

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

In the Matter of Interest Arbitration Between :

BOROUGH OF NEW MILFORD :
"the Employer or Borough" :

and :

NEW MILFORD PBA LOCAL 83 :
"the PBA or Union" :

**INTEREST ARBITRATION
AWARD**

Docket No. IA-2000-03

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE EMPLOYER:

Mark S. Ruderman, Esq.
Gene Vinci, Borough Administrator
Frank DeBari, Mayor of New Milford

FOR THE PBA:

Richard D. Loccke, Esq.
Vincent J. Foti
Sergeant John W. McGrath, New Milford Police Officer
John Moroney, New Milford Police Officer
Frank Ramaci, New Milford Police Officer
Stephen Littlefield, New Milford Police Officer

Background & Procedural History

The Borough of New Milford (the "Employer") and New Milford Policemen's Benevolent Association, P.B.A. Local 93 (the "PBA") are parties to a collective negotiations agreement which expired on December 31, 1998. Upon expiration of the collective negotiations agreement, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA filed a petition requesting the initiation of compulsory interest arbitration with the New Jersey Public Employment Relations Commission ("PERC") on July 2, 1999. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 which resulted in my mutual selection by the parties and my subsequent appointment by PERC on September 2, 1999 from its Special Panel of Interest Arbitrators.

I met with the parties in voluntary mediation sessions. The mediation sessions did not resolve all of the issues included in the impasse. Formal interest arbitration proceedings were invoked and a hearing was conducted on December 9, 1999 at which time the parties presented documentary evidence and testimony in support of their positions. Following receipt of the transcript, both parties filed post-hearing briefs. The hearing was declared closed as of February 2, 2000, upon receipt of the briefs. The parties mutually agreed to extend the time for issuance of the award to May 26, 2000.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

The parties did not agree upon an alternate terminal procedure. Accordingly, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to “separately determine whether the net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section.”

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 the evidence on each 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 condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 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:4-45.1 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 municipality, the arbitrator or panel of arbitrators shall take into account to the extent the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding 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 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.

Final Offer - Borough

The final offer of the Borough is as follows:

1. **Salary**

The Borough proposes the following salary increases for 1999, 2000 and 2001:

January 1, 1999:	3.00%
January 1, 2000:	3.25%
January 1, 2001:	3.25%

2. **Starting Step of Salary Guide**

For employees hired on or after January 1, 2000, the Borough proposes to freeze the starting salary for the three-year contract term. This proposal will not affect current employees.

3. **Longevity Benefits**

The Borough proposes to eliminate longevity for all employees hired after January 1, 2000. This proposal will not affect current employees. Employees hired prior to January 1, 2000 shall continue to receive longevity benefits in accordance with the schedule contained in Article Fourteen of the Collective Bargaining Agreement.

4. **Prescription**

The Borough proposes to increase the prescription co-pay on brand-name prescriptions from \$5.00 per prescription to \$10.00 per prescription. Currently, generic and brand-name prescriptions require the same \$5.00 co-pay.

5. **Medical Insurance**

The Borough is currently self-insured. The Borough proposes to provide a plan with a \$10.00 co-pay in network, \$250.00 out-of-network deductible, and \$2500.00 maximum out-of-network cap, to be effective March 1, 2000.

Additionally, the Borough proposes that employees hired after January 1, 2000 shall be responsible for 15% of family dependent coverage. This proposal applies to dependent coverage, and not the total health insurance premium. Under the Borough's proposal, officers with full family coverage will be required to contribute \$82.50 per month.

Final Offer - PBA

The final offer of the PBA is as follows:

1. **Salary**

The PBA proposes the following salary increases for 1999, 2000 and 2001:

January 1, 1999:	5.00%
January 1, 2000:	5.00%
January 1, 2001:	5.00%

Each increase is effective on January 1st of each respective year and is meant to be applied to each rank, step and position covered by the Agreement.

2. **Hourly Rate**

The PBA is proposing that the current hourly rate divisor of 2080 be changed to 1946. This proposed change is effective on July 1, 2000.

3. **Out of Title Work**

This is a new provision which provides that where a patrol officer is assigned to run a shift, or a tour, then said officer would be paid at the Sergeant's rate of pay during such time as the patrol officer is so assigned.

4. **Chief's Meeting**

The PBA proposes that the Chief's meeting be limited to police purposes only. The PBA is seeking that this time be utilized for Chief's meetings or weapons qualification only.

5. **Clothing Allowance**

The PBA is seeking a one hundred dollar (\$100) clothing allowance increase to be effective on January 1 of each contract year.

Issues in Dispute

The following issues remain in dispute:

1. Salary

Borough Position

The Borough proposes the following salary increases for 1999, 2000 and 2001:

January 1, 1999:	3.00%
January 1, 2000:	3.25%
January 1, 2001:	3.25%

PBA Position

The PBA proposes the following salary increases for 1999, 2000 and 2001:

January 1, 1999:	5.00%
January 1, 2000:	5.00%
January 1, 2001:	5.00%

2. Starting Step of Salary Guide

Borough Position

The Borough proposes to freeze the starting salary for the three-year contract term for employees hired on or after January 1, 2000. This proposal will not affect current employees.

PBA Position

The PBA is opposed to freezing the starting salary.

3. Longevity Benefits

Borough Position

The Borough proposes to eliminate longevity for all employees hired after January 1, 2000. This proposal will not affect current employees. Employees hired prior to January 1, 2000 shall continue to receive longevity benefits in accordance with the schedule contained in Article Fourteen of the Collective Bargaining Agreement.

PBA Position

The PBA is opposed to the Borough's proposal to eliminate longevity for all employees hired after January 1, 2000.

4. **Prescription**

Borough Position

The Borough proposes to increase the prescription co-pay on brand-name prescriptions from \$5.00 per prescription to \$10.00 per prescription.

PBA Position

The PBA is opposed to the Borough's proposal to increase the prescription co-pay on brand-name prescriptions from \$5.00 per prescription to \$10.00 per prescription.

5. **Medical Insurance**

Borough Position

The Borough is currently self-insured. The Borough proposes to provide a plan with a \$10.00 co-pay in network, \$250.00 out-of-network deductible, and \$2500.00 maximum out-of-network cap, to be effective March 1, 2000.

Additionally, the Borough proposes that employees hired after January 1, 2000 shall be responsible for 15% of family dependent coverage. This proposal applies to dependent coverage, and not the total health insurance premium. Under the Borough's proposal, officers with full family coverage will be required to contribute \$82.50 per month.

PBA Position

The PBA is opposed to the Borough's proposal on medical insurance.

6. **Hourly Rate**

PBA Position

The PBA is proposing that the current hourly rate divisor of 2080 be changed to 1946. This proposed change is effective on July 1, 2000.

Borough Position

The Borough is opposed to the PBA's proposal to change the current hourly rate divisor of 2080 to 1946.

7. **Out of Title Work**

PBA Position

This is a new provision which provides that where a patrol officer is assigned to run a shift, a tour, then said officer would be paid at the Sergeant's rate of pay during such time as the patrol officer is so assigned.

Borough Position

The Borough is opposed to higher pay for out-of-title work.

8. **Chief's Meeting**

PBA Position

The PBA proposes that the Chief's meeting be limited to police purposes only. The PBA is seeking that this time be utilized for Chief's meetings or weapons qualification only.

Borough Position

The Borough is opposed to any changes in the current language regarding the Chief's Meeting.

9. **Clothing Allowance**

PBA Position

The PBA is seeking a one hundred dollar (\$100) clothing allowance increase to be effective on January 1 of each contract year.

Borough Position

The Borough is opposed to any increases in the clothing allowance.

ARGUMENTS OF THE BOROUGH

The Borough, in its brief, examined the statutory criteria in relation to its proposal on the issues in dispute.

Interests and Welfare of the Public

The Borough argues that the Act requires the Arbitrator to consider "the interest and welfare of the public" in determining a reasonable award and requires the Interest Arbitrator to consider "the limitations imposed upon the employer by P.L. 1976 (C.40A:4-45.1 et seq., [the Cap Law]." This criterion focuses upon the priority to be given to the public employee's wages and other economic benefits within a public employer's finite budget and plans. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 188 (App. Div. 1993), rev'd on other grounds, Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994).

The Borough asserts that a public employer best serves the public interest by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services. While a municipality may have difficulty balancing these competing interests within the available budget, the municipality should not sacrifice fairness to its employees so that it may provide its residents with a plethora of frivolous government services. On the other hand, the Borough submits that a municipality should not reduce essential government services to satisfy the economic demands of overreaching public employees.

The Borough maintains that in determining a reasonable award, the Interest Arbitrator must consider the effect the award will have on the citizens and taxpayers of the Borough of New Milford.

Comparability and Overall Compensation

The Borough asserts that the Act requires the Interest Arbitrator to consider a 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 in (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions.

The Act also requires the Interest Arbitrator to consider the overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received. As discussed below, the comparable and overall compensation exhibits submitted at the interest arbitration hearing demonstrate that the Borough extends more reasonable proposals than the PBA.

The Borough notes that in Hillsdale, the Court criticized the Interest Arbitrator for overemphasizing comparability with, in the Hillsdale case, police departments in similar communities in rendering an award. The Court noted that the Legislature did not intend any one factor, including comparability to other police departments in similar municipalities, to be dispositive. In fact, section 16(g) "invites comparison with other jobs in both the public and private sectors." As a result, the Borough contends that the Interest Arbitrator should compare the Borough's police compensation package not only to other municipal police compensation packages, but to other public and private sector jobs.

The Borough maintains that the amendments implemented under the Reform Act change the weight the Interest Arbitrator should attribute to the consideration of compensation packages in private employment, public employment and in public

employment in the same or similar comparable jurisdictions. Prior to the Reform Act, the Act required the Interest Arbitrator to consider a:

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

Whereas, under the Reform Act, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions.

Therefore, the Borough contends that the Legislature altered the order of the three subfactors, moving comparability to employees in the private sector from the third subfactor to the first subfactor and moving comparability to public employment in the same or similar comparable jurisdictions from the first subfactor to the third subfactor. This amendment evidences legislative intent to reduce Interest Arbitrators' over reliance on wage and benefit comparability to public employees in the same or similar jurisdictions — an over dependence criticized by the Court in Hillsdale and Washington — and increase Interest Arbitrators' underemphasis of comparability to private employees in general. Consequently, the Borough asserts that the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions without unduly emphasizing comparability to public employment in comparable jurisdictions and without minimizing comparability to private employment in general.

a. Wages and benefits in the private sector

The Borough contends that wage and benefit packages in the private sector highlight the reasonableness of its wage offer in comparison to the PBA's demands. National wage increases in the private sector fall significantly below the 5.00% three-year average increase demanded by the PBA. The Borough notes that, according to the Bureau of National Affairs ("BNA"), median first year wage increases for settlements reached during the first thirty-six weeks of 1999 equaled 3.0%. The 3.0% median wage increase remained unchanged from the median wage increase over the first thirty-six weeks of 1998.

Additionally, according to the BNA, median first year wage increases for settlements reached during the first forty-eight weeks of 1998 equaled 3.0%. The weighted average of these settlements over the same period equaled 3.1%. The 3.0% median wage increase remained unchanged from the median wage increase over the first forty-eight weeks of 1997. The Borough asserts that these increases, which fall a full 2.0% per year below the PBA's annual increases, are consistent with the Borough's 3.0% wage offer during the first year of this successor contract.

The Borough notes that annual cost-of-living increases in social security fall below the Borough's proposed wage increase. On January 1, 2000, social security recipients received a 2.4% increase. On January 1, 1999, social security beneficiaries received about a 1.5% cost-of-living increase in benefits. Social security recipients have not received a 5% increase, the increase demanded by the PBA, since 1992, making it difficult for those New Milford citizens dependent on social security benefits to ultimately fund the PBA's demanded increase. Social Security increases demonstrate the reasonableness of the Borough's proposed 3.0%, 3.25% and 3.25% wage increase.

The Borough contends that because of the increased costs of employee health insurance, private employers have reduced health insurance benefits by requiring employees to contribute to their premiums. The Borough seeks to control its costs by increasing the co-pay on brand-named prescriptions from \$5.00 per prescription to \$10.00 per prescription. The Borough also seeks to control its costs by requiring new hires to contribute 15% of the premiums for dependent coverage.

The Borough submitted an article from USA Today showing that employers require employees to contribute an increasing share of health insurance premiums. In 1988, employers asked employees to contribute 10.2% toward the cost of insurance premiums. In 1998, workers contributed 17.7% toward the total cost of their medical insurance. The Borough's proposal falls below the 17.7% average, because the Borough proposes to require new hires to contribute 15% toward dependent health care coverage only.

Further, the Borough cites a Wyatt Watson survey showing that 99.6% of all employers require employees to contribute to medical insurance premiums covering the employee plus two dependents. In the Northeastern United States, 100% of employers required employees to contribute to medical insurance premiums covering the employee plus two dependents. Thus, the Borough maintains that national wage trends support the reasonableness of each element of its proposals.

b. Wages and benefits in the public sector

The Borough asserts that wage increases in the public sector highlight the reasonableness of its economic proposals. According to the BNA, median wage increases for state and local government contracts reached during the first thirty-six weeks of 1999 equaled 3.0%, the same as for 1998. Additionally, median first year wage increases for state and local government contracts reached during the first forty-eight weeks of 1998 equaled 3.0%. The weighted average of these contracts over the same period equaled 2.3%.

The Borough cited specific New Jersey settlements which it maintains highlights the reasonableness of its wage offer. In August 1999, the International Federation of Professional and Technical Engineers ("IFPTE"), which represents the toll collectors on the Garden State Parkway, settled for a four-year contract providing for 2.5%, 3.0%, 3.5%, 3.5% plus 1% midway through the last year of the contract. The contract provides an average 3.375% per year increase, 1.625% per year less than the PBA's proposed 5.0% annual increase.

The Borough points out that IFPTE also agreed to substantial concessions on medical insurance contributions. Under the new contract, employees with family coverage will double their monthly contributions to about \$150.00 per month. Under the Borough's proposal, officers with full family coverage will be required to contribute \$82.50 per month, \$67.50 per month less than IFPTE employees. Moreover, because toll collectors earn substantially less than police officers, toll collectors contribute a significantly higher percentage of their salary toward insurance contributions. Specifically, toll collectors at maximum step earn \$20.47 per hour, in comparison to New Milford police officers at maximum step who earn \$29.83 per hour, exclusive of benefits.

Moreover, the State of New Jersey recently reached an agreement with the CWA which represents 35,000 state employees. New Jersey and the CWA agreed to a four-year agreement, which provided for a 14.5% pay increase. Specifically, workers will receive 2.5% on July 1, 1999, plus 3.5%, 4.0% and 4.5% over the next three years. The contract, which a CWA spokesman described as "an excellent wage package," provided for a 3.625% average annual wage increase, considerably below the PBA's 5.0% demanded wage increase. The CWA also agreed that its members would contribute toward the cost of a health maintenance organization plan. Previously, only employees who selected a traditional health care plan contributed toward its cost.

Further, on March 3, 1996, the New York Times reported that the State of New Jersey reached an agreement with The Council of New Jersey State College Locals, a bargaining unit for 3,200 faculty members at all nine state college campuses. The four-year agreement provided for a \$250 bonus in 1997, a 3.0% salary increase in 1997-1998 and a 3.25% salary increase in 1998-1999. The previous three-year agreement which covered 1992 through 1995 provided an 11.0% salary increase consisting of 0% in the first year, 5.0% in the second year, and 6.0% in the third year. Therefore, the current agreement, which averages 1.69% per year, replaced an agreement providing for a 3.67% average wage increase. The Borough's average wage offer exceeds the 1.69% average annual wage increase by 1.48% per year. In contrast, the PBA's wage proposal exceeds the 1.69% average wage increase by an average of 3.31% per year. Thus, a comparison to public sector wage increases generally shows that the Borough presents a more reasonable offer than the PBA.

The Borough cites the conventional interest arbitration award of Arbitrator J.J. Pierson covering approximately 6,000 PBA members employed by the State of New Jersey. The award, among other things, imposed a four-year agreement providing for a wage freeze from July 1, 1995 through June 30, 1996, a wage freeze from July 1996 through June 30, 1997 plus a \$250 cash payment, a 3.5% wage increase effective July 1, 1997 and a 3.5% wage increase effective July 1, 1998. The award provided a 1.75% average increase, 3.25% per year less than the PBA's wage demand.

Further, on August 30, 1999, Interest Arbitrator Barbara Zausner rendered a four-year award between the State of New Jersey, Division of State Police and the State Troopers NCO Association. The award provided for a 0% wage increase on July 1, 1996, a 3.75% increase on October 1, 1997, a 3.75% wage increase on July 1, 1998, a 3.50% increase on July 1, 1999, and a 1.50% increase on January 1, 2000. The award averages 3.125% over

four years, 1.875% less per year than the PBA's demanded 5.0% increase. The award closely reflects the Borough's wage increase in this interest arbitration, which averages a slightly higher 3.16% per year.

The Borough contends that New Milford's maximum patrol officer salary significantly exceeds police officer salaries in some of the United States' largest cities. In 1997, the maximum patrol officers' salary equaled \$59,349, which exceeded maximum patrol officer salary as of January 1, 1997, in Chicago, San Francisco and New York City. New Milford's maximum patrol officer salary exceeded Chicago's maximum police officer salary of \$47,177 by \$12,172 or 25.8%. New Milford's maximum patrol officer salary surpassed San Francisco's maximum police officer salary of \$52,536 by \$6,813 or 12.9%. New Milford's maximum patrol officer salary significantly exceeded New York City maximum police officer salary of \$43,593 by \$15,756 or 36.1%. Thus, the Borough asserts that public sector wages and benefits demonstrate the reasonableness of the elements of its wage offer.

c. Public employment in the same or comparable jurisdictions

The Borough maintains that a comparison of the economic benefits of New Milford police officers with the economic benefits of other municipal police officers shows that its wage offer of 3.0%, 3.25% and 3.25% presents a more reasonable offer than the PBA's demand of 5.00% per year. The Borough selected four geographically and demographically similar communities — Dumont, Haworth, River Edge and Oradell — as comparable to New Milford.

Bergen County Comparables

Bergen County is divided into six geographic regions--Southwest Bergen, Southeast Bergen, Central Bergen, Northern Valley, Pascack Valley and Northwest Bergen. New Milford is located on the eastern border of Central Bergen.

New Milford shares geographic and demographic similarities with the four Bergen County municipalities--River Edge, Oradell, Haworth and Dumont--selected as comparable. Geographically, River Edge borders New Milford to the West and Dumont borders New Milford to the East. Haworth shares a border with Oradell, which neighbors New Milford to the North. These communities also have similar populations. They range from 17,358 in Dumont to 10,899 in River Edge to 8,169 in Oradell and 3,458 in Haworth. These communities have similar sized police departments. New Milford, at the time the data was recorded, had 35 officers. Dumont had 37 officers, River Edge had 27 officers, Oradell had 22 officers and Haworth had 14 officers.

The PBA selected all Bergen County municipalities as comparable, regardless of demographics. The PBA, however, only submitted collective bargaining agreements from twenty-seven out of seventy-one Bergen County municipalities. In short, the PBA randomly selected communities from all over Bergen County with markedly different demographics. For example, the PBA selected Mahwah and Oakland. These communities are located twelve to fifteen miles from New Milford, on the Northwestern border of Bergen County. Moreover, the PBA selected Montvale, located on Bergen County's norther border and Alpine, located on Bergen County's Northeastern border. Ridgefield and Edgewater, which the PBA also chose, are located in Southeast Bergen, a substantial distance from New Milford. Further, the PBA selected Paramus as a comparable, even though the Paramus Police Department contains three times the number of officers as the New Milford Police Department. The PBA did not select Dumont, which neighbors New Milford to the east. It also did not choose Haworth, separated from New Milford by a narrow strip of Oradell.

The Borough maintains that it provides a competitive annual salary. In 1998, New Milford officers at maximum step received \$62,049. River Edge, Oradell, New Milford,

Dumont and Haworth provided an average 1998 salary of \$62,073. New Milford's 1998 salary exceeded Dumont's 1998 salary of \$61,309 by \$740. New Milford's 1998 salary exceeded Haworth's 1998 salary of \$58,972 by \$3,077. Therefore, the Borough asserts that it provides a competitive salary among similar sized adjacent Bergen County communities.

The Borough seeks to increase the prescription co-pay for brand-named prescriptions from \$5 per prescription to \$10 per prescription. In the twenty-seven municipalities which the PBA selected as comparable, only four — Bergenfield, Fort Lee, Montvale, and Oakland — provide prescription benefits. Therefore, the police officers in New Milford receive a benefit which most of the PBA-selected municipalities do not provide. Moreover, two municipalities, Bergenfield and Montvale, implemented higher co-pays for brand-name prescriptions, as opposed to one co-pay applicable to both generic and brand-named prescriptions. Like the Borough's proposal, Montvale requires a \$5.00 co-pay for generic prescriptions and a \$10.00 co-pay for brand-named prescriptions.

The PBA seeks to decrease the hourly rate divisor used to calculate overtime from 2080 hours to 1946 hours, effective July 1, 2000. The Borough points out that seventeen of the twenty-seven municipalities which the PBA selected as comparable have language in their contracts which address the hourly rate for calculating overtime. Out of the seventeen municipalities, eleven municipalities — Alpine, Closter, Cresskill, Edgewater, Englewood, Fort Lee, Glen Rock, Harrington Park, Northvale, Norwood and Tenaflly — use 2080 as the hourly rate divisor. Six municipalities adopted different divisors. Teaneck, for example, divides its officers' biweekly gross pay by 78 ½ which equals 2041 hours. Montvale uses 1960. Little Ferry uses 1950. Emerson and Oradell use 1947 and one municipality, Westwood, use 1946. The Borough argues that Implementation of the PBA's proposal, as demonstrated by the PBA's selected comparables, would move New Milford among a small minority of municipalities which use a 1946 hourly divisor.

The Borough is opposed to the PBA's proposal to implement an out-of-title work provision requiring the Borough to pay patrol officers at sergeant rates for all time spent working in the higher rank. The Borough notes that only ten out of the twenty-seven municipalities selected as comparable by the PBA provide for such pay. These municipalities include Closter, Cresskill, Emerson, Englewood, Glen Rock, Little Ferry, Montvale, Oakland, Paramus and Park Ridge.

Of these municipalities, only three require the municipality to provide out-of-title pay for all time worked in the higher rank. The Borough points out that most municipalities require an officer to work in the higher rank for a specific period, before owing out-of-title pay. Specifically, Montvale only pays out-of-title compensation to officers who serve in the Detective Unit for six months or more. Closter requires an officer to work the higher rank for four months before it provides out-of-title pay. Oakland requires twenty consecutive days. Glen Rock requires five consecutive days. Little Ferry requires five days or more. The Borough submits that most municipalities do not have an out-of-title pay requirement. Additionally, most of the PBA-selected municipalities which provide out-of-title pay require officers to serve in the position for a specific period before the out-of-title pay becomes applicable.

Recent Bergen County Awards and Settlements

The Borough contends that recent Bergen County police awards and settlements illustrate the reasonableness of its salary offer. The Borough cites the June 24, 1999 award of Arbitrator Jeffrey B. Tener who rendered a conventional award between Cliffside Park Borough and its PBA. The award provides for a 3.5% increase effective January 1, 1998, January 1, 1999 and January 1, 2000. Arbitrator Tener declined to award any of the PBA's further demands, including a \$200 increase in the annual clothing allowance and an

additional holiday. The Borough points out that Cliffside Park patrol officers at maximum step earned \$58,417 in 1998, \$3,632 per year less than New Milford police officers at maximum salary.

The Borough also cites the voluntary four-year settlement between the Borough of Wallington and the PBA providing for a 3.5% wage increase in 1998, 1999, 2000 and 2001. Wallington froze its starting salary at \$23,148 from 1998 through 2000. The Borough seeks to freeze New Milford's starting salary at its rate of \$24,903 on January 1, 2000 for the remainder of the contract term. In 2000, the starting salary in New Milford will exceed Wallington's by \$1,755. In 2001, Wallington's starting salary will increase to \$23,958, still almost \$1,000 below the Borough's proposed \$24,903.21 starting salary.

In support of its proposal to terminate longevity benefits for new hires, the Borough notes that the parties in Wallington agreed to terminate longevity benefits for employees hired after January 1, 1998. The Borough points out that several Bergen County municipalities, in addition to Wallington, have adopted two-tiered longevity schedules. These municipalities include Closter, Edgewater, Hackensack, Little Ferry, Northvale and Paramus. The Paramus' two-tiered longevity schedule resulted from an interest arbitration award.

The Borough also relies on the April 21, 1997 interest arbitration award of Arbitrator Ernest Weiss in the Borough of Fairview. The Arbitrator awarded a 3.5% increase in 1997, a 3.5% increase in 1998 and a 3.5% increase in 1999. These annual wage increases fall 1.5% per year below the PBA's demanded salary increase. Additionally, Arbitrator Weiss granted the Borough's request for the right to change health insurance and dental insurance carriers. Arbitrator Weiss also denied the PBA's request for a \$100 per year increase in the clothing allowance.

The Borough also relies on the February 1999 voluntary settlement between the Borough of Haworth and the PBA. Haworth, located in close proximity to New Milford, settled for a 3.75% increase in 1999, a 3.75% increase in 2000, a 4.0% increase in 2001 and a 4.0% increase in 2002. These increases average 3.875% over the four-year contract term, 1.125% per year less than the PBA's demanded wage increase. The Borough points out that Haworth police officers receive a substantially lower salary than New Milford police officers. In 1998, Haworth officers received a maximum patrol officer salary of \$58,971, \$3,078 or 5.2% less than New Milford's maximum patrol officer salary. The Borough asserts that the salary differential between Haworth and New Milford warrants a lower wage package in New Milford. The Borough maintains that above cited awards and settlements show that the "going rate" falls substantially below the PBA's proposed salary increase of 5.0% per year.

The New Milford Public Works Employees Benevolent Association Agreement

The Borough asserts that the Interest Arbitrator should also consider the economic benefits provided to other bargaining units within the municipality in determining the appropriate package. The Borough has one other collective bargaining unit: The Public Works Employees Benevolent Association (the "PWEBA"). The PWEBA represents the Borough's Department of Public Works employees.

The PWEBA's contract covers January 1, 1998 through December 31, 1999. The agreement provides for a 3.75% increase in 1998, and a 3.75% increase in 1999. Significantly, effective January 1, 1998, the PWEBA agreed that employees would provide 50% of the premium toward the dependent portion of the medical insurance coverage. The Borough in this interest arbitration seeks to have employees contribute 15% of the premium toward dependent coverage. The Borough contends that the PWEBA's agreement to

contribute 50% of the premium toward dependent coverage illustrates the reasonableness of the Borough's proposal, especially when police salaries at maximum step exceed public works salaries by at least \$15,000 per year.

Additionally, the Borough points out that the PWEBA agreed to a two-tiered longevity schedule. Employees hired on or after January 1, 1998 receive 3% longevity after five years of service, plus 1% longevity for each additional five years of service. Employees hired before January 1, 1998 receive 3% longevity after four years of service, plus 1% longevity for each additional four years of service.

In sum, the Borough maintains that comparability, recent Bergen County settlements and awards, and the New Milford PWEBA Agreement support the elements of the Borough's offer.

The Lawful Authority of the Employer

N.J.S.A. 34:13A-16g(5) requires the Interest Arbitrator to consider the "lawful authority of the employer" in determining a conventional award. The Borough contends that the Reform Act specifically requires the Interest Arbitrator to consider, in evaluating this factor, "the limitations imposed upon the employer by [The New Jersey Local Government Cap Law (the "Cap Law"), N.J.S.A. 40A:4-45.1 et seq.]" N.J.S.A. 34:13A-16(g)(5). The Cap Law restrains the lawful authority of the employer by limiting overall budget increases. It thereby restricts a municipality's ability to grant wage increases to its employees.

In enacting the Cap Law, the Legislature 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." N.J.S.A. 40A:4-45.1. The Legislature also recognized, however, that "local government cannot be constrained to the point that it would be impossible to provide necessary services to its residents." *Id.*

The Cap Law controls the cost of local government by prohibiting a municipality from increasing its tax levy by more than the index rate over the previous year's tax levy. A municipality may increase its tax levy up to 5% only if it approves an ordinance or referendum. N.J.S.A. 40A:4-45.14(b). N.J.S.A. 40A:4-45.2 states, "[b]eginning with the tax year 1991 municipalities, other than those having a municipal purpose tax rate of \$0.10 or less per \$100.00 . . . shall be prohibited from increasing their final appropriations by more than 5% or the index rate, whichever is less, over the previous year. . . ." N.J.S.A. 40A:4-45.2. The New Jersey Supreme Court explained,

As the wording of the statute makes clear, it is the final line of appropriations in a municipal budget (less expenditures excepted from Cap consideration) which cannot exceed by more than [the index rate or] 5% the previous year's overall appropriations diminished by that year's Cap exclusions. The law does not preclude a municipality from increasing in excess of [the index rate or] 5% any particular line item or items which are reflected in the town's total appropriations. It is the budget as a whole, rather than each component thereof, which is subject to the [index rate or] 5% ceiling. N.J. State P.B.A., Local 29 v. Town of Irvington, 80 N.J. 271, 281-82 (1979).

Therefore, the Cap Law does not impose a line item by line item limitation. Instead, it places a limit on the overall budget to the extent it is subject to the Cap Law. Because salary expenditures fall within the Cap, the Legislature has already predetermined the maximum amount the Borough may increase taxes to cover police salary expenditures.

Moreover, costs incurred to fund an adverse interest arbitration award must be taken into account by the municipality in determining whether overall employer budgetary appropriations exceeded the index rate or 5% ceiling imposed by the Cap Law. Irvington, 80 N.J. 284-92; City of Atlantic City v. Laezza, 80 N.J. 255, 266 (1979). In fact, if an interest arbitrator fails to consider the impact of the Cap Law on a municipality prior to rendering an award, the award "would be subject to vacation on grounds of procurement by 'undue means.'" Laezza, 80 N.J. at 269.

Because increasing its final appropriations to the 5% maximum would require the Borough to increase taxes, the Borough decided not to pass an ordinance or referendum increasing the cap-allowed increase to 5%. The PBA total package averages 7.27% per year. To the extent the PBA's total package exceeds the 2.5% index rate, it would require the Borough to reduce other expenditures which fall within the Cap to the extent the cost of the economic demands exceed 2.5%. The Borough contends that if the PBA's demands are awarded it may have to reduce personnel through layoffs, or reduce budgetary appropriations for non-payroll costs to keep the Borough's budget within the 2.5% index rate.

The Financial Impact on the Governing Unit, its Residents and Taxpayers

State economic picture

N.J.S.A. 34:13A-16g(6) requires the Interest Arbitrator to consider the economic offer's financial impact on the governing unit, its residents and taxpayers in determining a conventional award. The considerations under this factor "do not equate with a municipality's ability to pay." *Hillsdale*, 137 N.J. at 85. The New Jersey Supreme Court emphasized that "[i]t is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award." *Id.* at 86 (quoting 263 N.J. Super. at 188 n.16). Moreover, the municipality does not carry the burden of proving its financial inability to meet the union's demands. *Id.*

The Borough's economic proposals consider the financial impact an award will have on the governing unit, its residents and taxpayers because it takes into account the impact of the economy upon New Milford's budget. The economy directly impacts upon the Borough's ability to raise taxes to pay the PBA's economic demands.

The unemployment rate in New Jersey edged upward from 4.7% in May 1999, to 4.9% in June 1999, the highest in eighteen months. New Jersey's unemployment rate continues to lag behind the June 1999 national unemployment rate of 4.3% by 0.6%.

Additionally, despite strong competition for qualified workers, corporations continue to downsize. One article, dated December 7, 1998, announced that "the number of planned job cuts by United States businesses rose in November from a year earlier, putting the annual total on track for the largest number of planned cuts in five years. . . . " According to a survey conducted by Challenger, Gray & Christmas, an employment firm, announced job cuts rose 9.3% from November 1997 to November 1998. According to one article, 35% of all layoffs in 1997 occurred during the fourth quarter. The retail sector led in layoffs because of strong price competition and an increase in on-line shopping.

The state of New Jersey's economy directly impacts the Borough's ability to raise revenue through taxes to pay for police salary increases.

Ability to Pay

The Borough prepared its 1999 budget in accordance with New Jersey's "cap" law, PL 1976 Ch. 68, as revised by PL 1990 Ch. 89 and PL 1990 Ch. 95. The "cap" law permits municipalities to increase the current expense portion of their 1999 budget by 1.5%, and gives municipalities the option through ordinance to increase the current expense portion of the 1999 budget by 5.0%. The Borough has opted not to pass such an ordinance permitting a 5.0% increase in the current expense portion of its 1999 budget.

Traditionally, a municipality's "ability to pay" argument focuses on the Current Expense Budget appropriations. If a municipality is budgeted up to "cap", there is no need to consider long-term versus short-term budgetary strategies, capital expenditures, debt service, revenues, etc. If a municipality is budgeted up to "cap", it can appropriate no additional monies within its Current Expense Budget. The sole focus is on whether the municipality has reasonably appropriated monies on each and every line item of the Current Expense Budget.

If a municipality is not budgeted up to "cap", it does not mean that the municipality has the "ability to pay". In the narrow sense, if a municipality is not budgeted up to "cap", there is room in the Current Expense Budget to appropriate monies for additional expenditures. To narrowly focus on this fact excludes the necessary considerations of long-term versus short-term budgetary strategies, necessary capital improvements, debt service and revenues.

In the present case, the Borough has budgeted up to the one and one-half percent (1.5%) "cap", plus more than \$100,000.00 of its "cap" allowance, which is admittedly less than is statutorily permissible under the "Cap" Law. However, other economic factors dictate and the Borough's "ability to pay" argument mandates an award in support of the Borough's economic position

Use of Surplus Balance

There are four (4) basic revenue sources: (1) surplus; (2) State Aid; (3) "one-shot deals"; and (4) taxes. With respect to surplus, the Borough anticipated \$175,000.00 from surplus in 1999, after anticipating \$125,000.00 in 1998, leaving a surplus balance of only \$123,254.00. With a surplus balance of \$123,254.00 and a tax collection rate of 98.39% in 1999 (an increase over 1998), the ability of the Borough to regenerate \$175,000.00 in surplus to anticipate in 2000 is virtually nonexistent.

1998 Budget Reserves

One prime source of surplus regeneration is reserves lapsing into surplus. A review of the 1999 Municipal Budget initially indicates a 1998 reserve of \$220,992.00. The exhibit entitled "Appropriation Reserve Statement" as of October 28, 1998 demonstrates that the reserve available to lapse into surplus is \$113,411.78. Out of this latter amount, \$12,369.00 is earmarked for the Unemployment Trust Fund. This line item is a "continuing" line item

from which appropriations are encumbered to pay unemployment insurance premiums. Any appropriations on this line item remaining at the end of the year or carried forward on this line item for unemployment insurance premium payments in subsequent years. Therefore, any reserve on this line item is unavailable to lapse into surplus. At the present time, the maximum amount of 1998 reserves available to lapse into surplus in 2000 is \$101,042.78.

1999 Municipal Budget

The Borough maintains that it developed and approved a fiscally tight 1999 budget, with only necessary appropriations in 1999 over 1998 expenditures. The Borough provided a review of the budgetary line items, explaining the rationale for virtually every budgetary line item, comparing the amount expended in 1998 to the amount appropriated in 1999. This review included a summary of all budgetary line items which showed a significant change, either decrease or increase, in the 1999 appropriations from the amount paid or charged in 1998.

State Aid

The Borough notes that the \$31,226.00 decrease in State Aid is due to the elimination of Discretionary Supplemental Property Tax Relief. It is anticipated or at least hoped that State Aid will not decrease any further in 2000, while it is a certainty that State Aid will not increase. The Borough contends that as its budget grows due to salary, insurance premium, inflation, necessary capital improvement, debt service, etc. increases, additional State Aid will not be available to fund these increases.

"One-shot" Deals

The Borough submits that it has no other "one-shot" deals to utilize as a revenue source. As the Borough's budget increases for the reasons expressed above, there will be no "one-shot" revenue sources to help fund these increases.

Taxes

The Borough maintains that with a declining surplus, decreasing State Aid and no "one-shot" revenue sources, the only revenue source available to absorb budgetary increases are municipal taxes. The Borough contends that it has a high percentage of tax attributable to the municipal portion of the tax rate.

The Borough contends that it has a stagnant ratable base. The Borough's ratable base in 1999 is virtually no greater than its ratable base in 1996. To simply generate the same municipal tax revenues in 1999 as in 1996, the Borough would have no additional ratables, and the municipal tax rate would have to remain the same. The Borough asserts that when you couple these liabilities with the necessity to compensate for the declining surplus balances and shrinking State Aid with municipal tax dollars, without severe budget cuts and no salary increases, the Borough of New Milford is faced with the prospect of a skyrocketing tax rate, which is already extremely and relatively high, placing an even greater tax burden upon its demographically disadvantaged citizens and taxpayers.

The Borough maintains that its concern for the municipal tax rate is not a political subterfuge on negotiation strategy. It is a reality. The tax rate has risen steadily since 1993. The impact of the Borough's fiscal concerns is even greater with respect to the municipal portion of the tax rate since over the six-year period, the municipal portion of the tax rate has increased by 44.42 percent.

The Borough maintains, for all of the reason expressed above, that it has a strong "ability to pay" argument, mandating an award of its economic offer, which would generate a reasonable salary increase for the PBA bargaining unit members while providing the Borough with necessary cost containment as part of its long-term budget strategy to deal with its demonstrated future budgetary concerns.

Consumer Price Index

N.J.S.A. 34:13A-16g(7) requires the Interest Arbitrator to consider the consumer price index ("CPI") in determining reasonableness of the parties' economic proposals. The CPI measures a wage earner's purchasing power. When a wage earner receives a salary increase which equals the CPI increase, the wage earner theoretically will be able to continue to maintain his or her standard of living. The Borough maintains that the recent decline in the CPI and the fact that the CPI increases for 1993 through 1999 were at their lowest level in many years emphasize the reasonableness of its economic proposals.

The Borough points out that consumer prices for the twelve month period ending August 1999 in the New York region increased only 2.0%. The national consumer price index for the twelve month period ending June 1999 increased only 2.1%. In August 1999, the consumer price index rose by 0.2% to 2.3%.

According to a recent article, the inflation rate is at a thirty-three-year low. In a rare "zero-zero moment in the nation's history of price increases," the consumer price index in May and June 1999 equaled 0.0%. Consumer prices for the twelve month period ending September 1998 in the New York region increased only 1.6%. The national consumer price index for the twelve month period ending September 1998 increased only 1.5%. Consumer prices for the twelve month period ending March 1998 in the New York region increased only 1.3%, down from 1.5% for the twelve month period ending February 1998. Consumer prices nationally rose only 1.7% in 1997, the smallest increase in eleven years.

The Borough asserts that the PBA has consistently received increases which dramatically exceeded the CPI. Even with a 3.0%, 3.25% and 3.25% wage increase, which reflects the Borough's offer, the PBA will remain significantly above the CPI. The Borough submits that the Interest Arbitrator should consider the dramatic gap between the CPI and the PBA's salary demands in rendering a conventional award.

Continuity and Stability of Employment

N.J.S.A. 34:13A-16g(8) requires an Interest Arbitrator to consider the "continuity and stability of employment" in determining a reasonable economic package. The Borough contends that the elements of its proposal will best allow the Borough to maintain and continue a stable work force in the Police Department and throughout the municipality. The Borough asks that the Interest Arbitrator conclude that the elements of its proposal more reasonably protects the police officers' stability and continuity of employment than the elements of the PBA's economic proposal.

In summary, the Borough maintains that the elements of its proposals more reasonably reflect the statutory criteria than elements of the PBA's proposal. It considers the interest and welfare of the public, the police officers' overall compensation package, salaries in the private sector, salaries in the public sector and benefits provided to police employees in nearby communities. Moreover, the Borough maintains that its proposals also consider the impact of the Cap Law on the Borough's ability to grant wage increases and the financial impact on the governing unit, its residents and taxpayers, in light of the current economy and modest increases in the cost of living. Finally, the Borough asserts that elements of its proposal take into account the impact on the police officers' continuity and stability of employment.

The Borough of New Milford respectfully requests the Interest Arbitrator to issue a conventional award supporting the Borough's proposals.

ARGUMENTS OF THE PBA

Interest and Welfare of The Public

The PBA asserts that the New Milford Police Department is a progressive, pro-active law enforcement agency which is known for its innovative procedures and equipment. As such, the PBA maintains that the Department well serves the interest and welfare of the public. The PBA cites the testimony of Sgt. John McGrath who described the Department in detail and gave its history over the past decade.

The New Milford Police Department is known for unique programs in public service. McGrath described these programs in detail and how they represented both enhanced police services as it is generally understood, as well as innovative programs providing services not often seen at the municipal level. One example of the cutting edge new services provided by the Department is the Defibrillator Program. In New Milford the officers are not just provided with basic defibrillator training, they also receive "defibrillator-D" training. McGrath testified that New Milford Patrol cars are equipped with this special equipment and that the Department owns four defibrillators. Other services include neighborhood watch programs, bicycle safety, "Adopt a Cop", School watch, Domestic Violence Crisis Training, victim follow up, "7-11 Network Center", Junior Police Academy, Child ID programs, home security surveys for the public, etc. Many of the officers are Methods of Instruction (MOI) certified and teach both at the County Police Academy and, of course, in house programs. The PBA maintains that examples of the special assignments within the New Milford Police Department present further evidence of the vast variety of specialties and services available. The PBA notes that this high level of service and increasing public service is being performed with less officers than in the past.

The New Milford Police Department has in recent years been substantially diminished in both size and rank structure. All of the above noted services have been provided and enhanced with a reduced work force. McGrath stated that the current staff of sworn Police Officers numbered 31. McGrath further testified that the greatest number of sworn personnel was in 1988 when the number of sworn Police Officers numbered 37. The PBA made several points concerning this staffing pattern.

First, with the reduction from 37 sworn officers to the current staff of 31, there would have to be an increase in the current staff of six officers just to reach the level of sworn personnel that existed at the department 12 years ago. This represents an increase of more than 19% in sworn personnel.

Second, numerous ranks have been permitted to be reduced or removed from the rank structure. In 1988 there were positions of Deputy Chief of Police and Detective Captain. All of these ranks have been removed from the rank structure in the current Table of Organization. Those tasks and functions which were being performed by those persons of higher rank in the past have now been reordered and given to police officers of lesser rank in the current Table of Organization. In 1988 there were 26 patrolmen. That number has shrunk to 18 patrolmen in 1999. In 1988 three of the patrolmen were assigned as Detectives. None of the current patrolmen are assigned as Detectives. These statistics impact on the current office holders in several ways. First, with lesser positions in the rank structure there is less of an opportunity to defer responsibility in a decision making process upward. Those in the various positions within the rank structure have a greater obligation in decision making and responsibility taking roles. There are less patrolmen to share the work on the road. Even the opportunity to be assigned as a Patrolman/Detective has been reduced to

zero. These types of preferred assignments certainly are career incentives and provide opportunities for future advancement.

Additionally, the PBA asserts that a Police Officer today has less ranks to look toward for promotional opportunities. The career path has been altered and the opportunity for movement has been significantly reduced. Increased emphasis is placed upon the position of patrolman and a Police Officer is more likely to remain at that rank for the greater part of the officer's career, if not the entire career. Since the commencement of the prior contract, the last five people to leave the department were three Police Officers and two Sergeants. Three of the five retired. The other two resigned to work in law enforcement elsewhere (one in the local Bergen County Prosecutor's Office and the other out of state). There can be no doubt that there are reduced promotional opportunities at this Police Department coupled with increased individual obligation and responsibility. The PBA maintains that these factors lead to the conclusion that there is a highly productive work force which has met the changing needs of the community. This is particularly notable when one considers the increases in measurable police activity.

During this period of reduced manpower and reduced rank structure, as well as the same period of increased police service and increased public safety innovation, the work load has increased. During this same period from 1988 to 1998 the calls for service in the Police Department have risen from the total of 6380 in 1988 to 8,466 in 1998. This represents a 32.7% increase in calls for service.

The PBA submits that it is clear under these criteria that the interests and welfare of the public are being well served by Borough Police Officers. Substantial economies have been achieved through attritional losses of personnel and rank positions. During these times

and over these last 12 years these reductions have been matched with increases in police services, calls for service and with new innovative services being offered for public service and safety. The PBA cites McGrath's testimony regarding the esprit de corps within the Police Department:

Q. Can you tell the Arbitrator what your observation is with respect to the esprit de corps within this department and the general professionalism of the department to your observation?

A. To my observation? I believe that we have a very high morale in this department. I believe we are well trained, we do the job well and I think the citizens do appreciate what we do for them and we do provide an excellent service to the Community.

Q. The guys here are proud to do their job?

A. Yes, we are.

Q. Is it a well run department?

A. Yes, it is.

Comparison of Wages, Hours and Conditions of Employment

The PBA contends that Borough Police Officers are among the poorest paid in the area of Bergen County where New Milford is situated and further the New Milford Police Officer is one of the poorest paid in the entire County of Bergen. The PBA contends that the base wage is well below average and there are no offsetting benefits to justify this low position. The PBA contends that the base pay rate in New Milford is one of the poorest in the eastern half of Bergen County and one of the lowest in the entire County. The PBA submitted the following chart to illustrate the pay rates based on the evidence it placed in the record:

CHART 1
TOP STEP POLICE OFFICER BASE WAGE IN 1998

TENAFLY	\$72,400
ENGLEWOOD	68,713
NORWOOD	67,700
GLEN ROCK	68,211
LEONIA	68,222
MONTVALE	63,405
HARRINGTON PARK	66,526
RIDGEFIELD	65,518
HACKENSACK	67,751
MAHWAH	72,659
WALDWICK	71,700
EDGEWATER	63,540
CLOSTER	70,531
BERGENFIELD	66,189
NORTHVALE	65,629
PARAMUS	77,584
TEANECK	63,450
CRESSKILL	63,395
ALPINE	67,812
FORT LEE	67,883
PARK RIDGE	62,762
HOHOKUS	65,552
OAKLAND	67,500
WESTWOOD	62,438
AVERAGE	\$67,307
NEW MILFORD TOP STEP POLICE OFFICER	\$62,049
NEW MILFORD POLICE OFFICER COMPARED TO AVERAGE	(\$5,258) (8.44%)

The PBA asserts that the above chart clearly illustrates the low relative pay position of the New Milford Police Officer. It would take more than 8% increase as a first day adjustment in this new contract just to bring the New Milford Police Officer up to average among said officer's peers.

The PBA argues that other municipal police compensation packages are not static and are increasing at rates which result in a worsening relative position of the New Milford Police Officer. The PBA submits Chart 2 to illustrate the average rate of salary increases which are occurring in these other area municipalities.

CHART 2
AVERAGE RATES OF BASE WAGE INCREASE

MUNICIPALITY	1999	2000	2001
NORWOOD	4	4	4
LITTLE FERRY	4	4	
GLEN ROCK	4.25		
ENGLEWOOD	4.25		
LEONIA	4.25		
MONTVALE	4.5	4.5	4.5
HARRINGTON PK	5.5		
RIDGEFIELD	4.25	4.9	
HACKENSACK	4		
MAHWAH	4	4	
WALDWICK	4		
EDGEWATER	4		
CLOSTER	4		
BERGENFIELD	4 (2/2)	4	
NORTHVALE	3.5	3.5	
PARAMUS	4		
TEANECK	4	4	
TEANECK SOA	4	4	
CRESSKILL	4.3		

ORADELL		4	4
ALPINE	4		
FORT LEE	3.8	3.8	3.8
PARK RIDGE	4	4	4
DEMAREST	4	4.9	
HOHOKUS	4	4	4
EMERSON	4	4	4
TENAFLY	3.9	3.9	3.9
OAKLAND	4	3.9	4 (3/1)
WESTWOOD	4		
AVERAGE	4.0892%	4.0824%	4.077%

The PBA submits that Chart 2 demonstrates that the towns which are already paid more than the New Milford Police Officers are moving ahead. The PBA asserts that the cumulative information on charts 1 and 2 fully support its last offer on salaries. The PBA has sought a 5% wage increase in each contract year over the three-year term. The PBA maintains that this 15%, if granted in its entirety, would actually result in a worsened position of the New Milford Police Officer in comparison to the officers' peers.

First, it has been established on Chart 1 that it would take more than an 8% increase just to catch average. Chart 2 illustrates that it would take the cumulative value of the three average increases for 1999, 2000 and 2001 just to maintain average. The cumulative value of the three averages at the bottom of Chart 2 is 12.25%. If that is added to the front end adjustment figure established on Chart 1 then there is a total of 20.68% which would be required over this contract term to catch and maintain average. The PBA has only sought a five percent per annum change. The PBA's package, if awarded in its entirety, would keep the New Milford Police Officer in a low relative position.

Further, the PBA contends that since the other towns have a significantly higher base wage rate (Chart 1) then even the lower annual averages, as seen at the bottom of Chart 2, will generate more money for those towns' increases that would be generated if a like increase were awarded in New Milford. The PBA argues that, by virtue of its low relative base wage rate at the outset of this contract term, it should be given a higher annual increase in order to maintain the dollar differential from average.

The PBA submits that there are no offsetting benefits in New Milford to justify the low wage rate. One common benefit found among all municipalities in the sample group is longevity. The PBA submitted Chart 3 below to illustrate the average maximum longevity benefits available in the various towns.

CHART NO. 3
COMPARISON OF MAXIMUM LONGEVITY BENEFITS

Englewood	9.5%
Montvale	9%
Harrington Park	12%
Ridgefield	15%
Hackensack	2% ea. 4 yrs. - No Maximum
Waldwick	10%
Edgewater	12%
Closter	1% @ 3 yrs + 1/3% ea. Yr. - no maximum
Bergenfield	8%
Northvale	10%
Paramus	10%
Teaneck	12%
Cresskill	1% @ 3 yr., + 1/3% ea. Yr. + 1% addl. @ 23 yrs.
River Edge	10%
Oradell	8%

Alpine	12%
Fort Lee	15%
Emerson	9%
Tenafly	1% ea. 2 yrs. - no maximum
Norwood	8%
Oakland	10%
Westwood	18%
Average	10.825%
New Milford Maximum	8%
New Milford compared to Average Longevity max	(2.825%) (35.3%)

The PBA points out that the 8% maximum longevity calculation available under the New Milford contract ranks well below average. The 8% maximum is the lowest of all towns listed on Chart 3 and only two other towns on the entire list have such a low maximum. The PBA argues that it would take more than a 35% increase in the current maximum just to catch area average as illustrated in Chart 3.

Another common benefit found among municipal Police Departments is annual clothing allowance. Chart 4 below illustrates the annual allowances in the various municipalities.

CHART NO. 4
COMPARISON OF ANNUAL CLOTHING ALLOWANCE

GLEN ROCK	\$700
ENGLEWOOD	600
MONTVALE	700
HARRINGTON PARK	650
RIDGEFIELD	600
HACKENSACK	725
MAHWAH	750

EDGEWATER	800
CLOSTER	700
BERGENFIELD	850
PARAMUS	600
TEANECK	475
CRESSKILL	725
RIVER EDGE	500
ORADELL	700
ALPINE	550
FORT LEE	700
PARK RIDGE	925
EMERSON	550
TENAFLY	600
OAKLAND	900
WESTWOOD	800
AVERAGE	686. Annual Clothing Allowance
NEW MILFORD PBA CLOTHING ALLOWANCE	\$500 Per Year
NEW MILFORD PBA ALLOWANCE COMPARED TO AVERAGE	(\$186) (37.2%)

The PBA submits that Chart No. 4 establishes that the New Milford PBA benefit is among the lowest in the entire sample group and that it would take a significant increase in the clothing allowance just to catch average.

The PBA submits that its evidence is entitled to great weight and the universal comparisons utilized is most appropriate. The PBA asserts that its data base effectively covers the entire eastern half of Bergen County whereas the Borough makes no such offer. The Borough submitted two contracts, the Haworth contract at the hearing and copy of the

Dumont contract in its post hearing submission. The PBA points out that while the Haworth contract provides slightly less wages, the longevity benefit is the same as in New Milford and the clothing allowance is double. Further the Borough's own Exhibit provides for increases of 3.75% and 4% over the term represented by these proceedings exceeding the Borough's own salary proposal.

The PBA contends that the Dumont contract provides direct support for its position. The 1999 increase on base wages in Dumont is 4.25%. The longevity maximum in Dumont is 12% whereas the New Milford maximum is only 8%. The clothing allowance in Dumont is \$625 whereas the maximum in New Milford is only \$500. The PBA maintains that its position is well documented and the Borough's position is without empirical support.

The PBA submits that most of the contracts in evidence provide for out-of-title work provisions. The PBA argues that a Police Officer is entitled to the higher pay of that position. The PBA maintains that where a Police Officer works in a position of greater responsibility, increased obligation, and increased work load, there should be commensurate pay. This principle is well ingrained in private sector labor relations and is commonly found in public sector contracts as well.

The PBA argues that due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparison of said law as it applies to private sector employees as compared to police officers must result in a strong justification for significantly higher compensation to be paid to police officers. The PBA submitted the following excerpt from a decision by Arbitrator Carl Kurtzman concerning private sector comparisons:

"As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of

specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight.” (**Borough of River Edge and PBA Local 201, PERC IA-97-20, pg. 30**)

The PBA asserts that private sector comparisons should not be considered controlling in this case. There is no comparable private sector job compared to that of a police officer. A police officer has obligations both on and off duty. This is most unusual in the private sector. A police officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. Certainly this is not seen in the private sector. The police officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Such public franchise and unique provision of statutory authority are not found in the private sector. There is no portability of a pension in the law enforcement community after age 35. Police officers may not take their skills and market them in other states as one may market one’s own personal skills in the private sector. A machinist or an engineer may travel anywhere in the country to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

The PBA submits that the greatest differentiation between police officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the state or not. A police officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector.

Police officers are trained in the basic police academy and regularly retrain in such specialties as fire arms qualifications. This basic and follow up training schedule is a matter of New Jersey statutory law and is controlled by the Police Training Commission, a New Jersey statutorily-created agency. Such initial and follow up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of police officer certification and the police officer's job. This is rarely found in the private sector.

The PBA contends that local comparisons are more relevant with police wages. These types of issues were considered in the recent decision issued by the well known arbitrator William Weinberg in the Village of Ridgewood case.

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

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

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

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such a contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, pages 29 - 31)

The police officer lives and works within a 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. Private employment generally is an overly generalized category that includes virtually every type of employment. To be sure in such a wide array of titles as the nearly infinite number covered in the general category of "private employment" there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in police work. A police officer is a career committed 25 year statutorily oriented specialist who is given by law the highest authority and most important public franchise. The police officer should be considered on a higher wage plane than private employment generally.

Stipulations of the Parties

The only substantive point of agreement between the parties in this proceeding is the term of agreement. Both parties have submitted 3 year packages for the Arbitrator's consideration.

The Lawful Authority of the Employer

The PBA contends that a review of this case under this criterion under the Revised Act presents no prohibition whatsoever to the payment of the full PBA position as presented. The PBA submits that an analysis of this criterion is essentially an analysis of the New Jersey "Cap Law". The Cap Law is basically a formula restricting governmental spending to within certain limits. The Cap Law provides that the municipality may not spend more than 5% above the expenditure level in the preceding year as to certain qualifying items in the municipal budget.

The Borough of New Milford has adopted a budget for 1999 which is significantly less than the limitations presented under the Cap Law. The actual cap is 5% increased expenditure on qualifying items within the budget each year. The process starts with the initial "index rate" which is issued year to year by the Department of Community Affairs.

For 1999 the initial figure was 1.5% as a start point. Each municipality has the right by ordinance passed by the governing body to utilize a cap above the 1.5% start point and to go as high as 5%. There are methods to exceed the 5%, but they are not at issue in this case. The Borough of New Milford elected to approve a budget which was far below the statutory authority under the Cap Law.

The Borough of New Milford elected to use the lowest of all numbers for cap computation, 1.5%. The Borough could have used up to 5% and therefore the governing body in its passage of the 1999 budget waived the additional authority of 3.5%. By utilizing the lowest of all start point numbers, 1.5%, the Borough increased its permissive flexibility by only \$111,428.00 for 1999. The amount waived in authority may be quantified in actual dollars. The Cap Law permits the governing body to utilize up to a 5% cap. Since it elected to use a 1.5% calculation the 3.5% figure, the amount waived, may be calculated to equal \$259,998.00. This sum is the amount waived in cap flexibility.

Notwithstanding the fact that the Borough of New Milford utilized the lowest cap number possible, the approved budget used significantly less than even was available under this low 1.5% number. The actual amount calculated which was permitted to be spent under the Cap Law, utilizing the 1.5% number, is found under the line captioned "Total Allowable Appropriations". Said amount of allowable expenditure under the lower cap number was \$8,128,975.00. Even this amount, generated by the lower figure, was not utilized in the budget process. The actual amount utilized was \$7,648,409.00. The difference between the amount that the Borough could have spent under the Cap Law (\$8,128,975.00) and the amount that it actually did appropriate for municipal purposes within the cap (\$7,648,409.00) is \$480,566.00. This amount represents the amount of qualifying cap expenditures appropriated less than the amount allowable to be appropriated under the Cap Law. In effect its approved money not utilized. The Borough, therefore, not only waived the other 3.5% of cap flexibility as was noted above (\$259,998) but in addition also waived utilization of the amount of allowable appropriation in the amount of \$480,566. These two sums cumulatively established that the Borough could have used another \$740,564 (\$259,998 + \$480,566) in budget appropriation. This is the amount that the Cap Law permitted the employer to expend. The PBA is not suggesting that this is cash available for expenditure, but it is clear that the Cap Law presented absolutely no prohibition to the funding of this budget and criteria g5 in no way inhibited appropriation for either the budget or PBA expenditures. The PBA maintains that the Cap Law is not an issue in this matter.

The PBA contends that when considering the amounts of money waived under the Cap Law by the Borough in 1999 it is relevant to put the actual cost of the parties' positions in perspective.

CHART NO. 5
BARGAINING UNIT BASE ANNUAL PAY

RANK	CENSUS	BASE 1999 RATE	COLUMN (B) X COLUMN (C)
CAPTAIN	0	\$76,190	-----
LIEUTENANT	4	\$71,206	\$284,824
SERGEANT	8	\$66,547	\$532,376
PATROLMAN	18	\$62,049	\$1,116,882
			\$1,934,082
			1%= \$19,340

Chart 5 above is the actual bargaining unit base wage cost. This chart establishes the value of a base wage point at \$19,340. This chart actually over calculates the cost of base wages since it assumes that all patrolmen are at maximum step. The PBA elected to over calculate the chart so as to avoid the necessity of a complete bargaining unit audit is done this way to avoid the argument of the cost of step movement. If all persons are assumed to be at maximum patrolmen's rate then there is no step movement cost. The PBA asserts that, based upon the above calculations, it is clear that the Cap Law does not present any prohibition to the funding of the PBA position. The parties are 2% apart for 1999. The total cost of the 2% is \$38,680. In 2000 the differential is \$33,845 and in 2001 the differential is \$35,537. The PBA asserts that these differences in base wage position are not substantial with respect to the amount of flexibility waived by the Borough. For example, the amount of flexibility waived by utilizing the 1.5% index rate instead of the 5% cap rate is almost seven times the difference in the parties' positions in 1999 alone. The difference between the amount allowable for appropriation and the amount actually appropriated is approximately 12.5 times the difference between the parties' position in this case.

The PBA maintains that the cap has not been a problem in 1999 and contends that it will not be a problem in subsequent years as well. The difference between the amount utilized in a given year and the amount available for appropriation in a given year, in this case is \$480,566.00. Under New Jersey Law said sum carries forward for future use for over the next two years in a "cap bank". "Cap banking" provides for the carry over of underutilized cap authority from one year into the next two years. One is therefore essentially certain to find additional flexibility in future years by virtue of cap banking. The PBA points out that Cap banking is not new to New Milford. In 1997 the cap bank not utilized and therefore carried forward amounted to \$177,158. In 1998 that cap bank grew to \$411,806. As was calculated above, in 1999 that trend has continued upward with a \$480,566 cap bank now being carried forward into the year 2000.

The PBA asserts that the above cap bank data establishes that there has been a cap bank flexibility factor each of the last three budget years in evidence and also it establishes that the cap bank amount has been growing substantially in each successive budget year. The PBA asserts that not only is there no cap problem in New Milford in 1999, but there will also likely be absolutely no cap problem in the year 2000 or 2001 as well.

The Impact on the Taxpayers and Residents

The PBA maintains that New Milford is a municipality with a strong tax base, moderate tax rate and a very strong overall financial picture. Any impact which would result from an award of the PBA position would be extremely small and effectively imperceptible. The Borough can afford the PBA position with no adverse impact on the taxpayers. In fact, it is these same taxpayers and residents who have already enjoyed substantial savings from the Police Department since the bargaining unit has now been over the recent years reduced

in staff and available supervisory positions. The cost per officer is less now than if it were staffed as it had been in the past. Less officers mean less payroll. The Borough has been able to divert funding for the Police Department to other municipal services over the recent years. The Police Officers have been absorbing their own cost reduction in the form of increased productivity and performance. The citizens have reaped the benefit of an expense which ultimately comes from the taxes. The PBA would certainly like to see the positions of Deputy Chief, Captain, etc. remain in the Table of Organization. The Borough has elected to amortize these positions and thereby creating a less costly Police Department. The PBA maintains that these savings, which are substantial, cannot be overlooked.

The total taxable value of land and improvements in the Borough of New Milford ranks 27th out of the 70 Bergen County municipalities. This fact is established by the 1999 Abstract of Ratables, published by the Bergen County Board of Taxation. This above average position on total taxable value of land and improvements is also found in the total taxable value of land where the Borough ranks 23rd out of the 70 Bergen County Municipalities. The PBA notes that the Borough does not have any significant exemptions and the column designated "Net Taxable Value of Land and Improvements" on the Abstract of Ratables also illustrates the Borough's position as 27th out of 70 municipalities demonstrating that the Borough tax base is above the County average. The PBA notes that "1996 - 1999 Assessed Valuation" shows a steady ratable growth in every year from 1996 through 1999.

The PBA contends that the Borough's strong and growing ratable base is matched with a below average, for the area, equalized tax rate. Chart 6 provides the area equalized tax rates for other municipalities.

CHART NO. 6
COMPARISON OF EQUALIZED AREA TAX RATES
 (Source: 1999 Abstract of Ratables, P-45)

HACKENSACK	3.38
BERGENFIELD	3.36
TEANECK	3.27
DUMONT	2.94
ENGLEWOOD	2.86
NORTHVALE	2.85
GLEN ROCK	2.64
RIVER EDGE	2.61
<u>NEW MILFORD</u>	2.55
TENAFLY	2.49
ORADELL	2.36
CRESSKILL	2.34
PARAMUS	1.90
AVERAGE	2.73
NEW MILFORD	2.55
NEW MILFORD COMPARED TO AVG.	(.18)

The PBA contends that the above chart confirms that the Borough enjoys a very strong and growing ratable base and a below average equalized tax rate.

The PBA maintains that the impact of these proceedings on the overall tax levy is extremely small. The overall tax collected and its breakdown into the various categories is set forth at the bottom of the Annual Financial Statement at page 17. The total amount collected is shown to be \$25,086,996. Of that amount 62% goes to education (\$15,441,440). 10% goes to run County Government (\$2,544,602) with only 28% of the levy going to municipal government (\$7,100,953).

The total cost of the PBA annual base wage, using 1998 known rates, represents 7.7% of the tax levy ($\$25,086,996 \div \$1,934,082$ as calculated on Chart 5, *supra*). One percentage point therefore has an impact on the total tax levy of .0007%. This is not a large sum. Put another way, if one had a 3,000 hypothetical real estate tax bill for a piece of property in New Milford then the impact of the entire bargaining unit base annual wage pay cost (7.7%) would be \$231. Once again this is a very small amount of money to pay for an entire police bargaining unit base wage program. If one took that \$231.00 and divided it by 12 months then the resultant monthly cost is \$19.25. To complete the analogy a base wage point costs 19¢ per month on a \$3,000 tax bill. All of these calculations assume of course that there are not sufficient funds elsewhere to pay for said expenditures. The PBA asserts that such funding is certainly available. In any event, the true cost of government is driven by school taxes and not by the municipal tax rate. The municipal tax rate over recent years has been a distant second to the school tax rate which has soared. The municipal taxpayer in New Milford is not burdened by a heavy tax rate.

The PBA points out that further evidence of this fact is the extremely high percentage of current collections in the Borough. Over the last 3 years the current collection rate has well-exceeded 98% of taxes in every single year. The delinquent taxes and title liens represent only 1.52% of the levy — an extremely small amount of unpaid taxes.

The PBA notes that the surplus anticipated in 1999 has risen significantly over the 1998 surplus, an increase of 40%. During that same period the fines and costs in municipal court, principally the result of police activity, have increased over \$12,500, or just under 13%. In recent years numerous off sets to the costs incurred for police services have been received through such grants as “COPS Fast”, “Drunk Driving Enforcement Fund” grant money, and “Safe and Secure Communities Program”.

The PBA submits that there are several indicators of both financial stability and fiscal flexibility in the Borough including the following:

- Preceding year budget revenues realized were \$10,620,127. The anticipated revenue was \$10,407,460.00. This represents an excess in budget revenue of \$212,666.00.
- The unexpended balance of appropriation reserves for 1998 was \$11,698.00 (AFS sheet 19, P-47). The schedule of fund balances establishes that increased monies have been available for utilization in successive years over the past several years. At the end of 1997 the balance was \$191,711. This balance grew as of December 31, 1998 to \$298,255 (Report of Audit, P-48).
- The tax levy has generated increased monies in each of the last several years. The levy result in 1997 was \$24,352,555. This is an increase of \$1,580,634 over the preceding year 1996. In 1998 the levy generated \$25,061,606. This represents an increase of \$709,051 over 1997 (1998 Report of Audit, P-48).
- The assessed values have grown in each of the last 3 years. The most recent assessed valuation available at the time of hearing establishes the value of 1 tax point at \$97,711 (source: 1998 Report of Audit, P-48).
- The borough only uses approximately 7% of its statutory borrowing power. The statutorily permissive equalized valuation formula for debt establishes a borrowing ceiling at \$33,649,795. The net debt as is established in the 1998 Report of Audit is \$7,361,962. This represents just over 7% of the statutorily permitted indebtedness. The remaining borrowing power is \$26,287,833. (See 1998 Report of Audit, P-48). The PBA does not suggest that the public employer borrow to pay salaries. Rather, the PBA suggests that this fact is a valid barometer of fiscal stability.
- The Moody's credit rating has given the Borough an A1 status.
- The cash balance in the current fund as of 12/31/98, the most recent information available as of the time of hearing, was \$3,100,090. The source of this information is the 1998 AFS sheet page 9 (P-47).

The PBA notes that the Borough did not make a financial argument through testimony at hearing. The only evidence with respect to financial issues offered by the employer at hearing was some information regarding a FEMA issue concerning reimbursement for the municipality from federal monies. The PBA argues, that notwithstanding the assertions of Administrator Gene Vinci at hearing, any conclusions on this issue were premature. The PBA maintains that there is no appreciable or perceptible impact of an award of the PBA's proposals on the residents and taxpayers of the Borough.

The Cost of Living

The PBA recognizes that the cost of living data is below the position set forth as the last offer of the PBA in this case. Notwithstanding this fact however, the PBA submits that one must consider that it is only one of the 8 criteria and is far from a key consideration.

The cost of living data is regional. All evidence with respect to wages, settlements, and arbitration awards, placed into evidence by the PBA are regional. The same impact of cost of living was felt on those other jurisdictions as well. The result of those wage increases, awards and settlements, is the result of the interplay among all statutory criteria, including cost of living. Costs of living implications are a part thereof.

One must consider the cost of living criteria as an indicator only. It is not controlling. Years ago when cost of living was at or near double digit level, employees did not receive increases of like magnitude. The PBA acknowledges that the cost of living data does not support its position in this case. The PBA points out that Borough Police Officers are currently paid below average and other towns, subject to the same cost of living considerations, have the patterns of settlement and award placed into the record in evidence.

The Continuity and Stability of Employment

The PBA submits that a review of this criterion imports the private sector concepts of "area standards" and "prevailing wage". The PBA notes that the prevailing wage issue has been previously covered under other criteria with appropriate charts and references to testimony and evidence at hearing. The PBA contends that the "area standards" concept must weigh heavily in favor of its position.

The PBA maintains that its position is well supported by "area standards" analysis. Its position goes beyond just base wages. It submits that other issues such as clothing allowance and proper rate adjustment are basic concepts in private sector negotiations.

The PBA emphasizes its proposal to correctly state the number of hours worked in the collective bargaining agreement. The hourly rate divisor is incorrectly therein stated as 2,080 hours. This number, 2,080 hours, is erroneous and does not reflect the current work schedule. The genesis of this number is that at one time in prior years these Police Officers did work 2,080 hours. Through negotiation several contracts back, a new work schedule was negotiated however the hourly rate issue was not addressed at that time.

This issue of proper divisor use for calculation has come before an Arbitrator before. The PBA prevailed on a grievance arbitrator case tried under this same contract. Grievance Arbitrator Herbert L. Haber on April 6, 1998 ruled in favor of the PBA and ordered a calculation based on the actual work schedule rather than the Borough's argument with respect to 2,080 hours.

The PBA contends that there is a *res judicata* argument available establishing that the proper work schedule should be used as opposed to the 2,080 divisor. Grievant's benefits under the Arbitrator Haber decision were calculated on the actual 6-3 work schedule which is the work schedule for the Police Officers at the New Milford Police Department. A 6-3 work schedule develops 1,946 hours per year. The calculations which were ordered by Arbitrator Haber use the 1,946 formula and base entitlements on actual work, not on a 2,080 formula. The grievance was upheld. This case has been tried and has been ruled upon. All the PBA is asking in this Arbitration is to correct the language in the text of the agreement. The PBA argues that its out-of-title work proposal is consistent with the private sector standard imported by the specific language of this criterion. The PBA submits that it is only seeking proper pay for the actual work performed. If a Police Officer is directed to work as a Sergeant and run a squad then the officer should be paid the appropriate sergeant's rate. The position is definable and not subject to debate. At present

the employer is enjoying a benefit of having lower rank people work in higher rank positions without additional compensation. The PBA contends that this is a windfall which should not be permitted. Persons working in the higher rated titles have additional responsibilities, work and obligations. The PBA contends that out-of-title work provisions are basic, "boiler plate", standard provisions of private sector contracts. The PBA points out that a review of most of the contracts in evidence indicates that this is the prevailing model found in most of those contracts.

The PBA asserts that the Borough's health care proposals are not supported by any evidence in the record. The PBA points out that the Borough at hearing admitted that the impact of the employer's proposal was to take away \$990.00 a year for each officer which represents a 1.6% "giveback" from each officer. This is a substantial reduction in benefits and compensation. The result of this proposal is to reduce coverage and increase the out-of-pocket cost for employees. These changes are reductions in coverage and increased exposure to cost.

The PBA contends that there is insufficient evidence in the Borough's health care proposal upon which a ruling can be made. There is no way to cost this package out. This has been established by the employer witness himself. They don't know what it costs and don't know what it saves. They can't be precise as to what the impact is on the employee. The revised statute mandates certain cost analysis. Such an analysis as is mandated is impossible under the lack of information and fact supplied at this point.

The PBA respectfully requests that the Arbitrator rule in favor of the last offer position of the PBA on each of the points presented.

Discussion and Analysis

The arbitrator is required to decide a dispute based on a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

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

I shall set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and its arguments regarding the criteria primarily to its offer and to that of the other party. I shall not do so because, in this conventional proceeding, I have the authority and responsibility to fashion a conventional arbitration award unlike the prior statute which required an arbitrator to select the final offer of one party or the other on all economic issues as a package and then to justify that selection. A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. This principle shall also be applied to new proposals.

The parties agree that the duration of the new three-year agreement shall be January 1, 1999 to December 31, 2001. I accept this agreement as a stipulation as to the term of the new agreement and shall award a three-year agreement.

I shall award across-the-board salary increases of 2% retroactive to January 1, 1999, an additional 2% retroactive to July 1, 1999, an additional 2% retroactive to January 1, 2000, an additional 2% effective July 1, 2000 and an additional 3.75% effective January 1, 2001.

The starting salary shall be frozen for the three-year agreement effective January 1, 2000. This shall not affect current employees.

The clothing allowance shall be increased by \$50 effective January 1, 2000 and \$50 effective January 1, 2001.

The prescription co-pay on brand-name prescriptions shall be increased to \$10 effective July 1, 2000.

I shall deny the Borough's medical insurance proposal.

I shall deny the Borough's proposal to eliminate longevity benefits for all employees hired after January 1, 2000.

I shall deny the PBA's proposal on out-of-title work.

I shall deny the PBA's proposal to change the hourly rate divisor.

I shall deny the PBA's proposal regarding the Chief's Meeting.

I have determined that the base salary that the 1999 salary increases will be applied to is \$1,840,868 for thirty-one police officers. Both the PBA and Borough salary proposals provide that their respective salary offers be applied to all steps of the salary schedule for all current employees in each of the three years. The Borough's proposal to freeze the starting salary, which I have awarded, does not affect the annual increases for the current

employees. Both the Borough and PBA proposals provide for across-the-board increases at all steps on the salary schedule. While the Borough has included the cost of such increases in its brief, neither party has included the incremental costs in their respective salary offers. The Borough calculated the cost of the increments to be 1.62% in 1999, 1.34% in 2000 and 1.32% in 2001. The record indicates that the 1998 salary increase included a 2.5% increase to be effective July 1, 1998. This provides for a 1.25% "rollover" cost in 1999. The cost of the 1.25% "rollover" is \$23,011 bringing the total base for calculation of salary increases to \$1,863,879.¹

The Borough's proposed salary increase in 1999 is 3% across-the-board. This is equivalent to \$55,916 on the salary base. The cost of the 1.25% "rollover" is \$23,011 for a total cost of \$78,237. The PBA's proposed salary increase in 1999 is 5% across-the-board. This is equivalent to \$93,193 on the salary base. The cost of the 1.25% "rollover" is \$23,011 for a total cost of \$116,205.

I have awarded a 2% increase to be effective January 1, 1999. This costs \$37,278. I have awarded a 2% increase to be effective July 1, 1999. This increases the base by \$38,024 and costs \$19,012 in 1999 (with a rollover of \$19,012 in 2000) for a total cost of \$56,290. Factoring in the 1.25% "rollover" of \$23,011 brings the total cost to \$79,301. The base salary for 1999 is \$1,939,180.

The Borough's proposed salary increase in 2000 is 3.25%. This is equivalent to \$63,023 on the 1999 salary base. The cost of the PBA's proposed salary increase in 2000 is 5%. This is equivalent to \$96,960 on the 1999 salary base.

¹The 1.25% roll-over cost is included in the 1998 base salary for purposes of calculating the increases for 1999, 2000 and 2001. I have calculated this as "new money" in 1999. The calculations of the PBA and Borough proposals in 2000 and 2001 are calculated on the new base determined by my awarded increases in 1999 and 2000. The PBA annual base, if compounded on its 5% annual increases, would be \$1,957,073 in 1999, \$2,054,926 in 2000 and \$2,157,673 in 2001. The Borough's annual base, if compounded on its 3%, 3.25%, 3.25% annual increases, would be \$1,919,795 in 1999, \$1,982,189 in 2000 and \$2,046,610 in 2001.

I have awarded a 2% increase to be effective January 1, 2000. This costs \$38,784. I have awarded a 2% increase to be effective July 1, 2000. This increases the base by \$39,560 and costs \$19,780 in 2000 (with a rollover of \$19,780 in 2001) for a total cost of \$59,340 (\$38,784 + \$19,780). Factoring in the 1% "rollover" of \$19,012 brings the total cost to \$78,352. The base salary for 2000 is \$2,017,524.

The Borough's proposed salary increase in 2000 is 3.25%. This is equivalent to \$65,570 on the 2000 salary base. The cost of the PBA's proposed salary increase in 2000 is 5%. This is equivalent to \$100,876 on the 2000 salary base.

I have awarded a 3.75% increase to be effective January 1, 2001. This costs \$75,657. Factoring in the 1% "rollover" of \$19,780 brings the total cost to \$95,437. The cost of the additional \$50 clothing allowance increase in 2000 and 2001 is \$1550 annually for 31 officers. The Borough did not provide information on new hires so I cannot factor in the potential cost savings of freezing the starting salary. The Borough will also receive cost savings in its premiums for prescription drugs as a result of the increase in the co-pay for name brand prescriptions. This information was not provided by the Borough.

I shall now discuss the evidence and the parties' arguments in relation to the statutory criteria.

The interests and welfare of the public

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to take this into account might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful

Authority but at the outset it is sufficient to state that the award will not cause the Borough to exceed its authority under the CAP law. The award can be funded without the Borough exceeding its spending authority.

I have structured the award with "split" raise salary increases in the first two years in order to reduce the cost of the impact of the "rollover" effect of the 1998 salary increase. The 1998 "rollover" is difficult to assess. The parties voluntarily agreed to a 4.5% increase in 1998 to be implemented by a split raise of 2% increase on January 1, 1998 and 2.5% on July 1, 1998. This reduced the actual cost to the Borough in 1998 to 3.25%. This was a benefit to the Borough in 1998. The Borough cannot now claim the "rollover" as a salary increase in 1999. This is more properly considered as a deferral of the 1998 salary increase to be paid out in 1999. I have considered the "rollover" as a cost to the Borough and have structured the "split" raises in 1999 and 2000 in order to reduce the cost of the salary increases to the Borough.

The interests and welfare of the public require the arbitrator to balance a number of considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels in order to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Police

Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increase in compensation to be received by a Police Officer from one contract to the next.

The Borough, in its brief, recognized that "a public employer best serves the public interest by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services." The Borough further noted that "a municipality should not reduce essential government services to satisfy the economic demands of overreaching public employees." I believe that this award accomplishes the objectives set forth by the Borough.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in a recent interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony."
(In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

Sgt. John McGrath, a PBA witness, described numerous programs provided by the Borough Police Department including certain innovative programs not often seen at the municipal level. One example is the Defibrillator Program. In New Milford the officers are not just provided with basic defibrillator training, they also receive "defibrillator-D" training. McGrath testified that New Milford Patrol cars are equipped with this special equipment and that the Department owns four defibrillators. Other services include neighborhood watch

programs, bicycle safety, "Adopt a Cop", School Watch, Domestic Violence Crisis Training, victim follow up, "7-11 Network Center", Junior Police Academy, Child ID programs, home security surveys for the public, etc. Many of the officers are Methods of Instruction (MOI) certified and teach both at the County Police Academy and, of course, in house programs. These diverse services are clearly in the best interests and welfare of the public.

McGrath also testified that these services are being performed with less officers than in the past. McGrath's testimony confirmed that the number of sworn officers has been reduced from a high of 37 in 1988 to the current level of 31 sworn officers. During this same period from 1988 to 1998 the calls for service in the Police Department have risen from the total of 6,380 in 1988 to 8,466 in 1998. This represents a 32.7% increase in calls for service. The PBA correctly noted that substantial economies have been achieved by the Borough through attritional losses of personnel and rank positions. During these times and over the last 12 years these reductions have been matched with increases in police services, calls for service and with new innovative services being offered for public service and safety. The Borough has clearly managed to provide diverse services to the public while still maintaining economies through a decline in the number of sworn personnel. This evidences a well-managed department. McGrath testified that Borough police officers enjoy high morale and are well trained. This clearly favors the interest and welfare of the public.

I have determined that salary increases of 4% in 1999 and 2000, provided by 2% "split" raises, and 3.75% in 2001 are consistent with the interests and welfare of the public. These increases, as will be discussed in other areas of this award, are consistent with other salary increases received within Bergen County and throughout the State. The split raise application of the salary increases, balances the need of the Borough to maintain a stable

level of governmental services and at the same time, it provides the PBA with an increase in base salary that is fair and reasonable. I do not believe that either the Borough or the PBA proposals satisfy the requirements of the interests and welfare of the public. The PBA salary proposal is excessive when compared with other settlements and awards within Bergen County and throughout the State. Conversely, the Borough's proposal is significantly less than salary increases within Bergen County and throughout the State. The PBA's proposed salary increases have the potential to force the Borough to reduce services and staffing levels and the Borough's proposed salary increases have the potential to undermine morale, labor harmony and provide adequate compensation levels in order to attract and retain the most qualified employees.

As previously stated, a reasonable level of compensation is a necessary ingredient in maintaining a productive work force with requisite high morale. I am required to balance the competing and diverse needs of the Borough and the PBA in order to satisfy the interests and welfare of the public. I believe that the awarded salary increases achieve that balance and are consistent with the public interest.

This completes my discussion and analysis of the *interests and welfare of the public* factor. I shall now proceed to a discussion and analysis of the other factors.

Comparison of The Wages, Salaries, Hours and Conditions of Employment

Comparisons of the wages, salaries, hours and conditions of employment of the Borough's police officers are to be made with other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar jurisdictions. I shall discuss these in order.

The first part, private sector comparisons, calls for comparisons with private sector employees performing similar services as well as private employees generally. As both parties acknowledged, there are no easily identified private sector police officers who perform services similar to those performed by Borough police officers. I find this aspect of the comparison to be of no relevance.

The second part of this factor requires a comparison with other employees generally in private employment. National wage increases in the private sector fall significantly below the 5.00% three-year average increase demanded by the PBA. The Borough cited statistics from the Bureau of National Affairs ("BNA"), showing that median first year wage increases for settlements reached during the first thirty-six weeks of 1999 equaled 3.0% and that this 3.0% median wage increase remained unchanged from the median wage increase over the first thirty-six weeks of 1998. The BNA statistics support the Borough's assertion that these increases fall 2.0% per year below the PBA's annual increases and are consistent with the Borough's 3.0% wage offer for 1999. This sub-factor favors the Borough's first-year wage proposal. My salary award in 1999 is somewhat higher than the private sector wage data submitted by the Borough however the cost of my award in 1999 is approximately the same as the Borough's in providing for a 3% pay out in calendar-year 1999.

Neither party submitted data on private sector wage settlements in 2000 and 2001. There is a trend toward higher salary increases in 2000 and 2001 in the private sector which are consistent with the awarded salary increases in 2000 and 2001. The three-year salary increases awarded may be slightly higher than the average private sector salary increases over the same three-year period.

The only other evidence on private sector employees in general is a report of private sector wage changes compiled by the New Jersey Department of Labor ("NJ DOL") for the

Public Employment Relations Commission in accordances with N.J.S.A. 34:13A-16-6. This survey is provided to members of the Special Panel of Interest Arbitrators by the Commission. The last survey which was published in December 1998 shows that the percentage change from 1996 to 1997 in private sector wages in New Jersey was 4.76%. The figure for Bergen County was 5%. This factor appears to support the PBA's salary proposal but this is only one of the factors to be considered under comparisons and no one factor is controlling or dispositive. All of the sub-factors must be considered as a whole in making a final determination.

The next comparison is with public employees in general. This has two parts: comparisons with public employees in the same jurisdiction and comparisons with public employees in comparable jurisdictions.

The first comparison is with employees in New Milford. Evidence in the record indicates that the Borough negotiated wage increases of 3.75% in 1998 and 3.75% in 1999 with Public Works Benevolent Association ("PWEBA"), the union representing public works employees. This settlement is more consistent with the awarded salary increase for 1999 exceeding the Borough's proposed 3% increase. There is no salary data available for other Borough employees in 2000 and 2001.

The 1998-99 contract with the PWEBA also includes a two-tier longevity schedule and a provision providing that "effective January 1, 1998 for new hires, the cost of premiums for dependent coverage will be shared by employees through payroll deduction of 50% of the dependent portion of the premium." These "internal comparability" agreements on longevity and contributions for dependent health insurance favor the Borough's proposed changes in longevity and health insurance.

The next part of this comparison involves comparison with employees in comparable jurisdictions. Bergen County is divided into six quadrants. New Milford is situated on the northeastern border of the Central Bergen quadrant contiguous to the Northern Valley quadrant to the east; the Pascack Valley quadrant to the north and the Southeast and Southwest quadrants to the south. New Milford shares a common border with River Edge, Oradell, Teaneck, Bergenfield, and Dumont. The parties did not agree on which municipalities were comparable to New Milford.

The PBA contends that New Milford officers are among the poorest paid in the area of eastern Bergen County where New Milford is situated and further these officers are among the poorest paid in the entire County of Bergen. The PBA submitted a chart to illustrate the pay rates based on the evidence it placed in the record. (See Chart 1 on page 36.) This chart shows that the top-step police officer's base wage in 1998, the last year of the predecessor agreement, ranged from a low of \$62,049 (New Milford) to a high of \$72,659 (Mahwah). The average of the twenty-four departments listed on Chart 1 is \$67,307, more than \$5,000 higher than the New Milford top-step police officer.

The Borough contends that New Milford shares geographic and demographic similarities with four Bergen County municipalities — River Edge, Oradell, Haworth and Dumont and are therefore more comparable than the broader Bergen County comparisons provided by the PBA. Geographically, River Edge borders New Milford to the West and Dumont borders New Milford to the East. Haworth shares a border with Oradell, which neighbors New Milford to the North. These communities also have similar populations. They range from 17,358 in Dumont to 10,899 in River Edge to 8,169 in Oradell and 3,458 in Haworth. These communities have similar sized police departments. Dumont has 37 officers, River Edge has 27 officers, Oradell has 22 officers and Haworth has 14 officers.

The Borough maintains that New Milford officers at maximum step are competitive with the above communities. New Milford officers at maximum received \$62,049. The Borough points out that River Edge, Oradell, New Milford, Dumont and Haworth provided an average 1998 salary of \$62,073. New Milford's 1998 salary exceeded Dumont's 1998 salary of \$61,309 by \$740. New Milford's 1998 salary exceeded Haworth's 1998 salary of \$58,972 by \$3,077.

The Borough, in its brief, argued that New Milford's maximum patrol officer salary significantly exceeded police officer salaries in some of the United States' largest cities. In 1997, the maximum patrol officers' salary equaled \$59,349, which exceeded the maximum patrol officer salary as of January 1, 1997, in Chicago, San Francisco and New York City. New Milford's maximum patrol officer salary exceeded Chicago's maximum police officer salary of \$47,177 by \$12,172 or 25.8%. New Milford's maximum patrol officer salary surpassed San Francisco's maximum police officer salary of \$52,536 by \$6,813 or 12.9%. New Milford's maximum patrol officer salary significantly exceeded New York City maximum police officer salary of \$43,593 by \$15,756 or 36.1%.

I find that a comparison of maximum police salaries in New Milford with maximum police salaries in some of the largest cities in the United States is less relevant than the Bergen County data submitted by the PBA. The PBA data clearly demonstrates that the maximum salary in New Milford is well below the average in Bergen County however the Borough data shows that the maximum salaries of New Milford officers is competitive with those of officers in more contiguous communities. The salary increases I have awarded will maintain the position of police officers at maximum with their counterparts in the communities cited by the Borough as well as those communities cited by the PBA. Officers in New Milford will retain their current position in both groupings. It should be pointed out

that while the "benchmark" salary is a common comparison in police negotiations it must be measured against the longevity schedules and the number of steps required to get to maximum to be properly evaluated.

The PBA also submitted a chart to illustrate the average rate of salary increases which are occurring in these other area municipalities based on the evidence it placed in the record. (See Chart 2 on pages 37-38.) Chart 2 shows that the average increase for twenty-eight departments is 4.09% in 1999, 4.08% for seventeen departments in 2000 and 4.07% for nine departments in 2001. The PBA argues that this data, when combined with the data on top-step pay, shows that other police officers, who are already paid more than police officers in New Milford are moving ahead.

This PBA data demonstrates that the salary increases that I have awarded herein are consistent with settlements throughout Bergen County. The Borough argues that the PBA data is not as representative as the four communities it cited as comparable: River Edge, Oradell, Dumont and Haworth. Yet, a review of the contracts in evidence shows that salaries in Oradell increased 4% in 1999, 4% in 2000, and 4% in 2001. In Haworth, salaries increased 3.75% in 1999, 3.75% in 2000 and 4% in 2001. In a recent interest arbitration in River Edge, salaries were increased by 4% in 1999, 4% in 2000, 4% in 2001 and 4% in 2002. There is no data on Dumont which is currently in negotiations. All of the communities cited by both the PBA and the Borough have reached salary agreements that are consistent with the salary increases I have awarded.

The Borough submitted data on numerous settlements involving state employees. This data shows average settlements above the Borough's proposed salary increases and somewhat below the awarded salary increases, although I note that the settlement involving

employees of the Garden State Parkway included a 3.5% and 4.5% salary increase in the last two years of the agreement which is consistent with the salary increases I have awarded. The Borough also cited the settlement reached between the State of New Jersey and the CWA which provides for an average increase of 3.62% and averages 4% for the last three years. These settlements cited by the Borough are consistent with the salary increases I have awarded herein.

The Borough cites the award of Interest Arbitrator Barbara Zausner who rendered a four-year award between the State of New Jersey, Division of State Police and the State Troopers NCO Association. The award provided for a 0% wage increase on July 1, 1996, a 3.75% increase on October 1, 1997, a 3.75% wage increase on July 1, 1998, a 3.50% increase on July 1, 1999, and a 1.50% increase on January 1, 2000. While the Borough is correct that the award averages 3.125% over four years, nearly identical to the Borough's proposal on salaries, the last two years (July 1, 1998 to June 30, 2000), a time period which includes the first eighteen months of this agreement, average nearly 4.4% per year, which exceeds the salary increases I have awarded herein.

This is an appropriate section to discuss the Borough's proposal to increase the prescription co-pay for brand-named prescriptions from \$5 per prescription to \$10 per prescription. The Borough points out that in the twenty-seven municipalities which the PBA selected as comparable, only four — Bergenfield, Fort Lee, Montvale, and Oakland — provide prescription benefits. Moreover, two municipalities, Bergenfield and Montvale, implemented higher co-pays for brand-name prescriptions, as opposed to one co-pay applicable to both generic and brand-named prescriptions. Montvale requires a \$5.00 co-pay for generic prescriptions and a \$10.00 co-pay for brand-named prescriptions. I have awarded the Borough's proposed increase. The comparability data clearly supports the

Borough's proposal. This co-pay increase is common in other negotiations, throughout the State, in which prescription drug benefits are provided through collective bargaining.

The PBA submitted a chart to illustrate that the New Milford clothing benefit is below the average of the sample group of 23 Bergen County communities. (See Chart 4 on pages 40-41.) Chart 4 shows that the average annual clothing allowance in the 23 communities is \$686 as compared to the \$500 annual clothing allowance in New Milford. A review of Chart 4 and the contracts in evidence shows that the four communities selected by the Borough as comparable have the following annual clothing allowances:

<u>Municipality</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Haworth	\$900	\$950	\$1000
Dumont	\$625	N/A	N/A
Oradell	\$700	\$700	\$700
River Edge	N/A	N/A	N/A

The evidence in the record indicates that the clothing allowance in New Milford is below the average of the communities selected by both the PBA and the Borough. This evidence favors my award of a \$50 increase in the annual clothing allowance effective January 1, 2000 and an additional \$50 increase in the annual clothing allowance effective January 1, 2001.

The PBA submits that most of the contracts in evidence provide for out-of-title work provisions and that it is only seeking proper pay for the actual work performed. The PBA contends that the employer is enjoying a benefit of having lower rank officers work in higher rank positions without additional compensation. The PBA contends that this is a windfall which should not be permitted. The PBA points out that a review of most of the contracts in evidence indicates that this is the prevailing model found in most of those contracts.

The Borough is opposed to the PBA's proposal to implement an out-of-title work provision. The Borough established that only ten out of the twenty-seven municipalities selected as comparable by the PBA provide for such pay. These municipalities include Closter, Cresskill, Emerson, Englewood, Glen Rock, Little Ferry, Montvale, Oakland, Paramus and Park Ridge. Further, the Borough pointed out that only three require the municipality to provide out-of-title pay for all time worked in the higher rank and that most municipalities require an officer to work in the higher rank for a specific period, before owing out-of-title pay.

This criterion does not favor the awarding of out-of-title pay. The record does not indicate to what extent the practice of working in out-of-title exists in New Milford. The PBA provided no documentary evidence to evaluate the impact of the granting of such a benefit. Given that only 33% of the surveyed municipalities provide for some form of out-of-title and with no data to evaluate its impact, I must reject the PBA's proposal on a comparative basis.

The PBA proposes that the current hourly rate divisor of 2080 be changed to 1946 to be effective July 1, 2000. The PBA contends that the hourly rate divisor is incorrectly stated in the contract as 2,080 hours, is erroneous and does not reflect the current work schedule. The PBA argues that the genesis of this number is that at one time in prior years these Police Officers did work 2,080 hours, but the hourly rate issue was not addressed at that time.

This issue of proper divisor use for hourly rate calculation has come before an Arbitrator before. The PBA prevailed in a grievance arbitration case tried under this same contract. The PBA cites the award in support of its position. On April 6, 1998, Arbitrator Haber ruled in favor of the PBA ordering a calculation based on the actual work schedule

rather than the Borough's argument with respect to 2,080 hours. The PBA contends that there is a *res judicata* argument available establishing that the proper work schedule should be used as opposed to the 2,080 divisor.

The Borough points out that seventeen of the twenty-seven municipalities which the PBA selected as comparable have language in their contracts which address the hourly rate for calculating overtime. Out of the seventeen municipalities, eleven municipalities — Alpine, Closter, Cresskill, Edgewater, Englewood, Fort Lee, Glen Rock, Harrington Park, Northvale, Norwood and Tenaflly — use 2080 as the hourly rate divisor. Six municipalities adopted different divisors. Teaneck, for example, divides its officers' biweekly gross pay by 78 ½ which equals 2041 hours. Montvale uses 1960. Little Ferry uses 1950. Emerson and Oradell use 1947 and one municipality, Westwood, uses 1946.

I reject the PBA's proposal for several reasons. First, the PBA's reliance on the decision by Arbitrator Haber is misplaced. Haber found that Article Ten (Hourly Rate) was not relevant to the issue before him — terminal leave benefits: "I do not see that the hourly rate established by Article Ten has any relevance to the terminal leave benefit. Its application is primarily related to the payment of overtime . . ." Essentially, Arbitrator Haber found that the Borough had agreed to pay terminal leave benefits at a daily rate of pay not an hourly rate.

Second, the PBA notes that at one time in prior years these Police Officers did work 2,080 hours, but the hourly rate issue was not addressed at that time. It is conceivable that when the parties agreed to the 6-3 work schedule of 1946 hours, it was also agreed that the hourly rate would remain at 2080 hours.

Third, the data cited by the Borough shows that a majority of the PBA's comparable communities use 2080 as the hourly rate divisor. There is insufficient justification, on a comparative basis, to reduce the current hourly rate of 2080 hours.

I find no basis in the evidentiary record to modify the current language regarding the Chief's Meeting.

The Borough proposes a medical insurance plan to provide for a \$10 co-pay in network, \$250 out-of-network deductible, and a \$2500 maximum out-of-network cap. The Borough also proposes that employees hired after January 1, 2000 shall be responsible for 15% of family dependent coverage. Under the Borough's proposal, officers with full family coverage will be required to contribute \$82.50 per month or \$990 annually. The Borough cited national studies showing that employees contributed up to 17.7% of the total cost of their medical insurance.

The PBA asserts that the Borough's health care proposals are not supported by any evidence in the record. The PBA points out that the impact of the Borough's proposal is to take away \$990.00 a year for each officer which represents a 1.6% "giveback which is a substantial reduction in benefits and compensation. The result of this proposal is to reduce coverage and increase the out-of-pocket cost for employees. These changes are reductions in coverage and increased exposure to cost.

The PBA is correct that there is insufficient evidence in the Borough's health care proposal upon which a ruling can be made. The Borough's own witness testified that he did not know what it costs and does not know what it saves. More important, the Borough submitted no evidence on comparability to justify its consideration. The Borough's plan, if implemented, would result in a substantial reduction in the current health insurance enjoyed by Borough police officers. There is simply no basis on the record in this matter to consider the Borough's proposal.

This is also the case with respect to the Borough's proposal that employees hired after January 1, 2000 shall be responsible for 15% of family dependent coverage costing

\$82.50 per month or \$990 annually. The Borough submitted no evidence showing that police officers in other communities in Bergen County, or in the four communities cited by the Borough as comparable, have two-tier health care benefits with new hires contributing to dependent coverage. This aspect of comparability must be given more weight than the internal comparability established by the Borough with the PWEBA.

The final issue is the Borough's proposal to eliminate longevity benefits for all employees hired after January 1, 2000. The Borough cited four communities (Wallington, Paramus, Hillsdale & Northvale) that recently negotiated or received through arbitration two-tier longevity benefits. Contracts in evidence show that Paramus and Northvale agreed to two-tier longevity. The Hillsdale contract is not in evidence so I cannot determine if the contract provides for two-tier longevity or if longevity was eliminated for new hires. The Wallington contract is not in evidence, however I served as mediator in the Wallington negotiations where the parties agreed to eliminate longevity for new hires with an increase in longevity benefits for current employees.

The comparable communities cited by the Borough represent only a small fraction of the communities in Bergen County and include none of the four communities cited by the Borough as being demographically and geographically more appropriate for comparison purposes. Moreover, I have previously determined that internal comparability favored the Borough because of its agreement with the PWEBA. However, that agreement provides for a two-tier longevity program as opposed to the Borough's proposal to eliminate longevity for new police officers.

The Borough submitted insufficient evidence showing that police officers in other communities in Bergen County, or in the four communities cited by the Borough as comparable, have eliminated longevity benefits for new police officers. This aspect of comparability, comparing police officers in New Milford with other police officers, must be

given more weight than the internal comparability established by the Borough with the PWEBA, particularly where that internal comparability is a two-tier longevity benefit not the elimination of longevity for new police officers.

There is insufficient justification to grant the Borough's proposal to eliminate longevity benefits for all employees hired after January 1, 2000.

Overall compensation

I have previously discussed certain aspects of the overall compensation received by the officers in New Milford. Overall compensation levels in New Milford, in terms of benefits are reasonably similar to other comparable communities. All employees are covered by or receive social security, workers' compensation, disability and health care benefits. They are covered by State pension plans. The Police and Fire Retirement System, to which all New Milford police officers belong, is much richer than that available to employees in the Public Employees Retirement System, although employee contributions to PFSR are appreciably higher than those to PERS.

The *overall compensation* factor favors the rejection of the Borough's proposal on health insurance and longevity since granting these proposals would effectively reduce the overall compensation and benefits received by New Milford police officers in relation to other County law enforcement employees.

As discussed above, the officers in New Milford enjoy a competitive salary with commensurate longevity benefits and fringe benefits.

Stipulations

The only substantive point of agreement between the parties in this proceeding is the term of agreement. Both parties have submitted 3 year packages for the Arbitrator's consideration.

Lawful Authority of the Employer

This factor, among other things, requires the arbitrator to consider the limitations imposed on the Employer by the CAP Law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

This factor can be a significant factor in interest arbitration matters when the parties fair and final offers on salary are extreme or one or both parties is asserting that the CAP Law affects their ability to fund salary increases.

The Borough contends that if the PBA's demands are awarded it may have to reduce personnel through layoffs, or reduce budgetary appropriations for non-payroll costs to keep the Borough's budget within the 2.5% index rate.

The PBA is correct that the evidence shows that the Cap is not a problem in 1999 and that it will not be a problem in subsequent years as well. The difference between the amount utilized in a given year and the amount available for appropriation in a given year, in this case is \$480,566.00. Under New Jersey Law said sum carries forward for future use for over the next two years in a "Cap Bank". In 1997 the cap bank not utilized and therefore carried forward amounted to \$177,158. In 1998 that cap bank grew to \$411,806 with a \$480,566 cap bank now being carried forward into the year 2000.

The difference between the Borough's proposed salary increases and the PBA's proposed salary increases were much greater than the difference between the Borough's proposed salary increases and the salary increases that I have awarded. The actual cost of the awarded salary increase in 1999 is virtually identical to the Borough's with a payout of

3%. It is undisputed that the Borough has not experienced Cap problems with its budget. The Township has consistently budgeted less than the maximum Cap Index figure of 5%. There is absolutely no evidence in the record to demonstrate that any aspect of this award will cause the Employer to approach the limits of its financial authority or to breach the constraints imposed by the CAP Law in funding the salary increases I have awarded.

**Financial Impact on the Governing Unit,
its Residents and Taxpayers**

The financial impact of my award will be minimal. Based on the evidence submitted, I cannot conclude that the award's financial impact will have an adverse effect on the governing unit, its residents and its taxpayers. I have reduced the impact of the salary increases by providing for "split" raises in 1999 and 2000 thereby reducing the cost impact. This was particularly important in 1999 when the Borough absorbed the cost of the July 1, 1998 salary increase of 2.5% resulting in an additional 1.25% payout in 1999. As I previously stated, this was a benefit to the Borough in 1998 and the Borough cannot now claim the "rollover" as a salary increase in 1999. This is more properly considered as a deferral of the 1998 salary increase to be paid out in 1999. I have considered the "rollover" as a cost to the Borough and have structured the "split" raises in 1999 and 2000 in order to reduce the cost of the salary increases to the Borough. The impact of the salary increases on the Borough is reduced by awarding the Borough's prescription co-pay increase. This co-pay increase will generate significant savings which must be credited against the annual costs of the salary increase.

I awarded the Borough's proposal to freeze the starting salary. This will provide additional savings to the Borough however the Borough did not provide information on new hires so I do not have actual cost savings for this change. As in all negotiations, the

employer will receive "breakage" from retirements thereby realizing savings from the difference between senior officer pay and a now reduced starting salary. The evidence in the record established that the Borough had reduced its police force by 15-20% over the past ten years. This has produced a more efficient and more productive police force at the same time reducing the financial impact of these services. All of this must be factored in under this criterion.

The cost of the Borough's proposed salary increase and the awarded salary increase in 1999 is virtually identical — the Borough's costs \$55,916 and the awarded salary increase costs \$56,290.

The cost of the Borough's proposed salary increase in 2000 is \$63,023 and the cost of the awarded salary increase in 2000 is \$78,352 — a difference of \$15,329. The cost of the additional \$50 clothing allowance increase in 2000 is \$1,550 for 31 officers. The total difference, including the clothing allowance, in 2000 is \$16,829.

The cost of the Borough's proposed salary increase in 2001 is \$65,570. The cost of the awarded salary increase in 2001 is \$95,437 — a difference of \$29,867. The cost of the additional \$50 clothing allowance increase in 2001 is \$1,550 for 31 officers. The total difference, including the clothing allowance, in 2001 is \$31,367.

The total difference between the Borough's proposed salary increases and the awarded salary increase is \$48,570 over three years for an average of slightly over \$16,000 per year. This overall figure must be offset by the savings from the increase in the prescription co-pay and the freezing of the starting salary as well as the breakage from retirements.

Based on the evidence in the record, I conclude that the award's financial impact will not have an adverse effect on the governing unit, its residents and its taxpayers.

Cost of Living

The cost of living data shows that the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), increased by 1.7% in 1999 and for the year ending in April of 2000 was increasing at an annual rate of 3%. This increase was caused by increases of .7% in February of 2000 and .6% in March of 2000. The above figures are for the New York-Northeastern New Jersey area.

These figures demonstrate that the awarded salary increases will result in an increase in real earnings in 1999 and 2000 although the increases in February and March (primarily due to increased energy costs), if duplicated in later months, could erode any increases in real earnings.

Thus, I conclude that the awarded salary increases, while higher than the increases in the cost of living, provide for an acceptable increase in real earning that must be measured against the productivity gains and reduced labor costs achieved by the Borough through attrition.

Continuity and Stability of Employment

The salary award in this matter will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Borough to retain and attract qualified police officers. The granting of the Borough's proposals regarding longevity, salary and health insurance would have jeopardized the ability of the Borough to both retain and attract qualified police officers. This would have eroded the fringe benefit and salary package making employment in New Milford less attractive than other communities which provide higher salaries, longevity benefits and full medical insurance.

The terms of this award will preserve the continuity and stability of employment and satisfy the requirements of this criterion.

I have carefully considered the evidentiary record in this matter including the testimony of the parties' witnesses and the numerous exhibits. I have calculated the cost of the award each year. I have also carefully considered the arguments advanced by the parties in support of their respective positions. I have considered the evidence and arguments in relation to the statutory criteria which I am bound to consider and apply. Each of the statutory criteria have been considered. I have found each factor to be relevant although I have accorded more weight to some factors than others.

Accordingly, I hereby issue the following award:

AWARD

The term of the new agreement shall be January 1, 1999 through December 31, 2001.

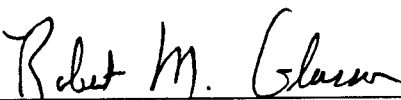
The clothing allowance shall be increased to \$550 effective January 1, 2000 and to \$600 effective January 1, 2001.

Salaries shall be increased across-the-board by 2% retroactive to January 1, 1999, by an additional 2% retroactive to July 1, 1999, by an additional 2% retroactive to January 1, 2000, by an additional 2% effective July 1, 2000 and by an additional 3.75% effective January 1, 2001. The starting salary shall be frozen at its rate on January 1, 2000 for the remainder of the agreement and shall not affect current employees.

The co-pay for brand-name prescription drugs shall be increased to \$10 per prescription to be effective July 1, 2000. The current \$5 co-pay for generic drugs shall remain unchanged.

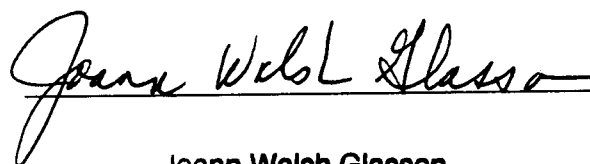
Except as the parties shall otherwise mutually agree, all terms and conditions of employment of the 1996-98 predecessor agreement shall be continued in the 1999-2001 successor agreement.

Dated: May 22, 2000
Pennington, NJ


Robert M. Glasson
Arbitrator

STATE OF NEW JERSEY) ss.:
COUNTY OF MERCER)

On this 22nd day of May 2000, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


Joann Walsh Glasson
Notary Public
State of New Jersey
Commission Expires 12-11-01