

In the Matter of Interest Arbitration Between:

CITY OF ASBURY PARK

"Public Employer,"

- and -

ASBURY PARK PBA, LOCAL NO. 6

"PBA."

Docket No. IA-99-111

CITY OF ASBURY PARK

"Public Employer,"

- and -

ASBURY PARK SUPERIOR OFFICERS ASSOCIATION

"SOA."

Docket No. IA-99-121

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the City:

Karen A. Murray, Esq.
Adam S. Herman, Esq. on the brief
Murray, Murray & Corrigan

For the Unions:

Richard D. Loccke, Esq.
Loccke & Correia PA

I was appointed arbitrator by the New Jersey Public Employment Relations Commission on June 30, 1999 in accordance with P.L. 1995, c. 425, in matters involving the City of Asbury Park [the "City"] and Asbury Park PBA Local No. 6 and Superior Officers Association [the "PBA, the "SOA" or the "Unions"]. Several pre-arbitration mediations were held. Because the impasse was not resolved, formal interest arbitration hearings were held on March 1, 16, May 22 and July 10, 2000 at which the parties examined and cross-examined witnesses and introduced documentary evidence into the record. The petitions were not formally consolidated, however, all parties recognized that the goals of economy and efficiency would be met by receiving evidence which was common to each negotiating unit during the course of the hearings without having to independently resubmit documentary or testimonial evidence in duplicate fashion.

Testimony was received from Gilbert Reed, Captain - Officers Macklin and Berkovitz - Michael Dowling, Director of Public Safety - Mary C. Callahan, Payroll Supervisor - Harold Breiner, Assistant Controller - Victoria DeMarinis, Chief Financial Officer. The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party. Post hearing briefs and reply briefs were submitted by both parties and transmitted by the arbitrator to each party on

October 20, 2000. Reply briefs were submitted by December 1, 2000. Additionally, the parties reached agreement on the issue of Union Leave Time to attend conventions on December 14, 2000.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

FINAL OFFERS OF THE PARTIES

PBA Local 6

1. Wage Increase - The PBA proposed a four (4) year contract with a 6% across the board increase at each step in each contract year.
2. Longevity Improvement - The PBA proposed a 2% for each four years of completed service longevity program.
3. Holidays - The PBA proposed that the PBA be provided with the same holiday benefit fold in as is now provided to the Superior Officers in Asbury Park in their contract in this same Police Department. Effectively this means that all holidays would be folded in for all calculation purposes.
4. Article IV, Paragraph C - Hours of Overtime - This was to be deleted per prior agreement between the parties. The PBA asserted that this modification was non-economic in nature.

The SOA

1. Wage Increase - The SOA proposed a four year contract with a 6% across the board increase in each year.

2. Longevity Improvement - The SOA proposed a 2% for each four years of completed service longevity program.
3. The SOA proposed compensation for 15 minutes of daily prep time at the overtime rate.
4. Grievance Procedure - The SOA proposed that minor discipline, defined as five (5) days of suspension or equivalent fine, or any lesser penalty, be included within the grievance procedure and further that the arbitration agency be changed from the New Jersey State Board of Mediation to the Public Employment Relations Commission.

The City of Asbury Park

- A. The City proposes a four (4) year contract which would be in effect from January 1, 1998 through December 31, 2001. The City proposes an across-the-board increase to base salaries as follows:

1/1/98: 2.0%
1/1/99: 2.5%
1/1/00: 3.0%
1/1/01: 3.0%

- B. Article V - Police Training - Section A and Section D

The City proposed to clarify that the compensation for the initial ten hours of training has been added to the officers' salary and there is no additional compensation.

- C. Article XI - Hospitalization and Insurance - Section D

The City proposes to increase the prescription co-pay from \$1 (generic) and \$5 (brand names) to \$5 (generic) and \$10 (brand names), effective 6/1/00.

- D. Article XX - Association Activity - Section C and Section D

The City proposes to delete Section C and Section D because both clauses have been declared unconstitutional.

The City and the Unions have offered testimony and considerable documentary evidence in support of their last offers. Each submission was expert and comprehensive in nature. The entire record of the proceeding must be considered in light of the statutory criteria. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant along with an analysis of the evidence on each relevant factor, and if one or more factors are deemed irrelevant, I must satisfactorily explain why they are not relevant. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

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

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

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

(7) The cost of living.

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

BACKGROUND

The City of Asbury Park is a beachfront community located in southern Monmouth County. It has a land area of 1.4 square miles and a population of 17,125. The City has 6,797 households and a median household income of \$20,754 in 1996. The Superior Officers Unit consists of 3 Captains, 3 Lieutenants and 11 Sergeants. The rank and file unit consists of 52 Police Officers. The existing collective negotiations agreements expired on December 31, 1997.

The record reflects that City management and its law enforcement department operate in a very challenging environment. The City depicts a governing body which operates in severe financial distress with operating deficits, a declining tax assessment base and heavy reliance on various grants and municipal aid. The Unions point to member police officers earning salaries which they assert are below average within the County but who are required to work in an environment with the highest crime rate per 1,000 and highest violent crime rate overall among all Monmouth County municipalities.

Against this general backdrop, the parties have offered substantial evidence and argument in support of their respective positions. I now set forth their positions on the issues on dispute.

POSITION OF THE UNIONS

The Unions contend that their members receive lower than average compensation and benefits but yet operate in an extremely challenging law enforcement environment while achieving wide recognition for their efforts in support of the public's health, welfare and safety. Consistent with this theme, the Unions assert that the interest and welfare of the public are served by a police department whose officers are well compensated for their efforts.

The Unions have submitted year end reports for the prior three years along with Uniform Crime Reports (UCR) reflecting a high level of productivity and danger in law enforcement work. The UCR ranks Asbury Park number one among all Monmouth County municipalities in violent crime, crime rate per thousand, violent crime rate per thousand, rape, robbery, aggravated assault, burglary, motor vehicle theft and domestic violence. The crime reports reflect the following activity for various offenses:

	1998	1999
Motor Vehicle Accident	318	346
Robbery Strong Arm Hwy	48	82
Simple Assault	238	278
Possession Narcotics	221	231
Disputes	1451	1734
Domestic Assault	293	204
Disorderly Youths	785	788
Aggravated Assault Firearm	17	33
Burglary Residents Night	40	69
Bicycle Theft	129	129
Shoplifting	69	72
Sex Offenses	24	17
Fight – Disturbance	383	437
Contempt of Court	1114	1311
Trespass	314	597

Testimony concerning the work of the department and its recent initiatives was received from Captain Gilbert Reed. Captain Reed testified to expansion initiatives, training and technology. Some of these initiatives include the following: expanded DARE program, street crime unit, expanded Juvenile Bureau, expanded Detective Bureau, quality of life unit, bike unit, Megan's Law Recordation Unit, improved vacant property check procedure, school violence intervention program working with students in the schools, new tactical entry team. Captain Reed testified to a significant increase in the level of training, some of which has been required by the purchase of new weapons, life scan units for emergency services and a new fingerprint system.

Captain Reed's testimony reflects that there is an integration in the work of the department with various other law enforcement agencies including the New Jersey Division of State Police and the Monmouth County Prosecutor's Office.

The Prosecutor maintains an office within the City of Asbury Park. The department works closely with the Monmouth County Prosecutor's Office Narcotics Task Force and also has had officers assigned to the Federal DEA program.

The Unions contend that the productivity of police officers has increased considerably because the staffing levels have not risen to reflect increased calls for police activity which now reach over 24,000 calls per year. The Unions believe that the challenging nature of the work along with low level of compensation has resulted in turnover. The Unions cite the testimony of Officers Macklin and Berkovitz each of whom resigned for law enforcement work elsewhere. Each testified leaving the department for reasons including compensation and workload.

The Unions contend that its members are paid less than average when compared to other municipal police departments in Monmouth County. The City and the Unions have submitted evidence with respect to maximum salaries for police officers in 24 selected Monmouth County communities. In 1997, the last year of the prior agreement, the salaries are set forth as follows:

Municipality	1997 Salary
Wall	\$61,863
Freehold	\$60,800
Eatontown	\$60,040
Neptune Twp.	\$58,947

Ocean Twp.	\$56,581
Belmar	\$56,264
Spring Lake	\$56,107
Sea Girt	\$55,724
South Belmar	\$55,720
Manasquan	\$55,288
Rumson	\$55,000
Avon-by-the-Sea	\$56,821
Monmouth Beach	\$54,336
Little Silver	\$54,137
Asbury Park	\$54,020
Manalapan	\$53,920
Neptune City	\$53,741
Bradley Beach	\$53,481
Deal	\$53,322
Atlantic Highlands	\$53,033
Keansburg	\$52,654
Shrewsbury	\$52,206
Spring Lake Hts	\$52,205
Long Branch	\$51,759

Based upon these figures, the Unions conclude that Asbury Park's salaries are \$1,369 or 2.53% below the average of these communities which support its demands for 6% increases in each of the contract years. The Unions also submit the level of wage increases for various municipal police departments for the relevant contract years. The Unions acknowledge that its demands are higher than the wage increases shown but that a higher level of wage increase is necessary to catch up with other municipalities. These increases are reflected as follows:

Municipality	1998	1999	2000	2001
Freehold	4.5	4.5	4	4
Eatontown	6	3.75	3.75	
Neptune Township	4	3.75	4	
Avon	3.9			
Ocean	4.25	4.25	4	
Belmar	4	3.5		
Sea Girt	4	4	3.8	3.8
South Belmar	4			
Manasquan	4.25	4.25		
Rumson	4.25	4.25		
Monmouth Beach	4.5			
Little Silver	4.5	4.25	4.25	
Manalapan	4.5	4.5		
Neptune City	4			
Bradley Beach	3.95	4	4	
Deal	4.			
Atlantic Highlands	4.25	4	4	
Spring Lake Hts	5	5		
Keansburg	4	4.25		
Long Branch	4.5	4.25	4.25	
Fair Haven		4	4	
Highlands		4.25	4.25	4.25
Tinton Falls		3.95	3.95	
Lakewood	4.5	4.5		
Wall	3.9	3.9	3.9	
Spring Lake	3.95	3.95	3.8	
Manchester		4	4	4
Matawan		4 (2/2)	4.25 (2/2.25)	4.25 (2/2.25)
Neptune City		4	4	3.9
Averages	4.291%	4.294%	4.11%	4.033%

The record also contains data submitted by the City and the Unions with respect to the salaries of superior officers in relation to other municipalities in Monmouth County. This data reflects the following information with respect to Sergeants, Lieutenants and Captains, the ranks contained in the recognition clause of the Superior Officer Association.

Maximum Salary - Sergeants - Monmouth County

	1997	1998	1999	2000
Wall			\$78,848	\$81,715
Eatontown	\$66,757	\$70,028	\$72,654	\$75,379
Rumson	\$62,005	\$64,640	\$67,387	\$70,082
Sea Girt	\$61,658	\$64,124	\$66,689	\$69,031
Belmar	\$60,202	\$62,610	\$64,802	
Spring Lake	\$59,696			
Manasquan	\$59,191	\$61,707	\$64,329	
Shrewsbury	\$56,964			
Monmouth Beach	\$56,806	\$59,362		
S. Belmar	\$58,507	\$60,847		
Keansburg	\$57,698	\$60,006	\$62,406	
Atlantic Highlands	\$57,526	\$59,971	\$63,885	
Neptune City	\$57,184			66,441
Neptune Township		\$59,489		\$71,103
Little Silver	\$56,392	\$59,030		
Deal	\$56,272	\$58,372	\$60,853	\$63,439
Bradley Beach	\$56,026	\$58,239	\$60,539	\$62,983
Spring Lake Heights	\$55,403	\$58,173	\$61,081	\$
Long Branch			\$63,184	\$65,869
Ocean				\$70,348
Fair Haven				\$64,098
Asbury Park (Sgt.)	\$62,604			
(Det. Sgt.)	\$63,279			

Maximum Salary - Lieutenants - Monmouth County

	1997	1998	1999	2000
Wall		\$81,373	\$84,546	\$87,844
Ocean		\$70,783	\$73,791	\$76,743
Sea Girt	\$66,300	\$68,952	\$71,710	\$71,710
Belmar	\$64,417	\$66,993	\$69,338	\$69,338
Rumson	\$63,772	\$66,482	\$69,307	\$72,772
Manasquan	\$62,543	\$65,201	\$67,972	
Keansburg	\$62,111	\$64,595	\$67,179	
Avon-By-The-Sea	\$60,691	\$63,043	\$65,565	
Neptune	\$60,597	\$62,415	\$72,820	\$76,613
Fair Haven		\$62,982	\$65,501	\$68,121
Monmouth Beach	\$60,099	\$62,804		

Shrewsbury	\$59,886			
Spring Lake Heights	\$59,582	\$62,562	\$65,690	
Long Branch			\$70,766	\$73,773
Little Silver	\$58,729	\$61,572		
Bradley Beach	\$58,608	\$60,923	\$63,329	\$65,883
Asbury Park (Lt) (Det Lt)	\$65,691 \$66,735			

Maximum Salary - Captains - Monmouth County

	1997	1998	1999	2000
Wall		\$87,446	\$90,887	\$94,432
Long Branch			\$79,257	\$82,626
Ocean			\$78,096	\$81,219
Neptune Township			\$77,917	\$82,554
Belmar	\$68,925	\$71,682	\$74,191	
Rumson	\$67,442	\$70,340	\$73,329	\$76,995
Keansburg	\$66,525	\$69,186	\$71,953	
Manasquan	\$66,033	\$68,839	\$71,765	
Fair Haven		\$67,346	\$70,040	\$72,841
Avon-By-The-Sea	\$64,599	\$67,103	\$69,787	
Little Silver	\$60,905	\$63,946	\$67,814	\$71,925
Bradley Beach	\$61,479	\$63,907	\$66,431	\$69,107
Highlands		\$62,553	\$65,056	\$67,658
Monmouth Beach	\$64,216	\$67,105		
Shrewsbury	\$63,809			
Asbury Park(Cpt) (Det. Cpt)	\$68,795 \$70,130			

The Unions offer the argument that the relatively poor comparability data for Asbury Park will cause police officers to fall further behind because the percentage increases achieved by higher paid municipalities will cause a worsening comparison with respect to dollar increases. In this regard, the Unions seek a higher than average percentage increase. The Unions also submit into evidence various contracts in City police departments outside the County, including the City of Trenton and the City of Passaic, each of whom

receives higher base pay and higher benefits, including longevity and clothing allowance.

The Unions assert that private sector comparisons on wages should not be controlling because of the difficulty in comparing the job of an Asbury Park Police Officer with private sector jobs. The Unions point to the hazards and risks associated with police work and their obligations to engage in law enforcement activity whether on or off duty. The Unions offer the following argument in its post-hearing brief [at p 34]:

The police officer lives and works within the narrowly structured statutorily created environment in a paramilitary setting with little or no mobility. The level of scrutiny, accountability and authority are unparalleled in employment generally. The police officer carries deadly force and is licensed to use said force within a great discretionary area. A police officer is charged with access to the most personal and private information of individuals and citizens generally. His highly specialized and highly trained environment puts great stress and demand on the individual.

The Unions also propose a new longevity program wherein each officer would receive 2% for each four years of completed service instead of the current system which provides for a fixed dollar amount. The current longevity program for Police Officers and Superior Officers is as follows:

	<u>10th Year</u>	<u>15th Year</u>	<u>20th Year</u>	<u>25th Year</u>
Police Officer	\$721	\$1,558	\$3,276	\$3,876
Detective	\$727	\$1,575	\$3,301	\$3,908
Sergeant	\$2,070	\$3,002	\$3,667	\$4,466
Det. Sergeant	\$2,086	\$3,027	\$3,699	\$4,507
Lieutenant	\$2,205	\$3,183	\$3,882	\$4,507
Det. Lieutenant	\$2,233	\$3,227	\$3,935	\$4,791
Captain	\$2,332	\$3,356	\$4,088	\$4,966
Det. Captain	\$2,372	\$3,419	\$4,167	\$5,066

All Superior Officers promoted to rank prior to January 1, 1992

	<u>20th Year</u>	<u>25th Year</u>
Sergeant	\$4,667	\$5,466
Det. Sergeant	\$4,699	\$5,507
Lieutenant	\$4,882	\$5,720
Det. Lieutenant	\$4,935	\$5,791
Captain	\$5,088	\$5,966
Det. Captain	\$5,167	\$6,066

The Unions allege that their units compare unfavorably with longevity benefits in other Monmouth County municipalities. The Unions point to contracts which it has submitted into evidence to support this contention and they also cite a City Exhibit [C-9, Tab H] in support of their argument. On the higher side of the City's chart is Tinton Falls 11% after 20 years, Bradley Beach 12% after 20 years, Deal 15% after 23 years, Avon 10% after 25 years, Wall 10% after 20 years, and Keansburg 10% after 20 years. On the lower side of the City's chart is Ocean Township \$3,240 after 24 years, Neptune Township \$2,200 after 24 years, Howell \$4,300 after 21 years, and Rumson \$4,450 after 28 years.

The Unions also contend that the clothing and maintenance allowance received (\$850 annually) also ranks on the low side compared to many nearby

municipalities. These include Neptune City - \$1,200, Spring Lake - \$1,200, Ocean Township - \$1,225, Spring Lake Heights - \$1,450, Neptune Township - \$1,400, Avon - \$1,225, Manasquan - \$1,400, Deal - \$1,000 and South Belmar - \$900.

The Unions acknowledge the requirement that the lawful authority of the employer be considered and weighed in this proceeding. The Unions contend that the financial evidence in the record reflects that the award it seeks would not be prohibited by the New Jersey Cap Law. The Unions point to a budget which has been structured within the Cap limitations and cites the existence of Cap Banks carrying forward into subsequent budget years. The Unions cite the 2000 budget wherein the City used an index rate of 2.5% rather than the maximum amount of 5%. The 2.5% increase equated to \$420,089.33 causing the lawful expenditures of the City under the 2.5% rate at \$20,808,565.86. Because the actual expenditures in the 2000 budget were set forth at \$18,273,489.61, the Cap Bank carried forward amounted to \$2,535,076.25. The Unions contend that the Cap Bank carrying forward from budget year 2000 will increase Cap flexibility in years 2001 and 2002 making it unlikely that there will be a Cap problem in those years. The Unions also point to the history of Cap Banking which reflects a trend of increases dating back to 1997.

The Unions have submitted a chart reflecting base rate calculations which renders an increase of 1% at \$39,011. The Unions assume all police officers to

be at maximum step, an assumption which may overstate the actual costs provided. It reaches these figures in the following manner.

(A)	(B)	(C)	(D)
Rank	Census	1997 Rates	Column (B) X Column (C)
Captain	3	\$68,795	\$206,385
Lieutenant	3	\$65,691	\$197,073
Sergeant	11	\$62,604	\$688,644
Patrolman	52	\$54,020	\$2,809,040
Totals	69		\$3,901,142
			1 point = \$39,011.00

The Unions compare and contrast the cost of one percentage point in relationship to the budget increase of \$420,089 and the Cap Bank amount of \$2,535,076 carried forward in the 2001 budget. The Unions contend that an award of its last offer would have an extremely small financial impact on the taxpayers and residents. I calculate this amount as \$234,660 in 1998, \$248,000 in 1999, \$262,880 in 2000 and \$278,652 in 2001. The Unions raise the point that the City cannot afford not to pay its last offer because of the costs associated with the turnover and training of new police officers and the need to reward police officers for working under dangerous circumstances.

The Unions also contend that recent separations from employment have resulted in cost savings for the City. According to the testimony of Captain Reed, 15 sworn members of the Department have left since December 31, 1997. According to Captain Reed, there has been a decrease in staffing and the

number of superior officers has also decreased. Based upon employee rosters, the Unions calculate the salary cost savings alone for these departures as amounting to \$898,239.

The Unions complain of the City's failure to provide full financial data during the course of the hearings because of an alleged lack of compliance with statutorily mandated financial statement filings. The Unions cite City testimony that its annual financial statement (AFS) was not filed as of July 10, 2000 although it was lawfully required to be filed on February 10, 2000. The testimony reflects that the City has not introduced the budget on time during the six previous years and that the City consistently did not adopt a budget or finalize an AFS on time for the last twenty years. The Unions cite the testimony of Financial Officer Briner that documents which he referred to at hearing simply did not exist for the purposes of presentation at hearing. Based on the financial data in the record, the Unions have made the following observations.

- Debt service was significantly reduced in 2000 over the preceding year 1999. The debt service appropriation for 1999 was \$838,129.00. 2000 budget sheet 27 shows a reduction for 2000 to \$729,229.00. This represents over \$108,900 in reduction.
- The amount to be raised for municipal purposes in a 2000 budget (sheet 11, line 6a) is less than in 1999. The 1999 amount to be raised was \$6,929,761.00 the 2000 amount was \$6,870,227.00. This represents a reduction of \$59,534.00. In 1999 the police and salary wage expenditure was \$3,776,176.00. The line for police salaries and wages appropriate in the 2000 budget is \$4,446,535.00. This represents \$670,359.00 more appropriation for 1999 than was

expended in 1999. This amount, if divided by the value of a wage point for both bargaining units (see chart no. 7, *supra*) represents over 17 percentage points.

- The Asbury Park tax levy per capita is one of the lowest in all of Monmouth County.
- The results of operations for 1998, the most recent year for which information is available, was \$254,050.00. This is an important point of analysis as it indicates the amount of surplus generated during the year. Conceptually it gathers or summarizes the closing entries to operations of the various "holding" accounts. The source of this information is the Annual Financial Statement for 1998 (P-49) sheet 19. The budget revenues anticipated for 1998 were \$22,439,838.00. The amount actually realized for 1998 was \$22,505,002.00. This shows an excess in amount realized over amount anticipated of \$65,164. (See P-49, sheet 17).
- The fund balance at the end of 1998 was \$267,106.00. Of that only \$48,641.00 was utilized in the succeeding year. Compare 1997 where the fund balance was less (\$233,811.00) and much more of it was used (\$198,064). This information is set forth in the 1998 Report of Audit (P-51).
- The total tax rate in 1993 was 3.933 which represents a reduction from the 1997 total rate of 3.953. The source of this information is the 1998 Report of Audit (P-51).
- The actual tax collection rate for 1998, the most recent year for which information is available, was 80.90. This represents an increase in collection rate from the 1997 actual rate of 78.72. The source of this information is the 1998 Report of Audit (P-51).
- The 3.5% equalized valuation basis generates by statutory formula a statutorily authorized borrowing power of \$11,723,724. The current net debt as of 1998, the most recent year for which information is available is \$6,845,666. The remaining borrowing power is \$4,878,058. The Associations are not suggesting that debt be incurred to pay the award. Rather the Associations illustrate that significant portions of net statutory borrowing potential are not being utilized.
- The cash balance as of 12/31/98, the most recent year for which information is available showed a current fund balance of

\$5,939,056 and a capital fund balance of \$753,335. The source of this information is the 1998 AFS, the most recent available, at sheet 9 (P-49, sheet 9).

- Total taxable value of land in Asbury Park ranks just below the mid point of the total taxable value of land and improvements for all 53 Monmouth County Municipalities (no. 34 out of 53). The source of this information is the Monmouth County Abstract of Ratables of the year 1999 (P-46).

The Unions also note that the City passed a resolution on January 5, 2000 authorizing a transfer from Police Department Salaries and Wages of \$494,000. The Unions calculate this amount as representing 12.7% in base wage percentage points in the year 2000 compared to the 6% they are seeking.

The Unions contend that the criterion dealing with the continuity and stability of employment favors its position. The Unions cite the testimony of Police Director Dowling. Dowling testified to the Department's expansion of bureaus and provision of new services. Dowling praised the productivity of the Department and evaluates the Department as "the best around."

The Unions cite the need for salary and benefit increases to avoid turnover. With respect to existing benefits, the Unions seek a fold-in of holiday pay for all calculation purposes including salary. The PBA supports its proposal for police officers citing its prior existence in the SOA contract. The Unions also note that the current agreement already provides for a holiday fold-in late in the police officer's career, thus the cost of the fold-in for employees from day one will have less financial impact. Any such change would also be prospective without

any retroactive cost. The Unions also refer to the existing provision providing a late fold-in as potentially conflicting with existing pension law as interpreted by the Divisions of Pensions thus requiring a modification.

The SOA has proposed additional compensation at the overtime rate for daily prep time. The current practice provides for an additional fifteen minutes of work per day or one hour and fifteen minutes per week without compensation. The Unions argue that it is inequitable to provide additional time without additional pay.

The only non-economic issue proposed by the Unions is the addition of minor discipline to the grievance procedure, thereby permitting arbitration of the review of discipline of five days suspension or less or equivalent fine. The Unions also propose a change in the administrative agency which appoints arbitrators from the New Jersey State Board of Mediation to the New Jersey Public Employment Relations Commission.

POSITION OF THE CITY

The City urges rejection of the Union's economic proposals on many grounds. The City contends that existing benefits and salaries compare favorably among other Monmouth County municipalities, and that the City is in severe financial distress.

The City cites the testimony of Chief Financial Officer Victoria DeMarinis and Assistant Comptroller Harold Breiner concerning the City's financial posture. DeMarinis testified to the City's operating deficit of \$250,000 in 1999 and a projected operating deficit of \$1,600,000 in 2000. She further testified to reliance on grants and municipal aid. One such grant, C.O.P.S., provides funds to hire police officers but requires contributions in increasing percentages by the City towards the grant until the grant monies cease. These contributions typically are "matches", with the municipality matching the grant, but the City has received a waiver of the match allowing it to hire new officers at no immediate cost. DeMarinis testified that the COPS grant is scheduled to expire in 2001. Other grants include one from the Monmouth County Prosecutor dedicated to the Law Enforcement Fund, which is used for police training. According to CFO DeMarinis, the City is often required to borrow money to meet its payroll from January to July of each year and has had to borrow money to purchase police vehicles.

The City also cites the testimony of CFO DeMarinis that it has an extremely low tax collection rate. Specifically, Asbury Park's 1999 tax collection rate was approximately 82 percent, compared to the tax collection rate in 15 other Monmouth County municipalities which exceeded 95 percent.

Again relying upon the testimony of CFO DeMarinis, the City points out that its tax base has been declining rapidly over the past few years. According to the City, 35% of the property located within its boundaries is tax-exempt and/or abandoned. Additionally significant waterfront property has been tied up in bankruptcy litigation. Back property taxes on this property are approximately \$9 million, and there is little prospect of the City realizing any of that money in the near future. Additionally, the City maintains that there has been no significant increase in the amount of commercial operations within recent years. Relying upon the testimony and Assistant Comptroller Breiner, the City maintains that it is in serious financial trouble, in part due to the declining value of taxable properties. Pointing out that taxable properties decreased as the result of owners vacating their properties, the City points out that there are very few new buildings to replace those that are abandoned by their owners. Illustrating the decrease in the value of taxable properties, the City points out that its net taxable value was \$414,345,929 in 1988, and by the year 2000 its net taxable value dropped to \$332,587,609. In other words during the past twelve years, the City's net taxable value has decreased by \$81,758,239, or almost 20%. When compared to other Monmouth County municipalities, as well as with Atlantic City, Jersey City, Newark, Elizabeth, Paterson, Trenton, and Camden, Asbury Park's net taxable value ranks near the bottom.

Noting that its general tax rate is 3.990, the City points out that its tax rate is higher than the tax rate in Monmouth County municipalities, including, Atlantic

Highlands; Shrewsbury; Manasquan; Brielle; Little Silver; Neptune City; Tinton Falls; Avon-by-the-Sea; Freehold; Bradley Beach; Ocean; Manalapan; Spring Lake Heights; Long Branch; Sea Girt; Belmar, Neptune Township; Keansburg; Spring Lake; Monmouth Beach; Wall, Rumson; Deal and South Belmar.

The City also cites numerous recent interest arbitration awards and salary settlements across the State. The City maintains that these awards and settlements demonstrate that the PBA's demand is out of line with other settlements and awards. The City cites In the Matter of the Interest Arbitration Between The City of Atlantic City and PBA Local No. 24, where Arbitrator Schienman's award provided a wage freeze for the first two years with subsequent increases which, on average resulted in an increase of 2.7 percent per year over the entire a five-year contract. The City also cites the Atlantic City Firefighters agreement which included a two-year wage freeze in 1996 and 1997 during a four-year contract that provided wage increases of fairly over to percent over the life of the contract. This similarly, the City also cites an interest arbitration between the Town of West New York and West New York PBA Local 361, where an arbitrator granted a one year wage freeze in 1994 and then provided raises of 3.7 percent in 1995, 1996, 1997 and 1998. In that Award, the Arbitrator also increased the prescription co-pay as requested by the employer and reduced vacation entitlement for current officers by two days and substantially reduced vacation for new hires. The City notes that the subsequent labor contract negotiated in West New York with the PBA provides wage

increases of three percent per year from July 1, 1998 through June 30, 2002 with a wage deferral for the first year to. In continuing, the City cites the interest arbitration award covering the State Troopers, which contained a wage freeze for 1996, followed by an average wage increase of approximately 3.0% over the life of the contract for the years 1997 through 2000. The City also cites the arbitration award in East Orange and PBA Local No. 23, which provides wage increases of 3.0% in 1996, 1997 and 1998, followed by a 3.25% increase in 1999.

According to the City, police expenditures comprise approximately 25% of its entire budget. The City also points to the evidence of overtime worked by police. According to the City, in 1997 Police Officers worked 5426 hours of overtime at a cost of \$182,490. In 1998, Police Officers worked 8377 hours of overtime at a cost of \$325,479. The City points out that in 1999, Patrolman worked 6403.5 hours of overtime at a cost of \$232,723. The City calculates that between 1997 and 1999, Patrolman worked 15,322.5 overtime hours of a total cost of \$740,694. The City points out that once new salaries are finalized for the years 1998 through 2000, these overtime costs will increase dramatically.

The City also highlights evidence that of the amount of worker's compensation involving police employees. In 1998, out of a total of 90 claims in the City, 55, or 62%, were filed by members of the Police Department. In 1999, out of a total of 94 claims, 42, or 45%, were filed by members of the Police

Department. The City points out that these claims are a drain on its budget both in terms of the cost of the claim and in coverage for absent officers. According to the City, the evidence presented by the Union's does not controvert the solid financial evidence presented by the City. To the contrary, the City maintains that the evidence it submitted demonstrates that it cannot support a 6% across the board increase for each of four years. The City maintains that such an increase would be a significant burden on its budget and its taxpayers. According to the City, when compared to the nation at large and to pay rate increases for the State, the City's offer is the norm while the Union's proposal is excessive.

Turning to other statutory criteria, the City emphasizes that it is undisputed that Asbury Park is in a severe or financially distressed condition. The City points to the causes of this distress, including a declining tax base, dramatically reduced property values, high debt levels, budget deficits, and very low tax collection rates. Accordingly, the City contends that there simply is no money available for large across-the-board wage increases, and any such award would have a negative impact upon Asbury Park, its residents and taxpayers. Noting that Asbury Park has been designated by the State as a financially distressed City, CFO DeMarinis testified that the City receives over \$8 million in State aid towards its budget. As a result, the City points out that its sources of revenue are extremely limited. According to the City, it is not able to rely upon property taxes as the main source of revenue, because it has such an extremely low tax collection rate. The City emphasizes that its tax collection rate in 1999 was a

“paltry” 82% and the dramatic decrease in its net taxable value over the last decade. The City cites the testimony of Assistant Comptroller Breiner, who partially attributed the City’s economic condition to its declining value of taxable properties, resulting from the abandonment of property.

The City chronicles the decrease in net taxable value from 1988 through 2000 as follows:

YEAR	NET TAXABLE VALUE
1988	\$414,345,929
1989	\$414,173,413
1990	\$414,544,836
1991	\$408,534,932
1992	\$404,890,735
1993	\$411,119,210
1994	\$393,651,255
1995	\$385,517,258
1996	\$368,012,390
1997	\$353,597,803
1998	\$354,354,841
1999	\$338,956,442
2000	\$332,587,690
1988-2000	-\$81,758,239

In sum, the City calculates that its net taxable value has decreased by \$81,758,239, or approximately 20% since 1998.

Relying upon the testimony CFO DeMarinis, the City points out that over 35% percent of the property located within Asbury Park is tax-exempt and/or abandoned. The City reiterates that significant waterfront property with back

property taxes of approximately \$9 million continues to be tied up in bankruptcy litigation and that commercial operations have not significantly increased in recent years. Additionally, the City points to its operating deficit of approximately \$250,000 in 1999. Again relying upon the testimony of CFO DeMarinis, the City contends that the operating deficit for the year 2000 could be in excess of \$1.6 million. The City also reiterates that's the C.O.P.S. grant which allowed Asbury Park to hire new Officers at no immediate cost is scheduled to expire in the year 2001, and the City will be required to pay the full cost of the salaries of its police force. According to the City, this will reduce its revenues and increase its expenditures. The City contends that collapse of the C.O.P.S. grant combined with a 6% across-the-board-increase would be financially crippling and would lead to expensive tax increases which the residents simply could not afford.

According to the City, the Unions did not offer evidence or expert testimony demonstrating that the City can fund its last offer. Specifically, neither the Unions' exhibits nor testimony, contradicts the evidence submitted by the City demonstrating that it cannot support the wage increases and benefits proposed by the Unions without increasing the individual tax burden. Accordingly, the City urges adoption of its wage proposal providing increases of 2% in the first-year, 2.5% in the second year, and 3.0% in each of the final two years.

The City urges careful study of the interest arbitration award in the Town of West New York and Local 361, where Arbitrator Brent found that the financial

impact on the municipality of an above-average, across-the-board wage increase, could not be justified in light of extreme financial difficulties, a stable cost of living, and where the current wage and benefit package provided continuity and stability of employment. Finding that employees were in the middle of the salary range within Hudson County, the City points out that Arbitrator Brent awarded a wage freeze followed by modest increases coupled with givebacks, a reduction in vacation time, and an increase in the prescription co-payments. The City cites with approval Arbitrator Brent's findings as follows:

The interests and welfare of the taxpayers of West New York mandate that their already heavy tax burden not be unduly increased. Bargaining unit Police Officers are entitled to fair compensation in comparison to Police Officers in other jurisdictions ... but it is inappropriate materially to augment their package of compensation at a time when the town is struggling to recover from the adverse impact of a declining tax base and is burdened by one of the highest tax rates in the area.

Additionally, citing Hillsdale PBA Local 207 V. Borough of Hillsdale, 137 N.J. 71(1994), the City points out that the financial impact criteria is not the same as municipality's ability to pay. Instead, the City asserts that the financial impact criteria requires consideration of the municipality's ability to maintain existing local programs and services, and to initiate new programs and services. According to the City, its Police are well compensated and excessive increases are not supported in this case. The Union's proposals would affect the City's ability to provide services and programs because they would require that taxes be raised, and that action would have a severe negative impact on the citizens

and taxpayers of Asbury Park. Accordingly, the City maintains that the financial impact of an award of the Union's proposal on its residents and taxpayers would be too great. Rather, the City suggests that its proposed increases of 2.0% for 1998, 2.5% for 1999, 3.0% for 2000 and 3.0% for 2001 would not unduly burden the City, its residents and taxpayers and would keep the salaries of its Police more than competitive with surrounding municipalities.

Additionally, the City urges rejection of the 2% longevity improvement in each of the four years of the agreement proposed by the Unions. Mindful of its classification as a "distressed city", the City urges rejection of the Unions' longevity proposal. According to the City, Police Officers are currently eligible to receive up to \$3,876 as longevity pay, and Superior Officers are currently eligible to receive up to \$5,066. The City also notes the effect of an increase in longevity on the cost of holiday and overtime pay. The City asserts that increased longevity pay would result in higher taxes or cuts in necessary expenditures elsewhere. Given Asbury Park's current tax rate of 3.990, the City maintains that its residents should not be asked to pay still higher taxes so that its Police may reap benefits greater than police officers in neighboring towns and New York. The City again reiterates that it will soon assume the full cost of the salaries of new police officers when the C.O.P.S. grant program expires.

Examining the overall compensation received by City police officers, including salaries, wages, vacations, holidays and leave, the City asserts that

overall compensation is equal to or better than that of Officers in the same or similar employment. Comparing salaries in 1996 and 1997, the City points out that its patrolmen earn more than patrolmen in Little Silver, Monmouth Beach, Deal, Atlantic Highlands, Shrewsbury and Long Branch. The following chart illustrates the City's position that its police salaries are reasonable within Monmouth County:

	1996	1997
Wall	\$58,777	\$61,863
Freehold	\$58,200	\$60,800
Eatontown	\$57,807	\$60,040
Neptune Township	\$56,680	\$58,947
Avon-By-The-Sea	\$54,767	\$56,821
Ocean Township	\$54,145	\$56,581
Belmar	\$54,100	\$56,581
Sea Girt	\$53,840	\$55,724
South Belmar	\$53,836	\$55,720
Spring Lake	\$53,486	\$56,107
Asbury Park	\$51,964	\$54,020
Little Silver	\$51,930	\$54,137
Monmouth Beach	\$51,872	\$54,336
Deal	\$51,222	\$53,322
Atlantic Highlands	\$50,749	\$53,033
Shrewsbury	\$50,207	\$52,206
Long Branch	\$49,506	\$51,759
Manasquan		\$55,288
Rumson		\$55,000
Manalapan		\$53,920
Keansburg		\$52,654
Spring Lake Heights		\$52,205

Comparing Superior Officer salaries, the City compares the maximum salaries in 1996 for an Asbury Park Sergeant of \$59,908 and for a Detective Sergeant of \$60,554 to those received by Sergeants in Rumson, Sea Girt,

Belmar, Spring Lake, Little Silver, Monmouth Beach, Deal, Atlantic Highlands, Shrewsbury, and Long Branch. Based upon that comparison, the City concludes that its salaries were higher than Sergeant's salaries in the municipalities listed above. Likewise, the City points out that in 1997 the maximum salary of \$62,604 for an Asbury Park Lieutenant and the maximum salary of \$63,279 for a Detective Lieutenant was higher than the maximum Lieutenant salaries in Belmar, Rumson, Manasquan, Keansburg, Neptune City, Avon-by-the-Sea, Atlantic Highlands, Shrewsbury, Spring Heights, and Long Branch. Continuing, the City points out that the 1996 salary for Lieutenants was \$62,862 and a Detective Lieutenant received a maximum salary of \$63,862. According to the City, the salaries were higher than those received by Lieutenants and Belmar, Avon-by-the-Sea, Shrewsbury, Monmouth Beach, and Little Silver. The 1997 maximum salary for a Lieutenant of \$65,691 and the maximum salary for a Detective Lieutenant of \$66,735 were higher than those received by Lieutenants in Belmar, Manasquan, Keansburg, Avon-by-the-Sea, Neptune, Monmouth Beach, Shrewsbury, and Spring Lake Heights. The City also compares the maximum salary of a Captain of \$65,883 and that of a Detective Captain of \$67,110 in 1996 to other Monmouth County communities and finds that the maximum's in Asbury Park were higher than those received by Captain in Avon-by-the-Sea, Shrewsbury, Monmouth Beach, and Little Silver. Likewise, in 1997, the City points out that its Captain's salary was \$68,795 and a Detective Captain salary was \$70,130, higher than the maximum salary received by Captains in

Rumson, Keansburg, Manasquan, Avon-by-the-Sea, Monmouth Beach, Shrewsbury, Bradley Beach, and Little Silver.

The City also argues that the maximum salary for its Patrolmen in 1997 exceeded the maximum salaries in Atlantic City (\$47,292), Newark (\$45,144), Elizabeth (\$44,135); Camden (\$43,928), Trenton (\$42,711) and Philadelphia. The City also points out that the salaries of New York City Patrolmen when considering longevity exceed the maximum salary for its Patrolmen by approximately \$900, but the base annual salary for City officers surpasses the 1997 New York City maximum of \$44,901.

The City also maintains that in addition to competitive wages, its police officers enjoy other favorable benefits. For example, the City points out that its Patrolmen receive three personal days per year, which it compares to the two days received by Atlantic City Officers and the one day received by New York City Officers. The City notes that its Patrolmen receive a higher clothing allowance than Patrolmen employed in Elizabeth, Camden and Philadelphia. Specifically, the City points out that Asbury Park's Patrolmen receive an \$850 annual clothing allowance compared to the \$500 per year received by Elizabeth's Patrolmen, \$200 provided in Camden and \$350 provided to Patrolmen in Philadelphia.

The City also points to the favorable benefits package received by its Officers. That package includes 16 days of sick leave, generous longevity (up to \$3,908 for Patrolmen and up to \$5,066 for Superior Officers), 3 personal days, a maximum of 27 days vacation and a clothing and maintenance allowance of \$900 per year for Patrolmen and \$400 per year for Superior Officers. The City asserts that its Police salaries combined with clothing allowance, sick leave, vacations, personal days and longevity show that their compensation and benefits are on an even keel with all other Monmouth County municipalities. The City contends that the Unions have not demonstrated that the overall compensation of Asbury Park Officers needs the significant increases they have sought.

Turning to the interest and welfare of the public, the City argues that this criterion compels adoption of its proposal, because, unlike the Unions' proposals, it avoids an onerous tax increase as well as maintaining competitive salaries and benefits. The City asserts that its proposal would not impose any significant cost increase on its taxpayers and has already been factored into the City's budget. In light of the City's significant financial trouble, including its classification as a "distressed city", its extremely low tax collection rate, the decrease in its net taxable value, the decrease in its tax assessment base due to tax exemption and/or abandonment, and its general high tax rates, the City argues that its proposal, which would not increase taxes and is in the interest and welfare of the public. The City maintains that it simply does not have the funds to support the

Union's last offer of a 6% across-the-board wage increase. The City reiterates that in order to fund such an increase, it would either have to increase a tax levy, or cut other expenses. Since the public is ultimately responsible for funding whichever proposal is implemented, the City urges consideration of the fact that it, the municipality, and not the Unions, bears the financial responsibility for such increases. Accordingly, the City contends that the interest and welfare of the public demand that the tax burden not be increased.

The City points out that there is no evidence that the current level of compensation is insufficient to attract and retain qualified police officers. The City also points out that there is no evidence of a shortage of available applicants for police positions. Therefore, the Union's proposals are not necessary to maintain staffing levels and merely provide unreasonably higher wage increases and more benefits thus increasing the taxpayers' burden.

Addressing the lawful authority of the employer, the City argues that this criterion favors its proposal. Noting that its index rate was 2.5% in 1998, 1.5% in 1999 and 2.5% in 2000, the City examines the Unions proposals in this context. The City points out that in 1998 it appropriated \$4,488,385 for the Police Department salary and wages. Based on that appropriation, the City calculates that if its Police Officers were awarded a 6% salary increase for 1998, the City would have to pay an up approximately an addition to \$269,300 just in base salary for all Officers, without calculation of the increase in overtime and other

benefits. The City maintains that that amount would exceed the Cap. Similarly, in 1999 the City spent \$3,776,176.19 for the Police Department's salary and wages. If the Union's proposed salary increase was granted for that year, the City would have to pay an additional \$226,570 which would again exceed the Cap. In 2000, the City has appropriated \$4,446,535 for salary and wages of its Police and a 6% increase would require it to pay an additional \$266,792, which would also exceed the Cap. In contrast, the City points out that its proposal for a 2% increase for 1998, a 2.5% increase for 1999, a 3.0% increase for 2000, and a 3.0% increase for 2001 would fall within the Cap and thus within the lawful authority of the employer. Accordingly, the City contends that the lawful authority criterion favors its proposal.

The City maintains that the continuity and stability of employment criterion supports a finding in favor of its last offer. According to the City, the record demonstrates that the overall compensation of its police officers, including their benefits and salary, has been an inducement to remain in the City's employ. The City reiterates that the salaries and benefits it provides to its police officers are comparable to those provided by other police departments. The City reiterates that the salary and benefits provided to its police officers, including sick leave, vacation, personal days and clothing and maintenance allowance, as well as all major medical and dental benefits at no extra cost to officers, are very comparable to those provided by other police departments. Additionally, the City asserts that its police officers do not experience job instability and stagnant

wages. In contrast, the City points out that its police officers enjoyed stability, longevity, generous vacation and sick time, and great benefits. The City maintains that these factors enhance the continuity and stability of police employment. The City cites the testimony of Director Dowling that only two police officers left the City to take other law enforcement positions. According to Director Dowling, one Officer left to work with his brother in the Deal Police Department where his bi-lingual skills were sought and the other took a position with the Monmouth County Prosecutor's Office. The City notes that the Unions have not presented evidence that police have experienced layoffs. Additionally the Unions have not presented testimony or evidence that the City has encountered difficulty in hiring police officers. Moreover, the City emphasizes that its police officers continue to enjoy a remarkable stability of employment. Relying upon the testimony of Director Dowling, the City points out that in 1999 the Police Department filled 70 training slots at the Monmouth County Police Academy and that the department has sent Officers for specialized training in New York City, Arizona and St. Louis. Specifically, the City hired 14 Officers in 1998 and 3 Officers in 1999. Additionally, the City points to the testimony of Director Dowling that its Police Department possesses new, technologically up-to-date equipment. Accordingly, the City points out that there is no evidence to suggest that its offer will adversely affect the continuity and stability of employment of its Police.

Looking to internal comparisons, the City points out that its proposal is similar to the wage increases received by IFPTE bargaining unit and by the non-bargaining unit employees. The City notes that on April 4, 2000 it entered into an agreement with the IFPTE, Local 196 covering the blue- and white-collar bargaining units where base salaries were increased by 2% effective January 1 1998, 2.75% effective January 1, 1999, 3.5% effective January 1, 2000, and 3.25% effective January 1, 2001. The City points out the similar wage increases were awarded to non-bargaining unit employees for 1998 and 1999, with non-bargaining unit employees receiving 2% wage increases in 1998 and 2.5% wage increases in 1999. The City contends that these increases establish a pattern of wage increases between the City and its employees. The City asserts that these increases are generous and that they represent what Asbury Park can afford to pay. Accordingly, the City urges adoption of its proposal of a 2% increase for 1998, a 2.5% increase for 1999, a 3% increase for 2000, and a 3% increase for 2001.

Addressing the cost of living criterion, the City points out that the Unions have acknowledged that this criterion supports the City's final offer over its proposed 6% across-the-board increase in each year of the agreement.

The City also urges adoption of its proposal to increase the prescription co-pay from its current \$1.00 (generic) and \$5 (brand-name) to a \$5 (generic) and \$10 (brand-name) co-pay effective June 1, 2000. The City points out that it

presently provides full major medical and dental benefits to its Officers. However, the City also points out that in January of 2000 it was noted that health insurance costs for employers are rising at three times the level of inflation. The City asserts that by increasing police officers co-payments by a minimal amount, it would greatly reduce its financial obligation and only slightly increase the Officers out-of-pocket expenses. Thus, the City asserts that balancing the equities of this proposal requires that this proposal be adopted.

The City seeks to remove Article XX, Sections C and D from the new collective bargaining agreement because the statutes upon which they are based have been declared unconstitutional by the New Jersey courts. Article XX, Section C of the collective bargaining agreement states:

The City agrees to grant to the member of the Association selected as the State Delegate up to twenty-four (24) man days off without loss of pay or time to attend any State meeting or State Convention of the New Jersey State Police Benevolent Association.

Article XX, Section D. of the collective bargaining agreement states:

The City agrees that a maximum number of four (4) Association members, to be designated by the Association, including the State Delegate and President shall be granted leave to attend State or national conventions pursuant to N.J.S.A 11:6-10, provided, however, that the Association notifies the City in writing of its intentions to do so, no later than one (1) week prior to the time leave is to be taken, except in cases of emergency, and in such case, the Public Safety Director or his/her designee shall prove such leave. Anything in this Agreement contained to the contrary notwithstanding, is understood and agreed by and between the parties hereto that the time allotted shall be for the duration of the

convention plus a reasonable time allowed for travel to and from the convention pursuant to N.J. S. A. 40A:14-177.

During the hearings the parties resolved this issue and it is no longer before me for consideration. This stipulation will be incorporated into the terms of the Award.

Finally, the City agrees with the Unions' proposal that minor discipline be included within the grievance procedure and that the arbitral agency be changed from New Jersey State Board of Mediation to the Public Employment Relations Commission.

DISCUSSION

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

One principle which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the bargaining process is that a party seeking such change bears the burden of

showing the need for such modification. I apply that principle as part of my analysis to each issue in dispute.

The parties have entered into stipulations on changes to the Grievance Procedure in the SOA agreement and overtime pay when officers are recalled to duty. Additionally, the parties have reached agreement concerning time off for attendance at national and state PBA conventions. These stipulations are incorporated into the terms of this Award pursuant to N.J.S.A. 34:13A-16(g)(4).

The City proposes to clarify Article V, Sections A and D to provide that the compensation for the initial ten hours of participation in the professional training program has been added to the Officers' salary and that no additional compensation is provided for this time. The PBA has not objected to this proposal. Article V, Section D currently provides that "the compensation received for training pursuant to the 1989-90 contract (\$470) is eliminated and has been added to the 1991 base salary figures for steps 1, 2, 3, and 4." In the absence of objection and in view of the current language indicating that this payment has already been added to base, the City's proposed clarification is awarded.

The City also proposes to increase the prescription co-payment from \$1 for generic and \$5 for brand names to \$5 for generic and \$10 for brand name prescriptions. The City notes that health insurance costs for employers are rising at rates as much as three times the level of inflation. The City points out that a

minimal increase in police officers' co-payments would greatly reduce its financial obligation and would result in only a modest increase in the officers' out-of-pocket expenses. The City's proposal to increase the prescription co-payments would ease its burden to pay the increased cost of prescription coverage, provide for some cost containment and yet maintain co-pays at a reasonable attractive level generally consistent with such terms in labor agreements submitted into the record. Accordingly, the City's proposal to increase the co-pay for the prescription drug benefit is granted with the authority to modify the co-payment effective January 1, 2002.

The PBA proposes that all police officers receive the benefit of a fold-in of holiday pay into base pay from commencement of employment. Currently, holiday pay is included in base for Superior Officers and only for rank and file employees who elect to do so and are within 13 months prior to their retirement date. The current provision conflicts with the legal requirements of the pension system and must be modified. The fold-in would also result in consistency with the SOA Agreement and in uniform payroll administration. The fold-in is awarded. The fold-in of holiday pay into base pay shall be incorporated into the PBA agreement under the identical terms set forth in the existing SOA agreement and shall be effective at the end of the workday on December 31, 2001.

The SOA proposes that its members receive 15 minutes of daily prep time at the overtime rate. According to the PBA, the current practice provides for the fifteen minutes of prep time per day, or one hour and fifteen minutes per week, of prep time without compensation. The PBA seeks compensation for this work arguing that it is inequitable to provide additional time without additional pay. I do not award this proposal. It simply has not been established that the annual salary for SOA members has been negotiated without consideration of the total time now worked.

I now turn to the issue of salary. The Unions seek a 6% increase in each of four years, while the City proposes increases of 2% in 1998, 2.5% in 1999, and 3% in 2000 and 2001, respectively.

The cost of the PBA's proposals for rank and file police officers represents a four year total increase to the City of \$600,958 based upon all officers assumed to be at top step. It is new money cost annually and is broken down as follows. The PBA proposes a 6.0% increase in base salary at a cost of \$168,582 on January 1, 1998. The PBA proposes an additional 6.0% on January 1, 1999 at a cost of \$178,654. The PBA proposes an additional 6.0% on January 1, 2000 at a cost of \$189,374 and an additional 6.0% on January 1, 2001 at a cost of \$200,736. The City proposes a 2.0% increase in base salary at a cost of \$56,180 on January 1, 1998. The City proposes an additional 2.5% increase in base salary at a cost of \$71,630 on January 1, 1999. The City proposes an

additional 3.0% in 2000 and 3.0% in 2001 at a cost of \$88,105 in 2000 and of \$90,748 in 2001. Thus, the difference in new economic costs annually of the parties' proposals is \$112,362 for 1998, \$107,024 for 1999, \$101,269 for 2000 and \$110,210 for 2001. The cost differences over the four years, based on the new economic costs for each year of the parties' salary proposals, represents \$294,295. This figure is substantially greater when annual payroll costs for each proposal are calculated.

The cost of the SOA's proposals for Superior Officers represents a four year total increase to the City of \$282,465 and is broken down as follows. The SOA proposes a 6.0% increase in base salary at a cost of \$64,569 on January 1, 1998. The SOA proposes an additional 6.0% on January 1, 1999 at a cost of \$68,443. The SOA proposes an additional 6.0% on January 1, 2000 at a cost of \$72,550 and an additional 6.0% on January 1, 2001 at a cost of \$76,903. The City proposes a 2.0% increase in base salary at a cost of \$21,523 on January 1, 1998. The City proposes an additional 2.5% increase in base salary at a cost of \$27,442 on January 1, 1999. The City proposes an additional 3.0% in 2000 and 3.0% in 2001 at a cost of \$33,753 in 2000 and of \$34,766 in 2001. Thus, the difference in new economic costs annually of the parties' proposals is \$43,046 for 1998, \$41,001 for 1999, \$38,797 for 2000 and \$42,137 for 2001. The cost differences over the four years, based on the new economic costs for each year of the parties' salary proposals, represents \$164,670. This figure is substantially greater when annual payroll costs for each proposal are calculated.

In evaluating and weighing the relevant factors which support a reasonable determination of the wage issue, I conclude that the City and the Unions have each established some valid, but often competing, points which must be taken into consideration.

The City's financial posture is not particularly strong on a cash flow basis. The record reflects that a shortage of cash has developed during prior budget years which has hindered its ability to meet some immediate needs and requirements. But, the City has significant economic assets which reflect a potential and growing base of financial support. Its revenues lag its expenses creating periodic operating shortfalls during the fiscal year although the record does reflect the carry forward of Cap banks. Millions of dollars of revenue which are due and owed, but not realized, appear to be a root cause for this dilemma. Upon the resolution of oceanfront development litigation, the City's financial footing will be substantially stronger and provide immediate cash infusion. It will also provide a stronger and broader tax base on a more consistent basis to meet continuing needs, including a strong law enforcement presence. The City acknowledges that its offer of 2%, 2.5%, 3.0% and 3.0% has been factored into its budgets and will create no Cap problem, but that an award of the proportion reflecting the Unions' proposals would have adverse financial impact and create Cap problems.

The Unions have established a strong trend towards wage settlements in the immediate surrounding area and within the County averaging in or about 4% for municipal police officers. The record also reflects that the City's police officers work in the most demanding environment within the County. This data suggests that an award be considered which does not erode the department's relative standing in light of the substantial and difficult caseload for City police officers.

These considerations weigh heavily, but not exclusively, in rendering a wage award. The record compels me to fashion an award which accommodates these and other factors in a manner in which satisfies all of the statutory criteria and the special circumstances present in Asbury Park. I am convinced that a wage award must be constructed which affords the City some financial relief in its total pay-out of wages including retroactivity to January 1, 1998; which provides rate increases which avoids erosion of wages for its police officers relative to surrounding jurisdictions; and one which, to satisfy longer term considerations, accompanies wage increases for existing employees with some future cost savings to the City for future police officers.

I also conclude that a contract duration of four and one-half (4 ½) rather than four (4) years is reasonable and warranted in light of the protracted nature of the negotiations and these arbitration proceedings. The City and the Unions will benefit from the stability caused by such an award, the flexibility required to

accomplish the above stated goals and the cost savings resulting from not having an immediate commencement in negotiation which would be required by law for a contract which would terminate on December 31, 2001.

Based upon all of the above, I conclude that an Award must be fashioned which is beyond the City's last offer but less than what the Unions have demanded. Although I conclude that the terms of the Award should be above the rates of settlement which the City has concluded with its non-law enforcement employees (2% effective January 1, 1998, 2.75% effective January 1, 1999, 3.5% effective January 1, 2000, and 3.25% effective January 1, 2001), I am persuaded that the 1998 increase received by all City employees is also an appropriate wage increase for police officers represented by the Unions. Although this figure is less than the County average for 1998 it is not unreasonable, in the context of a four and one-half year award, for the City's police officers to receive a common wage increase for that year and thereby share in the City's overall effort to minimize its financial burden. The 2% wage increase shall be effective and retroactive to January 1, 1998. I am not persuaded, however, that the terms of the non-law enforcement agreement must be applied subsequent to 1998. In order to provide terms more comparable to those within the County and surrounding communities, I award salary rate increases of 4% annually for 1999, 2000 and 2001. The awarding of these increases must be accompanied by a schedule of timing during these fiscal years which will ease the financial impact of these terms toward a time in which the City

should reasonably anticipate some realization of its assets. Accordingly, the rate increase for 1999 shall be effective and retroactive to July 1, 1999, the rate increase for 2000 shall be effective and retroactive to April 1, 2000, and the rate increase for 2001 shall be effective on January 1, 2001, the traditional commencement date for the parties' prior agreements. For reasons previously stated, I have concluded that an agreement with an additional six months duration (January 1, 2002 through June 30, 2002) is reasonable and warranted given the protracted nature of the parties' negotiations efforts and this dispute settlement process. An award of 2.25%, effective January 1, 2002 will serve this purpose, provide an additional wage adjustment but will also allow for negotiations to proceed at a time which will permit a renewed assessment of the City's longer-term financial posture. The terms of this award represent a reasonable determination both for the PBA unit and the SOA unit.

The terms of this Award will not compel the City to exceed its lawful authority and will not have adverse financial impact on the governing body, its residents and taxpayers. The fiscal year 2000 budget reflects that the City used a 2.5% index rate, 2.5% below allowable. The allowable Operating Appropriation within CAP was \$20,388,476. The actual Operating Appropriation within CAPs was \$18,273,489, a difference of \$2,114,987. The Fiscal Year 2001 budget is not in the record but the 1999 budget also reflects expenditures well within the City's lawful spending authority.

With respect to financial impact, as stated, the expenditures required by the Award are less than the City proposed for 1998 and 1999 (although the salary rate is 1.5% higher), but the Award exceeds the City's payroll costs beyond its proposals by \$123,000 in 2000 and \$212,000 in 2001. The salary and wage account or line item for the police department reflected a \$494,000 transfer in 1999 from an account of \$4,338,496. In addition, this account held a reserve balance of \$68,319.82 calculated by what the City actually expended after all transfers out of the account were accomplished. A similar result appeared for 1998. An amount of \$186,969 was transferred out of the police wage and salary account and a reserve of \$54,469 was held based upon an expenditure of \$4,247,947 from an account of \$4,301,416 after all transfers out of the account were accomplished. Thus, it appears that a substantial portion of the funds required to pay the terms of the Award can be spent from within the appropriation for the police department. The financial documents also reflect that substantial assets do exist, many in the form of receivables, although the timing in the receipt of these receivables is not always consistent with the City's financial obligations. They remain, nevertheless, as viable assets to the City. The records also reflect a tax title lien receivable of \$6,316,766, and property acquired for taxes valued at \$3,398,900. These are viable assets. Although not readily available, they do reflect a potential and growing base of financial support.

The cost of the January 1, 1998 increase of 2% reflects a \$56,180 cost for the PBA and a \$21,523 cost for the SOA. These costs are consistent with the City's estimate of cost for its proposal. The July 1, 1999 increase of 4% reflects an additional \$57,304 cost to the PBA and \$22,000 for the SOA. Because this increase has a payout of 2% for 1999, this cost is \$20,326 less than the City's estimate of cost for its proposal of 2.5% effective January 1, 1999 and \$6,000 less for the SOA. While costing less than the City's proposal, the Award contains a rollover cost placing \$37,000 into the new base for 2000 above the City's proposal for the PBA and \$16,000 for the SOA. These additional costs are not expended during 1999.

The April 1, 2000 increase of 4% has a payout of 3% for 2000. Although its new money cost is identical to the City's offer of 3%, its cost is \$64,070 above the City's proposal for the PBA due to the cost of the rollover into base from 1999. Similarly, its new money cost to the SOA is identical to the City's offer but is \$29,000 above due to the rollover of the unspent portion of the 1999 increase into 2000. The January 1, 2001 increase of 4% is 1% beyond the City's offer of 3% but contains, in addition, a 1% rollover for the unspent portion of the 2000 increase into 2001. The 1% difference represents an additional cost for the PBA of \$30,990 above the City's proposal coupled with an additional \$30,990 from the 2000 rollover. The cost for the SOA is an additional \$11,870 for the 1% difference in rate above the City's proposal and an additional \$11,870 for the 1%

rollover. The additional 2.25% increase effective January 1, 2002 represents an additional \$70,000 for budget year 2002 for the PBA and \$24,000 for the SOA.

I also conclude that the terms of the Award should be accompanied by future cost savings containing one additional step of one year during the time period between the Academy step and police officer maximum. The existing salary schedule shall be modified to provide for "Patrolman - Fifth Year." The modified salary schedule will provide substantial cost offsets for new hires during each of their first five years of employment but still maintain a salary schedule providing for swift movement between the time of graduation from Academy to the achievement of maximum step.

The Unions also propose a new longevity program where each officer would receive 2% for each four years of completed service. The current longevity program for Police Officers and Superior Officers is as follows:

	<u>10th Year</u>	<u>15th Year</u>	<u>20th Year</u>	<u>25th Year</u>
Police Officer	\$721	\$1,558	\$3,276	\$3,876
Detective	\$727	\$1,575	\$3,301	\$3,908
Sergeant	\$2,070	\$3,002	\$3,667	\$4,466
Det. Sergeant	\$2,086	\$3,027	\$3,699	\$4,507
Lieutenant	\$2,205	\$3,183	\$3,882	\$4,507
Det. Lieutenant	\$2,233	\$3,227	\$3,935	\$4,791
Captain	\$2,332	\$3,356	\$4,088	\$4,966
Det. Captain	\$2,372	\$3,419	\$4,167	\$5,066

All Superior Officers promoted to rank prior to January 1, 1992

	<u>20th Year</u>	<u>25th Year</u>
Sergeant	\$4,667	\$5,466
Det. Sergeant	\$4,699	\$5,507
Lieutenant	\$4,882	\$5,720
Det. Lieutenant	\$4,935	\$5,791
Captain	\$5,088	\$5,966
Det. Captain	\$5,167	\$6,066

The Unions allege that their units compare unfavorably with longevity benefits in other Monmouth County municipalities. The City argues that added new longevity costs will add incremental costs onto any adjustments to base salary.

There is merit in the Unions contention that the longevity schedules should be modified during the term of this Agreement. The longstanding benefit is referenced in dollar amounts. There are departments in surrounding communities which pay longevity on a percentage basis (Tinton Falls, Bradley Beach, Deal and Avon-by-the-Sea) which yield higher amounts and some which pay longevity on a dollar basis (Ocean Township, Neptune Township and Howell) which receive lower amounts. While I do not award the Unions proposal to convert the payment structure to a percentage basis, I am mindful that without some increase, the existing longevity benefit in relationship to salaries would be reduced on a proportionate percentage basis. I also conclude that the timing of any such increases should be towards the latter stages of the Agreement to avoid substantial cost impact. Accordingly, the amounts set forth in the existing

longevity schedule shall be increased by the following amounts on the following dates.

**AWARDED LONGEVITY INCREASES TO
EXISTING LONGEVITY SCHEDULE - EFFECTIVE 1/1/01**

	<u>10th Year</u>	<u>15th Year</u>	<u>20th Year</u>	<u>25th Year</u>
Police Officer	100	150	200	250
Detective	100	150	200	250
Sergeant	100	150	200	250
Det. Sergeant	100	150	200	250
Lieutenant	100	150	200	250
Det. Lieutenant	100	150	200	250
Captain	100	150	200	250
Det. Captain	100	150	200	250

All Superior Officers promoted to rank prior to January 1, 1992

	<u>20th Year</u>	<u>25th Year</u>
Sergeant	200	250
Det. Sergeant	200	250
Lieutenant	200	250
Det. Lieutenant	200	250
Captain	200	250
Det. Captain	200	250

An additional increase in the identical amounts at each longevity step shall be implemented effective January 1, 2002. These increases are well below the increases which would be yielded by applying the salary percentages to the amounts set forth on each longevity step over the term of the Agreement. However, the increases will allow for additional rewards to police officers who remain employed by the City and encourage them to remain on a career basis to

perform the unique functions associated with the preservation of law and order within the City.

In evaluating the merits of the last offers in relation to the remaining statutory criteria, the record reflects that while they are not irrelevant, they must be given less weight. The interests and welfare of the public have fully been taken into consideration. The current needs of the public for a safe and secure environment will be furthered by the terms of an award which maintains a reasonable relationship with other jurisdictions and recognizes the efficiency and productivity of the City's police officers. This factor is also furthered by mitigating the payments of salary increases due to the deferment of some of the salary increases as well as the insurance savings from increase prescription co-pay and cost offsets for future hires.

The cost of living factor tends to support the City's offer. The CPI-U for 1999, which increased by 2.9% virtually mirrors the City's proposal which includes proposed increases of 3.0% in both 1999 and 2000. The CPI-U supports the City's contention that the PBA's demands are overly generous and cannot be awarded but cannot be regarded as a sole or controlling factor.

I have also considered the increases in average annual wages among private sector employees. The terms of this Award are compatible with the evidence in the record with respect to such increases. Wage increases in

Monmouth County have risen to over 5% annually between the years 1996 to 1997 and from 1997 to 1998 according to average wage increases for private sector jobs covered under the State's unemployment insurance system as published by the New Jersey Department of Labor. These increases are above the average wage increases in New Jersey on a statewide basis although the annual salaries which these figures are based upon reflect lower annual salaries than received by the City's police officers.

The criterion speaking to the continuity and stability of employment also is relevant and has been considered. Both parties address the continuity and stability of employment criterion by focusing on the need to avoid turnover and provide job stability. The Unions urge adoption of their proposals as necessary to prevent turnover in an environment with a high and dangerous workload and to provide for salaries which should not lag behind those of other Monmouth County municipalities given the high crime rate which the police officers must deal with. The City focuses on the job stability and generous benefits it already provides to its police officers. This Award will promote the continuity and stability of employment which each party contends is necessary to promote and protect the interests and welfare of the public.

Accordingly, I respectfully submit the following Awards.

AWARD

All proposals by the City and the PBA and the SOA not awarded herein are denied and dismissed. All provisions of the existing agreements shall be carried forward except for those modified by the terms of this Award. All tentative agreements entered into between the City and the PBA and the SOA shall be incorporated herein. The increases in salary and longevity shall be retroactive and received by all eligible unit employees, including those who have left employment in good standing between January 1, 1998 and their last date of employment.

Duration

January 1, 1998 through June 30, 2002.

Salary

	1997	2% 1/1/98	4% 7/1/99	4% 4/1/00	4% 1/1/01	2.25% 1/1/02 - 6/30/02	Schedule B New Hire Effective 1/1/02	
Academy	\$27,595	\$28,147	\$29,273	\$30,444	\$31,661	\$32,374	Academy	\$32,374
1	\$35,654	\$36,367	\$37,822	\$39,335	\$40,908	\$41,828	1	\$38,574
2	\$43,242	\$44,107	\$45,871	\$47,706	\$49,614	\$50,731	2	\$44,774
3	\$49,600	\$50,592	\$52,616	\$54,720	\$56,909	\$58,190	3	\$50,974
4	\$54,020	\$55,100	\$57,304	\$59,597	\$61,980	\$63,375	4	\$57,174
5	\$54,609	\$55,701	\$57,929	\$60,246	\$62,656	\$64,066	5	\$63,375
Detective	\$54,609	\$55,701	\$57,929	\$60,246	\$62,656	\$64,066	Detective	\$64,066
Sergeant	\$62,604	\$63,856	\$66,410	\$69,067	\$71,829	\$73,446		
Det. Sergeant	\$63,279	\$64,545	\$67,126	\$69,811	\$72,604	\$74,237		
Lieutenant	\$65,691	\$67,005	\$69,685	\$72,472	\$75,371	\$77,067		
Det. Lieutenant	\$66,735	\$68,070	\$70,792	\$73,624	\$76,569	\$78,292		
Captain	\$68,795	\$70,171	\$72,978	\$75,897	\$78,933	\$80,709		
Det. Captain	\$70,130	\$71,533	\$74,394	\$77,370	\$80,465	\$82,275		

Overtime

Article IV, Paragraph C is deleted.

Grievance Procedure

The grievance procedures shall be amended to provide that minor discipline, defined as five (5) days of suspension or the equivalent fine, or any lesser penalty, is included in the grievance procedure.

The grievance procedures shall be amended to provide that the arbitration agency is the Public Employment Relations Commission.

Prescription Co-Pay

The prescription co-payment shall be set at \$5 (generic) and \$10 (brand names) effective January 1, 2002.

Longevity

The amounts set forth in the existing longevity schedule shall be increased by the following amounts effective January 1, 2001 and an additional increase in the identical amounts at each longevity step shall be implemented effective January 1, 2001.

	<u>10th Year</u>	<u>15th Year</u>	<u>20th Year</u>	<u>25th Year</u>
Police Officer	100	150	200	250
Detective	100	150	200	250
Sergeant	100	150	200	250
Det. Sergeant	100	150	200	250
Lieutenant	100	150	200	250
Det. Lieutenant	100	150	200	250
Captain	100	150	200	250
Det. Captain	100	150	200	250

All Superior Officers promoted to rank prior to January 1, 1992

	<u>20th Year</u>	<u>25th Year</u>
Sergeant	200	250
Det. Sergeant	200	250
Lieutenant	200	250
Det. Lieutenant	200	250
Captain	200	250
Det. Captain	200	250

Police Training

Article V - Police Training - Sections A and D

This provision shall be clarified that the compensation for the initial ten hours of training has been added to the officers' salary and there is no addition compensation.

Stipulations

Pursuant to N.J.S.A. 34:13A-16(g)(4) the parties' stipulations on overtime pay when officers are recalled to duty and time off for attendance at national and

state PBA conventions to conform this provision to constitutional requirements are incorporated into the terms of this Award.

Holiday Fold-In


Commencing at the end of the workday on December 31, 2001 the PBA shall receive a fold-in of holiday pay into base pay from commencement of employment. The language implementing the fold-in shall mirror the language contained in the SOA Agreement.

Dated: July 24, 2001
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 24th day of July, 2001, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/13/2003