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

In the Matter of Interest Arbitration Between :
:
BOROUGH OF LEONIA : **INTEREST ARBITRATION**
“the Borough or Employer” : **DECISION**
:
and : **AND**
:
LEONIA PBA LOCAL 381 : **AWARD**
“the PBA or Union” :
:
Docket No: IA-2004-053

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE EMPLOYER:

Gerald L. Dorf, Esq.
Of Counsel & On the Brief
Christopher Vaz, Esq.
Dorf & Dorf

FOR THE PBA:

Richard D. Loccke, Esq.
Of Counsel & On the Brief

Procedural History

The Borough of Leonia (the "Employer" or "Borough") and Leonia PBA Local 381 (the "PBA" or "Union") are parties to a collective bargaining agreement (the "CBA") which expired on December 31, 2003. Upon expiration of the CBA, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA filed a petition with the New Jersey Public Employment Relations Commission ("PERC") on January 12, 2004, requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on February 24, 2004 from its Special Panel of Interest Arbitrators.

Mediation sessions were held on June 4 and July 20, 2004. Formal interest arbitration proceedings were invoked and a hearing was conducted on December 13, 2004, when the parties presented documentary evidence and testimony in support of their positions. Both parties filed post-hearing briefs and the record was closed on March 7, 2005. The parties agreed to extend the time limits for the issuance of the award to August 15, 2005.

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 on an alternate terminal procedure. Accordingly, the terminal procedure is conventional arbitration. I am 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 of 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.

PARTIES' LAST OFFERS

PBA's Last Offer

1. **Term of Agreement:** January 1, 2004 to December 31, 2007.

2. **Salary:**

The PBA proposed a 5% across-the-board salary increase in each year of a four-year contract.

3. **Out-of Title Pay:**

The PBA proposed that whenever an employee works in a higher rated position then said employee would, after one shift, be compensated as an out-of-title employee and in that higher rate.

4. **Detective Stipend:**

The PBA proposed a 3% Detective Stipend to be defined as compensation for on-call time. Whenever a Detective is called out and actually performs service then said service would be paid at the time and one-half rate.

Borough's Last Offer

1. **Term of Agreement:** January 1, 2004 through December 31, 2006.

2. **Salary:**

- a. Effective January 1, 2004, 3% across-the-board wage increase.
- b. Effective January 1, 2005, 3% across-the-board wage increase.
- c. Effective January 1, 2006, 3% across-the-board wage increase.

3. **Salary Schedule:**

The Borough proposes to add four additional steps to the salary. The annual wage for each of the new steps shall be equal to one-half of the difference between the wages for the existing steps added to the wage of the lower step. Salary guide movement from the "Patrolman" steps shall not occur until after an officer has completed twelve full calendar months in the prior step. The Borough also proposes deletion of the "twenty years of service" wage differential.

4. **Longevity:**

The Borough proposes to eliminate longevity in regard to employees hired on and after January 1, 2004. Additionally, the Borough proposes a new longevity guide that is based on a flat dollar amount rather than a percentage of the employee's base salary and is effective when an employee has reached the top patrolman step on the step guide.

5. **Medical Coverage and Insurance Benefits:**

The Borough proposes comprehensive modifications to Article XVII which will not take effect until the Borough negotiates the same changes with its other bargaining units.

5. **Non-Economic Issues:**

- a. Future Bargaining (Article V). Replacing existing language.
- b. Management of Borough's Affairs (Article VII). Replace existing language.
- c. Maintenance of Operations (Article VIII). Replacing the existing section A.
- d. Exchange of Days Off (Article XXVII). Amend existing language.
- e. Personnel Files (Article XXIX). Amend existing language.
- f. Further Negotiations (Article XXXV). Deleting existing language.
- g. SPEN Radios (Article XLII). Deleting existing language.

BACKGROUND

The Borough of Leonia is located in the eastern portion of Bergen County, immediately south of Interstate 95. Routes 4, 46, 1 and 9 all converge and extend along Leonia's eastern municipal boundary. To the north is the City of Englewood, to the east the Borough of Fort Lee, to the south the Borough of Palisades Park, and to the west the Township of Teaneck. Leonia comprises an area of approximately 1.51 square miles with a total land area of 1,063.5 acres, of which 222.2 acres is designated as Overpeck Park by the County of Bergen. The Borough has a population of approximately 8,914 residents as of the 2000 census. The 1990 census population was 8,365 persons. Leonia is a fully developed municipality with almost 100% of its land area developed or set aside for permanent recreation or open space use.

The median value single family home in 2000 was approximately \$282,500. Residential value as a percentage of total value was 87.5% in 2002; apartment value was 4.5%; commercial value was 5.2%; and industrial value was 2.2%. (B-2, Exhibits 1-4).

The Leonia Police Department consists of a Chief of Police, two Captains, two Lieutenants, three Sergeants, one Corporal and eleven Patrol Officers. One Lieutenant and one Patrol Officer are assigned as a Detective. The Chief and the two Captains are not in the bargaining unit.

It is undisputed that the police department is an excellent department with high productivity. The Borough acknowledged in its brief that the police department is a well-trained, well-equipped professional workforce. The police officers are well-educated with all officers holding a BA degree and with two officers also holding a Master's Degree.

The primary issues, as reflected in the parties' last offers and positions, are salary, longevity and medical insurance benefits. The PBA and the Borough offered the following arguments in support of their respective positions.

POSITIONS OF THE PARTIES

PBA LOCAL 381

The PBA seeks a four-year Agreement. The PBA submits that a four-year term is preferable since the last contract had a term through December 31, 2003. The PBA notes that by stipulation the post-hearing briefs are not due until March 2005 and the PBA anticipates that the Arbitrator's Award will be issued well into the year 2005. By the time the parties review the Award and prepare a successor contract one may anticipate a very significant part of 2005 to have passed. Since the Act contemplates the parties commencing negotiations for a successor Agreement at least ninety days before the expiration of a contract that would leave the parties with only about twelve months until successor contract negotiations commence if the Borough's proposal for a three-year Agreement is granted. The PBA submits that its four-year proposal would provide at least a twenty-four-month hiatus in negotiations.

The following is the PBA's argument and contentions in support of the statutory criteria:

Interests and Welfare of the Public

The PBA notes that the Leonia Police Department is a full service law enforcement agency known for its professionalism and productivity that well serves the interests and welfare of the public both within the Borough and the many who pass through on a daily basis. The Department has met many challenges in the recent past, improved services and offered many new protections to the public.

The PBA cites the testimony of Detective Lieutenant Thomas Rowe of the Leonia Police Department. Lieutenant Rowe, a fourteen-year veteran, had risen through the ranks and is familiar with its operations. Rowe described the new services offered by the

Department since January 1, 2000. Included within Rowe's testimony were the following improved and new services:

- Child Seat Safety Program - Leonia was one of the first towns to do it and a model for others to follow.
- Domestic Violence Response Team - One of the first in the County and a model followed by others.
- Identity Theft Victim Assistance Program.
- School Seminars for Seniors involving alcohol consumption and its consequences.
- Project Safe and Sound - A program specifically designed for persons suffering from Alzheimer's disease and other elderly residents with dementia or disorders that require attention. Persons can register with the Police Department and are regularly checked and given special identification.
- Megan's Law Registry and Tracking - This was originally done at the County level and was transferred to the municipalities.
- John's Law - Relating to DWI arrests and follow-up procedures.
- School Security Planning Program - A result of the Columbine school tragedy.
- Halloween Safety Night Programs.
- New Motorcycle Patrol with two (2) new Harley-Davidson motorcycles.
- Mobile Video Recorders placed in police cars.
- New hand-held Radar Unit Equipment.
- Bicycle Safety/Community Policing.
- Defibrillators in Patrol Cars - one of the first in Bergen County.
- New 4-Wheel Drive Vehicle.
- Bicycle Safety Program for Children.
- Child Fingerprinting.
- Internship Program - college student.
- Traffic Trailers to monitor and advise speeders of their exact speed.

- All Officers are certified as "first responders."
- The Leonia Police Department has received the "Outstanding Achievement Award for Community Traffic Safety Programs in 2004" from the American Automobile Association.
- "Click-it or Ticket Program."

These many new services, activities and public service equipment listed above are all in addition to the ordinary police activity found in any municipality, motor vehicle enforcement, DWI enforcement, etc. In these other categories of somewhat "routine" police work, Leonia has also distinguished itself as having a most active Police Department. Chart Number 1 below illustrates some of those measurable activity levels (based on Municipal Court Violations Bureau Letter - P5).

CHART 1
GENERAL POLICE ACTIVITY INCREASE LAST THREE YEARS

	2001	2004	PERCENTAGE CHANGE
Municipal Court Fines	182,616	250,042	+37%
D.W.I.	50	100	+50%
SUMMONSES	4,103	6,286	+53%
MUNICIPAL COURT SESSIONS PER MONTH	2	3	+50%

The PBA notes that Chart 1 shows a significant increase in motor vehicle activity and resultant Court fines. In the last few years, the Court has had to increase its sessions from twice monthly to three times per month just to keep up with the flow of Police Department generated activity.

The PBA cites Rowe's testimony regarding major criminal activity in the recent past in Leonia:

- Q. Now, there has been a lot of information with respect to general activity within the Department, traffic, motor vehicle. Is there also an issue with respect to criminal activity within the Town?

A. In the last three (3) years we had three (3) homicides. All three (3) homicides were cleared, either by conviction at trial or plea bargain. In the last nine (9) years we had four (4) homicides. Recent trends we've had houses, because of our proximity to New York City, we have the houses in Town that have been used as a stash house.

Q. What is a stash house?

A. Where they will rent a house in town to use it to maintain a drug distribution facility. We had a house where we effectuated arrests along with the Bergen County Police. We seized fifty (50 lbs.) pounds of marijuana, Eighteen Thousand Five Hundred (\$18,500.00) Dollars in cash and also seized a 2005 Chrysler vehicle.

We had other houses we identified with the same MO, houses that have been rented and people who are trying establish a drug distribution facility in it. It is our proximity to New York City that makes it a favorable place to locate.

Q. Has this area of the State been designated as a HIDTA area?

A. Yes.

Q. Explain what it is.

A. United States Drug Enforcement Administration has determined this is what they call High Intensity Drug Trafficking Area, HIDTA.

Q. Not just this town?

A. The Interstate Highways used for drug transportation from New York City down to Florida, because of the fact that houses, like we just discussed, are being used as stash houses, they determine this area to be that. There's different areas throughout the country, Los Angeles, Florida, there's urban areas they determine to be HIDTA areas. (Tr. at 36-37).

The PBA asserts that Leonia is a busy jurisdiction with major law enforcement issues at every level, from the general and mundane to the most serious, such as homicides. Part of the issue, as referenced by Rowe, is the geographic location of the Borough on one of the largest and most active traffic corridors in the Northeast. Rowe described the geography as impacting on police activity as follows:

A. We have Route 95 which is the Turnpike, running through the north and west part of the Town on the border. Route 93, also Grand Avenue, a State Highway runs through the town and goes north to south. We have Route 1,

also known as Bergen Boulevard, goes from the George Washington Bridge down to Hudson County. We have also Route 46. Route 4 is just over the border in Englewood. Route 95 which, because the State Police have staffing shortages, we are constantly called up there by the State Police for assistance.

Q. So your responding to calls in State Police jurisdiction and you are the first car there?

A. Yes, we had one incident in the last five (5) years when there were six (6) fatalities in a DWI accident, two (2) of our Officers were up there for at least ten (10) minutes before the State Police showed up. Plenty of times - this is a very unique part of the Turnpike because they are not closed in. We have two (2) access points out to them. Routinely calls for back-up, only have one (1) Trooper.

Five (5) people they need arresting assistance with. Motor vehicle accidents, people live on the north part of Town, they know when they hear a certain noise it is a truck flipping over. We go up there first because our Fire Department and Ambulance Corps get dispatched and we are usually the first one on the scene. (Tr. at 37-38).

The PBA cites Rowe's detailed testimony of regular interaction with the State Police, Port Authority Police, Fort Lee Police, Englewood Police, and the Bergen County Police which patrols numerous facilities within Leonia. The PBA submits that what is noteworthy is that this increased productivity has been achieved with less personnel with less experience. Rowe described the Police Department's staffing and organizational changes that have occurred over his fourteen years in the Department. There are less sworn police personnel in the Department today than there were in 1990. In 1990 there were twenty-one sworn persons (P-3) and in 2004 there are nineteen sworn personnel. One of those nineteen in 2004, Captain Thomas O'Meara, has announced his retirement and as of the date of hearing was to leave within two weeks. Therefore, there are actually eighteen sworn officers at present. Not only are there less sworn personnel, but the rank structure within the bargaining unit has been reduced. In 1990 there were two Lieutenants. Today there is only one. In 1990 there were four Sergeants. Today there are only three. In 1990 there were thirteen Patrol Officers, whereas today there are only eleven, and one person designated as Corporal.

The Department has been reduced in total number of sworn officers and has also been modified in rank structure. Since the commencement of the last contract in January of 2000 nine sworn police personnel have left the Leonia Police Department. Chart 2 below identifies those persons who have left and their status after separation.

CHART 2

LEONIA POLICE DEPARTMENT SEPARATION SINCE COMMENCEMENT OF LAST CONTRACT ON 1-1-2000

RANK	NAME	STATUS
1	Chief	Vodde
2	Chief	Greiner
3	Sergeant	Cross
4	Sergeant	Reilly
5	Corporal	Castronova
6	Police Officer	Massaro
7	Police Officer	Reich
8	Police Officer	Ware
9	Police Officer	Venezia

The PBA suggests that several observations may be made from the circumstances of reduced force, reduced rank structure, and less seasoned and experienced personnel remaining. First, fewer people are obviously doing more work. Secondly, the career path of remaining police officers in the Department has been reduced. There are fewer opportunities for promotion and career advancements through the ranks. The PBA submits that police officers should always be encouraged to move forward and look toward a career path of personal and professional improvement. This is difficult since Governing Body has elected to reduce the size of the force and not fill the vacancies created in the rank structure by retirees. Career

path opportunities are unquestionably reduced. Perhaps this is why young officers with a good future in the Department have left, not to get out of law enforcement but, to join other law enforcement agencies. Where ranks have been filled, they were done with less experienced personnel. New hires must go through a basic academy and also must go through an on-the-job training program to know Leonia and become able to operate alone on the street. The PBA notes that the current Roster, as of the date of the hearing, shows that four police officers had less than twelve months of service since their original date of hire. These four officers certainly cannot be expected to operate up to 100% of efficiency when they are new to the Department. This also has an impact on other officers as they must pick-up the slack caused by retiring or resigning police officers and in addition have to train the new people coming in. The PBA notes that this turnover saves the Borough a very significant amount of money in personnel costs. The PBA submits that it is a credit to the Department's sworn officers that they can maintain increasing services, increasing workloads and do it all with fewer sworn people.

The PBA notes that, aside these personnel challenges and personnel decisions, Rowe testified to the pride and high level of *esprit de corp* within the Leonia Police Department.

- Q. Now, it seems I'm hearing a great deal of pride in performance in a Department. What is this support among the Officers, how do they work with each other and Department rank structure as it exists?
- A. Excellent. We have a great working relationship. Everybody likes coming to work. They like doing their job. They like helping the residents in town. Phenomenal pride, if you look at the productivity of this Department and also another way of measuring it, look at complaints. We don't have any complaints or we have nominal at best.
- Q. With respect to the additional workload, people on the force get it done?
- A. No matter what the circumstances, we get it done.

Q. Based on your observations and experience over the time with this Department, have you seen a difference between the proactive patrolling and reactive patrolling from when you started to current circumstances because of less people and more work?

A. Yes.

Q. Please explain.

A. When I first got on fourteen (14) years ago, the Department was extremely reactive. Something happened, you went there. Now, because we have I would say better leadership, we are able to look at problems that are surfacing in their infancy, able to go to our management, let them know what the problem is and work on solutions to quell or quash the problem, instead of something occurring after the fact and/or collecting and being totally reactive to it.

I think that's a testament to the members of this Department. They think outside the box. They think of the greater good of the community to accomplish those tasks.

Q. Do you believe this Department well serves the interests and welfare of the public?

A. Absolutely. I think it's the best Department in the State. (Tr. at 44-45).

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

The PBA asserts that an analysis consistent with criteria g2 and g3 under the Act strongly supports its position. Wages and benefits in Leonia are generally in the mid-range of comparable towns. The PBA contends that, through testimony and documentary exhibits, it established an appropriate universe for comparison — area Bergen County municipalities, those municipalities with a Mutual Aid Agreement and Bergen County municipal police departments generally.

The PBA has proposed a 5% annual salary increase which it contends is consistent with recent settlements in nearby Edgewater (5%) and Bergenfield (4.75%) Chart 3 below analyzes salary increases reached in voluntary settlements and arbitration awards.

CHART 3
BASE RATE INCREASES BASED ON PBA EXHIBITS IN EVIDENCE

Municipality	2004	2005	2006	2007	2008
Allendale	4				
Bergenfield	4.75 (2/2.75)	4.75(2/2.75)	4.75(2/2.75)	4.75 (2/2.75)	4.75(2/2.75)
Closter	4	4	4	4	
Demarest	4.25				
Edgewater	5	4.9			
Elmwood Park	4	4	4	4.2	
Englewood PBA	4.1	4.1	4.1		
Englewood SOA	4.1	4.1	4.1		
Fort Lee	3.9	3.9	3.9		
Garfield	4	4.2	4.2	4.2	
Glen Rock	4	4	4		
Harrington Park	4	4	4	4	4
Hasbrouck Heights	4	4	4	4	4
Lodi	4	4			
Moonachie	4				
Paramus	4	4	4	4	
Ridgewood	4.4 (2/2.4)	4.4 (2/2.4)	4.4 (2/2.4)	4.4 (2/2.4)	4.4 (2/2.4)
Ridgewood SOA	4.4 (2/2.4)	4.4 (2/2.4)	4.4 (2/2.4)	4.4 (2/2.4)	4.4 (2/2.4)
River Edge	3.9	3.9	3.9		
Rutherford	4.25 (2/2/25)	4.25 (2/2/25)	4.25 (2/2/25)	4.25 (2/2/25)	
Rochelle Park	4	4			
Saddle Brook	4.5				
Tenafly	4				
Wood Ridge	4	4	4	4	
AVERAGES	4.15%	4.15%	4.11%	4.2%	4.21%

The PBA points out that the above salary increases relate only to base salary increases. The PBA notes that the Bergenfield settlement includes, in addition to annual 4.75% "split" salary increases, \$100.00 annual increases in the clothing allowance, a full family prescription drug plan, and a new "Senior Officer Differential" step at twenty years an additional \$2,500.00. The value of this settlement exceeds the 4.75% salary increase shown in Chart 3 above. The PBA submits that virtually every one of the above settlements includes other economic increases. The PBA contends that a complete analysis of each of the above settlements would show a higher increase. The PBA submits that the average salary increase is well above 4% annually in each year in dispute.

The PBA contends that the Borough's wage proposal is not supported by any empirical data. There are no settlements in the region or in Bergen County, and there certainly are no awards as low as the Borough's proposal. Further, no municipality in the County has added four steps to the salary schedule. The PBA submits that the deletion of the "Twenty Years of Service" differential is also unsupported by the data in the record.

The PBA submits that the recent trend in settlements shows an increase in the average settlement in the area. Chart 4 identifies several recent settlements, all of which took place within six months of the hearing date in this case. The PBA notes that all of the data is from voluntary settlements and applies only to salary increases.

CHART 4
MOST RECENT SETTLEMENTS (LAST 6 MONTHS)

Municipality	2004	2005	2006	2007	2008
Bergenfield (05/12/04)	4.75 (2/2.75)	4.75 (2/2.75)	4.75 (2/2.75)	4.75 (2/2.75)	4.75 (2/2.75)
Elmwood Park (07/24/04)	4	4	4	4.2	
Englewood PBA (05/19/04)	4.1	4.1	4.1		

Englewood SOA (05/19/04)	4.1	4.1	4.1		
Garfield (12/04/04)	4	4.2	4.2	4.2	
Glen Rock (05/09/04)	4	4	4		
Rutherford (05/24/04)	4.25 (2/2.25)	4.25 (2/2.25)	4.25 (2/2.25)	4.25 (2/2.25)	
Averages	4.171%	4.2%	4.2%	4.35%	4.75%

The PBA proposed that Detectives be entitled to overtime. The PBA notes that a differential for Detectives is normally provided by a stipend given in recognition of special training, extra duty, extra responsibility, and a higher level of proficiency required on a daily basis. Further, the Detective must comply with substantial periods of "on call" time. A Detective's day does not end when they leave the building. Detectives must be available to either be called out or answer questions by telephone or radio at other times of the day. On call duty is shared among Detectives generally. There are two Detectives in the Leonia Police Department. Each Detective is on call for approximately two thousand hours per year. A review of the contracts in evidence shows that every Department, including Leonia, provides some form of a Detective stipend. The difference is that all of the other Departments also provide that a Detective receives time and one-half overtime when called out. The PBA seeks payment at time and one half for overtime work for Detectives in Leonia. Chart 5 shows the other jurisdictions providing this benefit to Detectives.

CHART 5

DETECTIVE OVERTIME BASED ON PBA EXHIBITS

Bergen County Police	Yes
Bergenfield	Yes
Closter	Yes
Demarest	Yes

Edgewater	Yes
Elmwood Park	Yes
Englewood	Yes
Fort Lee	Yes
Garfield	Yes
Glen Rock	Yes
Harrington Park	Yes
Hasbrouck Heights	Yes
Lodi	Yes
Ridgewood	Yes
River Edge	Yes
Rochelle Park	Yes
Rutherford	Yes

The PBA asserts the above comparability data supports its proposal for overtime pay for Detectives.

The PBA is seeking compensation for officers working in a higher rank. The PBA seeks to have an officer who works in a higher rank paid at the higher rank's rate of compensation after one shift. The PBA seeks this out-of-title compensation only when an officer is identified to serve in the higher rate and performs the functions of the higher rank.

The PBA cites Rowe's testimony regarding this proposal:

- A. These are three Officers that are in current acting supervisory positions without compensation. Officer Scott Tamagny has been in an acting Sergeant's position for the past year without compensation. Officer Chris Jones has been in an acting supervisory position, Acting Sergeant, since May of 2004 without additional compensation. And Detective Garris also has been acting as a Sergeant without compensation since May of 2004.
- Q. Since we're on the subject, let me refer to J-5. PBA Proposal Number Two relates to a provision that whenever an employee works in a higher rank, then said employee after one shift shall be compensated as an out-of-title employee at that higher rate.

- Q. You're familiar with this?
- A. Yes, I am.
- Q. And is this proposal meant to address circumstances such that exist and are reflected at the bottom of *P-1*?
- A. Yes, it is.
- Q. Are there others from time to time who are placed in supervisory positions without any additional compensation?
- A. Every day.
- Q. And please explain to the Arbitrator how that occurred.
- A. That would occur in the patrol squad usually has three Officers per squad; Sergeant, two Police Officers. If the Sergeant is out sick, injured or is on some type of leave or vacation or personal day, the senior-most Officer will then be in charge of the squad. And he would or she would operate without any additional compensation, although they have the additional responsibility.
- Q. In such cases, is the person who is the acting supervisor designated to take such duties?
- A. Yes.
- Q. And that's a departmental designation?
- A. Yes.
- Q. And when one is in such capacity, what types of additional responsibilities, as you related or mentioned, exist?
- A. Tremendous responsibility. You have to know all the Attorney General's guidelines, you have to know state case law. You have to make instantaneous decisions that regard life and you have to know what you're doing.
- Q. How is the responsibility of the shift supervisor in these circumstances different than a Police Officer working on said shift?
- A. Rephrase that. Are you asking - -
- Q. How is the supervisor's obligation different than the Officer who is non-supervisory at that time?
- A. He's in charge of the tour.
- Q. Is there a level of responsibility?

- A. Much higher level of responsibility.
- Q. Are there decisions to be made by the supervisory person?
- A. Absolutely.
- Q. If there's a pursuit, who decides who calls it off or when?
- A. As per the Attorney General's guideline, the Officer in charge is responsible for terminating all pursuits.
- Q. If there is an event in town, let's say a crime occurs, are there options where you can activate SPAM or other types of networks?
- A. Yes.
- Q. Who makes the decision to activate SPAM?
- A. The acting supervisor or supervisor.
- Q. Where a person is in custody, who makes the decision as to how that person is handled?
- A. Supervisor or acting supervisor.
- Q. Do Police Officers out on the road, non-supervisory personnel out on the road, from time to time call in on the radio for direction or advice?
- A. Every tour.
- Q. Is this with frequency or once on a tour or how would you describe it?
- A. It could happen once or ten times based on the volume of calls. There's a lot of situations that you need advice on. Ultimately the supervisor's in charge, so he or she has to know what's going on, so subordinate patrol person has to run all these discussions past the supervisor.
- Q. And the supervisor makes those decisions in those cases?
- A. Absolutely, yes.
- Q. If someone has to contact the Prosecutor's Office or a county police, who is the appropriate person to make such decision?
- A. The person in charge.

- Q. If someone is to meet personnel issues, someone goes home sick, someone is going to be late, any number of problems, who makes the call?
- A. The supervisor.
- Q. If there is a problem on the shift with an Officer, who steps in and takes corrective action?
- A. Supervisor, the person in charge.
- Q. During the period of time that a person serves in this, use the example of a shift supervisor, does that individual fulfill all the duties, obligations and have all the rights and responsibilities of a Sergeant?
- A. Yes.
- Q. And is that from the moment a person is so designated?
- A. Yes.
- Q. You know the PBA has proposed that after a shift, that is after an eight-hour period?
- A. Yes.
- Q. So today, there are times when even when there is a Sergeant working, that Sergeant may go home for lunch or take off early or miss a day or whatever, whatever reason, those are not the focus of this proposal, is it?
- A. No.
- Q. It's only where one is designated and works beyond one's shift?
- A. Yes. (Tr. at 19-20).

According to the PBA, there is a higher frequency of officers working in higher rank positions because the Borough has elected not to fill supervisory positions when they are vacated due to retirements. The PBA seeks compensation for performing these higher rated duties. The PBA notes that the Borough is not only saving by leaving these ranks vacant, it is also being subsidized when officers work out-of-title with no additional compensation. The PBA contends that bargaining unit members are effectively subsidizing most, if not all, of their own wage increases by virtue of the Borough's reduction in rank structure and reduction in force.

The PBA notes that the only reference to any question or challenge from the Borough concerned the use of "corporal" nomenclature on the personnel list in the Department. The PBA submits that the testimony of Detective Lieutenant Rowe clarified this on redirect examination:

- Q. Mr. Dorf was focusing on the military comparison with Corporal versus ostensibly a Private in the Army. Is the sleeve insignia worn by a Corporal in this Department predicated by years of service?
- A. Yes.
- Q. It has nothing to do with Council action or promotion or any other type of personnel activity?
- A. No.
- Q. So when one achieves twelve years of service you are entitled to wear the Hash mark?
- A. That was set up by former Chief Greiner, and my understanding is that the only way an Officer can be promoted is through a Council Resolution. There is no such condition.
- Q. It's more akin to Hash marks in the military service as opposed to rank?
- A. Yes. (Tr. at 70-71).

The PBA notes that there is no additional compensation provided for a person who is designated as a Corporal. There are also no duties added to the Corporal. It is the same as Hash marks in any branch of service and many Police Departments.

The PBA notes that the Borough is seeking significant give-backs in longstanding benefits and an unsupportable wage proposal but it elected to introduce no testimony in support of any comparability or justification. The PBA cites the testimony of the Borough Administrator, that other Borough employees who work closely with the police officers, the police dispatchers, recently settled for nearly double what the Borough is offering its police officers. The dispatchers received an annual increase of 3.5% with an additional \$1,000

annual equity adjustment (Tr. at 106). According to the PBA, the Borough's lengthy list of give-backs, forfeitures, and other extensive efforts to diminish longstanding rights and benefits are completely without support in the record.

The PBA asserts that many Borough proposals are unsupported and therefore cannot be awarded under the statutory criteria. According to the PBA, there is nothing to base an Award upon on such far-ranging issues as the language proposals, reduction of benefits proposals, grandfathering proposals and stripping of health benefits. The health benefit issue alone is very important to bargaining unit employees. The Borough simply "takes a shot" at this longstanding benefit and seeks to significantly diminish the benefit for police officers and their families. The PBA questions the basis of the Borough's health care proposal pointing out that the basis for the Borough's proposal is a block of exhibits photocopied from a list of all settlements in the State over a period of years as published by PERC.

Private Sector Comparisons

The PBA asserts that private sector comparisons are not entitled to significant weight in comparisons to police officers. The PBA notes the Borough made comparisons to private sector employment at the hearing. The PBA submits that the best comparisons are made with other public employees and specifically other law enforcement employees. This best evidence and best comparison universe of comparison concept has been support by arbitrators. The PBA maintains that due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparison to private sector employees (as compared to other police officers) must result in a strong justification for significantly higher compensation to be paid to police officers. The PBA cites the following excerpt from Arbitrator Carl Kurtzman's interest arbitration award in support of its argument regarding 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, at 30).

The PBA respectfully asserts that private sector comparisons should not be considered controlling in this case. In the first instance, 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. Again such public franchise and unique provision of statutory authority is not found in the private sector. There is no portability of pensions in the law enforcement community after age thirty-five. Police officers may not take their skills and market them in other states as one may market one's own 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 following represents certain statutory and other precedential laws controlling the relationship of police officers to their employers:

1. The Federal Fair Labor Standards Act, 29 USCA §201, *et seq.* applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7 day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.
2. The New Jersey State Wage & Hour Law, NJSA 34:11-56a, *et seq.* does not apply to the employment relationship between a police officer and the officer's Public Employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, Perry v. Borough of Swedesboro, 214 N.J. Super. 488 (1986).
3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. NJSA 40A:14-118. There is no such statute covering private employment in New Jersey.
4. NJSA 40A:14-122 provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, NJSA 40A:14-122. No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under 40A:14-122.2. There are no such private sector limitations on promotion.
7. A police officer in New Jersey must be resident of the State of New Jersey, NJSA 40A:14-122.8. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute 40A:14-123.1a. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such

rehire with respect to age, 40A:14-127.1. No such provision exists for private employees in this state.

10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, NJSA 40A:14-127.3. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage NJSA 40A:14-131. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed 6 days in any one week, "except in cases of emergency". NJSA 40A:14-133. The Fair Labor Standards Act gives superior protection to private sector employees.
11. NJSA 40A:14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65 year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, NJSA 40A:14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

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. Police Officers are statutorily conferred with specific authority and "...have full power of arrest for any crime committed in said officer's presence and committed anywhere within the territorial limits of the State of New Jersey." NJSA 40A:14-152.1. 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.

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one state to another, there is more of a global competition to be considered. The New Jersey private sector employee must consider the possibility that his industrial Employer might move that plant to another state or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The Employees must work locally and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other states, even in Mexico.

The PBA contends that local comparisons are a more relevant to police salaries. The PBA cites the decision of Arbitrator William Weinberg in support of its argument:

"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, at pages 29 - 31).

The PBA argues that any time there is a comparison made between a police officer and a private employee generally, the police officer's position must gain weight and be given greater support by such comparisons. 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. The PBA notes that 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 PBA asserts that a police officer should be considered on a higher wage plane than private employment generally.

Lawful Authority of the Employer

The PBA asserts that its last offer is consistent with the requirements of the lawful authority criterion which is essentially an evaluation under the New Jersey "CAP Law". This "CAP Law" is a formula putting certain limitations on various governmental expenditures. The New Jersey State Cap Law has been modified numerous times since its initial introduction in 1979, however, the PBA contends there is nothing in the record to suggest any restriction on the Borough's ability to adopt a budget. The most recent Budget available for analysis is for the calendar year 2004. (P-26). The 2004 Budget has a Cap calculation set forth at sheet 3B-1. The PBA notes that the Borough used a Cap calculation of 2.5% for 2004 resulting in a "Maximum Allowable General Appropriation within CAPS" of \$6,325,567. (3B-1). The PBA notes that the Borough of Leonia did not appropriate this sum which was the result of the 2.5% calculation. The actual "Appropriations within CAPS" was only \$6,284,621. This precise amount of appropriation within CAPS is set forth on the 2004 Budget (P-16) on the top of the right column on sheet 3. The Borough, using the 2.5% CAP number for 2004, underspent allowable appropriation limits therefore by \$41,275. The PBA

submits that this is significant since the Borough could have adopted an increase above the adopted 2.5%. The PBA notes that the Borough, after adopting a 2.5% figure for 2004, did not spend up to that limit. The PBA asserts that there is not now, nor has there been in the past, a CAP restriction on the Borough which prevented it from funding all necessary expenditures and appropriating an annual Budget each year.

The PBA submits that the Borough has not experienced any CAP problems in past years as is illustrated from a review of the most recent and prior Budgets in the record. The PBA describes the Borough's arguments regarding potential future CAP problems as speculative suggesting that future Budgets, when introduced, may undergo many changes before final adoption.

The PBA notes a recent modification of the CAP Law. Although the CAP rate decreased under the most recent change, the CAP base increased, similar in concept to a revaluation. The PBA suggests that there may be no negative impact. In addition to the above, there is current legislation pending regarding additional modifications which will have impact on potential CAP increases. The PBA submits that evidence in the record shows that the Borough is in sound financial condition. The PBA suggests that it has not been established that the changes in the CAP Law will have any impact on the Borough. The PBA asserts that whether the new maximum is 2.5%, 3.5% or any higher percent, is of little import to the Borough. In 2004, the Borough chose to adopt a Budget with a 2.5% maximum and operated within that Budget. The PBA contends that any claim of a negative impact by the Borough is pure supposition and without factual basis.

The PBA cites the testimony of Victoria Miragliotta, the Borough Administrator, who stated that there will be an adjustment for the Courts this year and that it will be the second year of a three-year exemption to the CAP for insurance.

H

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

The PBA asserts that the impact of an award in favor of its last offer will not have an adverse impact on the Borough's taxpayers and residents. According to the PBA, there have been significant cost savings within the department through breakage from attrition in the bargaining unit. The PBA submits that the public received a significant bargain in the form of low cost law enforcement services from the bargaining unit.

The PBA provided a "snapshot" of the current cost of base salary rates for the bargaining unit. Chart 6 below reflects the current base salary rates paid to the various ranks within the bargaining unit.

CHART 6

BASE RATE OF BARGAINING UNIT (2003 RATES PER J-1)

(A)	(B)	(C)	(D)
	Census (P-1)	2003 Base Rate	Col. (B) x Col. (A)
Lieutenant	1	91,354	91,354
Sergeant	3	87,598	262,794
Patrolman	12	83,832	1,005,984
TOTALS	16		\$1,360,132

$$1\% = \$13,601$$

The PBA points out that the value of a 1% bargaining unit salary increases at \$13,601 is an overstatement since not all patrol officers are at the maximum step on the salary schedule. All PBA calculations assumed that everyone is at maximum. The PBA used the maximum patrol officer salary for all patrol officers regardless of salary schedule placement for ease of calculations. The PBA notes that the difference between the parties' last offer on salaries is 2% annually. The PBA contends that the difference of \$27,206 in 2004 does not have any significant impact on the Borough.

Chart 7 lists the full-time officers who left the police department within one year of the hearing date.

CHART 7
RECENT LEONIA POLICE DEPARTMENT RETIREMENTS

Rank	Name	Date of Retirement	Base Wage
Captain	O'Meara	January 2005	
Sergeant	Cross	January 2004	\$87,598
Sergeant	Reilly	January 2004	\$87,598
Chief	Greiner	January 2004	

According to the PBA, some of these positions were left vacant and others were filled from the bargaining unit. The PBA submits that the cost of the bargaining unit was reduced by virtue of senior officers retiring or being promoted out of the unit. The PBA calculates the cost of promotion to Sergeant as \$3,766, the rank differential. However, the Borough ceased to pay the retiring Sergeant \$87,598. The PBA contends that this single breakage point alone can more than pay for the entire difference between the parties' last offers on salary. While the Chief and Captain positions were not bargaining unit positions, their departures also saved money. The PBA points out that testimony established that the positions vacated through retirement were not all filled. To the extent that a position went unfilled, the saving is the entire cost of the departing officer. To the extent that they were filled, the cost is the rank differential. According to the PBA, its last offer on salaries can be fully funded by savings generated by the breakage from personnel changes due to retirements left unfilled by the Borough.

The PBA submits that the Department has also brought into the Borough substantial sums of monies from its efforts in law enforcement and its successes in securing grants at the National and State levels. The PBA notes that the Borough Municipal Court generated \$250,042 from January to October 2004. (P-5). This sum represents 18.4 PBA base salary

percentage points (\$13,601 per point) for the bargaining unit which is almost 20% of the cost of base pay for the bargaining unit. In addition, there were substantial Grant monies received in the recent past which were payable to the Borough on behalf of its Police Department. The PBA cites Lieutenant Rowe's testimony in this regard:

- Q. Over the last two years, or for the last two-year period, have you been asked to check on various Grants that have come in from State or Federal Agencies with respect to law enforcement?
- A. Yes.
- Q. Please advise what your research determined.
- A. In 2003 we received our \$25,000.00 Departmental Homeland Security Domestic Preparedness Grant. 2003, \$10,500.00 DWI grant from New Jersey State Department of Highway Traffic Safety. 2004 we received a \$15,500.00 DWI grant from the New Jersey Department of Highway Traffic Safety. That was used for - that gives us the ability to put out extra patrols and buys Breathalyzer related equipment for us. 2004 we received an \$18,000.00 Pedestrian Safety Grant. Those monies were used for traffic enforcement, more specifically on Broad Avenue and any intersection where there have been pedestrians struck by vehicles. 2004 we received a \$5,000.00 Click-it or Ticket Grant from the State Department of Highway Traffic Safety. That was used for reinforcing seatbelt law. We received a \$2,000.00 Equipment Grant in 2004 from the Bergen County 200 Club and for next year 2005 \$17,375.00 Comprehensive Traffic Safety Program Grant also from the New Jersey State Department of Highway Traffic Safety. (Tr. at 34-36).

The PBA calculates the \$1,360,132 cost of bargaining unit base salaries as 6.3% of the total Municipal levy of \$21,541,178. If a hypothetical homeowner paid \$5,000 per year in real estate taxes, the amount allocated for the base wages in this bargaining unit would be \$315 annually or approximately \$26 monthly. The PBA describes this cost for police services as a "bargain" and contrasts it with the school portion of the tax levy of \$12,929,073 which is approximately 60% of the total Municipal levy.

The PBA suggests that the school budget is relevant since the citizen/voter's reaction to the school budget is a valid barometer of tax pressure. The PBA points out that the school budget is the only budget on which taxpayers get to vote. The Leonia School Budget was voted on by the taxpayers on April 20, 2004. The taxpayers were voting on a School Budget

that would increase the school tax bill by an average of \$180. (P-22). Only 7.6% of the voters cast a ballot (P-23). The PBA contends that without a significant turnout to vote on a \$180 average increase in the school tax bill, it is difficult to fashion an argument regarding the police impact of approximately \$31 annually. The PBA notes that not everyone uses schools. This is not so with police work. All persons living in and traveling through the Borough benefit from police services, either actively or passively. The PBA asserts that this shows that there is no evidence of any form of tax pressure in the Borough.

According to the PBA, another method of taxpayer pressure is the percentage of current cash collections on the tax levy. The record shows that the Borough has enjoyed an exceptionally high collection rate. P-18, the most recently available reported Audit and P-17, the most recently available Annual Financial Statement provides the actual percentages of current collection:

2003	98.12%
2002	98.94%
2001	98.82%
2000	98.93%
1999	98.72%

The PBA asserts that the above collection rates are well above the State average. The PBA points out that the Borough consistently underestimates its collection rate thereby creating significant annual surpluses.

The PBA provided the following observations regarding financial documents in the record to support its position that the Borough is a fiscally sound municipality that can afford to fund the PBA's last offer on salary:

- The results of operations (AFS Sheet 19) shows the ability of the Borough to regenerate surplus, similar to the "bottom line" in the private sector. The results of operations for 2002 were \$691,916. In 2003, this number was \$464,257.

- Budget revenues (AFS Sheet 17) have shown an excess of collections in each of the years analyzed. The Borough has averaged well over One Hundred Thousand (\$100,000) Dollars per year in excess revenues.
- The unexpended Appropriation Reserves (AFS Sheet 19, 2002 report of Audit) reflects budget appropriations that remain unspent and by statute one year later automatically canceled the surplus (**NJSA 40A:40-60**). These are unspent budget appropriations that provide budget flexibility. This amount in 2002, from the year 2001 was Two Hundred Ninety-One Thousand Three Hundred Ninety (\$291,390) Dollars. In 2003, from the year 2002 the sum was \$421,982. The Borough appears to have significant unspent budget appropriations.
- The fund balances (2002 report of Audit, 2003 AFS Sheet 21) reflect funds available for use as revenue in the Budget or to reduce the tax levy. Significant sums in this category, well over \$1,000,000 *per annum*, have been reflected in every year since 1999. The fund balance averaged \$1.5 Million over the last five years and the average utilization of surplus was 51%. The consistency of surplus is evidenced by the relatively stable tax rate.
- Cash balances are reflected at AFS Sheet 9. The balance as of December 31, 2003 in the current fund was \$4,974,550.
- In the Capital Fund there was 1,637,233. It would appear that the Borough does not have a cash-flow problem.
- The “Gross Debt *Per Capita*” is the lowest in 2002 than any of a preceding four years (See Official Statement, P-20, Chart A-2).
- The ten largest taxpayers within the Municipality are all corporations (See P-20, Sheet A-6).

The PBA asserts that the Borough is fiscally strong. The PBA also notes that the Borough's unemployment rate is among the lowest in the State at 3.3% contrasting this to the state-wide unemployment rate of 5.8% and the Bergen County unemployment rate of 4.8%. (P-20, at 20).

The PBA contends that the cost of the bargaining unit increases is minimal and that such increases are offset by the attrition and breakage achieved through retirements and resignations. The PBA submits that even if the PBA's last offer on salary is awarded, the Borough would still spend much less than it has in prior years.

Cost of Living

The PBA submits that the cost-of-living is an area issue which affects not just the towns immediately around Leonia but the greater region. This factor affects all municipalities. The PBA notes that this is one of the key reasons why it sought to stress comparability and create an appropriate universe of comparison through testimony and evidence in the record. The PBA submits that the trends in the cost-of-living in Northeastern New Jersey out paces those of the Metropolitan area generally and certainly of the United States.

The Continuity and Stability of Employment

The PBA submits that an analysis of this criterion suggests reliance on the private sector concepts of "prevailing rate" and "area standards". The PBA submits that both concepts strongly support an award of its last offer.

The PBA asserts that the Borough's proposals are for the most part completely unsupported by evidence in the record. The PBA submits that proofs are required under the Interest Arbitration law. The PBA cannot respond to the Borough's proposal nor can it evaluate the Borough's proposals when there are no proofs. The PBA asserts that the Borough's proposals cannot be awarded without proofs in the record.

According to the PBA, the Borough must meet a high standard in order to make a case for a change in a contractual benefit, particularly when that benefit has been in the contract for many years. The PBA suggests that modifications in the contract should be subject to the "compelling need test". The PBA submits that the record is completely devoid of any information of any sort on nearly all of the Borough's proposals.

The PBA notes that the Borough has a less costly police bargaining unit which is much smaller in both numbers of sworn officers and the rank structure. Police officers in the unit have taken on more work and supervisory obligation to pick-up for those persons no longer available. In addition, new officers cannot take on the full load on their own and must be provided with additional supervision and "coaching". Many new officers had to go to the Police Academy and, while they are carried on the books for six months while in the Academy, they are not available to do any service. The PBA contends that the career path of remaining officers has been significantly diminished. The PBA contends that fewer police officers do more work for less money.

The PBA submits that the Borough offered no evidence or testimony to support its non-economic proposals. The PBA requests that I leave in place the longstanding contract language and benefits of many years.

In conclusion, the PBA requests that, based upon the testimony and proofs at hearing, and the arguments set forth in its brief, that I award its last offer.

BOROUGH OF LEONIA

Current Compensation

The Borough notes that Leonia police officers have received generous wage increases in the past and enjoy generous benefits, and working conditions. The Borough notes that wages were increased by 4% in 2001, 4% in 2002 and 4% in 2003. The Borough points out that these wage increases exceeded both the CPI-U and CPI-W between 2000 and 2003.

The Cap Vs. Inflation

<u>Year</u>	<u>CAP</u>	<u>CPI-U</u>	<u>CPI-W</u>	<u>Wage Increase</u>	<u>PBA Wage Proposal</u>
2000	2.5	3.1	3.2	4.0	
2001	4.0	2.5	2.6	4.0	
2002	2.5	2.6	2.4	4.0	
2003	1.0	3.1	3.2	4.0	
2004	2.5	3.4	3.4		5.0

Inflation Vs. Wage Increases

<u>Year</u>	<u>CPI-U</u>	<u>CPI-W</u>	<u>Wage Increase</u>	<u>PBA Wage Proposal</u>
2000	3.1	3.2	4.0	
2001	2.5	2.6	4.0	
2002	2.6	2.4	4.0	
2003	3.1	3.2	4.0	
2004	3.4	3.4		5.0

The Borough further notes that between 2000 and 2003 wage increases to unit members either exceeded or were approximately the same as the average of salary increases for both awards and settlements as reported by PERC. (B-2, Ex. 32, Ex. 33, and Ex. 34).

<u>Year</u>	<u>Total Awards</u>	<u>Avg of Salary Increase All Awards</u>	<u>Total # Reported Voluntary Settlements</u>	<u>Avg of Salary Increase Reported Settlements</u>	<u>Leonia Police Wage Increases</u>
2004	21	4.07	42	3.91	
2003	23	3.82	40	4.01	4.0
2002	16	3.83	45	4.05	4.0
2001	17	3.75	35	3.01	4.0
2000	24	3.64	60	3.87	4.0

The Borough provided a detailed list of other terms and conditions of employment currently enjoyed by Borough police officers:

1. **Longevity:** The Borough points out that it provides a generous longevity benefit to unit members of 1.5% of the employee's base annual salary per year for each four years of service reaching 6% after sixteen years of service; 9.5% after 20 years of service; and 12% after 24 years of service. The Borough notes that unit members start receiving their longevity increment before they reach the top step of the salary guide.
2. **Grievance Procedure:** The CBA contains a grievance procedure that terminates in binding arbitration.
3. **Holidays:** Unit employees receive thirteen paid holidays per year. Employees are compensated for these holidays as an addition to regular pay which is used as a basis for other payroll calculations such as overtime.
4. **Vacation Leave:** Paid vacation leave is earned in amounts that correspond with an employee's years of service up to a maximum of twenty-two working days after completing 20 years of service.
5. **Emergency Leave, Compensatory Time & Leave:** Employees are provided two paid personal leave days annually and three emergency leave days. Compensatory time may be converted into up to two personal leave days (called "Golden Days").
6. **Sick Leave:** Employees are entitled to paid sick leave without any apparent cap.
7. **Retirement Leave:** Employees are entitled to "retirement leave" and employees with twenty-five years of creditable pension service in the PFRS are entitled to an additional cash payment of \$1,000.
8. **Work Incurred Injury:** Employees who suffer a work-connected injury receive full pay for up to one year.
9. **Medical Coverage and Insurance Benefits:** Employees and their families and retirees are entitled to generous medical benefits. Leonia pays 100% of the premiums for this coverage with none of the premium costs being shared by the employees or retirees. Employees also receive employer-paid dental benefits.
10. **Clothing Allowance:** Employees receive an annual clothing allowance for the purchase and maintenance of uniforms according to a schedule that increased annually during the life of the last contract: \$800 (2000), \$900 (2001), \$1,000 (2002), and \$1,100 (2003). Officers designated as Corporals receive an additional, one-time, clothing allowance payment of \$100.

11. **Pension:** Unit employees are enrolled in the Police and Firemen's Retirement System of New Jersey (PFRS). PFRS is a multiple employer public employee retirement system. Under this system, employees who are age 55 or older with no minimum amount of service credit are entitled to a service retirement benefit, payable monthly for life, calculated as follows:

Years of Service X 2% X Final Compensation = Annual Maximum Pension
(Up to 30 years, plus 1% for each year over 30 years).

Employees who are age 55 or older, with at least 20 years of service (but less than 25 years of service), or; 20 or more years of service at any age, but less than 25 years of service, if enrolled prior to January 18, 2000, are entitled to a service retirement of 50% of final compensation.

Employees who are age 65 (mandatory retirement age), with 20 or more years of service, but less than 25 years of service are entitled to a service retirement of 50% of final compensation, plus 3% of final compensation for each year of service over 20, up to 25 years, if enrolled in the PFRS as of January 18, 2000.

In addition, employees any age with 25 or more years of service credit are entitled to a special retirement benefit of 65% of final compensation plus 1% per year over 25 years (up to a maximum of 70% of final compensation).

These and other PFRS retirement benefits are established by State statute such as deferred retirement, ordinary disability retirement, accidental disability retirement, and various types of survivor benefits.

Employees covered by PFRS are typically required by statute to contribute a percentage of their annual compensation. Leonia is required to contribute the remaining amount necessary to pay benefits when due. Based on the July 1, 2001 actuarial valuation, which determines contribution requirements for 2004, there are no longer excess pension assets available to reduce contribution requirements. However, in order to assist local employers with meeting their current budgetary obligations as well as those in coming years, Chapter 108, P.L. 2003 was passed by the Legislature and signed into law by then-Governor James McGreevey. This law calls for the return of employer pension contributions on a phase-in basis with 20% of the actuarially calculated amount for 2004 being due and payable. In fiscal year 2004 the Township's normal PFRS contribution was \$195,087 but the adjusted balance taking into account the phase-in was \$39,017. In 2005 the normal PFRS contribution with accrued liability was \$237,898 but the adjusted balance was \$95,159. (B-2, Ex. 12). This approach will continue with 60% being due in 2006, 80% being due in 2007, and 100% being due in 2008. (B-2, Ex. 12). By the time the next contract expires in 2006 (assuming the arbitrator adopts the Borough's 3-year contract) the Borough will be paying 60% of its normal PFRS contribution.

Municipal Budget Requirements

The Borough submits that State law imposes specific budgetary restraints upon local government units. Pursuant to the Local Budget Law, the Borough is required to maintain an operating budget which provides sufficient collections to pay all debt service and operating costs during the fiscal year and, in addition, provide for any mandatory payments required to be met during the fiscal year. Notwithstanding any discretionary spending power it may have, the Borough Council, like governing bodies in other municipalities, is subject to the Local Government CAP Law which prohibits the Borough Council from increasing their final appropriations by more than 2.5% or the COLA (formerly the "index rate"), whichever is less, over the previous year's final appropriations, subject to certain exceptions including:

- Capital expenditures, including appropriations for current capital expenditures, whether in the capital improvement fund or as a component of a line item elsewhere in the budget, provided that any such current capital expenditure would be otherwise bondable under the requirements of the Local Bond Law;
- An increase based upon emergency temporary appropriations made pursuant to N.J.S.A. 40A:4-20 to meet an urgent situation or event which immediately endangers the health, safety, or property of the residents of the municipality, and over which the governing body had no control and for which it could not plan and emergency appropriations made pursuant to N.J.S.A. 40A:4-46. Emergency temporary appropriations and emergency appropriations shall be approved by at least two-thirds of the governing body and by the Director of the Division of Local Government Services, and shall not exceed in the aggregate 3% of the previous year's final current operating appropriations;

The Borough's brief references a significant number of other exceptions which I shall not detail.

The Borough notes that a significant statutory amendment in 2004 was adopted as part of the State's FY 2005 budget. P.L. 2004, c. 74 made substantial amendments to cap exceptions, the index rate, cap increases, and cap banking, effective with SFY 2005 budgets. Those changes include a reduction from 5% to 2.5% in the maximum cap increase rate. A

municipality may, when the COLA is less than or equal to 2.5%, increase its allowable inside-the-cap spending to 3.5% upon passage of a COLA Rate Ordinance. In the past municipalities could adopt an ordinance providing for an increase of up to 5%. CAP banking is no longer automatic. The governing body must pass an ordinance for the difference to be banked.

The Borough notes that many important CAP exception changes were made and several CAP exceptions were eliminated. In all cases, amounts outside the CAP in these categories in 2004 budgets will be rolled into the base amount for 2005 budgets. The following municipal CAP exceptions were deleted:

- PEOSHA expenses (u);
- Hazardous waste facilities (w);
- Municipal court costs (ff);
- Environmental Joint Insurance Fund administration costs (gg);
- Costs that are part of implementing an estimated tax billing system (hh);
- Salaries of police officers brought onto the payroll after COPS (nn).

The Borough submits that the PBA's proposed 5% annual salary increases exceed the mandate of P.L. 2004, c. 74 that the Borough's total expenditures not exceed 2.5% of the previous year's final appropriations. The Borough cites the testimony of Borough Administrator Miragliotta who explained the municipal CAP law. Miragliotta stated that as a result of the new CAP law the Borough is facing the prospect of layoffs. So, when the PBA seeks annual wage increases that exceed the CAP, the Borough must make up the difference from other parts of the budget. The governing body will be forced to make choices among many competing needs within the municipal government in order to fund the PBA's wage proposals. Line items will be cut, projects will be deferred to some unknown future date, and the public employees who don't have interest arbitration will be asked - unfairly - to bear the burden. (Tr. at 94).

Administrator Miragliotta stated:

"Yes. The Borough of Leonia faces a tremendous challenge. For one thing, our tax base is all on the burden of the homeowners, most of them single homeowners. We have no industry to speak of. We have very little commercial, as we discussed before. It's just one or two, a few blocks on a main street, so we don't have a lot of commercial. We have no development coming down the pike. We don't have a postage stamp to develop. Even in looking for new locations for the Borough facilities, we can't get our hands on any land. The structures we have, we are actually trying to bring them up to code in terms of all the violations they've had from being neglected so many years, 30, 40 years. The police department was one area. This building, itself, is another." (Tr. at 95-96).

Administrator Miragliotta testified further that the Borough's roads are substandard, areas of the Borough are prone to flooding, a new sewer infrastructure is needed, and the Borough is under a mandate to remove some oil tanks. (Tr. at 96). The Borough notes that in 2004 Leonia qualified for extraordinary aid the first time in its history. In 2003 the Borough had to issue tax anticipation notes because cash flow was so poor and surplus was a problem. (Tr. at 97). The Borough notes that it must bear the full burden of uncollected taxes.

The Borough submits that its overall financial condition is generally stable due to the Mayor and Council's fiscally conservative approach to local government. Leonia, like its sister municipalities across the State, finds itself confronting shrinking non-tax sources of revenues, growing expenditures - especially in labor and employee wages and benefits - and proliferating infringements on the Borough's right to control costs through the exercise of its traditional budget and policy making discretion.

Statutory Criteria

The following is the Borough's contentions and arguments in relation to the statutory criteria:

Salary

The Borough proposes a 3% annual across-the-board salary increase in 2004, 2005 and 2006 whereas the PBA seeks 5% annual across-the-board salary increases in 2004, 2005, 2006 and 2007. The Borough contends that the PBA's salary proposal is substantially more than the reported average of salary increases for all interest arbitration awards and the reported average of salary increases for all reported voluntary settlements. (1/1/04 - 9/30/04). (B-2, Ex. 32, Ex. 33 and Ex. 34; Table, Page 12).

Moreover, salary increases involve compounding costs and the true costs of the PBA's salary proposal cannot be determined by simply adding the percentage salary increases over the four-year period. According to the Borough, when looking for trends within the average interest arbitration salary increases as reported by PERC, it becomes clear that except in three instances (average awards in 1996 and the first three-quarters of 2004 and average voluntary settlements in 1996 and 2002), average interest arbitration salary increases have remained below 4.00%. The PBA's wage proposal of 5% is unreasonable, especially in the absence of any agreement by the PBA concerning any of the Borough's economic proposals.

The Borough asserts that an examination of the competing wage proposals under the statutory criteria shows that the Borough's salary proposal is more reasonable. The members of this collective bargaining unit already receive a highly desirable compensation package including generous leave time, pension and health benefits. The Borough submits that its proposed salary increases are reasonable when comparisons are made to other public sector wage increases.

Furthermore, the Borough asserts that its salary proposal is on par with the salary increases recently agreed to with its white collar bargaining unit. (Tr. 98-100). The white collar bargaining unit received a salary increase of 11% in the first three years of a four-year contract. The blue collar bargaining unit received a wage increase totaling 10.5% over three years (2004-2006). (Tr. 100-101). Both groups of employees are paid much less than Leonia police officers.

The Borough submits that its wage proposal is generally comparable with Department of Labor inflation figures (B-2, Ex. 7, Ex. 8, Ex. 9, and Ex. 10). Likewise, the Borough's wage proposal for 2004 exceeds the index rate of 2.5% that year. The wage proposal is only 0.5% less than the COLA for CY 2005 of 3.5%. (B-2, Ex. 14).

Private sector wage data also lends support to the Borough's wage proposal. The percentage change between 2002 and 2003 in Bergen County was 3.2%. The total statewide percentage in the same period was only 2.5%. (B-5).

The Department of Labor's "Employment and Wage Estimates" data concludes that New Jersey is the top paying state of police and sheriff's officers. (B-2, Ex. 11). More important for purposes of this interest arbitration, police and sheriff's officers employed by local government in the Bergen-Passaic, NJ metropolitan area are among the highest paid employees in this category in the nation. In fact, the Bergen-Passaic, NJ metropolitan area was reported to be the top paying region in the nation as of November 2003 for police and sheriff's officers (bypassing Oakland, CA; San Jose, CA; Orange County, CA; and Los Angeles, CA). (B-2, Ex. 11). The data is remarkable not as a justification for the even higher police wages that the PBA proposes, but rather because there is simply no comparison between the Bergen-Passaic metro area and any of the four California metro areas. Leonia and the other municipalities comprising the Bergen-Passaic metro area are not comparable to the likes of Oakland, San Jose, Orange County or Los Angeles, California.

The Borough contends that another consideration supports its proposed salary increases. Since 2002 several police officers have inadvertently received accelerated step increases. The three police officers were incorrectly moved to higher paying steps six months prematurely. (B-2, Ex. 26). These premature movements on the step guide reflect overpayments that total \$28,149. If one views a collective bargaining agreement as a package comprised, in part, of economic and non-economic benefits, the overpayment of wages created an unintended benefit for the PBA while causing a detriment to the Borough.

Longevity

The Borough argues that longevity was arguably an appropriate employment benefit during an era when public employees were low paid and local government needed to find creative ways to retain employees or otherwise lose them to the private sector. Over time, however, governing bodies came to realize that longevity is a major financial commitment and is no longer necessary given the substantial achievements that public employees have negotiated in salaries and benefits. Public employees now receive salaries comparable to, if not better than, private sector employees plus longevity. In many collective bargaining agreements, including the now expired agreement between Leonia and Local 381, longevity is added to base salary for pension purposes.

The Borough contends that local governments have sought the removal of longevity provisions in collective bargaining agreements. Some public employers have moved toward the trend of eliminating longevity for future hires while preserving the longevity benefit for existing employees. This approach emphasizes long-term fiscal management. Other public employers have sought to eliminate, or reduce, the longevity of existing employees to control the immediate fiscal impact of longevity on municipal budgets. The Borough's proposal is a combination of both fiscal strategies.

Under the present longevity schedule, employees become eligible for an initial 1.5% longevity bonus after only four years of service to Leonia. This occurs before the police officer reaches the top step of the salary guide (Patrolman 1). Additionally, the present schedule calls for longevity to be calculated as a percentage of an employee's base annual salary. This means that as an employee's base salary increases annually by way of the across-the-board raises and longevity also increases annually since it is stated as a percentage. A 6% longevity bonus, for example, means something different in each of the 4 years it is in effect. That is, 6% equates with a higher dollar amount each year as base salary grows. The following table shows the true effect of longevity on salaries:

Salary <u>Increase</u>	<u>2003</u>	<u>3.0%</u>	<u>2004</u>	<u>3.0%</u>	<u>2005</u>	<u>3.0%</u>	<u>2006</u>
Patrol I	87,676	2,630	90,306	2,709	93,015	2,790	95,805
6% Longevity	5,261		5,418		5,581		5,748
Total	92,937		95,724		98,596		101,553

A 6% longevity payment provides \$5,261 in CY 2003, \$5,418 in CY 2004, \$5,581 in CY 2005, and \$5,748 in CY 2006.

The Borough proposes a two-part solution. First, employees hired on and after January 1, 2004, would no longer be entitled to longevity. Existing members of the Police Department will be placed in an appropriate category on the new schedule based on years of service and receive a flat dollar longevity payment. While those employees will likely realize a smaller longevity benefit, the Borough submits that the new scale - based on a flat dollar amount - is a more reasonable and fiscally sound basis to calculate longevity. The present level of police officer salaries and benefits lends considerable support for the Borough's contention that longevity is no longer a necessary tool in order to attract new recruits for the Police Department.

Second, employees who remain entitled to longevity would not be entitled to any payments until after they have reached the top step on the salary guide. It is important to mention that a two-tiered longevity schedule is not a new concept in Bergen County. Longevity was eliminated prospectively in Hillsdale, Old Tappan, Hackensack, and Wallington. Closter, Edgewater, Little Ferry, Northvale and Paramus have adopted two-tiered schedules. Franklin Lakes and Midland make no provision in their collective bargaining agreements for longevity. (P-7, Ex. 1, at 9-10). This is a tool being used by more public employers and Leonia hopes to be able to control the rising cost of the longevity benefit. The Borough cited the following interest arbitration awards detailing modifications in longevity benefits:

- IA-2004-100 (Weisblatt) Livingston Twp. and PBA Local 263
- IA-2004-019 (Restaino) Bordentown Twp. and Bordentown Twp. Police Officers Association
- IA-2002-027(19) (Mastriani) City of Passaic and Passaic Firefighters Ass'n
- IA-2004-022(2) (Tener) Jackson Twp. and PBA Local 168

The Borough's proposal also seeks to achieve uniformity among the various collective negotiations units. The white collar agreement provides:

Article VII.

There shall be no longevity for any employees hired after January 1, 1996. As to employees hired prior to January 1, 1996, their longevity as it accrues up to December 31, 1999. Beginning January 1, 2000, no employee shall receive any additional longevity. The longevity that has been earned as of December 31, 1999 shall be fixed and carried through for the remainder of that employee's time in the municipality without any additional increases. Longevity is defined in Chapter 50 Personnel Policies of the Code of the Borough of Leonia (Section 50-17). Longevity will be included into the hourly rate of employees in accordance with the provisions of the Fair Labor Standards Act (FLSA). (Emphasis added by Borough).

Similarly, the Public Works Department agreement states:

Article VII.

There is no longevity for any person hired as a permanent employee after July 1, 1995. Those persons who were hired prior to July 1, 1995 by the municipality shall have their longevity frozen at 50% of that benefit up to a maximum of 4.0%. For employees who were employed prior to July 1, 1995, longevity shall be based on the following schedule:

0-3 (0%)
4-7 (.75%)
8-11 (1.50%)
12-15 (2.25%)
16-19 (3.00%)
20 plus (4.00%)

Longevity will be added to an employee's base annual salary on the first of the month following the month of the employee's anniversary date of employment. (Emphasis added by Borough).

Except for two "grandfathered" employees none of the non-union employees receive longevity. (Tr. at 102). The PBA unit is the only group of Borough employees to retain longevity benefits. The Borough, anticipating the PBA argument that a two-tiered longevity schedule would create disharmony among police officers, responds as follows. First, any such argument is speculative and was not supported with a factual basis in this record. Second, it presumes that economic disparity will cause police officers to violate their oath of office. Third, it presumes, too, that an officer who is hired without longevity benefits will behave a certain way in the workplace out of a sense of resentment notwithstanding the fact that at the time he or she was hired it was clear that longevity was not an employee benefit. Lastly, assuming that such behavior would actually occur, it would last only until employees with longevity retire. Essentially, all of this line of argument is speculative.

Medical Coverage and Insurance Benefits

The following are the key elements of the Borough's amended proposal which it submits is in compliance with the requirements of the State Health Benefits Program ("SHBP"):

- The Borough will continue to pay the full cost of the premium for employees but only 80% of the premium for dependent coverage.
- Should the Borough leave the State Health Benefits Program, then additionally: Employees hired on or after January 1st of that year shall no longer be eligible for enrollment in a Traditional Plan. Employees hired before January 1st of that year, who elect coverage in a Traditional Plan shall pay the difference between the cost of the premium for the Traditional Plan and the cost of the premium for a Managed Care/Point of Service Plan offered by the same insurer.
- Coordination of Benefits. If a husband and wife are both eligible for coverage under the Program as employees: (A.) Each may elect single coverage in one of the Plans, provided that he or she is not covered under a Plan as a dependent of his or her spouse. (B.) Each qualified dependent is eligible for coverage under one parent only.
- The Borough may, at its option, withdraw from the State Health Benefits Program so long as in the aggregate substantially similar benefits are thereafter provided by a new health insurance carrier or program or through the Borough's option to self-insure itself.
- In the event that any of the Borough's health care benefits proposals may not, in accordance with State law or rules that regulate the State Health Benefits Program, take effect unless and until the Borough's proposal(s) are applied to other Borough employees then, under such circumstances, the Borough proposes language that conditions a particular proposal's implementation to the date on which the proposal is implemented among all, or part, of the Borough's workforce as may be required by the Program.
- Retiree Health Benefits. The Borough's proposal preserves retiree health benefits but plugs holes in benefits administration that have developed over the years. Also, the Borough proposes a cost containment plan that protects health benefits for retirees while passing the costs for the coverage along to a retiree's new employer (that is, if the retiree reenters the workforce) where substantially similar health benefits are provided.

The Borough submits that its health insurance proposal is reasonable and reflects the prevailing practice in the modern workplace. Premium cost sharing is gaining ground in the public sector and is common - if not the norm - in the private sector. As evidence of the strides being made in the public sector, thousands of employees covered by the various contracts (for the period June 30, 2003 to July 1, 2007) between the Communication Workers of America and the State of New Jersey (administrative/clerical unit, professional unit, primary level supervisory unit, and higher level supervisory unit) agreed to language that is similar to the Borough's proposal. Specifically, effective July 1, 2003, new hires are not eligible for enrollment in the Traditional Plan. Employees hired prior to that date who elect coverage in the Traditional Plan must pay 25% of the cost of the premium of that Plan. Effective July 1, 2003, employees who elect coverage in an approved HMO Plan must pay 5% of the cost of the premium of that Plan.

The Borough cites the following cases in which interest arbitrators have awarded management proposals or helped parties settle cases that require employees to pay the difference between a base plan and the more costly Traditional Plan, or the difference between single coverage and family coverage, or a portion of the premium. (B-2, Ex. 32, Ex. 33, Ex. 34).

- IA-2004-008 (Glasson) Freehold Borough and PBA Local 159
- IA-2003-021 (Glasson) City of Orange and PBA Local 89
- IA-2003-096 (Mastriani) Montclair Twp. and FMBA Local 20
- IA-2002-089 (Weiss) Cherry Hill Twp. and PBA Local 176 (cap on retiree benefits)
- IA-2003-34 (Glasson) Morris Cty Sheriff's Office and PBA Local 151
- IA-2001-83 (Glasson) Monroe Twp. Fire District 2 and IAFF Local 3170
- IA-2001-68 (Glasson) Hanover Twp. and PBA Local 128

- IA-2001-80(2) (Mason) Union County and PBA Local 73 (Superiors)
- IA-2002-031(2) (Mason) Vernon Twp. and PBA Local 285
- IA-2001-3(7) (Buchheit) NJ/State (Corrections) and NJ Law Enforcement SOA Lts. (State employee unit)
- IA-2001-35(8) (Glasson) NJ/State and NJ State PBA SLEC (Primary Level Supervisors Unit) (State employee unit)

The Borough submits that there no longer is any question that public employees in the future will be required to share the burden of health insurance costs. This will be in the form of premium cost sharing or some other method such as the Borough's proposal. This is the growing reality in New Jersey, no doubt hinged to the realization that public employees have successfully avoided paying their fair share of health insurance costs for far too long. Taxpayers - friends, neighbors and family members of many public employees - have footed this substantial budget liability while taxpayers' own workplaces have initiated cost sharing policies and have even increased employee contributions in response to the crisis.

In the employment universe that exists beyond the boundaries of Leonia few public employers and private employers have escaped rising health insurance premiums and the growing crisis in employee benefits management. Research findings that cut across both the public and private sectors firmly support the Borough's proposals. The survey results and statistics contained in the second binder indicate that employers throughout the country and in the State of New Jersey are trying new methods to preserve employee benefits while containing rapidly increasing health insurance premiums.

The Borough experienced a premium increase of 9.9% (Traditional Plan) and 10% (NJ Plus) effective January 1, 2005. The CPI-W for 2004 (New York-Northern New Jersey-Long Island) was only 3.4%. Unquestionably, health insurance premium increases are a serious problem for both the Borough and the business community in general. It is important to highlight some of these surveys and findings (see B-3):

The Borough provided the following data and findings from various national organizations:

Mercer National Survey of Employer-Sponsored Health Plans:

Mercer's survey uses a national probability sample of public and private employers. Results are weighted to represent all employers in the United States with ten or more employees that offer health care benefits. The survey is conducted July through September of every year. According to the 2003 survey, the average total health benefit cost per employee rose 10.1% in 2003, with employers anticipating an average increase of 13% in 2004.

Kaiser/HRET 2004 Annual Employer Health Benefits Survey:

The Henry J. Kaiser Family Foundation is an independent philanthropy focusing on the major health care issues facing the nation. Kaiser and the Health Research and Educational Trust (HRET) conduct an annual survey of employer-sponsored health benefits. The survey is designed to produce nationally representative estimates for firms, workers, and covered workers in workplaces with three or more employees. The survey sample is based on the Dunn & Bradstreet data base of United States employers. The data are analyzed with SUDAAN, which computes appropriate standard error estimates by controlling for the complex design of the survey. All statistical tests are generally performed at the 0.05 level. Two types of significance tests performed are the t-Test and the Chi-square test.

Among the survey's findings:

- Premiums for employment based health insurance increased by 11.2% from spring 2003 to spring 2004.
- Premium increases during the period reported rose at about five times the rate of inflation and workers' earnings.
- 15% of all small firms (3-199 workers) and 52% of all large firms (200 or more workers) report that they are very or somewhat likely to increase the amount that employees pay in the next year. 56% of employers offering health insurance say that they shopped for a new plan in the past year.
- Employees paid approximately 16% of the premium for conventional single plans and 28% of the premium for a conventional family plan in 2003.
"The cost of family health insurance is rapidly approaching the gross earnings of a full-time minimum wage worker," said Drew Altman, President and CEO of the Kaiser Family Foundation. "If these trends continue, workers and employers will find it increasingly difficult to pay for family health coverage and every year the share of Americans who have employer-sponsored health coverage will fall."

International City/County Management Association (ICMA):

The International City/County Management Association (ICMA) is the professional and educational organization for chief appointed managers, administrators, and assistants in cities, towns, counties and regional entities throughout the world. Since 1914, ICMA has provided technical management assistance, training, and information resources to its members and the local government community. The management decisions made by ICMA's nearly 8,000 members affect more than 100 million individuals in thousands of communities - from small towns with populations of a few hundred to metropolitan areas serving several million. (<http://www.icma.org>) *The Health Care Plans for Local Government Employees, 2002* surveys were mailed in fall 2002 and winter 2003 to the Chief Administrative Officers in municipalities with populations 2,500 and over and to the Chief Administrative Officers of counties with populations 2,500 and over. Of the 7,856 municipalities and counties that received surveys, 3,101 responded (39.5%). Approximately 60% of local governments reported that they are likely to or will definitely increase the percent of premiums paid by employees in the next two years. Notably, approximately 55% of employee premium contributions are made by employees who are union members. Survey responses also indicate that 50% or more local government employers are likely to or will definitely increase co-payments and deductibles.

Watson Wyatt:

Watson Wyatt is a global consulting firm focused on human capital and financial management. The company specializes in four areas: employee benefits, human capital strategies, technology solutions, and insurance and financial services.

The Ninth Annual Washington Business Group on Health/Watson Wyatt Survey Report 2004 outlines employers' current health care strategies. Among the survey's findings:

- Fewer employers reported that they are willing or able to absorb health care cost increases. (Decrease from 52% in 2000 to 32% in 2002 to 29% in 2003 to 24% in 2004).
- At the time of the study, employers expected costs to increase by a median of 12% in 2004.

New Jersey Business and Industry Association (NJBIA):

The New Jersey Business and Industry Association (NJBIA) is an employer association comprised of more than 19,500 member companies throughout New Jersey. NJBIA's 2004 Health Benefits Survey was conducted in January 2004. It was mailed to more than 1,500 of the Association's member companies employing two or more people. Respondents included companies of every size from every industry and region of the state. The survey found that the cost of providing employee health benefits soared by 13% for New Jersey employers in 2003, following a 15% increase in 2002. The cost of providing employee health insurance soared by 53% over the past four years - a compound annual rate of 13%. Among the survey's other findings:

- A majority of employers responded to higher costs by requiring employees to pay more.
- 72% of respondents increased their employees' share of premium costs, deductibles, and co-payments.
- Responding employers indicated that they expect their cost of health insurance to rise at double digit rates again in 2004, with an average increase of 11% anticipated.

International Society of Certified Employee Benefit Specialists (ISCEBS):

The International Society of Certified Employee Benefit Specialists (ISCEBS) provides educational resources, information, and networking resources to nearly 4,000 certified employee benefit specialists, group benefits associates, retirement plans associates, and compensation management specialists.

In a 2002 survey of ISCEBS members conducted online, 58% of respondents indicated that they have increased or are considering increasing cost sharing by employees. Only 15.8% of respondents indicated that employees in their organization make no contribution toward their health insurance coverage. Survey respondents indicated that 34% percent contribute between 10% and 20%, and 25% contribute 20% to 30%, and 11% contribute at levels greater than 30%.

In a separate survey conducted in 2003 by ISCEBS jointly with the human capital advisory services practice of Deloitte & Touche LLP, nearly 86% of the respondents identified controlling health and welfare costs as their top priority. For 67% of the employee benefit specialists responding to the survey, the key objective driving benefits program policy and design for 2003 was cost management/reduction. Among the public sector respondents, 88% identify controlling health and welfare costs as their top priority.

UCLA Anderson Forecast:

The UCLA Anderson Forecast conducted an informal survey of human resources managers from a variety of businesses across the United States. The sample of 451 respondents indicates that premiums have been rising faster than the rate of health care inflation. Moreover, the primary way that plans were altered in response to these drastic increases was to pass on at least some portion of the higher premium to the employee through higher co-payments or deductibles or raising personal contribution to premium payments. 41% of respondents indicated that their organization increased premiums on coverage for dependents, 65.5% raised employee contributions for personal premiums and 75.5% raised co-payments or deductibles.

Hewitt Associates Survey 2004:

Hewitt is a global human resources outsourcing and consulting firm. Hewitt's survey, conducted in August and September 2003, of 648 major United States employers (representing over 15 million employees, including government and education employees) revealed that the maximum added annual cost that employers can absorb over the next 5 years is 9%. However, employers expected a 14% increase in 2004, leaving a 5% gap between what employers report they can afford to absorb and what they actually expected. 96% of respondents reported that their CEOs and senior executives are significantly or critically concerned about the rising costs of health benefits.

Hewitt finds that companies are responding to rate increases by passing along part of the increase to their employees. Hewitt predicted that employees' portion of health care premiums would increase to 23% for employee coverage and 27% for dependent coverage in 2004.

The Society for Human Resource Management (SHRM)

The Society for Human Resource Management (SHRM) polled 170 senior human resource professionals to determine the top 10 workplace trends for 2002-2003. The poll requested that respondents rank the relative importance of 83 trends on a scale of 1-5. Rising health care costs was identified as the second most important workplace trend, following the use of technology to communicate with employees. According to Susan Meisinger, SPHR, President and CEO of the Society for Human Resource Management, "Employers won't be able to shoulder the entire burden (of health care costs), and many have already made adjustments in employee co-pays or will in the near future."

In February 2004, the organization e-mailed the Health Care Survey to 2,000 randomly selected SHRM members who were part of the sample. In the end, 1,670 e-mails were successfully delivered, and 373 HR professionals responded. 75% of HR professionals indicated that their organization had changed their health care plan design between 2002 and 2003. These methods include increased co-pays and/or co-insurance (69%), increased amount that plan participants pay for prescription drugs (68%), increased participant costs (65%), and increased deductibles (52%).

National Governor's Association (NGA)

The National Governor's Association (NGA) supports the work of the country's governors by providing a bipartisan forum to help shape and implement national policy and to solve state problems. NGA identifies health care spending as the single most important cost driver for state governments. NGA's Health Policy Studies Division advocates that by taking a lesson from private sector employees, states can adjust state employee health plans and public insurance benefit plans to improve health care quality and reduce costs. Among the range of options to reduce health care costs, NGA advocates that states can reduce costs by limiting benefits, increasing cost sharing, and establishing health plans that limit the employer contribution and reward employees for limiting their health care consumption.

According to the Borough, all of these studies lead to the unavoidable conclusion that health care insurance in the United States and in New Jersey is in a crisis. Employers and employees need to respond together to the crisis in a way that recognizes the exorbitant cost of such benefits to employers while also recognizing that health insurance is an important employee benefit that needs to be preserved even if employees must contribute a share of premiums.

The Borough submits that there is no question that public employees in the future will be required to share the burden of health insurance costs. This will be in the form of premium cost sharing or some other method such as the Borough's proposal. This is the growing reality in New Jersey, no doubt hinged to the realization that public employees have successfully avoided paying their fair share of health insurance costs for far too long. The Borough asserts that its health care proposal is reasonable and should be awarded.

Term of Agreement

The Borough submits that the particular circumstances presented by this case do not support the PBA's proposal for a four-year contract. Harmony in labor relations will not suffer if the contract expires December 31, 2006. The Borough contends that the PBA has not made any showing that labor relations have suffered or will suffer in the future. It is likely that the arbitrator will render an opinion and award in this matter some time between July and September 2005. Therefore, it will be approximately 16 months before the new contract expires. The Borough submits that this is a reasonable period of time for the parties to administer the new contract and prepare for successor negotiations.

Borough's Non-Economic Proposals

The Borough asserts that it is seeking to eliminate inconsistencies. For example the existing language of Article V conflicts with the language contained in Article XXXV. One

article provides that the parties are not required to enter into negotiations during the term of the contract but the other article requires mid-term negotiations.

Article VII purports to be a management rights clause but upon closer reading one finds language that seems to require maintenance of standards. The Borough proposes new language that very clearly sets forth management's rights.

Borough's Rebuttal To PBA's Positions

The Borough cites Detective Lieutenant Thomas Rowe's testimony concerning purported changes in workloads and activity since January 1, 2000. The Borough contends that Rowe's testimony simply confirms that Borough police officers are doing the things that police officers are routinely required to do by virtue of being police officers. The Borough submits that it has not expanded the "police officer" job description. According to the Borough, many "new programs" can be characterized as personal enrichments for police officers:

- A. We started the Senior Citizens Project Care Program . . .
- Q. Was there a DARE program here?
- A. Yes.
- Q. And there's DARE programs elsewhere as well?
- A. It's not obligatory. We do it because it's a good service.
- Q. What types of new activities in that time frame [2000 forward] have been made available or undertaken?
- A. We started a child seat safety program . . .
- A. We have a domestic violence vice response team this department started and other departments joined . . .
- A. We have an identity theft victims assistance program . . .
- A. We have a program where the drinking awareness in schools, we have officers that go in the school to give the seniors a seminars, information session around prom time so they don't drink and drive . . .

- A. We had a program started Project Safe and Sound recently specifically for Alzheimer or other elderly residents that suffer dementia or other diseases or disorders that would a lot of times they leave home, they can register with us, give us a picture so we can track them down easily . . .
- A. We also have Halloween Safety Night programs. We go to the school and talk to the kids in town. One officer started like a glow stick program to give glow sticks so the kids are visible crossing the street. (Tr. 25-32).

The Borough characterizes these programs as personal enrichments similar to other law enforcement enrichments such as requesting assignment to a bike patrol or assignment to a K-9 unit. Rowe also testified that police officer productivity can be measured by DWI arrests. Rowe stated that the Police Department effectuated 100 DWI arrests as of December 10, 2004, but there may be a holiday spike (there were 120 DWI arrests in 2003 apparently over a complete 12- month period). Assuming that officers will have reached 120 DWI arrests in 2004, this averages out to approximately one DWI arrest every three days.

The number of summonses also purportedly increased in 2004. The Borough notes that B-1 shows that a substantial number of summonses were issued by two persons who are not members of the bargaining unit. Eduardo Millan, an EMT/Traffic Officer employed by the Borough, issued 958 of the summonses (up to October 2004). Special Officer Steve Oxnard issued 684 motor vehicle summonses. Exhibit B-1 suggests that Special Officer Oxnard issued an additional thirty-nine code enforcement related summonses. In October 2004 for example, Oxnard and Millan issued 118 of the 462 summonses for the month. A comparison of the productivity of Oxnard and Millan to PBA members reveals that, on average, each police officer issued 20.6 summonses in October. Oxnard issued fifty while Millan issued 68. The next highest number of summonses was issued by Officer Mikatarian (39).

The Borough notes that Rowe testified regarding his understanding of the "department roster." According to Rowe's testimony and P-1, the Leonia Police Department consists of nineteen total police officers including seven superior officers holding the rank

of sergeant, lieutenant, captain or chief. This is a ratio of one supervisor for every 2.7 rank-and-file officers. Except for the chief and both captains the sixteen remaining officers are a part of the PBA bargaining unit.

Rowe testified that officers' Tamagny, Jones and Garris hold "acting sergeant" status but are not eligible for any additional compensation. Rowe contended that whenever a rank-and-file officer is designated to be an acting sergeant there is "additional responsibility."

Rowe's specific testimony:

- Q. And when one is in such capacity, what types of additional responsibilities, as you related or mentioned, exist?
- A. Tremendous responsibility. You have to know all the Attorney General's guidelines, you have to know state case law. You have to make instantaneous decisions that regard life and you have to know what you're doing.
- Q. How is th supervisor's obligation different than the officer who is non-supervisory at that time?
- A. He's in charge of the tour.
- Q. Is there a level of responsibility?
- A. Much higher level of responsibility." (Tr. at 10).

Rowe stated that the acting supervisor decides if and when to call off motor vehicle pursuits, activates SPEN when necessary, assists other departments when a motor vehicle pursuit enters Leonia, decides the custody of detainees, contacts the Prosecutor's Office or county police, resolves personnel issues and routine issues that arise during a given shift. (Tr. at 11-12).

The Borough cites Rowe's testimony, during cross-examination, that most of those decisions are regularly made by non-supervisors as well:

- Q. These are things that the officers in this department, again, especially all except one being college educated, presumably intelligent, make them every day of the week?

A. Yes.

Q. Whether or not you get paid for it as being a supervisor or not?

A. Yes. (Tr. at 67).

The Borough respectfully submits that so-called "acting sergeants" are not entitled to any form of premium pay or differential. The work that is allegedly performed and the decisions that are allegedly made by "acting sergeants" were admitted by Rowe to be no different than the work and decisions of rank-and-file officers.

Rowe compared the most recent roster with the number of police officers employed as of 1990 and concluded that the Police Department is presently comprised of two less officers. (Tr. at 17-18). The argument is that the existing nineteen officers are doing the work that twenty-one officers had done and wages should be adjusted accordingly. In addition, Rowe testified that three other police officers left the Leonia Police Department to work for other law enforcement agencies. In terms of "continuity and stability of employment," the Borough submits that the reasons those officers left the Leonia Police Department was not put on the record. Therefore, in the absence of testimony from those officers it is anybody's guess why those officers may have sought other employment. There was no testimony whether those officers left for reasons related to compensation, health insurance, and longevity benefits or left for opportunities for advancement that are not available within the Leonia Police Department.

The Borough asserts that the PBA's reduced work force argument is also flawed because a reasonable argument can be made that improvements in technology since 1990 have streamlined law enforcement. Arguably, the Police Department may have been overstaffed with 21 officers. If one accepts the PBA's contention that productivity has increased, it adds little punch to the PBA's argument that the Borough should hire more police officers or pay existing officers more. The job is getting done.

In addition, with the aid of computers and other technologically advanced equipment police officers today can accomplish more during a routine tour of duty than they could fifteen years ago. As technology advances even further and more quickly, we will likely find that in the coming years law enforcement will be very different than it is today. Perhaps surveillance cameras positioned strategically throughout a city or borough will replace patrol cars. Police reports could be generated in a matter of minutes by voice recognition software rather than having to be manually typed. When these things happen the employer should not be penalized by the collective bargaining process because of the efficiency and cost savings it achieves by incorporating technology into law enforcement operations.

The Borough contends that a system that depends on employees and employers submitting wages from supposedly comparable jurisdictions is seriously flawed. Employees will naturally offer jurisdictions where wages and benefits support their proposals and employers will challenge those jurisdictions either on grounds that they lack comparability or will offer jurisdictions where wages and benefits support the Borough's proposals. What such a system does is draw arbitrators to some artificial middle ground that bears no true relationship to the situation prevailing in a particular town such as Leonia.

Conclusion

The Township submits that on balance, the independent parts as well as the totality of its proposal is more reasonable than the PBA's proposal. The interests and welfare of the public must include not only the public's need for a productive police force, but also the Borough's interest in limiting the costs of its police force so that all other Borough services may be preserved while at the same time maintaining the tax rate as low as possible. To be sure, the municipal CAP law puts a stranglehold on municipal government. The Borough

submits that its proposal achieves the necessary balance by proposing reasonable 3% annual wage increases and the elimination of longevity for new hires after January 1, 2004.

Despite rapidly increasing costs, the Borough continues to provide its police officers and their families with comprehensive medical, dental and prescription benefits. The Borough seeks to implement a limited premium cost sharing proposal on dependent benefits. This is the norm in the private sector and is a growing trend in the public sector. Furthermore, it is possible to maintain the high level of medical coverage presently provided while at the same time implementing cost containment measures that ensure that employees and retirees will continue to be covered.

The Borough notes that Lieutenant Rowe's testimony confirms that the Leonia Police Department is a well-trained, well-equipped professional workforce. Leonia police officers are highly regarded by their peers in other departments. Moreover, the Borough notes Rowe's testimony that the Leonia Police Department well serves the interest and welfare of the public and that it is the best in the state. The Borough does not disagree. However, the Borough submits that the police officers are well paid for their efforts and they will continue to enjoy the above average compensation and benefits that they currently receive.

The Borough requests, based upon the testimony and evidence in the record and the arguments set forth in its brief, that I award its last offer.

Discussion and Analysis

The parties presented testimony and more than 200 documentary exhibits totaling thousands of pages in support of their last offers. I am required to make 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 as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the 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 arguments regarding the statutory criteria primarily to its own last offer and to the last offer of the other party. I shall not do so because, in this conventional proceeding, the terms of the award will be the reference point rather than the parties' last offers. Conventional arbitration is a more flexible process which grants the arbitrator broad authority to fashion the terms of an award based on the evidence without the constraint of selecting any aspect of a final offer submitted by the parties. The prior statute required the selection of 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 showing a need for such change. I shall apply this principle to all new proposals.

I shall award a four-year agreement. The duration of the new four-year agreement shall be January 1, 2004 to December 31, 2007.

I shall award the following salary increases:

- a. 4% across-the-board salary increase effective January 1 of 2004.
- b. 4% across-the-board salary increase effective January 1 of 2005.
- c. 4% across-the-board salary increase effective January 1 of 2006.
- d. 4% across-the-board salary increase effective January 1 of 2007.

I shall award a modification in the health care plan by requiring all employees to make a contribution to the cost of dependent health care premiums. I shall set the contribution at 10% of the dependent health care costs. This modification shall not be effective until the Borough has satisfied the uniformity requirements of the SHBP. N.J.A.C. 17:9-5.4, requires that SHBP employers electing to pay any portion of the cost of dependent coverage pay the same proportion of the cost of such dependent coverage for all employees covered in the program. Thus, the 10% contribution shall not take effect until the Borough has met the uniformity requirements of the SHBP. The Borough shall adopt a Section 125 Plan to allow employee contributions on a pre-tax basis.

I shall award out-of-title language to provide that patrol officers shall receive payment when assigned to the duties of a sergeant. When a police officer is assigned by the Chief or his designee to perform the duties of a Sergeant for ten (10) consecutive days or more, the officer shall receive the pay of the Sergeant commencing with the first day of such assignment. This shall be effective September 1, 2005. All other proposals of the Borough and the PBA are denied.

Cost of Salary Proposals

The current bargaining unit (at the close of the record) includes twelve Police Officers, three Sergeants and one Lieutenant. The total base pay is \$1,185,414 (includes \$5,656 in differential). The base salary includes holiday pay but does not include longevity payments.

The calculations of the parties' last offers do not include incremental step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. Neither party included the incremental costs in their last offers. Historically, incremental costs have not been factored in by the parties. These incremental costs fluctuate depending on the amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer's average salary costs down because senior officers are replaced by entry level officers making in some cases less than 50% of the maximum step officer's salary.

Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. Calculations for 2004, 2005, 2006 and 2007 do not include the cost of increments.

2004

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2004. The cost of the 5% increase in 2004 (excluding increments) is \$59,271. The total cost of the PBA's proposed salary increase in 2004 is \$1,244,685.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2004. The cost of the 3% increase in 2004 (excluding increments) is \$35,562. The total cost of the Borough's proposed salary increase in 2004 is \$1,220,976.

I awarded a 4% across-the-board salary increase effective January 1, 2004. The cost of the 4% salary increase in 2004 (excluding increments) is \$47,417. The total cost of my award in 2004 is \$1,232,831. The cost of the awarded salary increases in 2004 is \$11,854 less than the PBA's 2004 salary proposal and \$11,855 more than the Borough's 2004 salary proposal.

2005

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2005. The cost of the 5% salary increase in 2005 (excluding increments) is \$62,234. The total cost of the PBA's proposed salary increase in 2005 is \$1,306,919.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2005. The cost of the 3% salary increase in 2005 (excluding increments) is \$36,629. The total cost of the Borough's proposed salary increase in 2005 is \$1,257,605.

I awarded a 4% across-the-board salary increase effective January 1, 2005. The cost of the 4% salary increase in 2005 (excluding increments) is \$49,313. The total cost of my award in 2005 is \$1,282,144. The cost of the awarded salary increases in 2004 is \$12,921 less than the PBA's 2005 salary proposal and \$12,684 more than the Borough's 2005 salary proposal.

2006

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2006. The cost of the 5% salary increase in 2006 (excluding increments) is \$65,346. The total cost of the PBA's proposed salary increase in 2006 is \$1,372,265.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2006. The cost of the 3% salary increase in 2006 (excluding increments) is \$37,728. The total cost of the Borough's proposed salary increase in 2006 is \$1,295,333.

I awarded a 4% across-the-board salary increase effective January 1, 2006. The cost of the 4% salary increase in 2006 is \$51,286. The total cost of my award in 2006 is \$1,333,430. The cost of the awarded salary increases in 2006 is \$14,060 less than the PBA's 2006 salary proposal and \$13,558 more than the Borough's 2006 salary proposal.

2007

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2007. The cost of the 5% salary increase in 2007 (excluding increments) is \$68,613. The total cost of the PBA's proposed salary increase in 2007 is \$1,440,878.

The Borough proposed a three-year agreement. I awarded a four-year agreement. The Borough did not make a salary proposal in 2007. For calculation purposes only, I have assumed that the Borough proposed an additional 3% across-the-board salary increase to be effective January 1, 2007. The cost of the assumed 3% salary increase in 2007 (excluding increments) would be \$38,860. The total cost of the Borough's 3% salary proposal in 2007 is \$1,334,193. I awarded a 4% across-the-board salary increase effective January 1, 2007. The cost of the 4% salary increase in 2007 is \$53,337. The total cost of my award in 2007 is \$1,386,767. The cost of the awarded salary increases in 2007 is \$15,276 less than the PBA's 2007 salary proposal and \$14,477 more than the Borough's 2007 salary proposal.

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 consider this 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 Township to exceed its authority under the CAP law. The award can be funded without the Township exceeding its spending authority.

The interests and welfare of the public require the arbitrator to balance many 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 increases in compensation to be received by a Police Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an 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.)

I shall discuss the open issues with respect to the interests and welfare of the public factor.

Term of Agreement

The Borough proposed a three-year agreement commencing on January 1, 2004 and continuing to December 31, 2006. The PBA proposed a four-year agreement commencing on January 1, 2004 and continuing to December 31, 2007.

I shall award a four-year agreement to commence on January 1, 2004 and continuing to December 31, 2007. A four-year Agreement will provide the Borough with continued stability in the financial and operational management of the department. It will also promote a more harmonious bargaining relationship with attendant improvements in morale and productivity. I note that the predecessor agreement between the PBA and the Borough was a four-year agreement (January 1, 2000 to December 31, 2003) and the Borough's current agreement with its blue-collar bargaining unit is a five-year agreement (January 1, 2003 to December 31, 2007). This is supportive of a four-year agreement.

I conclude that a four-year agreement is consistent with the requirements of the interests and welfare of the public criterion. The award of a three-year agreement that expires on December 31, 2006 would require the parties to commence negotiations approximately a year after the completion of the current round of negotiations and interest arbitration. Negotiations and interest arbitration are time consuming and expensive and can often distract the parties from their mutual obligations to provide efficient and effective police services to the Borough's residents. The current negotiations commenced more than two years ago. Protracted negotiations are not in the best interests of the parties nor are they in the best interests of the public. The parties need a hiatus from the time and expense of bargaining and interest arbitration.

Accordingly, I shall award a four-year agreement to be effective January 1, 2004 through December 31, 2007.

Salary

The Borough proposed a 3% annual across-the-board salary increase in 2004, 2005 and 2006 whereas the PBA seeks a 5% annual across-the-board salary increases in 2004, 2005, 2006 and 2007. The Borough contends that the PBA's salary proposal is substantially more than the reported average of salary increases for all interest arbitration awards and the reported average of salary increases for all reported voluntary settlements. I agree with the Borough's contention that the PBA's last offer substantially exceeds the reported average salary increases for police officers. However, I find that the Borough's salary proposal is substantially less than the reported average of salary increases for all interest arbitration awards and the reported average of salary increases for all reported voluntary settlements and the evidence in the record.

The Borough's reliance on the average increases in voluntary settlements and awards in interest arbitration matters as reported by PERC is an accurate barometer of statewide salary data. The PERC data shows that the average salary increase in 2004 for awards issued in 2004 was 4.05% and the average salary increase in 2004 for voluntary settlements was 3.91%. The PERC data shows similar results in 2002 and 2003. The 2003 PERC data shows that the average salary increase in 2003 for awards issued in 2004 was 3.82% and the average salary increase in 2004 for voluntary settlements was 4.01%. The 2002 PERC data shows that the average salary increase in 2002 for awards issued in 2002 was 3.83% and the average salary increase in 2002 for voluntary settlements was 4.05%. The PERC salary data is not supportive of the PBA's last offer nor is it supportive of the Borough's last offer. The PERC salary data is more consistent with the terms of my award providing for annual 4% salary increases.

The PBA submitted an analysis of salary data in the record in Chart 3. Chart 3 includes annual salary increases in 2004, 2005, 2006 and 2007. This salary data includes twenty-four contracts in twenty-two Bergen County municipalities. The PBA contends that this salary data is supportive of its proposed 5% annual salary increases. A review of the salary data in Chart 3 (See page 15 of award) shows that the average salary increase in 2004 is 4.15%; the average salary increase in 2005 is 4.15%; the average salary increase in 2006 is 4.11%; and the average salary increase in 2007 is 4.2%. This salary data is not supportive of the PBA's last offer nor is it supportive of the Borough's last offer. The PBA's salary data is more consistent with the terms of the award providing for annual 4% salary increases.

The above salary data is consistent with the terms of my award providing for annual 4% salary increases.

In summary, I find that the interests and welfare of the public require a stable and experienced police force and that the terms of my award on salary will maintain the Borough's ability to recruit and retain qualified and experienced police officers consistent with the requirements of this factor.

**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. It is well established that there are no easily identified private sector police officers who perform services similar to those performed by Borough police officers. Neither party submitted salary data on this sub-factor since none exists. A police officer position is a uniquely public sector position that does not lend itself to private sector comparisons. I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement. (See excerpt on page 27-28 of this Award). There is no data in the record to evaluate the comparison to other employees performing the same or similar services in private employment. I have given this sub-factor no weight.

The second part of this sub-factor requires a comparison with other employees generally in private employment. Neither party emphasized private sector comparisons. The parties did not submit extensive data on this sub-factor. The Borough submitted the

September 8, 2004-NJDOL report of private sector wage changes showing a 3.2% increase in Bergen County between 2002 and 2003. (B-5).

A review of current United States Department of Labor, Bureau of Labor Statistics ("BLS") data shows that total compensation in private industry increased by 4% in 2003, 3.8% in 2004 and 3.2% through the first two quarters of 2005. A review of current United States Department of Labor, Bureau of Labor Statistics ("BLS") data shows that total compensation in the civilian workforce increased by 3.8% in 2003, 3.7% in 2004 and 3.2% through the first two quarters of 2005. In addition, the BLS reported that the Employment Cost Index ("ECI") for the northeast region of the United States increased by 3.5% for the year ending March 2005.

The current data on average salary increases in private sector employment in general shows that the PBA's proposed salary increases substantially exceed average salary increases in the private sector generally. The Township's proposed salary increases, while more in line than the PBA, are below average increases in the private sector generally. I find that my award, while somewhat higher than private sector settlements in general, is acceptable when measured against the totality of the terms of the award. This sub-factor, as evidenced by the limited evidence submitted by the parties, is not entitled to significant weight.

The next comparison is with public employees in general. Neither party submitted salary data on public employees in general. I have served as a mediator or fact-finder in many cases involving other public sector employees; i.e., school district employees and non-police municipal and county employees. I am aware of settlement data published by the New Jersey Education Association and the New Jersey School Board Association. A review of this data shows that the average annual salary increases in public employment in general are below the salary increases proposed by the PBA and above the salary increases proposed by

the Borough and more closely approximate the awarded salary increases. This sub-factor is supportive of the awarded salary increases.

I shall now address internal comparability with other Borough employees. The Borough contends that its salary proposal is on par with the salary increases recently agreed to with its white collar and blue collar bargaining units. According to the Borough, the white collar unit received a salary increase of 11% in the first three years of a four-year contract and the blue collar bargaining unit received a wage increase of 10.5% over three years (2004-2006).

The PBA, citing the testimony of the Borough Administrator Miragliotta, contends that the Borough's police dispatchers received an annual increase of 3.5% with an additional \$1,000 annual equity adjustment, which is nearly double what the Borough is offering its police officers. According to Miragliotta, this equity adjustment was applicable to three of the dispatchers with more than eight years of service, in three of the four years of the CBA. (Tr. at 105-106). This "equity adjustment" is worth approximately 3% for three dispatchers. (B-22 at 18).

The Borough's settlement with its white collar unit averages 3.66%. The settlement with the blue-collar unit averages 3.5%. The settlement with the dispatchers averages 3.66% for those dispatchers who did not receive an equity adjustment and 6.66% for those dispatchers who received an equity adjustment in three of the four years of the new CBA and 3.66% in the fourth year for an average of 5.91%. The internal settlement data is significantly below the PBA's last offer (with the exception of the dispatchers) and between .5% and .66% annually above the Borough's last offer to the PBA for the white collar and blue collar units. I find that internal comparability is somewhat below the awarded salary increases.

The next sub-factor calls for comparisons of the wages, hours and conditions of employment of employees performing the same or similar services in the same or similar comparable jurisdictions. These comparisons are made to police officers in the same or similar jurisdictions.

As I discussed under the *interests and welfare of the public criterion*, the Borough relied on the average increases in voluntary settlements and awards in interest arbitration matters as reported by PERC and the PBA relied on the data on average salary increases in Bergen County.

The PERC data shows that the average salary increase in 2004 for awards issued in 2004 was 4.05% and the average salary increase in 2004 for voluntary settlements was 3.91%. The 2003 PERC data shows that the average salary increase in 2003 for awards issued in 2003 was 3.82% and the average salary increase in 2003 for voluntary settlements was 4.01%. The 2002 PERC data shows that the average salary increase in 2002 for awards issued in 2002 was 3.83% and the average salary increase in 2002 for voluntary settlements was 4.05%.

The PBA data shows the average salary increases in certain Bergen County municipalities from 2004 to 2007. The average salary increase in 2004 is 4.15%; the average salary increase in 2005 is 4.15%; the average salary increase in 2006 is 4.11%; and the average salary increase in 2007 is 4.2%. I found that the PERC salary data is not supportive of the PBA's last offer nor is it supportive of the Borough's last offer. I also found that the Bergen County salary data is not supportive of the PBA's last offer nor is it supportive of the Borough's last offer.

The terms of my award are consistent with the sub-factor requiring comparisons of the wages, hours and conditions of employment of employees performing the same services in similar comparable jurisdictions. Both the PERC salary data cited by the Borough and the Bergen County salary data cited by the PBA are consistent with the terms of my award providing for annual 4% salary increases.

All of the above salary data is consistent with the terms of my award providing for annual 4% salary increases. This sub-factor is entitled to great weight. I find that the external comparability data detailing salary increases in other municipalities in Bergen County and throughout the State is the most relevant factor in this proceeding. After all, this is salary data for all other police officers in Bergen County. This data shows that the average settlement in Bergen County is slightly above the awarded 4% salary increases in 2004, 2005, 2006 and 2007. I note that the external Bergen County comparability data is in line with my experience throughout the State. This data is also consistent with the summary data provided by PERC on the average salary increases achieved by the parties voluntarily and by award.

Accordingly, in consideration of the above analysis, I shall award annual salary increases of 4% in 2004, 2005, 2006 and 2007. These salary increases shall be across-the-board and fully retroactive.

Other Issues

I shall now address the other issues. 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. I shall apply that principle in my analysis of each of the issues in dispute. While I am required to evaluate the merits of the disputed issues

individually, I am guided by criterion N.J.S.A. 34:13A-16(8) that directs the consideration of factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. An element that must be considered is the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under all of the criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award.

Longevity

The Borough's proposal essentially changes the current longevity from a percentage-based formula to a flat dollar formula for current police officers hired before January 1, 2004 and the elimination of all longevity benefits for police officers hired after January 1, 2004. The Borough's proposal also postpones the implementation of the first longevity payment until an officer reaches the maximum step on the salary schedule.

The Borough maintains that longevity was an appropriate benefit when public employees received lower salaries and was needed to recruit and retain employees. The Borough contends that longevity is no longer necessary given the substantial increases in police officer salaries. The Borough contends that police officers receive salaries that are comparable to private sector employees and they also receive longevity and that such payment is no longer necessary.

The Borough contends that there is the beginning of a trend showing that public employers are eliminating longevity for future hires while preserving the longevity benefit for existing employees. The Borough further contends that other public employers have

sought to eliminate or reduce longevity for existing employees. The Borough's calculations show that a police officer with a 6% longevity payment received \$5,261 in 2003, and would receive \$5,418 in 2004, \$5,581 in 2005, and \$5,748 in 2006.

The Borough submits that its proposal for a flat dollar formula reduces longevity benefits for current officers consistent with its position that police officer salaries are now more competitive and that longevity is no longer necessary to recruit and retain police officers.

The Borough asserts that a two-tiered longevity schedule is not a new concept in Bergen County noting that longevity was eliminated prospectively in Hillsdale, Old Tappan, Hackensack, and Wallington; Closter, Edgewater, Little Ferry, Northvale and Paramus have adopted two-tiered schedules; and Franklin Lakes and Midland make no provision in their collective bargaining agreements for longevity. The Borough cited the following interest arbitration awards detailing modifications in longevity benefits:

- IA-2004-100 (Weisblatt) Livingston Twp. and PBA Local 263
- IA-2004-019 (Restaino) Bordentown Twp. and Bordentown Twp. Police Officers Association
- IA-2002-027(19) (Mastriani) City of Passaic and Passaic Firefighters Ass'n
- IA-2004-022(2) (Tener) Jackson Twp. and PBA Local 168

The Borough notes that white collar bargaining unit employees hired after January 1, 1996 do not receive longevity. The Borough further notes that longevity payments were frozen at their December 31, 1999 levels with no additional movement to higher longevity payments. In addition, the Borough notes that longevity was eliminated for all blue collar employees hired after July 1, 1995 and that employees hired before July 1, 1995 have their longevity frozen at 50% of the benefit up to a maximum of 4%. Except for two "grandfathered" employees none of the non-union employees receive longevity.

The PBA is opposed to any changes in the current longevity schedule and asserts that the Borough has not submitted sufficient proof to justify its proposed reduction of benefits for current employees and the total elimination of the benefit for employees hired after January 1, 2004.

The evidence in the record does not support the Borough's longevity proposal. The Borough contends that there is the beginning of a trend that public employers are eliminating longevity for future hires while preserving the longevity benefit for existing employees. The Borough cites evidence of such trend by referring to selected communities in Bergen County cited by the Borough of Allendale in an interest matter in which I issued an award in 2003. (B-7, Exhibit 1).

In the *Allendale* matter the Borough also sought changes in an existing longevity program. The Borough of Allendale's reliance on selected communities was found to be insufficient justification for a change in an existing benefit. As stated at the outset, 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 showing a need for such change. The Borough of Leonia has not met its burden of showing a need for such change.

As I stated in *Allendale*, a comparison to other Bergen County communities shows that a small number of communities have modified longevity to provide for two-tier longevity systems or for its elimination. The record in Allendale, as in Leonia, does not include evidence about whether there was an incentive to either eliminate longevity or agree two-tier longevity systems. Wallington is one town cited by the Borough. I served as the arbitrator in Wallington when longevity was first reduced for new hires. The "trade-off" for that reduction in longevity for new hires was to dramatically increase the longevity for the

current employees. Many of these jurisdictions that achieved two-tiered systems or eliminated longevity provided financial incentives for such modifications. In other words, there was a "trade-off" or financial incentive to agree to a modified longevity schedule. No such "trade-off" of financial incentive is being offered by the Borough. Comparability with police officers in other Bergen County communities favors a continuation of the current longevity benefits for current employees and prospective employees.

As I noted in the *Allendale* decision, the longevity issue was submitted to Arbitrator James Mastriani who decided the terms of the 1999-2001 CBA. Arbitrator Mastriani denied the Borough's proposal to eliminate longevity for prospective employees. He stated that "the elimination of longevity for new hires would substantially reduce compensation for new hires after several years of service" and "the small size of the Department would yield little in the way of savings and any savings must be weighed against the adverse effects that a dual compensation system might yield between employees who must work together on behalf of the public's welfare and safety."

I agree with Arbitrator Mastriani's reasoning. The Borough's proposal regarding new hires will yield no savings over the term of the new CBA. The changing of the formula for current officers will provide insignificant savings and the potential savings from a two-tiered system will not begin for several years after the expiration of the CBA in 2008. There are simply no financial issues that warrant this change.

In addition, the implementation of a two-tiered system has the potential for reducing the Borough's ability to recruit and retain qualified and experienced police officers. By all accounts, the Leonia police department is an excellent department with high productivity. The Borough acknowledged in its brief that the police department is a well-trained, well-equipped professional workforce. The police officers are well-educated with all officers

holding a BA degree and with two officers also holding a Master's Degree. The Borough's ability to recruit and retain its officers is directly related to the compensation package received by the Borough's police officers. The longevity compensation is an integral part of compensation and a reduction in the current compensation package will undermine the Borough's ability to recruit and retain experienced and well-educated police officers. Eliminating longevity will make other communities more attractive to newly hired officers creating the potential for turnover. As I stated in *Allendale*, turnover is expensive. More important, turnover produces a less experienced police officer which jeopardizes the Borough's ability to continue to provide high quality police services. The Borough did not establish that there is a trend in Bergen County to eliminate longevity. No such trend exists.

For all of the above reasons, I find that the Borough did not meet its burden to justify a change in the current longevity benefit and it is hereby denied. I have given considerable weight to both the continuity and stability of employment factor and comparison of the wages of Borough police officers to the wages of police officers in similar jurisdictions.

Health Insurance

The Borough is proposing major changes in the current health insurance benefits received by police officers. The Borough is seeking the following changes:

1. The Borough will continue to pay the full cost of the premium for employees but only 80% of the premium for dependent coverage.
2. Should the Borough leave the State Health Benefits Program, then additionally: Employees hired on or after January 1st of that year shall no longer be eligible for enrollment in a Traditional Plan. Employees hired before January 1st of that year, who elect coverage in a Traditional Plan shall pay the difference between the cost of the premium for the Traditional Plan and the cost of the premium for a Managed Care/Point of Service Plan offered by the same insurer.
3. Coordination of Benefits. If a husband and wife are both eligible for coverage under the Program as employees: (A.) Each may elect single coverage in one of the Plans, provided that he or she is not covered under a Plan as a

dependent of his or her spouse. (B.) Each qualified dependent is eligible for coverage under one parent only.

4. The Borough may, at its option, withdraw from the State Health Benefits Program so long as in the aggregate substantially similar benefits are thereafter provided by a new health insurance carrier or program or through the Borough's option to self-insure itself.
5. In the event that any of the Borough's health care benefits proposals may not, in accordance with State law or rules that regulate the State Health Benefits Program, take effect unless and until the Borough's proposal(s) are applied to other Borough employees then, under such circumstances, the Borough proposes language that conditions a particular proposal's implementation to the date on which the proposal is implemented among all, or part, of the Borough's workforce as may be required by the Program.
6. Retiree Health Benefits. The Borough's proposal preserves retiree health benefits but plugs holes in benefits administration that have developed over the years. Also, the Borough proposes a cost containment plan that protects health benefits for retirees while passing the costs for the coverage along to a retiree's new employer (that is, if the retiree reenters the workforce) where substantially similar health benefits are provided.

The Borough asserts that its health insurance proposal reflects the prevailing practice in the workplace. According to the Borough, premium cost sharing is common in the private sector and is becoming more common in the public sector. The Borough cites the current CBA between the State of New Jersey and CWA. Effective July 1, 2003, new hires are not eligible for enrollment in the Traditional Plan and employees hired prior to July 1, 2003 who elect coverage in the Traditional Plan pay 25% of the cost of the premium of that Plan. In addition, employees who elect coverage in an approved HMO Plan must pay 5% of the cost of the premium of that Plan.

The Borough cited eleven cases in which interest arbitrators have either issued awards (or mediated settlements) that include modifications in health care plans requiring employees to pay the difference between a base plan and the more costly Traditional Plan, or the difference between single coverage and family coverage, or a portion of the premium. (See p. 51).

The Borough submitted many reports and studies showing that employers throughout the country and in the State of New Jersey are trying new methods to preserve employee benefits while containing rapidly increasing health insurance premiums. (See pp. 52-56). The following are highlights of the findings in the reports and studies:

- The average total health benefit cost rose 10.1% in 2003 (Mercer).
- Premium increases rose at about five times the rate of inflation and workers' earnings; 52% of all large firms (200 or more employees) report likely increase in employee contributions to health care costs; 56% of employers shopped for a new plan in the last year (2003), employees paid approximately 16% of premiums for single plans and 28% of premiums for family plans (Kaiser/HRET);
- 60% of local governments will likely increase the percent of premiums paid by employees in the next two years (2003 & 2004); 55% of employee premium contributions are made by employees who are union members; 50% or more local government employers are likely to increase co-payments and deductibles (ICMA).
- The cost of providing health benefits increased by 13% for New Jersey private sector employers in 2003, following a 15% increase in 2002; the cost of providing health insurance increased by 53% over the past four years (2000-2003); 72% of respondents increased their employees' share of premium costs, deductibles, and co-payments (NJBIA).
- 15.8% of respondents indicated that employees in their organization make no contribution toward their health insurance coverage; 34% contribute between 10% and 20%, 25% contribute between 20% and 30%, and 11% contribute at levels greater than 30% (ISCEBS).
- 41% of respondents reported increased premiums on coverage for dependents; 65.5% raised employee contributions and 75.5% raised co-payments or deductibles (UCLA).
- 75% of HR professionals reported that their organization changed their health care design between 2002 and 2003 with 69% reporting increased co-pays and/or co-insurance, 68% reported increased co-payments for prescription drugs, 65% reported increased participant costs and 52% reported increased deductibles (SHRM).
- The National Governor's Association identified health care spending as the single most important cost driver for state governments and identified a range of options to reduce costs by limiting benefits, increasing cost sharing, and establishing health plans that limit the employer contribution and reward employees for limiting their health care consumption.

The Borough notes that it experienced a premium increase of 9.9% (Traditional Plan) and 10% (NJ Plus) effective January 1, 2005. The CPI-W for 2004 (New York-Northern New Jersey-Long Island) was only 3.4%.

The PBA is opposed to any changes in the current health care benefits provided by the SHBP. The PBA maintains that the Borough has not submitted sufficient evidence to justify a change in the current health care benefits.

The Borough is seeking major changes in the current health care benefits as well as major changes in its obligation should it decide to leave the SHBP and move to another provider. I am not convinced that major changes in the current health benefits are in order at this time. However, a review of the following examples of voluntarily negotiated and awarded health care cost containment measures persuades me that certain changes are justified:

- The current CBAs between the State of New Jersey and CWA provides that effective July 1, 2003, new hires are not eligible for enrollment in the Traditional Plan and employees hired prior to July 1, 2003 who elect coverage in the Traditional Plan pay 25% of the cost of the premium of that Plan. In addition, employees who elect coverage in an approved HMO Plan must pay 5% of the cost of the premium of that Plan. These CBAs cover more than 40,000 state employees.
- The 2004-2008 CBA between the State of New Jersey and the State Troopers Fraternal Association includes a provision stating "effective July 1, 2005, the Traditional Plan shall be closed to all current members of this bargaining unit, including members retiring after said date. Effective immediately, no new hires shall be enrolled in the Traditional Plan."
- The 2003-2007 CBA between the State of New Jersey and the NJ State FOP (Corrections Sergeants) provides that the Traditional Plan shall be closed to all current members of this bargaining unit, including members retiring after said date and effective immediately, no new hires shall be enrolled in the Traditional Plan.
- The 2003 CBA between the State of New Jersey and the NJ State FOP (Corrections Lieutenants) provides that the Traditional Plan shall be closed to all current members of this bargaining unit, including members retiring

after said date and effective immediately, no new hires shall be enrolled in the Traditional Plan.

- The 2003-2006 CBA between the Borough of Freehold and PBA Local 159 provides that officers will contribute \$12.50 per pay period for health insurance in 2004; \$15.00 per pay period for health insurance in 2005; and \$17.50 per pay period for health insurance in 2006.
- The 2003-2006 CBA between the County of Morris and CWA and the six CBAs with its six law enforcement bargaining units provide for bi-weekly contributions to health care premiums ranging from \$14.92 to \$26.73 in 2003; \$17.90 to \$32.08 in 2004; \$21.48 to \$38.50 in 2005; and \$25.78 to \$46.20 in 2006 for family coverage. The bi-weekly contributions for single and parent/child \$10.10 and \$18.98 in 2003 to \$17.45 and \$32.80 in 2006.
- The 2002-2005 CBA between the City of Orange and PBA Local 89 provides that effective January 1, 2004, current employees enrolled in the "Traditional" plan shall pay the difference between the "NJ Plus" plan and the "Traditional" plan for dependent coverage. All employees hired on or after August 4, 2003 who choose the "Traditional" plan shall receive "single only" coverage. If such employees elect "Traditional" coverage beyond "single only" they shall pay the full cost of the dependent coverage. Employee contributions shall be made by mandatory pre-tax contributions.
- The 2002-2004 CBA between the Township of Montclair and FMBA Local 20 provides: "Upon being applicable to all other Township employees, all members of the bargaining unit shall contribute five percent (5%) of the health insurance premium cost associated with coverage they may select for dependents. Employee contributions will be calculated using the premium rates provided by the Township's insurance carriers." The CBA further provides that "in 2004, all members of the bargaining unit will receive an additional quarter of a percent (0.25%) increase effective if and when employee contributions to dependent health insurance premiums are implemented for all Township employees."
- The 2004-2007 CBA between West Milford Township and PBA Local 162 provides that "the Township has the prerogative to eliminate the "Select Plan" upon 100% migration to other Township-provided health plans."
- The 2004-2006 CBA between Point Pleasant Borough and PBA Local 106 provides: "Effective upon ratification, all permanent/full time employees and their dependents shall be provided Horizon Blue Cross/Blue Shield PPO provided and paid for by the Borough for the life of the Agreement. Employees wishing to stay in the Traditional Plan shall be able to do so, however they will be obligated to pay the difference for such coverage through payroll deduction." The trade-off for this change was retiree health insurance benefits with employees paying 20% of the premium costs.

- The 2004-2007 CBA between the City of North Wildwood and PBA Local 59 provides: "Employees hired after January 1, 2004, will have the option of electing health benefits coverage from the City's plans. The plan of the City's choosing shall remain without any premium cost to the eligible employees and their eligible dependents. Should an employee choose one of the other health benefit plans offered by the City, the employee shall pay the cost difference between the free plan and the other plan."
- The 2004-2007 CBA between Randolph Township and FOP Lodge 25 provides: "Effective January 1, 2005, the "Choice Plus 10" shall be the base health insurance plan for all current employees. Employees enrolled in the "Choice 10 Plus" shall receive such plan at no cost to the employee for annual premiums. Effective January 1, 2005, all current employees enrolled in the "Choice Plus 5" or the "Choice Plus" plans shall pay the difference between the cost of the "Choice Plus 10" plan and the cost of the "Choice Plus 5" plan or the cost of the "Choice Plus" plan. Effective January 1, 2005, all new employees shall receive the same level of health benefits as all Township employees hired after 1/1/95 (10% premium sharing in 2005, 20% in 2006). All current employees shall receive a one-time- only cash payment to switch from one of the three (3) Choice Plus plans to the Patriot V plan. The cash incentive shall be equal to 50% of the difference between the cost of the "Choice Plus 10" plan and the cost of the "Patriot V" plan. The three employees currently enrolled in the "Aetna Patriot V" plan shall receive a one-time-only cash incentive payment of \$2,064 if enrolled in the family coverage or an equivalent 50% if enrolled in the H/W, P/C or single coverage."
- The 2003-2007 CBAs between Hamilton Township and PBA Local 66 and th SOA provide: "Police officers hired after the date of this award shall be ineligible for the Traditional Program. Police Officers hired after the date of this Award and their dependents will be covered by the PPO Program without cost to the employee."
- The 2004-2007 CBA between orange Township and Orange Police SOA provides: "Employees promoted into the bargaining unit shall pay the cost of dependent coverage for the 'Traditional' plan. Current employees shall continue to receive 'Traditional' plan at no cost for dependent coverage."
- The 2004-2006 CBA between the City of Milville and PBA Local 213 provides: " Effective January 1, 2005, increases in premiums for health insurance for all coverage except for individual coverage shall be shared by the City and the employee on a 50/50 basis subject to a maximum contribution of \$500 per year."
- The 2004-2007 CBAs between Warren County and PBA Local 331 and FOP Lodge 170 provides: "Health Insurance: Effective July 1, 2005, the bi-weekly contributions shall be as follows:

<u>Contribution Based on 26 Pays</u>	<u>Salary</u>	<u>\$19-\$35K</u>	<u>\$35-60K</u>	<u>\$60-85K</u>	<u>\$85K+</u>
Single	\$5.00	\$11.00	\$17.00	\$23.00	
Parent/Child	\$7.00	\$15.00	\$23.00	\$32.00	
Husband/Wife	\$10.00	\$19.00	\$28.00	\$37.00	
Family	\$12.00	\$24.00	\$35.00	\$47.00	
Parent/Child	\$12.00	\$24.00	\$35.00	\$47.00	

- The 2000-2004 CBAs between the County of Union and all of its civilian and public safety unions provide for monthly contributions ranging from \$10 to \$25. Effective September 1, 2001, new employees shall receive PHS or Blue Choice coverage only. In addition, new employees will contribute \$15 per month for single coverage and \$25 per month for family coverage. The contributions shall be increased by the proportionate annual increase in the plan cost. Employees may opt for a different plan at their own expense.”
- The 2004-2008 CBA between Emerson Borough and PBA Local 206 provides: “Insurance: Effective July 1, 2005 the PBA will move to Patriot V Health Insurance Plan. In exchange for moving to the Patriot V Plan, effective January 1, 2006 all employees shall receive \$4,000 in base and effective January 1, 2007 all employees shall receive \$1,000 addition in base.”
- The 2004-2007 CBA between Marlboro Township and PBA Local 196 provides: “Health Care: Employee contribution to dependent health care premiums shall be 4% annually, not to exceed \$250 annually. This modification shall be effective no sooner than July 1, 2005.”
- The 2005-2007 CBAs between City of Burlington and FOP Lodge 63 and FOP Lodge 63 (SOA) provides: “Increased payroll deduction for all current employees to \$10/week, effective upon the date of the signing of the contract. This will be for prescription coverage and will be for all employees. The City shall pay only for medical, prescription & dental care benefits upon retirement of employees hired after the signature date of this contract.”
- The 2005-2008 CBA between Hopatcong Borough and PBA Local 149 provides: “New Hire Insurance: Employees hired after on or after January 1, 2005, shall be entitled to enroll in the Borough’s Aetna Point of Service group insurance plan (or equivalent as defined herein) with single or dependent coverage at no cost to the employee or in the Borough’s United Health Care Traditional (“Traditional Plan”) group insurance plan (or equivalent as defined herein) with single coverage at no cost to the employee. New hires desiring to cover dependents in the Borough’s Traditional Plan shall be required to pay the Borough, via bi-weekly payroll deduction, for fifty percent (50%) of the difference between the cost of single-level coverage and the cost of applicable family plan.

- The 2005-2007 CBA between Florham Park Borough and PBA Local 78 provides: "Health Care Inc.: Shall be modified at Section 2 by deleting the current percentage formula and replacing same with the following schedule, which shall be fixed without change for the entire contract term. Single PPO 67.57; Pic PPO 101.52 - 101.82; H/W PPO 97.02; and Family PPO150.73. No New Enrolles in Traditional Health Care.
- The 2002-2004 CBA between Montclair Tp & PBA Local 53 provides: "Health Insurance: Commencing January 1, 2003, officers with health insurance coverage for dependents will be required to contribute five (5%) of the dependent health care premiums.
- The 2003-2005 CBA between Camden County & PBA Local 351 (Corrections) provides: Health Care/Prescription Benefits: Article XXVI, Insurance, shall be modified effective no earlier than thirty (30) days from the date of this award. New employees will pay a portion of their health and prescription benefits through payroll deduction according to the following schedule:

<u>Years of Service</u>	<u>Percentage</u>
1	20%
2	20%
3	20%
4	17%
5	17%
6	13%
7	13%
8	10%
9	10%
10	10%
11	10%
12	0%

All deductions are limited to a maximum 5% of an individual's base gross pay. Implement a Section 125 Premium Conversion Plan (pre-tax new employee contributions)

- The 2003-2006 CBAs between East Brunswick Township & PBA Local 145 and FOP Lodge 98 (SOA) provides: "Health Insurance: The health insurance deductibles shall be increased from \$150 for individuals and \$300 for family to \$250 and \$500 respectively. These modifications shall be effective as soon as practicable but no earlier than January 1, 2005."
- The 2003-2006 CBA between Franklin Township and PBA Local 122 provides:

Health Insurance: The Township will provide medical insurance coverage, including pharmaceutical coverage, to full-time employees and eligible dependents in accordance with the following premium cost sharing provisions:

- a. Family Coverage: Each employee shall pay five (5%) percent of the monthly premium charged to the Township;
- b. Husband/Wife: Each employee shall pay five (5%) percent of the monthly premium charged to the Township;
- c. Parent/Child: Each employee shall pay five (5%) percent of the monthly premium charged to the Township; and
- d. Single: Each employee shall pay five (5%) percent of the monthly premium charged to the Township.
- e. The same percentage of premium cost sharing shall be due from employees in the event the Township self-insures. In such event, the Township will calculate a premium equivalent for each of the coverage categories (family, husband/wife, parent/child, and single).
- Borough of Bergenfield and PBA Local 309: Employees contribute \$260 annual toward medical benefits. (P-7, Exhibit 4 at 14).
- “The Ridgewood Plan (POS Plan) will be offered at no charge to employees. The Indemnity Plan will be offered at a cost representing the amount by which the cost of the Indemnity Plan exceeds the cost of the Ridgewood Plan. Such payments shall be deduction from pay.” (P-11, Ex. 29 at 15).
- “The Ridgewood Plan (POS Plan) will be offered at no charge to employees. The Traditional Indemnity Plan will be offered at a cost representing the amount by which the cost of the Indemnity Plan exceeds the cost of the Ridgewood Plan. Such payments shall be deduction from pay.” (P-11, Exhibit 30 at 21).
- “The Borough agrees to pay 85% of the premiums associated with the plan. The employee through payroll deduction divided equally by each pay period will pay the remaining 15%. (P-9, Exhibit 18 at 55).
- “Active members of service who elect the option of dependent dental coverage will pay a surcharge of forty dollars (\$40.00) per month through payroll deductions divided equally by each pay period.” (P-9, Exhibit 18 at 55).
- “In accordance with past practices the employer agrees to contribute 62% and the employee will contribute 38% of the total dental insurance plan premium.” (P-9 at 29).

Most of the above data was gleaned from the synopses of awards and voluntary settlements as reported by PERC. Additional data was gathered from CBAs in the record, mainly Bergen County CBAs. This data does not include the results of numerous contractual

negotiations resolved without the intervention of PERC. I have not included data showing increased co-payments for prescription drugs and office visits. This is a common component of voluntary and arbitrated agreements. As the cost of prescription and health care premiums increased, increases in co-payments for prescription drugs and office visits have become common elements of health care cost containment. This can be described as the "less painful" way of reducing the impact of an employer's continued health care cost increases. Other options include higher out-of-network contributions, increased maximums for major medical co-payments, and increased deductibles for employees and dependents.

In the past, unions have been resistant to both a reduction in plan options (elimination of Traditional Plan) and to premium cost sharing provisions (in any form) for medical insurance. However, evidence in the record shows that this is no longer the case. Tens of thousands of State employees have seen the elimination of the Traditional Plan as well as premium cost sharing provisions. Employees in many counties are now sharing in the cost of health insurance premiums and a significant number of municipalities have negotiated both reduced plan options and health insurance premium cost sharing.

The premium cost sharing agreements include fixed dollar bi-weekly payments (with cap & without cap); obligation to pay the difference between a POS Plan and a Traditional Plan; single only coverage in Traditional Plan with full payment for dependent coverage; elimination of Traditional and limitation to POS Plan only for new hires; cash incentive to switch to lower priced health plan; 50/50 sharing between employer and employee for the increased cost of health insurance premiums (often with cap); bi-weekly contributions based on a salary range; percentage contribution of full cost of health insurance; full payment of dependent coverage in Traditional Plan; employee payment of 50% of annual increase in dependent coverage; declining percentage contribution ranging from 20% upon initial

employment declining to no cost beginning with 13th year of employment; payroll deduction with or without a 125 Plan (allowing pre-tax payments for health care contributions); financial incentives to migrate to lower cost health plans; and employee financial incentives for “opting out” of employer provided health insurance.

Many of these health care concessions have been made voluntarily in the give-and-take of negotiations. These concessions are often made to insure the continuation of the level of benefits and the continuation of the existing network of doctors and hospitals. Salary and health care are often linked in bargaining. Concessions on health care influence the level of salary increases. The total cost of a settlement for an employer includes the increased cost of a negotiated salary increase and the increased cost of employee fringe benefits. It is undisputed that the cost of health insurance and drug prescription coverage is the most significant component of employee benefits. The cost of these health insurance benefits are rising at a much higher rate than inflation and salary increases. Health insurance is a costly fringe benefit that must be considered as part of the cost of employment and part of the overall wage and fringe benefit package of an employee.

Under the statute, health insurance must be treated as an economic item just like salary and longevity. The increased cost of providing this benefit cannot be considered only as an employer obligation but also must be viewed as a continuing fringe benefit to an employee that is more costly to provide. As previously stated, consideration must be given to the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under the statutory criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the entire award.

Accordingly, based on the above data showing extensive modifications in health care cost sharing, I award the following:

- a. I shall award a modification in the health care plan by requiring all employees to make a contribution to the cost of dependent health care premiums. I shall set the contribution at 10% of the dependent health care costs. This shall not be effective until the Borough has satisfied the uniformity requirements of the SHBP. N.J.A.C. 17:9-5.4, requires that SHBP employers electing to pay any portion of the cost of dependent coverage pay the same proportion of the cost of such dependent coverage for all employees covered in the program. Thus, the 10% contribution shall not take effect until the Borough has met the uniformity requirements of the SHBP.
- b. The Borough shall adopt a Section 125 Plan to allow employee contributions on a pre-tax basis.

The following is the current cost of single and dependent coverage for local government employers (without prescription coverage) enrolled in the SHBP:

<u>PLAN</u>	<u>SINGLE</u>	<u>DEPENDENT</u>
<u>NJ PLUS</u>		
Single	\$365.02	
Member/Spouse	\$366.18	\$446.20
Family	\$366.60	\$578.62
Parent/Child	\$365.53	\$173.46
<u>TRADITIONAL</u>		
Single	\$513.76	
Member/Spouse	\$514.93	\$600.40
Family	\$515.34	\$789.85
Parent/Child	\$514.27	\$233.23
<u>AETNA</u>		
Single	\$396.44	
Member/Spouse	\$397.60	\$459.96
Family	\$398.02	\$566.84
Parent/Child	\$396.95	\$146.46
<u>CIGNA HEALTHCARE</u>		
Single	\$454.29	
Member/Spouse	\$455.45	\$520.24
Family	\$455.87	\$668.37
Parent/Child	\$454.80	\$181.99

OXFORD

Single	\$379.37	
Member/Spouse	\$380.53	\$453.99
Family	\$380.95	\$605.31
Parent/Child	\$379.88	\$189.16

AMERIHEALTH

Single	\$461.95	
Member/Spouse	\$463.11	\$564.76
Family	\$463.53	\$733.47
Parent/Child	\$462.46	\$219.48

HEALTH NET

Single	\$462.23	
Member/Spouse	\$463.39	\$543.55
Family	\$463.81	\$758.55
Parent/Child	\$462.74	\$246.39

The above monthly rates will require a monthly contribution ranging from \$17.30 to \$78.98. The actual cost to the employee will be offset by the Borough's adoption of a Section 125 Plan to allow employee contributions on a pre-tax basis. The impact of the 10% premium sharing on dependent coverage will be offset by the annual 4% salary increases and the awarding of out-of-title compensation. All of the economic components of the award must be considered in their totality and balanced to achieve a reasonable result under the statutory criteria. Comparability on a state-wide basis is the criterion entitled to the greatest weight in the awarding of premium sharing for dependent coverage. I have also given weight to the interests and welfare of the public and the lawful authority of the employer. Finally, I have taken account of the total economic change in consideration of this issue.

Salary Schedule

The Borough seeks to add four additional steps on the salary schedule and requests that each of the new steps be equal to one-half of the difference between the existing steps added to the lower step. The Borough also seeks to limit movement until after an officer has

completed twelve full calendar months in the prior step and the deletion of the "twenty years of service" wage differential.

The PBA is opposed to any changes in the structure of the salary schedule. The PBA maintains that the Borough has not submitted sufficient evidence to justify a change in the salary schedule.

The 2003 salary schedule (Schedule A-4) includes a trainee step, a probationary step and five additional steps to maximum as follows. Schedule A-4 includes two columns for "High School + 120" and "BS/A/Masters" with a notation that the stipend for a Master's Degree is frozen at the 1999 level and added to the High School + 120 level. This ranges from \$296 (probationary) to \$708 for Patrol I. Schedule A-4 also includes columns for "H.S. Grad", "H.S.+30", "H.S.+60", and "H.S.+90". These columns do not have steps and only list salaries for Patrol I, Sergeant and Lieutenant. The maximum salary for Patrol I range from \$83,832 at H.S. Grad. to \$86,183 for H.S. + 90.

The following is the current seven-step salary schedule on the High School plus 120 column:

Patrol I	\$86,968
Patrol II	\$67,550
Patrol III	\$54,489
Patrol IV	\$45,686
Patrol V	\$39,900
Patrol Probationary	\$36,359
Patrol Trainee	\$32,977

The above salaries include holiday pay. The CBA provides for thirteen holidays which requires all of the Leonia police officers to work thirteen more days than all other Borough employees who are permitted to take those days off with pay. The Borough's major

concern is with the \$13,061 increase for an officer moving from Patrol III to Patrol II and the \$19,418 increase for an officer moving Patrol II to Patrol I. The Borough essentially seeks to extend the time that current employees take to reach maximum.

The Borough's argument to have these changes applicable to current employees is unpersuasive. The Borough has benefitted from this top-loaded guide by paying officers disproportionately lower annual salary increases at the lower steps. Most salary schedules have equalized steps with the same total dollar increase between steps. This is best illustrated by equalizing the steps on the current salary schedule and comparing this with the current salary schedule:

	<u>Equalized</u>	<u>Current</u>
Patrol I	\$86,968	\$86,968
Patrol II	\$77,977	\$67,550
Patrol III	\$68,977	\$54,480
Patrol IV	\$59,977	\$45,686
Patrol V	\$50,977	\$39,900
Patrol Probationary	\$41,977	\$36,359
Patrol Trainee	\$32,977	\$32,977

The cumulative earnings for an officer on the current salary schedule is \$363,929. The cumulative earnings for an officer on an equalized salary schedule is \$419,930. Officers at the lower steps on the current salary schedule have much lower salaries on Steps 2-4 on the way to maximum when compared to Steps 2-4 on the equalized salary schedule. To now insert additional steps at the top of the salary schedule is not reasonable for current employees who have already received reduced salaries at the lower steps. The current schedule shall remain unchanged for all officers hired on or before September 1, 2005.

I recognize that an equalized salary schedule would create a more uniform salary schedule and provide new recruits with a consistent year-to-year salary progression to maximum. This progression would assist the Borough in recruitment and retention of police officers. Other municipal salary schedules would be less attractive at the lower steps. P-1 shows that four police officers were hired in 2004. It appears by the officers' placement on the salary schedule that three of the officers were hired with some experience.

There are definite benefits to an equalized salary schedule. However, granting an equalized schedule for new hires, even with one additional step, will create a conflict with current employees hired in 2004. The granting of an equalized salary schedule for all employees, applicable to current and future officers, will increase the Borough's salary obligations. That was not the intent of the Borough's proposal. The intent of the Borough's salary schedule proposal was to reduce future salary costs at the maximum steps.

Therefore, I remand the issue of salary schedule structure to the parties for additional discussions. I shall not retain jurisdiction, meaning that it shall be considered as denied if there is no mutual agreement.

Out-of-Title Compensation

The PBA is seeking compensation for officers working in a higher rank. The PBA seeks this out-of-title compensation only when an officer is identified to serve in the higher rate and performs the functions of the higher rank:

"Whenever an employee works in a higher rated position then said employee would, after one shift, be compensated as an out-of-title employee and in that higher rate."

The PBA cited Rowe's testimony regarding this proposal:

- A. These are three Officers that are in current acting supervisory positions without compensation. Officer Scott Tamagny has been in an acting Sergeant's position for the past year without compensation. Officer Chris

Jones has been in an acting supervisory position, Acting Sergeant, since May of 2004 without additional compensation. And Detective Garris also has been acting as a Sergeant without compensation since May of 2004.

- Q. Are there others from time to time who are placed in supervisory positions without any additional compensation?
- A. Every day.
- Q. And please explain to the Arbitrator how that occurred.
- A. That would occur in the patrol squad usually has three Officers per squad; Sergeant, two Police Officers. If the Sergeant is out sick, injured or is on some type of leave or vacation or personal day, the senior-most Officer will then be in charge of the squad. And he would or she would operate without any additional compensation, although they have the additional responsibility.
- Q. In such cases, is the person who is the acting supervisor designated to take such duties?
- A. Yes.
- Q. And that's a departmental designation?
- A. Yes.
- Q. It's only where one is designated and works beyond one's shift?
- A. Yes. (Tr. at 19-20).

The Borough is opposed to the PBA's proposal. The Borough contends that officers serving in acting higher rank positions are not entitled to any form of premium pay or differential. The Borough contends that the work that is allegedly performed and the decisions that are allegedly made by "acting sergeants" were admitted by Rowe to be no different than the work and decisions of rank-and-file officers.

A review of the evidence in the record support's the awarding of a new provision providing compensation for officers working in a higher rank. The following contracts in the record include provisions for compensating officers for "working in higher rank" or working "out-of-title":

1. "When an employee works in a higher rank for four (4) months or more, he shall receive the pay of the next higher rank for the period he works in a higher rank beyond the four (4) month period. The Chief may not reassign for the sole purpose of defeating the intent of this clause. (P-7, Ex. 6 at 51)."
2. "When an employee works in a higher rank for sixty (60) consecutive days or more, thereafter he shall receive the pay of the higher rank in which he is working, and the Borough shall not defeat the intent of this clause by shifting two (2) or more employees to cover the higher rank in question. This clause shall not apply in cases of vacancies due to vacations. Upon return to prior rank, pay will revert to prior salary. (P-, Ex. 6 at 31)."
3. "When an employee works in a higher rank, he shall receive the pay of that higher rank in which he is working and the Village will not defect the intent of this clause by shifting two or more employees to cover the rank in question." (P-11, Exhibit 29 at 24).
4. "When an employee works in a higher rank, he shall receive the pay of that higher rank in which he is working and the Village will not defect the intent of this clause by shifting two or more employees to cover the rank in question." (P-11, Exhibit 30 at 33).
5. "When an employee works in a higher rank for thirty (30) days or more, he shall receive the pay of that higher rank in which is working and the Borough shall not defeat the intent of this clause by shifting two or more employees to cover the rank in question. This clause shall not apply in cases of vacancies due to vacations. (P-11, Exhibit 35 at 35)."
6. "In the patrol division only, on occasions where a superior officer is not present, a patrol officer shall be designated as Officer in Charge of the tour. The Officer in Charge will be responsible for the tour. The Officer in Charge will be paid an eight percent (8%) increase over what he or she would have earned for that tour of duty." (P-8, Exhibit 9 at 23).
7. "If any member is designated by the Chief to an acting rank higher than the rank he/she holds for at least a full tour of duty, he/she shall be paid at the rate of the rank in which he/she is acting for that tour of duty." (P-8, Exhibit 11 at 13).
8. "If any member is designated by the Chief to an acting rank higher than the rank he/she holds for at least a full tour of duty, he/she shall be paid at the rate of the rank in which he/she is acting for that tour of duty." (P-8, Exhibit 13 at 11).
9. "When an employee works in a higher rank for five (5) or more consecutive days or more, he shall receive the pay of that higher rank in which he is working and the Employer shall not defeat the intent of this clause by shifting two (2) or more employees to cover the higher rank in question." (P-9, Exhibit 18 at 27).

10. "In the event that a vacancy in a permanent authorized position of rank higher than Patrolman exists for longer than thirty consecutive days, the Borough shall then assign the individual to fill the rank temporarily and then fill the rank ninety consecutive days after the vacancy. This shall not be construed to apply to vacancies created by temporary illness or injury, nor shall the same be deemed to change the present 'rotations' program of temporary assignments in various Divisions." (P-10, Exhibit 27 at 33).

In addition, documentary evidence and testimony in the record confirms that officers are being assigned to the duties of higher ranks. A review of P-1 and P-2 show that there were six Sergeants in 2000 and three Sergeants in 2004. Two sergeants retired, Sergeant Ziegler was promoted to Chief of Police and Sergeant Rowe was promoted to Lieutenant. One police officer was promoted to Sergeant. Rowe's testimony confirms officers are currently serving in acting Sergeant positions without compensation.

I shall award out-of-title compensation for police officers designated to perform the duties of a Sergeant. Let me be clear on this. A police officer must be designated to serve in this acting position by the Chief or his designee or ordered to perform the responsibilities of a Sergeant. The following language shall be included in the CBA to be effective September 1, 2005:

"When a police officer is assigned by the Chief or his designee to perform the duties of a Sergeant for ten (10) consecutive days or more, the officer shall receive the pay of a Sergeant commencing with the first day of such assignment. The Borough shall not defeat the intent of this clause by shifting two or more employees to cover the assignment."

Detective Overtime

The PBA proposed that the current 3% Detective Stipend be defined as compensation for on-call time. In addition the PBA seeks modification in the current language in the CBA to provide that all hours beyond forty hours be paid as overtime. Section 3 of Article 10 in the current CBA provides as follows regarding on-call pay and overtime:

"3. Any employee covered by the terms of this Agreement who is assigned by the Chief of Police to act as a detective shall receive additional compensation (which shall not be deemed as part of base pay) of the annual sum of three (3) percent of base salary pro-rated for the period during which the assignment is in effect. Employees in this category shall not be eligible for overtime compensation under the terms of Subsections (B)(1) or (2) above of this Agreement for work they perform as detectives, except insofar as the overtime compensation exceeds the amount of the differential, in which cases the employee will be entitled to overtime compensation for the excess amount." (J-1 at 14).

The PBA contends that detectives are on call for a significant number of hours annually. This is undisputed. However, that is precisely why a detective receives an annual stipend — to be on call and available for duty. This 3% stipend provides an annual payment of \$2,835 for a lieutenant and \$2,609 for a top step patrol officer. The CBA provides that detectives are paid overtime after they exceed the annual stipend. There is nothing in the record to show how many hours of overtime detectives work annually and therefore no way to evaluate the impact of the PBA's proposal.

Accordingly, I find that the PBA has not met its burden to justify its proposal and it is denied.

Non-Economic Issues

The Borough presented seven non-economic issues. The Borough asserts that it is seeking to eliminate inconsistencies in the current CBA. The Borough submitted no documentary evidence or testimony in support of its non-economic proposals. There is no evidence that any of the Borough's proposals are based on problems in administering the CBA or related to prior grievances or prior arbitration decisions. The Borough has not met its burden to show a need for changing the existing contractual language.

Accordingly, I conclude that the County has not met its burden to justify its non-economic proposals and they are denied.

Lawful Authority of the Employer

This factor, among other things, requires the arbitrator to consider the limitations imposed on the Borough 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 can be a significant factor in interest arbitration matters when the parties last offers on salary are extreme or when a party is asserting that the CAP Law affects their ability to fund salary increases.

There is certainly no ability to pay argument under the New Jersey Cap Law (including the recent amendments) given the difference between the cost of the Borough's four-year salary proposal and the terms of my award. Testimony by the Borough Administrator indicates that the Borough did not intend to replace a retiring Captain. This means that the Borough will reduce its police department budget by more than \$125,000 a year following the Captain's retirement. This savings is realized from the \$108,110 salary and the cost of health insurance, prescription, pension costs, etc. The difference in the Borough's proposed salary increases and the awarded salary increases range from \$12,684 in 2004 to \$14,477 in 2007.

The Borough has also reduced the cost of police salaries over the last few years. P-1 shows that there were six sergeants in 2000. Two sergeants retired in 2004 and Sergeant Ziegler was promoted to Chief. Sergeant Rowe was promoted to Lieutenant. This results in two less supervising officers. The Borough hired four officers in 2004. The record does not indicate if these new hires replaced the sergeant's positions or if they replaced other officers who retired or resigned. In any event, the Borough clearly achieved significant

savings by not filling the Sergeant positions. The retiring sergeants were paid approximately \$100,000 (inclusive of longevity and holiday pay) whereas a starting patrol officer is paid \$32,997. B-35 shows that of the four patrol officers hired in 2004, one was paid \$45,686, two were paid \$39,900 and one was paid \$36,359. The Borough's decision not to replace a Captain and two Sergeants upon their retirement generated annual savings of approximately \$250,000. This figure could be as high as \$325,000 depending on who the four officers hired in 2004 replaced. This is between 20% and 25% of the annual salary account for the police department.

A more detailed analysis would be required if I had awarded the PBA's salary proposals which are much higher than my award. There is absolutely no evidence in the record to show that any aspect of this award will cause the Borough 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 the awarded salary increases, while higher than the Borough's proposed salary increases, is not significant when calculated over the four years of the new CBA. As noted under the lawful authority criterion, the difference between the Borough's proposed salary increases and the awarded salary increases range from \$12,684 in 2004 to \$14,477 in 2007. The funding of the awarded salary increases will have minimal financial impact on the Borough which will realize substantial savings from the "breakage" of not replacing a Captain and two Sergeants. The hiring of additional patrol officers in lieu of replacing the Captain and two Sergeants will reduce the Borough's police department budget by approximately \$250,000 annually. The Borough may also realize future offsets if it is

successful in satisfying the uniformity requirements of the SHBP for premium sharing of dependent health insurance.

There is no evidence that the terms of my award will require the Borough to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not directly impacted by this proceeding nor is there any evidence that the terms of this award will impact on the Township's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

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

Cost of Living

Arbitrators must consider changes in the cost of living. The cost of living data shows that the increase in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), for New York-Northern New Jersey increased by 3.5% in 2004. This is above the Borough's proposal and below the awarded salary increases. The 2005 CPI data is incomplete. The most recent data shows that the CPI for the year ending June 2004 increased by 3.7%. However, most of that increase came between January and May with a decline in June and July. There is no reason to believe that this trend of higher month-to-month increases will continue and it is more likely that the awarded 4.0% salary increases will exceed the CPI resulting in an increase in real earnings of bargaining unit members for the 2004-2007 duration of the new CBA.

I conclude that the awarded base salary increases, while marginally higher than the increases in the cost of living in 2004 (and probably higher in 2005, 2006 and 2007), provide for an acceptable increase in real earnings that must be measured against the continued

delivery of quality services by the Borough's police officers. The award provides for base salary increases that over the full term of the CBA will allow for a modest increase in real earnings consistent with historical trends.

Continuity and Stability of Employment

The terms of my Award will maintain the continuity and stability of employment for the Borough's police officers. 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 continue to recruit and retain qualified police officers.

I gave significant weight to this criterion in denying the Borough's longevity proposal. I found that the implementation of a two-tiered system has the potential for reducing the Borough's ability to recruit and retain qualified and experienced police officers.

I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

Accordingly, after carefully considering each of the statutory criteria in relation to the evidence in the record, I respectfully issue the following award:

AWARD

1. Term of Agreement:

There shall be a four-year agreement effective January 1, 2004 through December 31, 2007.

2. Salary:

- a. All steps and ranks on the 2003 salary schedule shall be increased by 4% effective January 1, 2004.
- b. All steps and ranks on the 2004 salary schedule shall be increased by 4% effective January 1, 2005.
- c. All steps and ranks on the 2005 salary schedule shall be increased by 4% effective January 1, 2006.
- d. All steps and ranks on the 2006 salary schedule shall be increased by 4% effective January 1, 2007.
- e. All salary increases are fully retroactive.

3. Health Insurance:

I shall award a modification in the health care plan by requiring all employees to make a contribution to the cost of dependent health care premiums. I shall set the contribution at 10% of the dependent health care costs. This modification shall not be effective until the Borough has satisfied the uniformity requirements of the SHBP. N.J.A.C. 17:9-5.4, requires that SHBP employers electing to pay any portion of the cost of dependent coverage pay the same proportion of the cost of such dependent coverage for all employees covered in the program. Thus, the 10% contribution shall not take effect until the Borough has met the uniformity requirements of the SHBP. The Borough shall adopt a Section 125 Plan to allow employee contributions on a pre-tax basis.

4. Out-of-Title Compensation

Effective September 1, 2005, the following language shall be added to the collective bargaining agreement:

“When a police officer is assigned by the Chief or his designee to perform the duties of a Sergeant for ten (10) consecutive days or more, the officer shall receive the pay of a Sergeant commencing with the first day of such assignment.

The Borough shall not defeat the intent of this clause by shifting two or more employees to cover the assignment."

5. **Salary Structure:**

I remand the issue of salary schedule structure back to the parties for additional discussions. I shall not retain jurisdiction, meaning that it shall be considered as denied if there is no mutual agreement.

6. All proposals of the Borough and the PBA not awarded herein are denied and dismissed. All provisions of the existing CBA shall be carried forward except for those provisions modified by the terms of this Award.

Dated: August 15, 2005

Pennington, NJ

Robert M. Glasson

ROBERT M. GLASSON
ARBITRATOR

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

On this 15th day of August 2005, 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 12-11-08