

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration *

Between *
Borough of Raritan *
-and- *
Raritan PBA Local #82 *

Docket No. IA-2007-042
Jeffrey B. Tener
Interest Arbitrator

Appearances:

Steven S. Glickman, Esq.
Borough of Raritan

David J. De Fillippo, Esq.
PBA Local #82

OPINION AND AWARD

Background and Procedural History

I was appointed as the interest arbitrator in this matter by letter dated January 29, 2007 from the Public Employment Relations Commission ("PERC"). I held an informal mediation session with the parties on March 22, 2007 at which time it was evident that a voluntary resolution of the impasse was highly unlikely. There were two major stumbling blocks: one was the proposal of the Borough that the employees contribute 20% of the Borough's cost of health insurance for dependent coverage and the other related to the uncertainty associated with a pending tax appeal by Ortho Pharmaceutical, Inc., by far the largest tax payer in the Borough. Accordingly, it was agreed that the matter should be scheduled for a formal hearing.

A formal hearing was held on August 15, 2007. Following several agreed extensions for the filing of briefs, necessitated in part by the hope that the Ortho tax

appeal would be resolved, briefs were filed by January 23, 2008, thereby marking the close of the hearing.

As set forth in letters to Richard Gwin, PERC's Director of Arbitration, dated February 4, 2008 from Mr. Glickman and January 30, 2008 from Mr. DeFillippo, the parties mutually agreed, in accordance with N.J.S.A. 34:13A-16f(5) and N.J.A.C. 19:16-5.9, to an extension of time for the issuance of this decision so that the decision was to be issued on or before March 7, 2008.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act. P.L. 1995, c. 45, effective January 10, 1005, as amended by P.L. 2007, c. 62. The parties did not agreed upon an alternative terminal procedure. Therefore, in accordance with N.J.S.A. 34:13A-16d, this is a conventional arbitration proceeding. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section."¹

Statutory Criteria

The statute requires the arbitrator to:

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

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

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the

¹ The statute as amended now lists nine criteria.

arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

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

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

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new

programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

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

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007,c.62 (C.40A:4-45.45). (N.J.S.A. 34:13A-16(g))

Final Offers

Final Offer of PBA Local #82 The final offer of the PBA consists of the following proposals:

1. Duration. The PBA proposes a four (4) year contract commencing January 1, 2007 and expiring on December 31, 2010.
2. Article III – Salaries (pg. 4).
 - The PBA is proposing the following annual salary increases:
 - a. Police Officers: 5%
 - b. Sergeants: 12% above top paid Patrolmen
 - c. Lieutenant: 10% above top paid Sergeant
 - d. Captain: 10% above top paid Lieutenant
 - Detective salary. Article III should be clarified so as to reflect the terms of the parties' recent settlement of the PBA's "Detective salary grievance."

- Out of Title Pay. Article III shall be further modified so as to entitle any police officer required to perform the duties of a higher rank to be compensated at the rate of pay applicable to said higher rank. For example, when a patrol officer is required to supervise a particular shift in the absence of a Sergeant, said officer shall be compensated at the Sergeant's rate of pay for said shift.

3. Article IV – Holidays and Personal Days.

- Paragraph A shall be revised so as to recognize a 13th holiday – Martin Luther King's birthday.
- Paragraph C shall be modified so as to permit officers to carry over from year to year a maximum of 72 hours of unused personal leave.
- In the event the Borough either closes its office or permits its non-police personnel to leave work early due to inclement weather or other reasons, all officers shall be compensated at the rate of 1 ½ their regular rate of pay for the number of hours the non-police personnel were released. Said officers shall be entitled to elect to be compensated in comp time or cash.
- Paragraph B shall be modified so as to entitle members who report for duty on Thanksgiving and/or Christmas an additional 8 hours of comp time, if non-essential personnel are given the day off with pay and without any loss of accumulated time.

4. Article V – Clothing Allowance (pg. 10).

- Paragraph C shall be modified so as to require the Borough to satisfy any increases in the annual cost of the PBA's uniform cleaning service.

5. Article VI – Leave for Sickness, Vacation, Shift, and State Meetings (pg. 12).

- Paragraph A(2) shall be modified so as to establish a uniform amount of unused sick leave which may be accumulated regardless of the shift (8 vs. 12 hours) worked by each officer. Currently, all officers are permitted to accumulate a maximum of 960 hours of unused sick leave. This should be clarified in the contract.
- Paragraph A(2) shall also be modified so as to permit an employee to utilize sick leave for the care of a family member.
- Paragraph B(1), specifically the vacation leave schedule, shall be modified so as to reflect the following steps: 1 year; 5 years; 10 years; 15 years; and 20 years.

6. Article VIII – Bereavement Leave (pg. 16).

- Bereavement Leave shall be modified so as to afford each employee three days bereavement leave – regardless of the duration of shift of the officer's regular assigned shift.
- Expand definition of "immediate family" to include additional relatives by marriage.

7. Article IX – Terminal Leave (pg. 17).

- The PBA seeks to increase the terminal leave entitlement.
- Paragraph C shall be deleted.

8. Article X – Insurance (pg. 19).

- The contract does not provide for the continuation of health benefits for the surviving spouse/eligible dependent(s) of an active PBA member nor a retired officer. The health insurance benefits of the

spouse and eligible dependents shall be continued – at no cost – in the event of the death of an active member as well as a retired officer.

- Paragraph C shall be modified so as to require the Borough to satisfy the full cost of the dental plan for each year of the successor agreement.
- Also, paragraph C shall be amended so as to include orthodontic care.

9. Article XI – Hours of Work, Overtime (pg. 21).

- The work schedule that has been currently in place for several years shall be codified in the contract.
- Paragraph A(4) shall be modified so as to increase the on-call compensation to 2 hours for every 8 hours being on call. Also, the maximum allowable compensation of 8 hours shall be deleted.

10. Article XIV – Grievance Procedure (pg. 28).

- Paragraph A shall be revised so as to include within the definition of a "grievance" minor discipline (i.e., suspension or fine of 5 days or less including reprimands).

11. Article XV – Arbitration (pg. 31).

- Consistent with the proposal with respect to Article XIV, this clause shall be modified so as to permit arbitration of grievances challenging minor discipline.

12. Article XVIII – Miscellaneous (pg. 35).

- The contract shall be clarified so as to require the Borough to indemnify or otherwise hold harmless any officer who is made a party to any civil litigation as the result of the performance of his duties.

Final Offer of the Borough of Raritan The final offer of the Borough consists of the following items:

1. **Duration:**

The Borough proposes a three (3) year contract, commencing January 1, 2007 and expiring on December 31, 2009.

2. **Article III – Salaries:**

- a. Effective January 1, 2007, the Borough is proposing an across-the-board increase of three (3.0%) percent.
- b. Effective January 1, 2008, the Borough is proposing an across-the-board increase of three and one-half (3.5%) percent.
- c. Effective January 1, 2009, the Borough is proposing an across-the-board increase of four (4.0%) percent.

3. **Article X – Insurance:**

The Borough is proposing the following language be added at the end of Section A: "All employees shall contribute twenty (20.0%) per cent of the Borough's cost of health insurance (non-dental) for dependent coverage, depending upon the cost of coverage in excess of the individual coverage under the plan selected by each employee pursuant to the State Health Benefits Program. The contribution shall be implemented through a bi-weekly payroll deduction.

Stipulated Issues

There were two stipulated issues which the parties agreed should be included in the successor agreement. First, the parties agreed to clarify Article III, Salaries, of the agreement to reflect the terms of the parties' recent settlement of the "Detective's salary grievance." Second, they agreed to a PBA proposal that PBA members would be

permitted to use Borough equipment and services (e.g. telephone, fax machine, computers, copier) to perform their duties as members of the Raritan PBA.

Evidence

The parties presented a considerable amount of documentary evidence in this proceeding. While I will discuss this in greater detail and specificity when reviewing the arguments of the parties in relation to the statutory criteria, it is helpful to provide a general description of the evidence which was submitted.

The PBA's evidence included a certification from Ptl. Ray Nolte, the immediate past President of Local #82 and a State Delegate from 1996 through 2002, in which he discussed each proposal of the PBA and its reasons for making the proposal. The PBA submitted the parties' last three collective bargaining agreements covering the terms January 1, 1998 to December 31, 2000, January 1, 2001 through December 31, 2003 and January 1, 2004 through December 31, 2006. It submitted a roster of the 18 members of the PBA along with date of hire, salary, whether or not they received longevity, and their college credits. Of the 18 members, ten are patrol officers, two are detectives, four are sergeants, one is a lieutenant and one is a captain. The PBA also provided a report of the Police Department by the Somerset County Prosecutor's Office. It provided data about the Borough from its web site. It submitted a May 2007 study regarding the Borough's re-development opportunities as well as additional development data which came from the Borough's web site.

The PBA submitted demographic, economic, tax rate, real estate and other data from Somerset County and its various municipalities, including Raritan. It also provided some Statewide comparisons. It provided data on the economy of New Jersey. It submitted consumer price index data. It submitted the 2005 Uniform Crime Report for

the State. It submitted documents demonstrating the dangers of and stresses associated with law enforcement work.

The PBA also submitted municipal budgets for 2005, 2006 and 2007 along with excerpts from the audited financial statements for 2004, 2005 and 2006. It offered a Fiscal Report 2007 prepared on its behalf by Joseph R. Petrucelli, CPA and FCPA, which analyzes the Borough's budget as well as the impact of the Cap laws in this proceeding. It provided wage comparisons, including longevity, among municipalities in Somerset County for patrolmen, sergeants, lieutenants and captains. It provided wage increase data for municipalities in the County in 2005, 2006, 2007, 2008 and 2009 for each of the ranks. It also provided comparative data on holidays, vacations, out-of-title pay and surviving spouse benefits. It submitted the 2006 to 2008 agreement between the Borough and AFSCME Local 2168 which represents the Borough's blue collar employees as well as the agreement between the Bridgewater-Raritan Regional Board of Education and the Education Association covering the term July 1, 2005 through June 30, 2008. It submitted data on health insurance premium sharing in the County. Finally, it submitted data from the Division of Pensions and Benefits indicating pension contributions by the Borough since FY 2000.

The Borough also submitted a considerable compilation of data from Somerset County and its constituent municipalities detailing population, area, density, per capita income, household income, the percentage of the population in poverty, the percentage receiving public aid and social security, the median value of a single family home, median rent, net valuation taxable, equalized value, general and effective municipal tax rates for various years, general and effective total tax rates for various years, and tax rates per \$100 of value. It provided comparative salary data for top patrolmen from 2003 to 2009 as well as the number of steps to the maximum patrolman salary. It submitted data on the availability of longevity in the County as well as on vacations, holidays and

personal days. It submitted a salary report which shows the salaries of police officers in relation to department heads in Raritan.

The Borough provided a detailed financial summary prepared by Mr. Glickman relating to the Borough's ability to pay. It analyzed the 2007 budget which, of course, was prepared in accordance with the Cap law. The document reviews the potential sources of revenue. The Borough budgeted the maximum amount permitted in the current expense portion of the budget. The analysis then examines current expense budgetary line items and compares 2006 expenditures and 2007 appropriations. It projects the Borough's surplus. The Borough provided back-up documents to support this study including the 2007 budget, a summary budget account status report, health insurance costs, the Police Department payroll, a chart showing appropriation reserve lapses from 1999 to 2005, the 2007 Sewage Authority appropriation, data on the Borough's pension contribution obligations, and the real property tax complaint filed by Johnson & Johnson. Finally, the Borough provided information on health care costs in recent years.

Argument of the PBA

The PBA begins with an acknowledgement that arbitrators are required to consider the statutory criteria in deciding interest arbitration cases. It notes that the 1995 statutory amendments to a large extent codified several prior Appellate Division and Supreme Court decisions which dealt with the consideration that arbitrators had to give to the factors in relation to the evidence submitted and to explain the bases of their decisions and the weighing of the factors. Not all factors have to be given equal weight but the decision must be explained. Salary comparisons must include both the public and private sectors but, as the Supreme Court said in Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 84, 85 (1994), the arbitrator can still conclude, after

considering the other evidence, that police and firefighter salaries in similar municipalities are the most relevant comparables. The PBA recognizes that the arbitrator must consider "the lawful authority of the employer" and that this includes Cap law provisions.

The amendments provide for conventional arbitration as the terminal procedure unless the parties mutually agree to use a different procedure. Thus, in reality, it is the arbitrator rather than either the Employer or the Union who is responsible for writing the employment contract.

The PBA notes that New Jersey has the highest median family income in the United States. The unemployment rate is declining while employment – much of it in high-paying jobs – is growing and at record levels. Personal income in the private sector is rising along with consumer costs and soaring home price costs. Personal income in New Jersey grew by a substantial 6% between May 2006 and May 2007 and the national average was an even larger 6.3%. At the same time, the cost of living, as measured by the CPI, has been increasing. It rose at a seasonably adjusted annual rate of 5.5% in the first five months of 2007. The economy in this State, as well as nationally, is said to be solid. PBA members require adequate salary increases and equitable fringe benefits to keep pace with the rising cost of living. The PBA contends that its final offer will provide the fair salaries and equitable fringe benefits which are needed to offset the high costs and the increasing cost of living in this affluent part of the country. At the same time, this offer will enable the Borough to maintain an efficient, competent and skilled police department.

Coming down to the local level, the PBA asserts that Raritan is a vibrant and growing community. It notes that the arbitrator is required to consider the interests and welfare of the public – one of the statutory criteria – in deciding this case and says that in order to analyze this factor properly it is necessary to look at the "public" in Raritan as well as in Somerset County and its other municipalities. There were 6,338 people in the

Borough according to the 2000 census and 2,556 households. Median household income was \$51,122 and median family income was \$59,962. While below the County average, the PBA notes that the per capita income in Raritan increased by 55% between 1989 and 1999 while its ranking in the State increased from 347 to 294, a large jump in its relative ranking. Residential sales prices have been increasing rapidly in Raritan. The 1994 figure was \$146,749 whereas by 2006 it was \$379,861. This has been a long-term trend. New housing units are being built in the Borough at a high rate and actually led the County in 2003 in construction activity. The number of building permits issued between January and July 2005 was the 20th highest in the entire State. More residential and commercial development is planned for 2007 as reflected in the Orlando Drive Visioning Workshop presentation dated May 2, 2007. River Park at Raritan is one example. These are 224 high-end rental apartments on the Raritan River. There is a renaissance in Raritan for both commercial and residential development.

The PBA, aware that the Cap law is implicated in two of the statutory criteria the arbitrator must consider – the interests and welfare of the public as well as the lawful authority of the employer – contends that there is no Cap law problem in Raritan. It refers to the analysis in the detailed report of its expert financial consultant. The cost of the salary increases proposed by the PBA for each year of the four-year agreement was calculated. The 2007 increase was determined to be \$101,272; that for 2008 was \$77,504; that for 2009 was \$85,360 and that for 2010 was \$92,347. The allowable inside Cap appropriation, including money available in the Cap bank and the Cap base adjustment, also was determined: \$325,027 in 2007; \$213,037 in 2008; \$542,579 in 2009 and \$365,377 in 2010. The proposed police salary increases represented 31% of the 2007 amount; 36% of the 2008 amount; 36% of the 2009 amount; and 38% of the 2010

amount.² Looking at the levy Cap or taxing Cap, the Borough is permitted to raise more than the amount permitted to be spent under the spending Cap. Thus, this, too, does not create any problems for the Borough. Therefore, there is no Cap law problem nor lawful authority problem in this case based on the salary increases proposed by the PBA.

The PBA notes that the statute also requires a consideration of the financial impact of an award on the governing body, the residents and the taxpayers. It then analyzed the Borough's recent history of regenerating surplus and concluded that the PBA's proposal would not have an adverse financial impact on the governing body, the residents or taxpayers. The Borough regenerated \$877,307 in 2001, \$428,922 in 2002, \$596,495 in 2003, \$700,568 in 2004, \$744,174 in 2005 and \$611,000 in 2006. This is an average of over \$650,000 during that period of years.

In analyzing the financial statements, the PBA determined that one of the ways used by the Borough to regenerate surplus was to underestimate tax collections, thus resulting in greater revenue than had been predicted in the budget. The evidence is that the Borough collected 99+% of its taxes in each of those years but 2006 when 98.91% of taxes were collected. For example, for 2005, the Borough estimated a tax collection rate of 98.27% but actually collected 99.02% so it collected an additional .75% in taxes than estimated and this resulted in an additional \$149,241 in revenue which contributed to the regeneration of surplus in that year. Thus, by consistently estimating that a lower percentage of taxes would be collected, the Borough has been able to regenerate surplus.

The PBA denies that the Ortho Pharmaceutical appeal changes this situation. It notes that the Borough entered into a voluntary settlement with Ortho. There will not be a revenue loss as a result of the settlement although there will be a reshuffling of the tax burden to reflect the lower assessment of Ortho property. Importantly, the Borough has

² By my calculation, the figures for 2009 and 2010 should be 15.73% and 25.27%, respectively.

enjoyed "added assessments" which offset the impact of the Ortho settlement. The Borough added \$843,999 in added assessments. Additionally, over the last five years, the Borough has increased the amount of money raised through taxes by over \$5,000,000, a figure which represents a 33% increase.

All of this is said to demonstrate that the Borough possesses more than adequate resources to meet its financial obligations including funding the PBA proposal in this proceeding.

The PBA demonstrated that the Borough has been in the enviable position in recent years of seeing its municipal tax rate decline while assessed valuations have skyrocketed. The municipal tax rate was 0.835 in 2004, 0.467 in 2005 and 0.495 in 2006. This is a decrease of 41%. In those same years, the total tax rate also declined from 3.260 in 2004 to 1.760 in 2005 and to 1.830 in 2006, a decline of nearly 44%. This was possible because of the substantial increase in the assessed valuation of real property. The assessed valuation in 2002 was \$566,699,324 and in 2006 it was \$1,150,025,201, an increase of over 100% in those five years.

While recognizing that the statute requires a comparison of the wages and fringe benefits with other employees in both the public and private sectors, the PBA emphasizes that the job of Raritan's police officers is very dangerous and demanding. Law enforcement has been determined to be one of the most dangerous and stressful occupations in the country. The PBA argues that proper compensation is essential to ensure that the Borough's police department retains and attracts high caliber officers and candidates.

It cites a *USA Today* report that a police officer has the 8th most stressful occupation in the country. It notes that in 2005, five officers in New Jersey died in the performance of their duties and over 3,000 were assaulted in the line of duty. At the same time, police officers are doing a great job in reducing crime. The Uniform Crime

Report shows an overall decrease in New Jersey's crime rate of 4% in 2005. The index, number of violent crimes, and crime rate per 1,000 also declined in Raritan in 2005.

It is the contention of the PBA that the police officers in Raritan are overworked and underpaid and yet have succeeded in combating crime in the municipality. To assure a continuation of this success, it is asserted that the wage and fringe benefit proposals of the PBA must be awarded in this proceeding.

The PBA, citing the statutory mandate regarding salary and fringe benefit comparisons, asserts that a comparison with the other law enforcement officers in the County is especially relevant in this case. Its proposal of 5% each year for patrolmen is absolutely necessary and if the Borough's offer of 10.5% over three years were to be awarded it would result in the dedicated officers of Raritan, who are already the worst paid in the entire County, falling further behind.

In 2005, a top patrolman received an increase of 4% in Raritan. The average in the County that year was 4.28% and only one municipality – Branchburg with 3.75% - granted a lower increase than did Raritan. That year, the average salary for a top patrolman was \$76,429 whereas the top patrolman in Raritan received on \$71,147, \$5,282 or 7.42% below the average. Those figures do not include longevity which only increases the disparity since officers in Raritan do not receive longevity whereas 11 of the other 17 municipalities provide longevity which, of course, increases their average salaries. When longevity is included, the average salary for a top patrolman in 2005 in Somerset County was \$77,981. Again, the total compensation that year in Raritan was \$71,147, \$6,834 below the average in the County.

The next year only aggravated the situation. Again, the officers in Raritan received an increase of 4%. None got a lower percentage increase and the County average was 4.6%. Without longevity, a top patrolman in Raritan was \$5,945 below the average, an increase from 2006. With longevity it was worse. A top patrolman in Raritan

was \$7,561 below the average. The municipality with the next lowest pay package was Warren Township and a top patrolman in Warren received \$77,525 in 2006, a figure \$3,532 higher than in Raritan.

In 2007, the average top patrolman in the County earned \$85,801 with longevity. A 5% increase in Raritan, as proposed by the PBA, would bring the salary only to \$77,693, the lowest salary in the County. This is \$8,108 or 10.4% below the County average. Thus, even with the PBA proposal, the officers in Raritan would fall further behind the rest of the County. The situation, of course, would be worse if the County's 3% offer were to be awarded.

In 2008, a 5% increase would raise the top patrolman salary in Raritan to \$81,578 compared with a salary of \$78,880 under the Borough's proposal. Based on 2008 settlements reached to date – seven of the 18 municipalities – the PBA proposal would leave a top patrolman behind the average by \$6,957. Comparing what the top patrolman in Raritan would earn with successive 5% increases with the salary plus longevity of the next lowest paid patrolman – Far Hills at \$84,225 – Raritan's top patrolman would be behind by \$2,647.

Based on the limited number of settlements covering 2009, and including longevity, under the Borough's proposal, a top patrolman would be almost \$8,000 below the average and still over \$4,000 below the average with the PBA's proposal.

The above analysis is said to demonstrate that even the modest increases proposed by the PBA would constitute only a first step toward the goal of comparability with their counterparts throughout the County whereas the Borough's proposal would result in a continuing growth in the gap between Raritan and the rest of the County with its damaging impact on morale and the ability of the Borough to attract high caliber law enforcement officers in the future.

Turning to the superior officers which the PBA also represents, it asserts that they, like the patrolman, are the worst paid or among the worst paid in the County. In 2005, sergeants earned \$76,057, the lowest figure in the County, both with and without longevity, and \$10,264 below the average with longevity. The \$76,057 figure was over \$3,000 below the next lowest paid sergeant.

The situation did not improve in 2006. The salary in Raritan of \$79,099 was \$11,422 below the County average, including longevity, of \$90,521. Again, the differential between the County average and Raritan increased.

In 2007, with the 3% proposed by the Borough, a sergeant would earn \$81,472. This figure would not only be the lowest in the County and over \$4,000 below the next lowest municipality but it would be below the top patrolman salary and longevity in twelve of the municipalities in the County. Even under the PBA proposal, which would result in sergeants receiving 12% more than top patrolmen, a sergeant in Raritan would earn only \$87,016, a figure that would move the sergeants, when longevity is included, to the second lowest in the County, above only Far Hills. They would still be almost \$8,000 below the County average and some top patrolmen in the County would still exceed sergeants in Raritan.

This situation would only get worse in 2008 so that, under the Borough proposal, a sergeant in Raritan would be more than \$12,000 below the County average with longevity included. The PBA's proposal would help in that sergeants in Raritan would be "only" almost \$5,000 below the County average when longevity is factored in. The salary would be the second lowest in the County.

The three reported settlements for 2009 show that even under the PBA proposal, a sergeant would be almost \$5,000 below the average County salary plus longevity of \$100,472.

The picture is similar for lieutenants and captains. They earned the worst salary plus longevity in the County in 2005 and 2006 and this would continue under the Borough's proposed increases. An award of the PBA's proposal would improve their relative position but would still cause them to trail their brethren in the County by significant amounts.

Again, the PBA urges the arbitrator to award its salary proposal as a small step toward improving the relative position of sergeants, lieutenants and captains in the County. It will at least move in the direction of addressing the huge wage disparity which has developed over the years. This will encourage young officers to remain in the Borough for their entire careers. It will also assure the existence of an experienced and efficient Police Department which will be able to provide the level of services desired by the residents. It will help in attracting and retaining high quality officers.

The PBA has several additional proposals which relate to salaries. One would clarify Article III regarding detectives' pay to reflect the terms of the parties' recent settlement of the "Detective's salary grievance." The Borough agreed to this proposal.

The other is a proposal for out-of-title pay. The PBA asks that officers who perform the duties of a higher rank be compensated at the rate of pay applicable for that rank. This would recognize the additional responsibility which the officer is expected to carry. The PBA points out that 50% of the departments in the County do provide for out-of-title pay. The proposal is equitable in that those performing the duties of a higher rank should be compensated for performing those duties.³

The PBA is particularly concerned about the Borough's proposal to require members to pay 20% of the cost of health care for dependents. It makes a number of points about this highly controversial proposal. It reiterates that these officers, regardless

³ Article XII, Filling of Shift Sergeant by Patrolman, does address this issue but is limited to situations in which a patrolman fills the position of shift leader due to the death, retirement, termination or promotion of a sergeant running a full shift.

of rank, are already the worst paid in the entire County. Even if the PBA salary proposal is awarded, thereby resulting in modest relative gains, the gains would be significantly if not totally eroded by the premium sharing proposal of the Borough.

The Borough calculated the cost of its proposal. An officer who has family coverage under CIGNA would pay \$1,899 in the first year for such coverage and he would pay \$1,619 under New Jersey Plus. These costs, coupled with the Borough's proposed 3% salary increase in 2007, would not only result in the lowest salary in the County but the \$1,899 payment would use up 2.5% of the officer's salary that year, resulting in a net salary increase in 2007 of only 0.5%. For an officer with New Jersey Plus, the premium would use 2.1% of the salary leaving a net wage gain of 0.9%. Even under the PBA proposal of a 5% increase, the premium sharing would use 2.44% of the 2007 salary under CIGNA and 2.1% of the salary under New Jersey Plus. These costs would only be expected to increase in the future.

The PBA cites the certification of Nolte in which he stated that this proposal would result in a significant increase of out-of-pocket expenses for the members; it would significantly offset wage increases which were received; it would make a position in the department among the least desirable in the County, given the fact that the officers are the lowest paid; it would place these officers in a nearly unique position in being required to share the cost of health insurance. The overall effect on morale, he said, would be drastic and adverse as would be the effect on the Borough's ability to attract high caliber officers in the future. There would be a deterioration of morale and in the ability of the department to provide competent service to the residents of the Borough.

The PBA also notes that no other municipal employee in the Borough is required to share the cost of premiums for health benefits. Thus, the Borough is seeking to make the police officers the only employees who would have this burden.

The PBA looked at the other municipalities in Somerset County and determined that, with the exception of Warren Township, all of the municipalities pay 100% of the cost of health insurance and this includes dependent coverage. The only exception, Warren Township, requires its officers to pay \$35 **annually** for dependent coverage and \$25 **annually** for officers without dependents. This is obviously a token payment and far different from what the Borough is proposing in this proceeding.

Additionally, the PBA notes that two arbitrators, James Mastriani and Gerard Restaino, have rejected less severe premium sharing proposals in recently issued decisions. Arbitrator Mastriani rejected a proposal that officers pay 10% of dependent coverage when that requirement was in place for all Borough employees in Borough of Stanhope and PBA Local 138, PERC Docket No. IA-2005-085 (Feb. 28, 2007). Similarly, Arbitrator Restaino rejected a similar proposal for officers to pay 10% of the total premium for dependent coverage in Township of Denville and PBA Local 142, PERC Docket No. IA-2006-030 (March 15, 2007).

The PBA pointed out that a provision in the recently negotiated contract between the State and the Communications Workers of America, which originally required retired public employees to pay a share of the cost of their health insurance, was changed to provide instead for a wellness option that would eliminate any payment by employees.

Finally, the PBA noted that a number of the fringe benefits received by these officers do not compare favorably with those received by their counterparts in the County. One prominent example is longevity, a benefit received by the vast majority of police officers in the County. The number of paid holiday, 12, ranks 17th in the County, almost one full day below the average. The vacation entitlement of 12 days after five years of service ranks 13th in the County. Thus, poor benefits coupled with the worst salaries in the County at all ranks mandate that the premium sharing proposal of the Borough be

rejected, argues the PBA. The PBA also notes that the Borough provided no testimony to support its health insurance cost sharing proposal.

Continuity and stability of employment is another factor which the arbitrator is required to consider and the PBA argues that this factor favors an award of the remaining PBA contract proposals. To help to offset the low pay, it is argued, at least an improvement in fringe benefits is justified and required to support continuity and stability of employment. According to the PBA, this factor is linked to the first statutory factor, interests and welfare of the public. It contends that senior officers are more valuable to the Borough and serve the interests and welfare of the public. Therefore, it is necessary to foster continuity and stability of employment to assure the retention of those senior officers. Those officers know the residents, business owners and others. They know the trouble spots and high crime areas. They know where things are in the municipality and they know its facilities. They are more efficient than junior officers in performing tasks. They are better at detecting patterns which can be useful in dealing with traffic problems as well as crimes. Also, of course, they are needed to train junior officers. Thus, it is important to retain senior officers to provide the needed continuity and stability of employment.

Nolte pointed out in his certification that the Department has lost three experienced officers in the last four years.⁴ They all moved to higher paying jobs with other law enforcement agencies.

The PBA is seeking a four year successor agreement which would run through 2010. This is in contrast to the three-year agreement sought by the Borough. The PBA notes that when this award is issued, it will be into the second year so the agreement will have less than two more years to run. If the agreement were to end in 2009, the parties would be compelled to return to the negotiating table next year and face again the

⁴ He identified these as Michael Schutta, Douglas Brownlie, and Nancy Phibbs.

expense of lengthy negotiations and, perhaps, interest arbitration. A four-year agreement would result in a longer period of labor peace which is a virtue for both parties and important for stability.

The PBA addressed the reasons for its other proposals beginning with those related to holidays and personal days, Article IV. First, it notes that there are now twelve holidays and the PBA is seeking to add one day, Martin Luther King's birthday. The average number of holidays received in the County is 12.9 days so an additional holiday would bring Raritan into line with the rest of the County. Only Green Brook with eleven has fewer holidays than Raritan.

It asks that members be permitted to carry over unused and accrued personal leave up to 72 hours in a year. As Nolte noted in his certification, the Department permits only one of the four employees – one sergeant, two officers and one dispatcher – to be off at the same time for vacation, personal leave or comp time. Many officers like to schedule vacation and other leave in December. This has the effect of forcing officers to take personal leave earlier in the year and that means that they do not have such leave available if a need arises late in the year. The proposal would alleviate that problem and there would be no adverse impact on the Borough.

The PBA is seeking compensation at the rate of time and one-half for officers who work when the Borough closes its offices or permits non-essential employees to leave work early due to inclement weather. It asks that this compensation would be in the form of either cash or comp time at the discretion of the officer. This would improve the morale, according to Nolte, of officers who have to remain at work when others have been released without loss of pay. While it understands that its members cannot leave, it does argue that it is reasonable for them to receive premium pay under these circumstances.

The other proposal involving Article IV concerns a request that officers who work either Thanksgiving or Christmas receive an additional eight hours of comp time (plus the time and one-half that they receive for working) when, as has occurred in the past, the Borough has permitted non-essential employees to have that day off with pay and with no loss of leave time. The dispatcher as well as officers assigned to the Detective Bureau or the Traffic Bureau have not been required to work on those days. Again, the PBA proposal would recognize that those who are actually working should be compensated beyond those not required to work. It overcomes this perceived inequity. Of course, if the Borough does require the non-essential employees to work on those days, then the other officers would work as they do at present without additional compensation.

Article V, Clothing Allowance, Section C begins as follows: "The Borough shall provide a uniform cleaning service for each officer, not to exceed an annual cost to the Borough as of December 31, 2006." Similar language has appeared in the prior two agreements with the year being the end of the contract period. The PBA is asking that this practice of updating this date be continued and that the date December 31, 2010 be substituted in the successor agreement for December 31, 2006 in the current agreement. There would be no significant cost, according to Nolte, because the vendor has not raised the fee for several years.

The PBA is seeking several changes to Article VI, Leave for Sickness, Vacation, Shift and State Meetings. First, it asks that Section A(2) be modified to provide that all officers, regardless of the shift worked, be permitted to accumulate 960 hours of sick leave. This is no different from the present policy but the contract speaks in terms of those who work 12-hour shifts (who can accumulate 80 working days) and those who work eight-hour shifts (who can accumulate 120 working days). These both work out to

960 hours and the PBA wants the change to avoid confusion as employees move from one shift to another. There would be no increase in the number of hours.

Second, the PBA is seeking to expand the use of sick leave in that same provision to cover the care of family members. Currently it is limited to the officer's own personal illness or disabling injury. This would be fair and equitable and recognize the reality that many officers have families including young children. This, says Nolte, would help boost morale.

Third, the PBA is seeking to improve the vacation schedule by moving up the eligibility date to advance the increased numbers of days. Currently, employees receive eight days from the first through the seventh years, 12 days from the eighth through 16th years, 16 days for the 17th through 22nd years, and 20 days after the completion of 22 years. The PBA is asking that this be changed so that officers receive eight days through the fifth year, 12 days through the tenth year, 16 days through the 15th year, 20 days through the 20th year, and 25 days after the completion of 20 years. According to the PBA, this change would bring Raritan's vacation schedule more in line with those of other law enforcement agencies in Somerset County and throughout the State. This improvement also would help to counter the inequity of the lowest salaries in the County. According to the PBA, Raritan generally ranks among the worst in the County at various years of service in terms of the number of vacation days provided.

The PBA is seeking to change Article VIII, Bereavement Leave, in two ways. First, it seeks to change bereavement leave from two working days for those who work twelve-hours shifts and from three working days for those who work eight-hour shifts to three working days regardless of the length of the shift worked by the officer. While recognizing that the current formula works out to the same number of working hours of bereavement leave for all officers regardless of their shift, it is said to be unfair in that those who work 12-hour shifts receive only two working days off with pay. This often

makes it necessary for them to utilize vacation or other paid leave for bereavement purposes.

Second, it seeks to expand the definition of "immediate family" to include relatives by marriage such as a spouse's grandparents, uncle, etc. It is suggested that there would be no adverse impact on the Borough if these two proposals were to be adopted.

Next, the PBA is seeking to make two changes to Article, IX, Terminal Leave. The first would be to increase the number of days of unused sick leave that can be converted to terminal leave each year from two days for those working eight-hour shifts and 1 1/3 days for those working twelve-hour shifts to three days and two days, respectively. According to Nolte, this benefit has not been improved in almost 30 years and is claimed to be woefully deficient. The proposed increase is modest and would help to counter the poor wages earned by the members of the department with an attendant positive effect on morale.

Second, the PBA seeks to remove Paragraph C from Article IX. That paragraph provides that employees who use all of the sick days earned in a year not be permitted to add to their terminal leave that year. This is said to be an equitable proposal.

The PBA has three proposed changes to Article X, Insurance. First, it proposes that the health insurance benefits be continued for a surviving spouse and eligible dependents of active members as well as for spouses and eligible dependents of deceased retired officers. It notes that in Franklin Township, if the officer is killed in the line of duty, benefits are provided to the surviving spouse. In Green Brook, surviving spouses of officers who retire with 25 years of service do receive this benefit. Thus, it is not unprecedented in the County and is obviously necessary to protect the surviving spouses. As noted above, law enforcement is extremely dangerous and officers have been killed in New Jersey.

Second, the PBA seeks to amend Paragraph C to require the Borough to pay the full cost of dental insurance. This is consistent with the parties' practice. The contract provides that the Borough will bear the full cost in each year of the prior agreement and the PBA wants to continue this throughout the term of the new agreement. This also was done in the two prior agreements.

Third, the PBA is asking that orthodontic care be included under the family dental plan coverage. This would assist the many members who have young children and who require these services.

There are two proposals to amend Article XI, Hours of Work, Overtime. First, the PBA asks that the current work schedule, which has been in place for several years, be codified and included in the agreement. This would not change or alter the current schedule but would spell it out to avoid any confusion or misunderstanding in the future. The Borough has not proposed any change to the work schedule and this indicates that it is reasonable and workable.

Second, the PBA is seeking to increase on-call compensation under Paragraph A(4). Officers now receive one hour of comp time for each eight hours of on-call time with a cap not to exceed eight hours in a calendar year. The PBA is seeking to increase the rate to two hours for each eight hours and to remove the cap of eight hours. This would represent more reasonable compensation for the officers who are required to adjust their schedules and off duty activities to remain available for court duty if necessary. At times, according to the PBA, an officer can remain on call for two or three days or even longer so the removal of the cap is said to be necessary.

The PBA seeks to modify Article XIV, Grievance Procedure, and Article XV, Arbitration. It asks that the definition of a "grievance" in Article XIV, Paragraph A be expanded to include minor discipline, defined as a suspension or fine of five days or less including reprimands. Similarly, it seeks to change Article XV to make it clear that minor

discipline can be submitted to arbitration. These changes would permit an officer to challenge minor discipline through the negotiated grievance procedure rather than by filing a complaint in Superior Court. This would provide a more efficient, faster and less expensive way of appealing minor discipline under which an arbitrator would have the ultimate authority to decide the matter. This change would benefit both parties, the PBA asserts. This does not create any new rights for the officers. It simply changes the forum in which minor discipline would be appealed.

The final proposal of the PBA relates to Article XVIII, Miscellaneous. It is asking that the Borough hold harmless any officer who is made a party to any civil litigation as the result of the performance of their duties. This would eliminate the exposure of the personal assets of officers and assure that they would not be adversely affected simply for performing their duties as law enforcement offices.

The PBA notes that under N.J.S.A. 40A:14-155, the Borough is now required to provide a legal means of defense for officers involved in civil suits as a result of the performance of his duties. The change would simply make clear that the Borough's obligation extends to indemnifying or otherwise holding harmless the officer in the event of an adverse judgment. It is recognized that in circumstances in which a statute prohibits indemnification, the Borough would not be obligated to provide indemnification.

Argument of the Borough

The Borough points out that this is a conventional arbitration proceeding under the 1995 statutory amendments. This gives greater flexibility to the arbitrator in rendering an award. Each economic issue can be considered and accepted or rejected so the arbitrator is able to fashion the final economic package. In performing this function, the arbitrator is required to determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria.

As an initial proposition, the Borough asserts that it has paid the officers a competitive wage in the past and that it will continue to do so in the future consistent with the ability of the Borough to pay. It contends that its final offer constitutes an equitable settlement for the next three years and that this offer reflects the overall context within which these negotiations are being conducted.

The Borough notes that the 1995 amendments specifically state that, "It also is the public policy of this State to ensure that the [interest arbitration] procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public..." They go on to provide that "the authority so delegated [to an interest arbitrator] be statutorily limited, reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good..." There is a "mandate" that "arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved." (N.J.S.A. 34:13A-14 b and c)

There also is a specific statutory requirement that, "The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section." (N.J.S.A. 34:13A-16d(2))

The Borough devoted some time to an analysis of two companion cases decided by the New Jersey Supreme Court: Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994) and Township of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994). The substance of these

decisions was incorporated in the 1995 statutory amendments which became the "Police and Fire Public Interest Arbitration Reform Act."

The statute sets forth criteria to which the arbitrator is required to give "due weight" in deciding the dispute. The arbitrator must indicate which of these factors is relevant and explain why others are not relevant and then to analyze the evidence on each of the factors.

The Borough next turned to its analysis of the statutory factors as applied to this case, beginning with the interests and welfare of the public. This is a factor which the arbitrator is required to consider and, as described by the Borough, it focuses on the priority to be given to the wages and benefits of public employees within the context of the municipality's finite budget and plans. The interests and welfare of the public are best served when the public employer succeeds in striking a balance between satisfying its employees, thereby avoiding labor strife, while maintaining government services. This can be a difficult balance to achieve. The municipality should not sacrifice fairness to its employees while providing a wealth of frivolous services but it also should not reduce essential governmental services to satisfy the over-reaching demands of its employees.

As the Supreme Court stated in Hillsdale, the public is a "silent party" in an interest arbitration proceeding. The outcome of interest arbitration proceedings affects the public because of the impact on taxes, the budget Cap, and the cost and level of services. It is for this reason that the statute requires the arbitrator to consider the effect of an award on the general public. The Borough suggests that arbitrators often fail to accord the interests of the public the proper weight and emphasizes that in this proceeding, the arbitrator must consider the effect of the award on the citizens and taxpayers of the Borough.

The Borough asserts that arbitration awards for police and fire personnel have dramatically exceeded inflation as well as private sector wage increases and that, if this

continues, the relative burden on taxpayers will continue to increase. The Borough believes that its offer in this proceeding supports the public interest while still providing the police officers with a reasonable salary increase.

The Borough contrasts the two parties to the proceeding in terms of their development of final offers. The PBA properly considers the wants and desires of its members while placing little or no weight on the interests and welfare of the public or the ability of the Borough to pay or the Borough's lawful authority or the financial impact on the governing unit, its residents and taxpayers. The Borough, on the other hand, prepares its economic proposal by taking into account not only the needs of the employees but also the interests and welfare of the public, the Borough's ability to pay, its lawful authority and the financial impact on the residents and taxpayers. Accordingly, the Borough submits, its final offer is a reasonable one which considers all of the relevant statutory criteria and it must be the position awarded by the arbitrator even in this conventional arbitration proceeding.

The Borough argues that demographics are an important element in determining the interests and welfare of the public as well as in analyzing comparability. The Borough cites various demographic facts which confront the residents of Raritan. There is a low per capita income, reported at \$26,420 in 1999. Median family income that year was only \$59,962. Median household income was \$51,122. New valuation taxable and state equalized value also are low. On the other hand, there is a high percentage of people in poverty. The 2000 figure was 6.41%. The percentage of households receiving public aid is 1.84%. Almost 28% of the households receive social security. There is a comparatively high municipal tax rate, effective municipal tax rate, general/total tax rate and effective general/total tax rate.

An even more telling perspective emerges when one compares the demographics of Raritan with those of other municipalities in Somerset County. The Borough ranked

only 14th of 19 municipalities in per capita income. It ranked 17th in median household income. It ranked fourth highest in the County in terms of the percentage of persons in poverty and percentage of households receiving public aid. It was fifth in the percentage of households receiving social security. Looking at both the municipal tax rate and the effective municipal tax rate in 2006, Raritan was the sixth highest in the County.

While acknowledging that it is in the public interest to maintain present benefit levels to the extent possible, there is said to be no justification for increasing current benefits or for adding additional benefits. Thus, the Borough opposes the proposals of the PBA to increase the rank differentials, to increase out-of-title pay, to add a new holiday, to compensate officers when other municipal employees are sent home due to inclement weather, to grant compensatory time to officers who work on certain holidays, to increase the Borough's cost of the Association's uniform cleaning service, to increase sick leave accumulation, to increase vacation entitlement, to increase terminal leave entitlement, to increase insurance benefits including the addition of a new orthodontic plan, or to increase on-call compensation. The added fiscal burden which any of these new or improved benefits would impose is said not to be in the public interest and, it is argued, the PBA failed to provide any countervailing support for any of these proposals.

The Borough urges the arbitrator to accept its final offer as being reasonable and consistent with the interests and welfare of the public and this is said to be particularly true in light of the skyrocketing health insurance premiums.

Next, the Borough turned to comparability and overall compensation, two of the other factors which the arbitrator is required to consider. Such comparisons are to be made with reference to the wages, hours and conditions of employment of employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions, in comparable private employment, and in public and private employment in general. Furthermore, the overall

compensation presently received by the employees must be considered. This includes not only direct wages but also vacations, holidays, excused leaves, insurance, pensions, medical and hospitalization benefits and all other economic benefits. Based on these factors, the Borough again asserts that its offer is a reasonable one which should be awarded by the arbitrator. It emphasizes that the comparability criterion does not mean that all municipalities must provide the same level of wages and benefits to their employees. If that were the requirement, these things would be unchanging and exactly equal throughout the County. Comparability is said to include a consideration of trends in the State as well as nationally. There is a point, according to the Borough, when "enough is enough."

The Borough contends that in 2006 a top patrol officer ranked 18th in the County out of 19 municipalities with a salary of \$73,993.⁵ The Borough argues that within the County, there is only a slight variation in the salaries of patrol officers. Thus, it computed the 2006 salary for a top patrolman in Raritan as being 94% of the average in the County, a difference of only 6% which is said to be fully justified – and indeed relatively higher than it should be – when the per capita income, median household income and median family income of the Borough's residents is considered.

If holiday pay is added to the base salary of the Borough's officers, as it is in some municipalities in the County, then the Borough argues that its base pay would exceed the County average in 2006.⁶

⁵ There are two areas in which the figures provided by the Borough and the PBA differ. First, the Borough included figures for Peapack and Gladstone Borough whereas the PBA did not. This difference does not affect anything except the number of municipalities used in the comparisons. Second, the Borough reports that the maximum salary for a patrolman in Far Hills was \$50,501 whereas the PBA reported this salary as being \$77,871. Neither party submitted back-up or source documents but I am suspicious of the accuracy of the number reported by the Borough since it is so far below any of the other reported figures.

⁶ The Borough did not specify its methodology in reaching this conclusion.

The Borough asserts that if the proposal of the PBA were to be awarded in 2007, sergeants would receive a salary increase of 11%; lieutenants would receive 14%; and captains would receive 17%. After 2007, these superior officers would still receive average increases, according to the Borough. These increases would far exceed the "going rate" within the Borough and the County and the State. On the other hand, under the Borough's offer, the patrol officers would have a relative salary ranking which far exceeded the per capita income, median family income and median household income rankings of the Borough in relation to the rest of Somerset County.

The Borough argues that even using the evidence submitted by the PBA, there is no justification for the other economic demands it submitted. Thus, as the exhibits reveal, only half of the municipalities in the County provide any form of out-of-title pay. As to holidays, the Borough is less than one day below the reported average in the County. For vacations, the Borough is only slightly below the County average for employees with five years of service; it is slightly above the average for employees with ten years of service; it is three days below the average for employees with 15 years of service; it is very close to the average for employees with 20 years of service; it is nearly three days above average for those with 25 years of service. The PBA is seeking a substantial increase in the vacation entitlement and this cannot be justified based upon the data which it submitted. Only two of the municipalities provide any form of benefits to surviving spouses so this proposal cannot be justified.

The Borough also argues that the PBA has provided no documents or testimony to support its demands for personal leave carryover; compensation if non-police personnel are released due to inclement weather or for other reasons; additional compensation for reporting for work on Thanksgiving and Christmas; payment by the Borough to pay any increases in the cost of uniform cleaning; increases in sick leave,

bereavement leave, terminal leave or insurance (other than surviving spouse); codification hours of work; changes in minor discipline or indemnification.

On the other hand, the Borough urges acceptance of its health insurance proposal. This proposal responds to the Borough's fiscal problems in coping with escalating health insurance premiums and the trend toward increasing participation by employees toward premiums with reduced coverage. While not denying the need for health insurance for officers and their families, the Borough asserts that these costs must begin to be shared at least for dependent coverage.

The Borough submitted data to show the extent to which these costs have increased. Thus, NJ Plus cost \$6,741.36 in 2001 for family coverage and CIGNA cost \$8,339.40 that year. Those costs increased every year and in 2007, the cost for NJ Plus was \$13,191.00 and the cost of CIGNA was \$15,936.96. These are huge increases in a short span of years.

The Borough indicated that six of the officers have CIGNA and eight have NJ Plus. Based on the 2007 costs, a payment of 20% of the difference between family coverage and individual coverage for an employee in NJ Plus would be \$1,619.40 annually and that for an employee in CIGNA would be \$1,899.36 annually. These amounts are said not to be unreasonable contributions by employees toward the cost of dependent coverage. Again, the Borough asks that this proposal be considered in the context of Raritan's low per capita income, low median family income, etc.

The Borough then turned to comparability within the Borough. The salaries of patrol officers and superior officers stand out as being exceedingly high. The salary of a top patrolman in 2006 was \$73,933. This exceeded the salaries of all Borough employees except the administrator (\$85,620), the construction official (\$74,985) and the Department of Public Works Superintendent (\$74,770). The base salary of sergeants - \$79,099 - exceeded the salaries of all municipal employees except the administrator and

the base salary of the captain exceeded the base salary of the administrator. The members of the Police Department receive holiday pay and overtime which increases the gap between them and other municipal employees. Thus, the Borough's top 11 employees in gross salary in 2006 were all members of the Police Department and all exceeded the gross salary of the administrator.

Looking at the other municipal employees, the Borough asserts that its salary offer will result in even greater dollar increases for the police officers than will be received by other municipal employees. In contrast, the PBA's proposal exceeds not only the dollar increase but also the percentage increase which the other employees will receive.

Finally, the Borough asserts that its offer is reasonable in relation to national wage trends and private sector wage trends. Many of the increases provided in the private sector are said to be tied to the Consumer Price Index ("CPI") and the proposal of the Borough is said to more closely approximate increases in the CPI than do those proposed by the PBA. Furthermore, much of the CPI increase comes from an increase in the costs of health care and the officers are protected from those increases under the current agreement.

Next, the Borough turns to the factor regarding the lawful authority of the employer which, again, the arbitrator is required to consider in determining the reasonableness of the parties' proposals. The Cap law, N.J.S.A. 40A:4-45-1 et seq., restrains the lawful authority of the employer by limiting overall budget increases and thereby the ability of municipalities to provide wage and other economic benefit increases to their employees.

The Cap law declared it to be "the policy of the [State] that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads." At the same time, it was not the intent to constrain local government "to the point that it would be impossible to provide necessary services

to its residents.” The law imposed a limit, with certain exceptions, on the amount by which final appropriations can increase from one year to the next. The law did not impede the ability of municipalities to increase individual line items by amounts in excess of the Cap but the overall appropriations were limited by the Cap. Salary increases are included within the Cap so the cost of these increases must be considered as part of the overall permitted final appropriations. This includes the cost of interest arbitration awards, although there are very narrow circumstances when an emergency appropriation can be used to fund an award which exceeds the budget. Even then, however, any such emergency appropriation over 3% of the current operating appropriations must be included in the following year’s appropriation limit.

It is the municipality which has the primary responsibility under the Cap law to allocate available resources among the services it chooses to provide to the residents. To remain within the required limits, a municipality may determine that it is compelled to lay off police officers or other municipal employees to remain within the Cap limitations.

Over the years, the exceptions to the Cap law have been narrowed so that the former exception of increases in insurance costs over the costs in 1985 has been eliminated. This has had a major impact on municipal budgets as the cost of health care has spiraled, as the Borough demonstrated (and as discussed above). The impact has been especially large because the Borough provides health benefits for retirees at the sole expense of the Borough, a very costly undertaking which most municipalities have not agreed to accept.

The Borough made an extensive presentation regarding its ability to pay in the form of a financial summary prepared by Mr. Glickman in which he examined the revenue side of the budget as well as the expenditure side. On the expenditure side, he reviewed each line item in the current expense portion of the budget which showed an increase or a decrease of more than \$2,500 between 2006 appropriations and projected

appropriations for 2007 based on the budgeted amounts of each line and a consideration of the actual expenditures in the first half of 2007.⁷ The budget generally provided for 3.5% salary increase across the Borough so salary items which matched that amount also were not reviewed.

The study begins by noting that for 2007, the Borough budgeted to the maximum amount permitted under the Cap law. The \$6,086,780 which it appropriated included the maximum 3.5% increase to the current expense portion of the budget along with increases in ratables and utilization of the Borough's Cap "bank" of \$123,366. No additional monies could have been appropriated under the law.

There are four general revenue sources. These are surplus, State aid, so-called "one-shot deals," and property taxes.

The Borough analyzed its surplus balances beginning on January 1, 2005 when the surplus stood at \$1,046,472. By January 1, 2006, this had increased to \$1,119,574. Of that amount, \$675,000 was anticipated in the 2006 budget. By January 1, 2007, the surplus had decreased to \$1,069,378, very close to the January 1, 2005 surplus but less than the January 1, 2006 surplus. The 2007 budget anticipated \$760,000 from the surplus balance. This was \$85,000 more than had been anticipated the prior year when the surplus was larger. According to Mr. Glickman, the Borough is hoping to regenerate surplus to replenish the surplus balance by the end of 2007 in part by receipt of greater revenue from River Park at Raritan, a development. Mr. Glickman asserts that it will be difficult to regenerate more surplus in the future and that if future budgets anticipate the use of more surplus, this will only generate a downward spiral of declining surpluses.

State aid is said to be a problematic revenue source. There was an insignificant increase of \$20,000 in 2007 but it is not reasonable to anticipate any increases in State

⁷ Excluded were items where appropriations did not equal \$1,000.

aid in the future and the Borough will consider itself fortunate if it receives the same State aid in the future.

"One-shot deals" are just that: they do not provide an ongoing source of revenue. Thus, if utilized in one year, that money must come from somewhere in future years to maintain that level of expenditure or that public service. They cannot be relied upon to fund a budget or to meet operating expenses.

The only other revenue source which can be used to absorb budgetary increases is municipal taxes. This brings back the problems cited above regarding the demographic factors associated with Raritan: low per capita income, low median family income, a high proportion of people in poverty, a high percentage of households receiving public aid, a high percentage of households receiving social security, and a high tax rate (both general and equalized).

The Borough cites two specific events which impact the revenue side of the budget. One is the Raritan Town Center development and the other is the Ortho Pharmaceutical tax appeal. The Raritan Town Center will result in an additional \$700,000 in tax receipts. This, however, will be more than offset by the Ortho tax appeal. This is of major importance because the Ortho and Johnson & Johnson properties represented some 31% of the Borough's tax base. The assessed value of this property in 2006 was approximately \$351,916,000 and the net taxable value of the Borough was approximately \$1,150,025,000.

Ortho and Johnson & Johnson appealed their tax assessments for the years 2001 through 2007. Late in 2007, the parties entered into a Stipulation of Settlement, and the Borough of Raritan adopted a Resolution, which results in a settlement of these appeals. The settlement includes an agreement that the 2001 through 2007 tax appeals will be dismissed and that, with a few limited exceptions, the 2008 cumulative tax assessments on all the properties at issue will be \$307,500,000. This is a reduction from the 2006

figure of \$44,416,000, a reduction of approximately 12.6%. As calculated by Mr. Glickman, this will result in a revenue loss of \$1,000,000. When considered with the increased revenue from the Raritan Town Center, the Boro is down \$300,000 in revenue before it starts. Thus, taxes will have to be increased by \$300,000 just to meet the revenue loss.

The Borough projected a budget surplus of only \$134,265 in 2007, as set forth in Mr. Glickman's Financial Summary. This is said to show that the budget is very tight even though the Borough raised the amount it was permitted to spend to the maximum. Thus, it is argued, any increase in police wages and salaries beyond the Borough's offer will have a detrimental impact on the Borough's ability to pay and its municipal services and projects. Other items would have to be reduced to meet those higher costs and this would result in reduced staff or reduced projects or reduced services or reduced programs or some combination thereof. The Borough contends that its insurance proposal was made with these same considerations in mind. It urges the arbitrator to accept the offer of the Borough as is and to award it in this case.

In its analysis of expenditures in 2007, the Financial Summary went over each appropriation which exceeded \$1,000 and those which were either \$2,500 more than or less than the previous year. It then "explained" what had happened with respect to each of these, based on actual expenditures in the first six months of 2007 and based on informed projections for the remainder of the year.

Based on these projections, the Borough has projected a surplus in the amount of \$134,265 which will be available to lapse into surplus in 2008. That amount is the smallest since at least 2000, according to data provided by the Borough. This means that, if the Borough is to regenerate its surplus balance in 2009, there would have to be other sources. Otherwise, the surplus balance would decrease and this would put even greater pressure on property taxes as a source of revenue.

Additionally, the Borough notes that with the recent Cap law, which generally limits increases in municipal levies to 4% annually, all added expenditures, whether within or outside of the Cap, have an impact on the Borough's ability to pay even current expense items. There is a limit on how much revenue can be raised from taxpayers. Therefore, items which fall outside of the Cap still have an important impact. The Borough identified two such items.

First, the Borough cites its Sewerage Authority appropriation. The Borough was compelled to raise its appropriation for this purpose in 2007 over that appropriated in 2006 and based on the first two quarters of 2007, it seems clear that the 2008 appropriation will again have to be increased. This will mean that the taxpayers will have to pay for this with higher taxes and it will mean that less money is available for appropriations in the current expense portion of the budget.

Second, the Borough notes that pension contributions have increased as the Borough, along with the rest of the State's municipalities, are in the midst of the "phase-in" program for pensions. The Borough's additional contribution in 2008 for the police and non-police pension funds is \$142,123 or 1.25 tax points.

The financial impact on the governing unit, its residents and taxpayers also must be considered by the arbitrator in determining the reasonableness of the award. This is not the same as the "ability to pay," as the Supreme Court emphasized in Hillsdale, and it is not the Borough's burden to prove that it cannot pay the increases proposed by the PBA.

The Borough contends that its offer takes into consideration the impact on the governing unit, its residents and taxpayers and the State's bleak economic condition which has an impact on the Borough's ability to raise taxes. It repeats its arguments regarding the limited revenue sources and the prospect that the only real source of additional revenue is through municipal taxes. Because the Borough is now budgeted to

Cap, it can only expend more than it has budgeted or more than the Cap amount on salaries if it reduces expenditures elsewhere in the budget and that means reducing municipal services or programs or projects or personnel.

The tax rate must be considered along with the ability of the Borough to maintain existing programs and services. Given the economic realities as described by the Borough, it contends that the arbitrator must award its final offer as is.

The cost of living and CPI is another factor which an arbitrator must consider. According to the Borough, the last time the CPI increase exceeded 4% was in 1991. Therefore, the salary demands of the PBA greatly exceed increases in the CPI. This, too, makes it clear that the Borough's offer is reasonable based on current and projected increases in the CPI and again point toward the selection of that offer as is.

The final statutory factor is the continuity and stability of employment and this, too, is said to be an important one. The Borough argues that its final offer will best allow the Borough to maintain its work force at current levels. On the other hand, if the arbitrator were to award increases in excess of those offered by the Borough, the ability of the Borough to maintain present levels of employment would be hampered.

We are in an economy that is slowing down and that is true of both the public and private sectors. The Borough has considered that fact in fashioning its final offer and it hopes to be able to maintain a stable level of governmental services but this can best be assured through acceptance of its final offer.

In sum, the Borough argues that the present economic environment is not one in which benefits should be increased, as the PBA has proposed with numerous proposals. Rather, the reasonable salary increases and insurance cost containment measure should be awarded as proposed by the Borough. It contends that the PBA failed to meet its burden of proof or to demonstrate the reasonableness of its demands in relation to the statutory criteria. It simply failed to provide supporting evidence to justify any of its

proposals, including its salary proposal. This is said to be in contrast to the Borough's final offer which is consistent with the statutory criteria in that it considers the interests and welfare of the public, the officers' overall compensation including salaries and benefits, the comparative compensation of these officers in relation to comparable public employees as well as other employees of the Borough and private sector employees, the Cap law, the financial impact on the governing unit, its residents and taxpayers, increases in the cost of living, continuity and stability of employment, the Borough's tax rate problem, and the fact that the current expense portion of the budget can be increased by a maximum of 3.5% under the current Cap law. Accordingly, it argues that the arbitrator should award the final offer of the Borough as is.

Discussion and Analysis

As stated, N.J.S.A. 34:13A-16d(2) requires the arbitrator to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria..." The arbitrator must give "due weight" to those factors which are deemed to be relevant. Each one must be considered. Those deemed relevant must be explained and there must be an explanation as to why any criteria is deemed not to be relevant.

I have carefully considered the evidence which has been presented as well as the arguments of the parties. As discussed at length below, I have considered the evidence and arguments in light of the statutory criteria. I have considered each criterion and found each to be relevant although, as discussed, I also have determined that the weight to be given to the factors varies. I also have determined the total net annual economic changes for each year of the agreement in order to conclude that those changes are reasonable under the criteria.

To make my analysis of the evidence and the parties' arguments more meaningful, I shall set forth the terms of the award at this point. Each party, of course, argued that its final offer was reasonable in relation to the statutory criteria and that the offer of the other party was not reasonable. I need not deal with the reasonableness of those final offers except to the extent that portions of those final offers are adopted as part of the award. Little insight can be gained by applying the criteria to the final offer of one party or the other if that is not what is awarded. In other words, in this conventional arbitration proceeding, it is the terms of the award rather than the final offer of one party or the other which must be reasonable. It is the arbitrator who fashions the terms of the award.

The parties have differed on the term of the successor agreement with the PBA urging a four-year agreement and the Borough proposing a three-year agreement. I would generally favor a four-year award, especially where, as here, the first year has already expired. I understand the desirability of a longer period of stability and predictability for both parties and the mutual advantage to the parties of avoiding the costs of having to negotiate and perhaps arbitrate a new agreement in less than two years. Nevertheless, I have concluded that the new agreement should be a three-year contract, January 1, 2007 through December 31, 2009. There is simply too much economic uncertainty at this time to try to project too far into the future. The PBA has provided data on only three contract settlements which cover 2009 and none which cover 2010. Additionally, the impact of the Cap laws, including the 2007 law limiting tax levies, is difficult to ascertain. Thus, this award shall provide for a three-year agreement.

The parties agreed to include in the new agreement a clarification to Article III regarding detectives' salaries to reflect the terms of a settlement of a grievance relating to that issue. Additionally, the Borough agreed to a PBA proposal that PBA members be permitted to use Borough equipment such as telephone, fax machine, computers and

copier to perform their duties as members of the Raritan PBA. These two items will be included in the award.

Article III, Salaries, shall be increased across-the-board as follows:

January 1, 2007	4%
January 1, 2008	4%
January 1, 2009	4%

The salary differentials of sergeants, the lieutenant and the captain shall not be increased to 12% above the rate of a top paid patrolman for a sergeant, 10% above the rate of a top paid sergeant for a lieutenant, and 10% above the rate of a top paid lieutenant for a captain. While it is true, as the PBA noted, that the salaries of superior officers are very low in the County, that is true of the salaries of the patrolmen as well. The PBA did not provide convincing evidence that the salaries of the superior officers are relatively lower than are those of the patrolmen so as to justify a larger increase for the superior officers.

There shall be no change in out-of-title pay. According to the PBA, nine of the 18 municipalities do not provide out-of-title pay. No evidence was provided indicating the extent to which this occurs in Raritan. I note that Article XII, Filling of Shift Sergeant by Patrolman, covers more extreme situations where the vacancy is the result of death, retirement, termination or promotion. There was insufficient evidence to support this proposal.

I shall not add a 13th holiday. I recognize that the Borough is behind the County average by almost one full day: 12 holidays in Raritan versus an average of 12.9 holidays in the County. Eight of the municipalities have only 12 holidays and Green Brook has only 11. An additional holiday would cost approximately .4% and this is money that is better devoted to a salary increase where the disparity is greater than it is for holidays.

The PBA is seeking to carry over a maximum of 72 hours of unused personal leave from year to year. It cited the difficulty of officers who might need personal days in December but who use their personal days before the end of the year to avoid losing them since many officers want to take paid time off in December and it is not always possible to get time off at the end of the year. In response to this problem, I shall provide that officers can carry over a maximum of one personal day a year – eight hours for those who work eight hour shifts and 12 hours for those who work twelve hour shifts. This will not result in any increase in the amount of personal leave available to either group of officers but it will deal with situations which might arise at the end of a year to increase the chance that the officer will have a personal day available for use if necessary. There should be no negative impact on the Borough as a result of this change.

The PBA has asked that employees who work when non-police personnel have left work due to inclement weather or other reasons be paid time and one-half for working. While I understand the equity argument of the PBA – others are getting paid straight time for not working whereas scheduled PBA members who are working also get only straight time – this does not really result in any loss to the PBA members. Police officers understand that the nature of their job requires that they provide protection around the clock in all circumstances. I shall not award this proposed change.

The PBA has asked that officers who work on Thanksgiving and Christmas be given an additional eight hours of comp time if non-essential personnel are given the day off with pay and without any loss of accumulated leave. Again I understand the equity argument the PBA is making but I am not convinced that the change is justified. Officers who work on Thanksgiving and Christmas receive time and one-half for this time. The PBA has stated that the Borough sometimes sends non-essential personnel home on these days in order to avoid the overtime premium. This makes economic sense for the

Borough and does not deprive those who do work of the extra payment provided by the contract. This, too, shall not be awarded.

The PBA has proposed that Article V, Clothing Allowance, be changed so that the date at the end of Section C reflect the end date of the contract, December 31, 2009. A similar change was made in at least the two prior agreements. No information was provided on any economic impact associated with this change but the PBA asserted that there has not been an increase for several years. Any increase would be expected to be minimal. This proposal shall be adopted.

The PBA has asked that Article VI, Section A2 be amended to provide that the amount of unused sick leave which can be accumulated be 960 for all officers, regardless of shift. Those who work eight-hour shifts can accumulate a maximum of 120 days and those who work 12-hour shifts can accumulate a maximum of 80 days. These both amount to 960 hours. This proposal will be awarded. The change will avoid any confusion if an officer moves from one shift to another. Again, there will be no economic impact since it will not result in any additional accumulation.

The PBA has asked that members be able to use sick leave to care for family members. It provided no evidence that this is a benefit which is enjoyed in Somerset County nor indicating the extent to which it has created problems for its members. It undoubtedly would result in an increased use of sick leave. I shall deny this proposal.

The PBA is seeking to improve the vacation schedule essentially by moving up the dates on which employees advance to a greater number of vacation days. The data submitted by the PBA does not justify a change. After five years of service, officers in Raritan receive 12 days, tied for 11th in the County and above five other municipalities. After ten years of service, officers receive 18 days – tied for 9th – and this exceeds the County average of 17.8 days by a minimal amount. After 15 years, officers still receive 18 days and this is 3.1 days below the County average and places Raritan 16th in the

County. This is the service level at which these officers do the least well on a comparative basis. After 20 years, they receive 24 days and this is only one-half a day below the average. After 25 years, they receive 30 days, tied for second highest and almost three days above the County average. While the picture is not consistent and while a case could be made in the abstract that some improvement in the schedule would be justified, I shall decline to change this benefit. This is not a benefit level which jumps out as grossly out of line and it is costly to add paid time off. As stated above, each additional day costs approximately .4% and, given the limited resources available in Raritan, the money is better spent on salaries. Accordingly, I shall not change the vacation schedule.

The PBA has proposed that bereavement leave be modified to provide that all officers, regardless of shift, receive three working days for bereavement leave. While I appreciate the argument that officers who work 12 hours shifts might have to take another form of paid leave to have a third day of bereavement since they receive a total of 24 hours or two work days for this purpose, this would create an inequity and result in a more costly benefit for the Borough. This is not something which occurs frequently. The PBA did not provide supporting evidence. Thus, I shall deny this proposed change.

The PBA also proposed to expand the definition of "immediate family" under bereavement leave to include relatives by marriage. No supporting data was provided. Presumably, other paid leave can be utilized to cover these circumstances. I shall not award this change.

The PBA is seeking to increase the terminal leave benefit and argues that it has not been improved in 30 years. While the formula may not have changed in 30 years, that does not mean that the benefit has not changed. The benefit is linked to salaries and as salaries increase, so does the value of this benefit. The PBA did not provide data to justify a change in the formula. This proposal will be denied.

The PBA also seeks to eliminate Article IX, Paragraph C. That paragraph permits officers to add to their terminal leave only in years in which they have not utilized all of their sick leave for that year. This limitation makes sense and no contrary evidence has been provided. I shall deny this proposal.

The PBA is seeking to add health insurance benefits for spouses and dependents of retired officers as well as for those of active officers who die. While this is a proposal which arouses sympathy and which would be very helpful for the surviving spouses and dependents, it also would be very expensive. The PBA cited only two municipalities which have any form of these benefits. In Franklin Township, there are surviving spouse benefits if an officer is killed in the line of duty. In Green Brook, if an officer retires with 25 years of service, a surviving spouse does receive health benefits. I am aware that the Borough provides health insurance for retirees in accordance with Chapter 88 of the Public Laws of 1974. See Article X, Paragraph B. This is a very costly and valuable benefit which is not universal. The PBA failed to provide sufficient justification for me to award its proposal regarding surviving spouses and dependents.

The PBA has proposed that Article X, Paragraph C, which provides for dental insurance, be changed so that the date reflects the final day of the new agreement: December 31, 2009. This paragraph provides that the Borough will pay the cost of the family dental plan not to exceed the cost as of the last day of the contract. This change has been made in each of the last two agreements. Neither party provided cost information on dental insurance. The Borough provided no specific reason not to continue providing this benefit as it has in the past. I shall award this change.

The PBA has proposed the addition of orthodontic care to the dental insurance coverage. It provided no supporting evidence nor cost data. It is not clear whether this is a benefit which is widely enjoyed in the County. It will be denied.

The Borough has proposed that employees who have dependent coverage pay 20% of the cost of providing such coverage. In 2007, this would cost officers who have CIGNA \$1,899.36 annually and those who have NJ Plus \$1,619.40. The Borough cited the increasing costs of health insurance and this, of course, is true. It also is true that health insurance costs are placing increasing strains on municipalities throughout the State and the nation. At the same time, as the PBA noted, with a token exception, no police officers in Somerset County make any contribution toward the cost of their health insurance. The sole exception is a minimal annual payment by officers in Warren Township who pay \$25 toward coverage if they have no dependents and \$35 toward family coverage.

I accept that in the private sector, cost-sharing by employees is widespread. This is not true among police officers in New Jersey and certainly not in Somerset County. An employer who was offering an outsize salary increase would have a better chance of making some change in this area but Raritan is not in a position to do that. While I understand that Raritan has financial pressures, it also must be remembered that its officers are the lowest paid in the County. Absent truly compelling circumstances, I am not prepared to render an award which further erodes the already bottom ranking of these officers.

The PBA seeks to have the current work schedule, which has been in place for several years, made a part of the contract. There is no evidence that the Borough is considering a change from that schedule. The PBA argues that this shows that the schedule is working for the Borough as it is for the PBA members. This, of course, cuts both ways in that it undermines the need to codify the current schedule. This is an item which has operational implications and which is best resolved by the parties or following an explicit consideration of any change. There is no evidence of a problem with the schedule. I shall not award this proposal.

The PBA also seeks to improve on-call pay by raising the compensation from one hour to two hours for every eight hours on-call and to remove the existing limit of a maximum allowable on-call compensation of eight hours. The PBA did not provide evidence indicating the extent to which this occurs nor showing that the eight-hour limitation has resulted in officers not receiving credit for on-call time. Therefore, I shall deny this benefit.

The PBA is seeking to change Article XIV, Grievance Procedure, and Article XV, Arbitration, to provide that "minor" discipline, defined as suspensions or fines of five days or less including reprimands, is subject to the grievance procedure and, if necessary, arbitration. This would change the forum from Superior Court to the negotiated grievance and arbitration procedure but it would not expand rights. I would not expect this to result in increased costs with any increase in the frequency of invoking the appeal procedure being offset in large part by a reduction in costs of arbitration as opposed to the costs of a full-fledged legal proceeding. There also is a benefit to both parties in having a more available forum to challenge minor discipline by increasing the perception of the fairness of the proceeding. This can have a positive effect on morale and, therefore, productivity. These changes will be awarded.

Finally, the PBA is seeking the inclusion of a hold harmless provision when an officer is made a party to any civil litigation as the result of the performance of his duties. The officers currently enjoy certain statutory protections and the PBA failed to demonstrate the need for nor the prevalence of additional protections for officers. This proposed change will be denied.

I turn now to a calculation of the total net annual economic changes for each year of the agreement. As reported above, the only quantifiable and significant economic item as issue is the salary increase: 4% across-the-board for each rank for each of the three

years of the agreement. The other items included in the award have either no, minimal or unknown economic costs and will not and cannot be considered in this calculation.⁸

There are 18 members in this bargaining unit which includes one captain, one lieutenant, four sergeants, two detectives and 10 patrolmen.

In calculating the total net annual economic change for each year of the agreement, I have done several things. First, I relied upon calculations provided by the Borough which indicate its costs for police wages and salaries in 2006, 2007 and 2008 assuming salary increases of 4% in 2007 and in 2008. The table (Section 3, Tab 5) includes the entire Department including the Chief, four dispatchers, a secretary, a figure for overtime, and a contingency figure. The 2006 total cost was \$1,541,770. The 2007 cost was \$1,689,181. The 2008 cost was \$1,802,918.

Based on these figures, the increase in costs in 2007 over the 2006 costs was \$147,411 or 9.56%.⁹ The increase in costs in 2008 over 2007 costs was \$113,737 or 6.73%. As stated, these figures include six non-bargaining unit members, overtime and contingency figures of \$8,000 in 2007 and \$3,000 in 2008.

The Borough did not extend these calculations into 2009. To determine the costs that year, I developed salary guides for each year of the agreement including 2009 by adding 4% to each step for each of the three years of the agreement. I added the Captain's longevity of \$2,800.¹⁰ To include the value of holidays, I added 4.6% to the 2009 salaries to arrive at a total figure and then placed the officers on the salary schedule at the step where they will be in 2009, assuming no change in the composition of the workforce. The salaries of the 18 officers were added and a total of \$1,521,194

⁸ There could be changes in the cost of the uniform cleaning service and family dental plan but neither party provided any evidence on this. None of the other changes would be expected to have any cost impact at all.

⁹ One tax point in 2007 generated approximately \$115,000.

¹⁰ The Captain is the only bargaining unit member who still receives longevity. Employees hired after January 1, 1983 do not receive longevity.

was obtained for the salary and holiday costs of the bargaining unit members. To this was added the salaries of the non-bargaining unit employees who are in the Police Department. These salaries were increased by 3.5% over the 2008 figures provided by the Borough. Also added was a figure of \$90,000 for overtime, an increase of \$10,000 over the Borough's 2008 estimate. Finally, I retained a contingent amount of \$3,000, the figure used by the Borough in 2008. Adding these figures up resulted in a total departmental expenditure on wages and salaries of \$1,914,785. This figure exceeds the 2008 figure by \$111,867 or 6.20%.

I shall discuss these costs in relation to the statutory criteria, and indicate why I have determined that they are reasonable, in the subsequent sections of the decision. The discussion will include a consideration of each of the criteria.

Interests and Welfare of the Public The statute requires arbitrators to consider the interests and welfare of the public. In Hillsdale, the Supreme Court make it clear that this criterion must always be considered in rendering an interest arbitration award. Included as part of this consideration must be the limitations imposed on employers by the Cap law.

The statute emphasizes the need to consider the interests and welfare of the public. Thus, N.J.S.A. 34:13A-14b states that it is the public policy of the State "to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public..." Additionally, the legislature stated that it was State policy to limit the authority which has been delegated to arbitrators "while at the same time affording arbitrators the decision making authority necessary to protect the public good..." and assuring that "arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that

labor peace between the public employer and its employees will be stabilized and promoted..." (N.J.S.A. 34:13A-14c)

As the Borough recognized, this factor requires the arbitrator to strike a balance between competing interests. There must be an adequate level of public services and this obviously includes, very importantly, police or law enforcement services. The public would like to obtain these and all services at the lowest possible cost so that taxes and tax increases are minimized. Lower salaries and benefits, other things being equal, permit the employment of more police officers or other public employees or the provision of new or expanded services.

The officers, on the other hand, are interested in receiving salaries and benefits which are commensurate with the services they provide and which reflect the value with they add to the community. They desire at least a competitive level of benefits and, if the municipality is well off, they desire to share in that wealth with higher than average salaries and benefits.

Several demographic facts are apparent in Raritan. The per capita income is relatively low, ranking 14th of 19 municipalities in the County. Median household and median family income rank lower at 17th. The percentage of people in poverty is the 4th highest in the County and the same ranking obtains for those receiving public aid. The ranking for those receiving Social Security – people who are often on fixed incomes – is the 5th highest in the County. The median value of a home is 13th lowest. The effective municipal tax rate in 2006, at .483, was the 6th highest in the County although there was a large gap between that rate the rate for Manville which was the 5th highest at .649. On the other hand, eight communities had rates which were below .300. The effective general tax rate was 11th of 19 at 1.762 so ten municipalities in Somerset County had higher effective total tax rates than did Raritan, placing Raritan in the lower and more

desirable half by this measure. Raritan's figure dropped slightly from 2005 when it was 1.820 and this, in turn, was a drop from the 2004 rate of 1.890.

While the figures make it clear that Raritan is far from a wealthy community by any measure and that its effective municipal tax rate is relatively high, as will be discussed in greater detail in the next section on **Comparisons**, its officers are the lowest paid in the County. In order to be able to attract and retain highly qualified and productive and competent officers, it is necessary that they be compensated adequately. It can easily be argued that the lowest compensation in the County jeopardizes this goal. Indeed, the department lost three officers in recent years to higher paying jobs in law enforcement. This causes the Borough to undergo recruiting and training for new officers and the expense associated with these activities and it deprives the municipality of experienced officers who know the community.

The public interests are best served if there is a police force which is reasonably compensated and this includes wages and benefits. This is necessary for the stability which the statute aims to promote and it is necessary for high morale which leads to a more productive, efficient, stable and effective police force and less labor unrest.

While I shall place this in context in the next section, suffice it to say at this time that the wage increases which I have awarded continue the pattern of at least the last several years in which the officers will receive lower percentage increases than their counterparts in the other municipalities. This is a recognition of the economic realities which exist in Raritan. It means that, on a dollar basis, the officers will fall further behind the others. The benefits which they receive do nothing to make up this difference.

Also, the salary increases awarded are lower than those received by employees in the private sector in New Jersey. For 2007 and 2008, they exceed the 3.5% received by other Borough employees. They also exceed the 2007 increase in the CPI but with

inflation on the rise, it is not possible to know if this will continue to be true in 2008 and beyond even if we are entering a period of recession.

I will address the limits imposed by the Cap law in the **Lawful Authority** section but the limits imposed by that law will not be exceeded as a result of this award. The Borough budgeted more for police salary increases in 2007 than has been awarded that year. Thus, it is apparent that for 2007, there can be no Cap issue. In 2008 and 2009, there is sufficient flexibility and time to adapt to the 4% annual salary increases which have been awarded.

Comparisons The law requires that comparisons of the wages, salaries, hours and conditions of employment of the Borough's officers be made to private employees in general, to public employees in general, and to public employees in the same or comparable jurisdictions.

In this context, it must be recognized that police officers provide an inherently governmental service and that there are no real private sector counterparts which provide the same services as do police officers. Thus, direct comparisons cannot be made with private employees who perform the same or similar services and neither party presented evidence which claims to make such a comparison. This is not a factor in deciding this case.

While the parties did not provide evidence on private sector or public sector wage increases in general, the statute requires PERC to conduct a survey of private sector wage increases. (N.J.S.A. 3413A-16.6) Each year, PERC provides to arbitrators a report of wage increases compiled by the New Jersey Department of Labor and Workforce Development.¹¹ The report which covered 2006, which is the latest report available, showed a 4.4% change in New Jersey from 2005 to 2006. The total private sector change in New Jersey was 4.6%. The total government change was 3.4%. This survey

¹¹ I take arbitral notice of this report.

breaks down the results by County. Somerset's increase was reported to be 7.9%. Thus, the 4% awarded is approximately half of the increase received by private sector employees in the County in 2006 (when the Borough's police officers also received an increase of 4%). A 4% increase is below the average 4.6% private sector increase in the State and it is above the 3.4% increase for the public sector.

The U.S. Department of Labor's Bureau of Labor Statistics also makes data available on its web site at www.bls.gov. It publishes a document called *Employment Cost Index*, of which I also take arbitral notice, which reports the increase in total compensation costs. The December 2007 report shows an increase in private sector compensation costs of 3% with a 3.3% increase for wages and a 2.4% increase in the cost of benefits. That report also indicates an increase of 4.1% in the compensation costs of state and local government employees with a 3.5% increase in the cost of wages and salaries and a 5.5% increase in benefit costs. The overall compensation increase for all civilian workers was 3.3%. This reports reverses the results reported by the New Jersey Department of Labor in that it shows higher increases in the public sector than in the private sector. A 4% increase, which I have awarded, is .5% above the reported wage increase of 3.5% for government employees and it is .7% above the reported wage increase for private employees.

Viewing these two sources in the aggregate, I believe that a wage increase of 4%, with other benefits remaining unchanged (although their costs will go up), is a reasonable increase in reference both to public and private employment in general.

(N.J.S.A. 34:13A-16g(2)(a) and (b))

Comparisons also are to made with employees in public employment in the same or similar comparable jurisdictions. Starting with comparisons with other employees in the Borough, an award of 4% exceeds the general increases of 3.5% which were

received by most of the Borough's employees in 2007 and 2008. This disparity is justified when comparisons with comparable jurisdictions are made.

The parties both used the other municipalities in Somerset County as the universe for making comparison with other police officers. Because 11 of the 18 municipalities listed by the PBA have longevity and because, with the exception of the captain, Raritan does not, I believe that salary comparisons should include longevity.¹² On the other hand, the Borough reports that in 2007, three of the municipalities included holiday pay as part of salary. This is not enough of a group to justify adding holiday pay to the salaries of the officers in Raritan (although I did consider these costs when determining the increased costs of the award since holiday pay increases by the same amount as the award).

In 2006, the salaries paid to the officers of Raritan, regardless of rank, were the lowest in the County. This is true for patrolmen, sergeants and lieutenants even if longevity is **not** included in the totals for the officers in the other municipalities. Adding the captain's longevity, which is capped at \$2,800, places the captain within the range of a captain in Franklin Township but that range is \$90,000 to \$150,000 and the captain in Raritan, with longevity, earned \$92,642, at the very bottom of the range. The actual salary or salaries paid to captains in Franklin Township was not reported.

The average increase received by patrol officers in Somerset County in 2007 was 4.17% and only one of the 15 reported settlements was less than 4%. Thus, a 4% increase is below the County average for employees who already are at the bottom of the County. A 4% increase is clearly justified on this basis. The PBA reported seven settlements for 2008 and the average increase was reported to be 4% with five of the settlements being 4% and the others being 3.75% and 4.25%. Again, on this basis, for

¹² Article VII, Longevity, of the prior agreement provides that employees hired after January 1, 1983 shall not be entitled to receive longevity payments. The captain is sole remaining employee who was hired prior to that date so he is the only one who now or in the future will receive longevity.

the lowest paid patrolmen in the County, an increase of 4% is completely justified. There are only three reported settlements for 2009 but the average increase is 4.08%, again indicating that an increase of 4% is reasonable in the context of this case.

The average increase for sergeants, based on 14 settlements, was 4.19% in 2007. It is 4% based on six settlements in 2008 and it is 4.08% based on three settlements for 2009. The reported figures for lieutenants are 4.18% in 2007 based on 13 settlements, 3.94% based on four 2008 settlements, and 4% based on only two 2009 settlements. Turning to captains, the average of the ten reported settlements in 2007 was 5.19%; there is only one reported settlement for 2008 (4%) and one for 2009 (4%).

Based on this data, annual salary increases of 4% in 2007, 2008 and 2009 are fully justified on a comparative basis.

Overall Compensation The overall compensation received by the officers also is to be considered in addition to their salaries. All police officers in New Jersey are in the same pension system so this is not a factor. The other major benefit, of course, is health insurance. The Borough, like a number of municipalities in the State, is in the State Health Benefits Plan. As discussed, none of the police officers in the County – with the token exception of Warren Township – contributes to the cost of their health coverage and this applies to dependent coverage as well. These employees are covered by Chapter 88 of the Public Laws of 1974, a very valuable and costly benefit, but I did not receive data showing the extent of this benefit in the County. The officers in Raritan, with the sole remaining exception of the captain, do not receive longevity. While this is a benefit which has been under attack by employers as a separate, stand-alone benefit by being incorporated into salaries, data submitted by both parties indicate that 11 of the municipalities in the County continue to have longevity as a separate benefit while it is being phased out in the remaining seven, including Raritan.

As discussed above, the County is almost one day below the County average in the number of holidays provided and its vacation schedule is lower than average at several points along the service continuum. It cannot be said, however, on the basis of the record before me, that these officers are significantly out of the mainstream either by receiving more lavish benefits than is typical or by receiving markedly fewer or lower benefits than is typical. Suffice it to say that the Borough has not made up for its very low salaries with unusually generous benefits, nor would this be expected. Specific proposals were discussed above when I set forth the terms of the award and that discussion applies in this context as well.

Stipulations Except for the two items which the parties agreed to include in the successor relating to the settlement of the detective salary grievance and the use of Borough equipment by the members of the PBA, there were no stipulations.

Lawful Authority Three of the statutory criteria, N.J.S.A. 34:13A-16g(1), (5) and (9), all refer to the either directly or indirectly to the lawful authority of the employer. Thus, g(1) refers to the original 1976 Cap law; g(5) refers to the lawful authority of the employer and cites the 1976 Cap law; g(9) refers to the newly enacted 2007 Cap law which limits tax levy increases. Whether the criteria are referring to a specific statute or "lawful authority" more generally, it is clear that arbitrators must recognize and respect the statutory limits which have been placed on public employers.

The Borough and all municipalities in the State face constraints on their ability to increase appropriations and, beginning in 2008, on their ability to levy taxes. Budgets, of course, must be balanced. The expenditure or appropriations cap applies to the total current expense portion of the budget and not to any one particular line item within that portion of the budget. Under the expenditure cap, the current expense portion of the budget now can be increased by a maximum of 3.5% without a referendum.

The Borough appropriated the maximum amount it was permitted to appropriate within the cap in 2007 and this included using both increases in ratables and its cap bank.

The evidence is that the Borough has demonstrated an ability to generate surplus from year to year and a portion of this has been used in the following year's budget. Thus, between 2001 and 2006, the Borough regenerated an average of over \$650,000 in surplus and the figure for 2006 was \$611,000.

The Borough had a surplus balance at the end of 2005 of \$1,119,574. The corresponding figure for 2006 was \$1,075,788. It used \$675,000 of the 2005 surplus in its 2006 budget and it used \$760,000 of the 2006 surplus in its 2007 budget. Thus, while it used a larger portion of its surplus in the budget in 2007, it still had a remaining fund balance of \$315,778 and that, of course, is prior to any regeneration of surplus which occurred in 2007. There is no reason to expect that the Borough will not continue to regenerate surplus.

One way in which surplus has been regenerated has been through the underestimation of tax revenues. In 2006, the Borough anticipated collecting 98.39% of its taxes. In fact, it collected 98.91% of its taxes that year. It anticipated that it would collect almost the same percentage, 98.42%, of its taxes in 2007. Again, based on prior experience, this should result in some funds being available to lapse into surplus.

It is clear that the Borough had no Cap problem in 2007. Its 2007 budget shows that it budgeted a total of \$1,690,000 for police salaries. Its total expenditures in 2006 for police salaries was \$1,515,116. (Sheet 15a) That is a difference of \$174,884. As discussed above, and assuming a 4% salary increase for 2007, the Borough's figures show a difference of \$147,411 between 2006 and 2007 for police salary, holiday and overtime costs for the entire Department. This is less than the additional amount budgeted of \$174,884. Thus, the 4% increase provided in this award can be funded

within the amount budgeted and the difference will be available to lapse into surplus for 2008.

I also note that the Financial Summary provided by the Borough projected a surplus of about \$135,000 at the end of 2007. This provides an added cushion, although it will not be needed to fund police salary increases and should be available to regenerate surplus.

Because the record in this case was closed before the end of 2007, the parties were not able to provide specific budget and Cap information for 2008 (or 2009). The Financial Report prepared on behalf of the PBA projected the 2008 budget as well as budgets in subsequent years. These generally assumed 4% salary increases and 2% increases for other operating expenses but dealt more specifically with items which were known or which rise more than normal cost of living increases. One such item, for example, was employer pension contributions which reflected information provided for 2008 contributions by the State Division of Pensions. The cost of health insurance was assumed to increase by 7.6%.

The PBA projected that the Borough's appropriations cap in 2008, based on the adjusted cap base for 2007 and a 3.5% increase, would increase by \$213,037. This money is available for expenditures for items within the cap including police salaries.

The taxing cap limits the amount to be raised by local property taxation to an additional 4% per year although there are exceptions including some pension expenditures and some increases in group health insurance. New ratables can also be included.

As the PBA also pointed out, by increasing its spending limit to 3.5% and by emptying its cap bank from prior years in 2007, the Borough did all that it could to expand the base on which the 2008 appropriations can be based and the taxing base on which

the 4% tax increase limit will be applied. This had the effect of increasing the Borough's budget flexibility in the future.

Based on the assumptions made in its Financial Report, the PBA showed that even with the salary increases which the PBA proposed – 5% each year of the agreement with an increase in the differential between ranks – the police salary increase would use approximately one third of the total allowable increase in appropriations in 2007, 2008, 2009 (and 2010). This award, of course, is well beneath the proposal of the PBA.

The Borough has projected increasing pressures as a result of the Cap laws and the PBA has acknowledged this as well. Nevertheless, the evidence is – and the Borough has not cited anything to refute this – that the salary increases awarded can be funded while still permitting the Borough to comply with both the appropriations and levy caps. The Borough has the lawful authority to fund these increases.

Financial Impact Not only must employers have the ability to pay for salary and benefit increases within their lawful authority, as discussed in the previous section, but the financial impact of interest arbitration awards also must be considered by arbitrators. The financial impact of an award on the governing unit, its residents and taxpayers must be assessed.

The tax rates in Raritan between 2004 and 2006 actually decreased somewhat. The effective municipal tax rate was .490 in 2004, .614 in 2005 and .483 in 2006. These numbers resulted in a consistent ranking of 6th in the County. The effective general tax rate was 1.913 in 2004, 1.846 in 2005 and 1.762 in 2006. These numbers ranked 11th in the County. Thus, while it cannot be said that taxes in Raritan are low, they are not at the top of the County. About one third of the municipalities have higher effective municipal tax rates and just over half have higher effective general tax rates.

The actual municipal tax rate in the Borough also decreased. It was .835 in 2004 and .495 in 2006. The total tax rate decreased from 3.260 to 1.830 in that same period.

The Borough has enjoyed a very substantial increase in assessed valuation. Assessed valuation stood at \$566,699,324 in 2002 and had climbed to \$1,140,025,201 by 2006. Thus, assessed valuation has more than doubled in that time period.

The Borough has expressed concern with the revenue side of the budget as well as the expenditure side. It doubts that there will be any increase in State aid and hopes to continue to receive what it has been receiving. It says one-shot deals cannot be relied upon. It has used increasing amounts of surplus in recent years. Thus, the only remaining revenue source is property taxes. Added assessments can be expected to assist the Borough in the future by continuing to increase the tax base.

It must be recognized that there are two particularly important developments in this regard. First, beginning in 2008, the Raritan Town Center has been added to the Borough's tax base, thereby increasing tax revenue by some \$700,000. More than offsetting this increase, however, is the settlement of the Ortho tax appeal which will result in a decrease in tax revenue beginning in 2008 of \$1,000,000. Thus, based on these two major factors – Ortho by itself had accounted for 31% of the Borough's assessed valuation – the Borough's revenue will decrease by \$300,000 in 2008.

The Borough has not cited any specific services or programs, planned or existing, which will be jeopardized by an award of this magnitude which only exceeds its own offer by 1.5% over the three years of the award (1% in 2007 and .5% in 2008).

The 1% which I have awarded in 2007 above that offered by the Borough represents less than \$20,000. In 2008 and 2009, the added costs are between \$20,000 and \$25,000.¹³ Thus, the financial impact will be minor. One point on the tax rate in

¹³ These numbers were obtained by comparing the salary schedules proposed by the Borough with those that will result from this award. The officers were placed on the appropriate steps of

2007 generated \$115,000 so it can be seen that the financial impact of this award will not be significant.

Cost of Living Another statutory relates to changes in the cost of living which generally are measured by the Consumer Price Index ("CPI"). The Bureau of Labor Statistics publishes this information: The increase in the CPI in the New York-Northern New Jersey area, in which Somerset County is included, was 3.7% in 2007. Thus, a salary increase of 4% will provide the officers with a very slight increase in excess of the increase in the cost of living in that year. Historically, employees have realized salary increases which exceed increases in the cost of living by moderate amounts and it is this difference which permits an improved standard of living. This is made possible by increases in the productivity of the US economy.

Inflation has been reasonably stable in recent years and it to be hoped that this will continue so that salary increases of 4% in 2008 and 2009 will permit these officers, at a minimum, to match increases in the cost of living and, preferably, to enjoy moderately higher increases than the cost of living increases.

Continuity and Stability of Employment This, too, is a factor which must be considered and each party cited this factor in arguing that its final offer was reasonable. The Borough argues that an excessive salary increase – or even one in excess of its final offer – would jeopardize the continuity and stability of employment because it would create the possibility of layoffs and thus diminish the level of governmental services. The PBA notes that three Borough officers left positions in the Police Department recently for higher paying law enforcement jobs. The loss of senior officers with the experience which they bring to the job is contrary to the public interest. This demonstrates the need for a more competitive salary and benefit package for the officers.

the guides and the differences in costs for the officers were added along with the added costs of holidays and overtime.

This factor, while not the most important one, is certainly consistent with the award of 4% increases. Such increases, as noted above, are close to but slightly below average salary increases in the County and thus will do little, if anything, to make employees less likely to seek higher-paying jobs elsewhere after the Borough has borne the costs of recruitment and training and providing some experience. Anything less than the amounts awarded would only increase the pressure on the officers to find alternate employment. This, of course, is particularly true of the less senior officers who generally are more willing to change employers. This is not in the interest of the Borough or its residents or taxpayers. It does not contribute to public safety nor to stability.

I have not accepted the Borough's proposal to require officers to pay 20% of the cost of dependent health insurance coverage. I believe that acceptance of this proposal would seriously undermine the continuity and stability of employment in Raritan where the officers already are the lowest paid in the County and will continue to be so after this award. No other officers in the County share in the costs of dependent coverage.

At the same time, I also have rejected a number of benefit proposals offered by the PBA because I am convinced, given the low salary position of these officers, that salary is more important than additional benefits at this time and because the Borough is not a wealthy one which can afford increased benefits.

Summary

As I hope is clear from the extensive discussion above, I have given full and careful consideration to the evidence and arguments of the parties in relation to the statutory criteria. I have considered each of the criteria and found each to have relevance.

This award, as would be expected in a conventional arbitration proceeding such as this one, falls between the final offers of the two parties. Because of the uncertainties

associated with the application of the new Cap law which limits tax levies as well as the absence of reported settlements to serve as a guide, I have accepted the three-year term proposed by the Borough rather than the four-year term proposed by the PBA. I have rejected all of the significant economic proposals of both parties, including the Borough's insurance cost-sharing proposal. I have crafted a salary increase which is between the final offers of the parties, although the 4% increase awarded in the third year does match the increase proposed by the Borough, albeit it on a higher base since I awarded 1% more in 2007 and .5% more in 2008 than the Borough offered. The salary increases are the only economic changes of any significance.

The salary increases are lower than the average increases received by police officers in the County and these officers already are the lowest paid in the County. They will continue to be the lowest paid in the County. Thus, I have not given controlling weight to comparisons with others performing the same work in similar jurisdictions, although this is a factor of great importance, particularly in this proceeding where the officers are the lowest paid in the County. The award does exceed by .5% the 3.5% increase given to other Borough employees in 2007 and 2008. It is 1% more than the national private sector compensation increase in 2007 but .1% less than the national public sector compensation increase. It is below the 4.6% wage increase reported by the New Jersey Department of Labor and Workforce Development in 2006, the last year for which data has been published, and it is well below the reported wage increase of 7.9% in Somerset County.

The salary increase exceeds the 2007 increase in the CPI by a very modest .3%, thus doing little more than permitting the officers to hold their own against increases in the cost of living. It is hoped that the increases will avoid further resignations for better-paying positions in law enforcement but this cannot be assured. Thus, anything less, I believe, would have seriously compromised the continuity and stability of employment.

The interests and welfare of the public will be served by providing salary increases which, while not what other officers in the County have and will receive – and this is particularly true when dollars as opposed to percentages are considered – provides salary increases which are reasonably close to those provided throughout the County. At the same time, the increases are below the average in both percentage and dollar terms in recognition of the relatively low economic standing of the residents of the Borough.

The increases do not conflict with the lawful authority of the Borough and specifically the limitations imposed by the Cap laws or by any other statutory restrictions, *i.e.* N.J.S.A. 34:13A-16g(1),(5) or (9). The 4% awarded in 2007 is well within the amount budgeted by the Borough for police salary increases in that year. As the Borough noted in its presentation, its 2007 police wage and salary appropriations were increased by 11.54% over 2006 expenditures. The amounts by which the 4% increases in subsequent years exceed the Borough's final offer are modest and can be accommodated within the spending and revenue constraints. I also do not believe that the increases will have an adverse financial impact on the governing unit, its residents and taxpayers. As noted, the effective tax rate actually declined the past several years and is not the highest in the County including all those municipalities which, living under the same budgetary and revenue constraints, have been able to provide increases which exceed those awarded in this decision.

Accordingly I hereby award the following:

AWARD

The term of the new agreement shall be three years, January 1, 2007 through December 31, 2009. (Article XIX, Term of Agreement, and other changes as necessary)

Article III, Salaries, shall be increased across-the board for each rank as follows:

January 1, 2007	4%
January 1, 2008	4%
January 1, 2009	4%

The terms of the settlement of the detective salary grievance shall be reflected in Article III of the new agreement.

The members of the PBA shall be permitted to use Borough equipment and services (e.g. telephone, fax machine, computers and copier) to perform their duties as members of the Raritan PBA.

Article IV, Holidays and Personal Days, Paragraph C shall be amended to provide that officers can carry over one personal day per year (eight hours for those working eight-hour shifts and 12 hours for those working 12-hour shifts).

Article V, Clothing Allowance, Paragraph C shall be changed to provide that the Borough shall provide a uniform cleaning service at an annual cost not to exceed the annual cost as of December 31, 2009. Additionally, the reference to December 1, 2006 shall be updated to December 1, 2009 and the final date in the paragraph shall be changed to December 31, 2009.

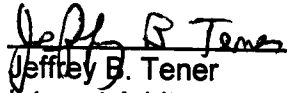
Article VI, Leave for Sickness, Vacation, Shift, and State Meetings, Paragraph A2 shall be amended to provide that all employees, regardless of their shift, can accumulate a maximum of 960 hours.

Article X, Insurance, Paragraph C shall be changed to reflect the contract years 2007, 2008 and 2009. The final sentence shall be changed to refer to December 1, 2009 and the cost of the family dental plan shall not exceed the cost as of December 31, 2009.

Article XIV, Grievance Procedure, shall be changed to include minor discipline – suspensions or fines of five days or less and reprimands – within the definition of a “grievance” in Paragraph A. Also, any necessary changes to Article XV, Arbitration, to permit the arbitration of grievances involving minor discipline shall be made.

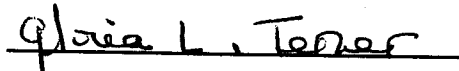
Except as the parties otherwise mutually agree, the provisions and terms and conditions of the prior agreement shall continue in the new agreement unchanged and all proposals not specifically addressed in this award are denied.

Dated: February 22, 2008
Princeton, NJ


Jeffrey B. Tener
Interest Arbitrator

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

On this 22nd day of February, 2008, before me personally came and appeared JEFFREY B. TENER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



GLORIA L. TENER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT. 19, 2009