

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

In the Matter of Interest Arbitration	)	
	)	
Between	)	
	)	
<b>BOROUGH OF MORRIS PLAINS</b>	)	<b>PERC DOCKET NO. IA-95-137</b>
(Public Employer)	)	
	)	
and	)	
	)	
<b>MORRIS PLAINS - LOCAL 254</b>	)	
<b>POLICEMEN'S BENEVOLENT ASSOCIATION)</b>	)	<b>OPINION AND AWARD</b>
(Employee Representative)	)	
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Before:       **J.J.Pierson, Esq.**  
                  **Arbitrator**

For the Borough of Morris Plains:   Frederic M. Knapp, Esq.  
  Courter, Kobert, Laufer & Cohen

For PBA Local 254:                   Richard D. Loccke, Esq.  
  Loccke & Correia

The undersigned was appointed by the New Jersey Public Employment Relations Commission ("PERC") to serve as Interest Arbitrator in the impasse between the herein named parties. Appointment was by letter of pursuant to N.J.A.C. 19 16-5.6. (see Appointment Letter dated July 6, 1995). The proceedings were initiated pursuant to the Compulsory Police and Fire Interest Arbitration Act P.L. 1977, c. 85 (C:34:13A-14 et seq.) and, after January 10, 1996, continued under the newly adopted interest arbitration statute P.L. 1995, c. 425., entitled "The Police and Fire Public Interest Arbitration Reform Act". The procedures utilized by this Interest Arbitrator were those in effect at the time of decision and application.

## **BACKGROUND:**

The Borough of Morris Plains (a public employer, hereinafter referred to as the "Borough") is located in Morris County, New Jersey, comprises 2.6 square miles and, as of the 1990 U.S. census, is composed of a population of approximately 5,219 people. (See B-4, at tab 32).<sup>1</sup> PBA Local 254 (hereinafter, the "PBA" or the "Union") represents all full-time Patrolmen, Sergeants and Lieutenants in the employ of the Morris Plains Police Department and is recognized as the bargaining agent for the purpose of negotiating employee "salar[ies], hours, and other terms and conditions of employment" for PBA Members. (see Joint Exhibit J-1 at Article I §1). There are approximately sixteen (16) police officers (including the Chief of Police, five sergeants and ten patrolmen) within the Borough Police Department.

The Borough and the PBA have been parties to a series of Collective Bargaining Agreements, the most recent concluding on December 31, 1994 (hereinafter, the "Agreement"). (See Joint Exhibit J-1 and Amendment J-2).<sup>2</sup>

The parties met after January 1, 1995 to negotiate a successor Agreement. When negotiations were not successful, interest arbitration was initiated by the PBA, specifically with a filing of a petition to PERC on June 2, 1995. The PBA's petition included the following schedule of issues which have been regarded and identified as economic within the meaning of N.J.A.C. 34:13A-16(f)(2), and considered mandatory items for negotiations (see PBA-):

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1. Exhibits entered into the record are identified by (J- ) for Joint Exhibits; (B- ) for Borough Exhibits; and (PBA- ) for PBA Exhibits. The information in Exhibit B-4 is obtained from the New Jersey Municipal Data Book, 1993 Information Publications.

2. J-1 reflects effective dates of January 1, 1993 through December 31, 1994. The J-2, an amendment discussed in greater detail below, became effective in December of 1993.

**Economic Issues:**

1. Wage Increase
2. Clothing Allowance
3. Personal Day
4. Terminal Leave
5. Sick Leave
6. Longevity

The Borough filed a response to the petition on June 19, 1995, requesting the following economic issues also be submitted to arbitration:

1. Health Insurance Benefits/Cost Sharing by Employees.
2. Elimination of Longevity.
3. Extension of Salary Guide, inclusion of additional steps.

Additionally, the Borough advised PERC that "with regard to the economic issues listed by the PBA, at no time prior to the submission of the petition did the PBA ever raise any issue as to terminal leave and/or longevity." (See response letter). Moreover, in a subsequent letter to PERC dated June 28, 1995, Counsel for the Borough maintained that the issues of health insurance and longevity would not be advanced in the interest arbitration process. However, Counsel submitted that the Borough remained firm in its intent to arbitrate the inclusion of additional steps in the salary guide, and in its position regarding those issues which were not properly raised by the PBA.

There were no non-economic issues listed in either petition.

Subsequent to the filings of the parties, PERC appointed this Arbitrator to serve as Interest Arbitrator in the impasse between the parties regarding the terms and conditions of the successor Agreement which was to commence on January 1, 1995. (See Letter dated July 6, 1995).<sup>3</sup>

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3. Notice was given to the parties by PERC pursuant to N.J.A.C. 19:16-5.6, as in effect at the time.

This Arbitrator's initial efforts were exerted in mediation, conducting two sessions with the parties on September 13, 1995 and October 24, 1996.

The PBA expressed their goal of unifying the two-tier wage schedules in order to eliminate the wage and promotion "gaps" inherent through the two schedules. The PBA sought a single schedule and a single top step rate. The PBA also pursued the elimination of the "grand fathering" clauses found within the Agreement. According to the PBA, the "vastly different maximum rate of pay ... an varied compensation amongst the bargaining unit members" resulted in both disharmony and disruption within the Police Department.

The Borough expressed disappointment in the reversal of the PBA's position on the Early Retirement Program (hereinafter, "ERP").<sup>4</sup> (See J-2). According to the Borough, when considering that seven members of the Police Department were granted early retirements with advanced benefits, that the remaining officers received (actual and potential) promotional opportunities and movements on the salary guide movements, and that the Borough funded the program at a considerable cost, the PBA had reversed its position on the ERP. Moreover, when considering that the PBA had requested

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4. Reference to Early Retirement Program will be prevalent within the instant Opinion and Award. While more fully developed below, the ERP was an early retirement incentive program which permitted the retirement of seven officers, including the Chief, within the Morris Plains Police Department. The parties do not dispute that the additional cost to fund the retirements caused a financial burden to the Borough and impacted on the municipal budget. In turn, to reduce the financial burden and budgetary impact, Article V (Salaries) of the Agreement in effect in January 1993 and 1994 was amended to create two schedules of salary. The "two-tiered" wage schedule placed employees hired before January 1, 1994 to be placed in Schedule A and those hired after January 1, 1994 to be placed on Schedule B. There were differences in wage levels and the steps to achieve top-step salary in order to "absorb" (emphasis added by this Arbitrator) the costs of the program. In turn, and as the PBA has contended, the establishment and implementation of a two-tiered wage guide created disharmony amongst the police officers performing identical work. The Borough, while not entirely disagreeing with the PBA's assessment of the problems caused by a two-tier system of compensation, nevertheless finds it difficult to accept "the punishment for performing a good deed."

adoption of the ERP and entered into a voluntary agreement to fund the retirement costs, it was difficult for the Borough to accept that the PBA claimed the two tier system was "ill advised and ill conceived".

Finally, the Borough remained concerned that two issues (terminal leave and longevity) appeared on the PERC petition when never discussed in previous negotiation. The Borough maintained that it was only aware of the PBA's "wage" issues.

Although mediation efforts appeared to reduce the number of issues in dispute and narrow the positions of the parties, when a negotiated settlement could not be reached, the parties were instructed to prepare for a "formal" hearing.

The arbitration hearing proceeded on two dates (March 25, 1996 and April 4, 1996), after due notice to the parties, with sessions being held at the Morris Plains Borough Hall in Morris Plains, New Jersey.<sup>5</sup> Because the parties did not agree upon a terminal arbitration procedure, the interest arbitration was conducted in accordance with the statutory procedure for "conventional arbitration".<sup>6</sup> The parties were afforded full opportunity to present witnesses and documents in support of their positions. Upon completion of the hearing, the Arbitrator offered the parties an opportunity to submit

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5. In October 1995, there was no requirement for the parties to exchange economic positions prior to the first hearing. After January 10, 1996, regulations were proposed to implement the new act. N.J.A.C. 19:16-5.7 (f) and (k) require that final offers be submitted ten days before the hearing and preclude revisions in final offers once an arbitrator has begun taking evidence or testimony.

6. Subsection 3d of the new Act changes the terminal procedure from "final economic offer as a single package" to "conventional" arbitration in the event the parties have not agreed upon a terminal procedure prior to hearing. The effective date of the new Act (January 10, 1996) is relevant to pending interest arbitration matters since, if testimony was taken before that date, the parties continue to use the terminal procedure in effect when the hearing began. N.J.A.C. 19:16-5.4(d) permits parties to agree to modify a terminal procedure before the arbitrator takes testimony or evidence. If testimony was not taken by January 10th, as in the instant matter, conventional arbitration is the terminal procedure absent an agreed-upon alternative procedure.

post-hearing briefs. The hearing was concluded and the record declared closed upon receipt of the parties post-hearing briefs.

**Appearing for the PBA:**

Richard D. Loccke, Esq.  
Mark Ewert, PBA Bargaining Representative  
Scott Thompson, PBA Bargaining Representative  
Michael Womer, PBA Bargaining Representative  
Dr. Robert Werner, Witness for the PBA  
James Peslis, Hanover Township Police Department  
Kevin Carroll, Roxbury Township Police Department  
Ronald Goodspeed, Colts Neck Police Department  
Christopher Guiliani, Randolph Police Department  
Michael Shay, Morris Plains Police Department (Retired)

**Appearing for the Borough:**

Frederic M. Knapp, Esq.  
Frank Druetzler, Mayor  
David Banks, Treasurer  
Stephen Welsh, Councilman  
Rose Lopez, Councilwoman  
Ralph Rotondo, Councilman

## **FINAL ECONOMIC OFFERS**

### **FINAL OFFER OF THE PBA:**

1. **Term of Contract**

January 1, 1995 - December 31, 1997. (Three Years).

2. **Wage Increase:**

Preparation of a single, unified wage schedule for all bargaining unit employees (with present Schedule B employees being grandfathered into Schedule A by year of service) and an across the board increase of six (6%) per cent on January 1st of each contract year.

3. **Clothing Allowance:**

Increase clothing allowance in the amount of \$ 25.00 in each contract year.

4. **Personal Days:**

Increase the current three (3) personal day allowance per year by two days over the course of the contract. The proposal was to add one personal day in the second year of the Agreement (1996) and another in the third year of the Agreement (1997).

5. **Terminal Leave:**

Delete the grandfather provision under Article IX (Section 2) so that all employees will receive terminal leave pursuant to paragraph one of Article IX of J-1.

6. **Sick Leave:**

Permit fifteen (15) sick days per year, to be used or banked, retroactively to the employee's date of hire.

7. **Longevity:**

Amend the current longevity program from a flat dollar figure to one (1%) per cent for each three (3) years of completed service and delete the grandfather provision set forth at Article V, Section of the Agreement (J-1).

## FINAL OFFER OF THE BOROUGH

1. Term of Agreement:

January 1, 1995 through December 31, 1998. (Four Years).

2. Wages: To be amended as follows:

Probationary Patrolman Salary Guide

	<u>1995 - 1997</u>	<u>1998</u>
Academy	\$ 20,900.	\$ 21,631.
Probationary Period	24,035.	24,876.
Step 1	27,170.	28,120.
Step 2	Step One of Regular Patrolman Guide	

Regular Salary Guide

<u>Patrolman</u>	<u>Effective</u> <u>1/1/95 - 1/1/97</u>	<u>Effective</u> <u>1/1/98</u>
1st year	\$ 31,350.	\$ 32,447.
2nd year	33,544.	34,718.
3rd year	35,557.	36,822.
4th year	37,601.	38,917.
5th year	39,685.	41,073.
6th year	41,890.	43,356.
7th year	44,181.	45,727.
8th year	46,472.	48,098.
9th year	48,765.	50,471.

<u>Sergeant</u>	<u>Effective</u> <u>1/1/95 - 1/1/97</u>	<u>Effective</u> <u>1/1/98</u>
1st year	\$ 51,367.	\$ 53,164.
2nd year	52,504.	54,341.
3rd year	53,713.	55,592.
4th year	54,923.	56,845.



<u>Lieutenant</u>	<u>Effective 1/1/95 - 1/1/97</u>	<u>Effective 1/1/98</u>
1st year	\$ 52,733.	\$ 54,578.
2nd year	55,509.	57,451.
3rd year	56,646.	58,628.
4th year	57,856.	59,880.

### Bonus Awards

\$ 1,500 to 9th year Patrolmen effective 1/1/96 and 1/1/97.

\$ 1,500 to 4th year Sergeants effective 1/1/96 and 1/1/97.

\$ 1,500 to 4th year Lieutenants effective 1/1/96 and 1/1/97.

### 3. Sick Leave:

Shall be in accordance with the following sick leave policy, definition and procedures:

"Sick Leave" is defined as absence from duty of an officer or employee because of illness, accident, or exposure to contagious diseases. A certificate by a reputable physician in attendance upon any officer or employee may be required as proof of need of sick leave.

Officers or employees using sick leave for three or more consecutive scheduled working days must provide a doctor's certificate.

Effective January 1, 1997, regular full-time officers or employee with one (1) or more years of service will be allowed to carry over and accumulate sick days as follows:

<u>Employees Entitled to</u>	<u>Will be Allowed to Carry</u>
65 days	30 days
40 days	20 days
20 days	10 days
10 days	5 days
Less than 10 days	0 days

## Policy

Regular Full-time officers or employees shall be entitled to the following sick leave with pay, which is computed from the officers' or employees' anniversary date:

<u>Length of Service</u>	<u>Time Allowed</u>
0 - 3 months	None
3 months to 1 year	1 day per month
After 1 year of continuous service	12 days full pay

Officers or employees will be permitted to accumulate unused sick days up to a maximum of 200 days.

Upon severing employment, officers or employees will be paid for accumulated sick days based upon a percentage of the officers' or employees' sick days at officers' or employees' prevailing hourly rate in the following manner:

1. Upon retirement, 50% of accumulated sick days.
2. Upon employee's death, the family shall receive 50% of the accumulated sick days.
3. Upon being laid off, 50% of accumulated sick days.
4. Upon voluntarily leaving, 25% of accumulated sick days.
5. Upon being discharged, 0% of accumulated sick days.

### Sick Leaves: Extension

Extension of sick leave beyond the maximum allowed in the schedule set forth shall require special approval of the Borough Council.

### Sick Leave: Regulation

One-half of each work day shall be the smallest unit to be considered in computing sick leave used.

Sick leave shall not be allowed for ordinary medical appointments.

**Procedure:**

An officer or employee who becomes ill is responsible for notifying his/her Supervisor four (4) hours in advance of the scheduled starting time, either personally or through an emissary.

The Police Chief or his designee will maintain records for each officer or employee upon which he/she shall record the total sick leave used. All sick leave earned and used for each completed continuous service year shall be shown on the record.

In protracted illnesses or disability, weekly or biweekly health reports may be requested by the Borough Council. The choice of the reporting physician, attending or Borough-designated, is at the discretion of the Borough.

4. **Personal Days:**

Shall be modified to provide for an allowance of two (2) personal days per year for each bargaining unit member.

**INTEREST ARBITRATION:**

Interest Arbitration is permitted in labor disputes for the public fire and police departments per N.J.S.A. 34:13A-14 et. seq., amended per P.L. 1995, c. 425. The statute provides that in the event the parties do not agree on any designated acceptable terminal procedures, or do not fashion one of their own, the mandatory procedures of the statute shall be implemented. Pursuant to N.J.S.A. 34:13A-16(d)(2), the impasse in the negotiations herein must be resolved by "conventional arbitration" arbitration.<sup>7</sup> Moreover, under Subsection 3(d) of the Act, this Arbitrator is directed to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth under [N.J.S.A. 34:13A-16g]."

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7. For the purpose of the record, this Arbitration is governed by the "Police and Fire Public Interest Arbitration Reform Act" pursuant to P.L. 1995, c. 425, which was signed into law on January 10, 1996 and establishes "conventional arbitration (as opposed to last and final offer arbitration) as the terminal procedure to be utilized when ... unable to reach a new collective agreement".

## **STATUTORY CRITERIA**

The criteria which require consideration are listed under the statute (at N.J.S.A. 34:13A-16g)

as follows:

1. The interests and welfare of the public. Among the items the arbitrator...shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).
2. Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wage, hours, and conditions of employment of other employees performing the same or similar service and with other employees generally:
  - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C. 34:13A-16.2);<sup>8</sup> provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
3. The overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits and all other economic benefits received.
4. Stipulation of the parties.
5. The lawful authority of the employer. Among the items the arbitrator...shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

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8. Note that guidelines have no been promulgated as of the time of this Award.

6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator...shall take into account, to the extent the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
7. The cost of living.
8. The opportunity and stability of employment including seniority factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective bargaining between the parties in the public service and in private employment."

The statute further requires that this Arbitrator:

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

### **A PRINCIPAL ISSUE WHICH PERMEATES THE ABOVE CRITERIA:**

From the initiation of the interest arbitration process, and as indicated in the parties' briefs, a critical aspect of consideration is a recent occurrence within the Morris Plains Police Force is the Early Retirement Program ("ERP"). A brief review of same is necessary to gain proper perspective of the parties' respective positions on the subject. (Note: See also Footnote 4 above).

In late 1993, an agreement was reached between the parties which enabled the Borough to offer an early retirement package to seven eligible members of the Morris Plains Police Department. The ERP not only benefitted the officers retiring early, but offered opportunities for promotion to remaining officers and the chance to rise through the ranks of the Department. Openings were also made available for new recruits.

The offer of early retirement, however, was made with a cost to the Borough.<sup>9</sup> Thus, the Borough devised an alternative compensation program to absorb the expenditure and implemented a two-tiered wage schedule. As a result, new recruits (i.e. PBA members hired after January 1, 1994) were paid at a lower wage rate and progressed through a reduced wage schedule. (see J-2).<sup>10</sup>

With the benefit of hindsight, both parties observed the results of their endeavor to offer early retirement to seven police officers. While the Borough had little difficulty in hiring new officers at reduced salaries, many of the recruits remained only for short periods of employment. The

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9. The cost of the Early Retirement Incentive Program was either \$649,000. in a lump sum payment or \$1,231,000. over a period of ten year.

10. The PBA contended that the two tiered wage schedule was "ill conceived" (see PBA brief at p. 6) and claimed that Schedule B was forced upon the bargaining unit. However, the PBA could not refute the Borough's evidence that the matter was presented to the PBA for approval and the bargaining unit members approved both the Early Retirement Incentive Plan and Schedule B. (see J-2). The Addendum was executed on behalf of the respective parties by Frank Druetzler, Mayor of Morris Plains, and Martin L. Callahan, President of PBA Local 254.

Department apparently serves as a stepping stone for new recruits (and transfers) to achieve police academy training, department experience and job skills which permit them to find higher paying jobs in, and transfers to, other police departments. Thus, while the costs of the retirement program remain fixed to the Borough, the stability and experience of the Department has been reduced and, according to the PBA, the organization has witnessed a diminution in officer morale.

To the extent possible, the parties seek to remedy these circumstances.<sup>11</sup>

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11. There is some concern for this Arbitrator to discuss aspects of the mediation discussions and recognizes that perhaps further deliberation upon what transpired at mediation is not appropriate in this interest arbitration. Aberdeen Tp. v. PBA Local 163, 286 N.J. Super. 372 (App. Div. 1996). Nevertheless, it is important to recognize that remedial discussions were held, with the PBA Bargaining Representatives advancing the cause of those police officers presently on Schedule B.

### **SUMMARY OF THE PBA'S ECONOMIC POSITION:**

The PBA focused upon the "failings" of the reduced/two-tiered wage schedule as a basic indicator of what would happen, now on a broader scale, if all officers were "underpaid" in accordance with the Borough's offer. The PBA argued that the Borough's proposal will cause the general compensation of bargaining unit members to fall below the compensation packages of other police departments in Morris County. The PBA emphasized that the Borough had actually made the extraordinary proposal to freeze the salaries of top level officers.

According to the PBA, the Borough is a wealthy and economically healthy municipality which can well afford the salary increases and benefits sought in the PBA's final offer.

### **SUMMARY OF THE BOROUGH'S POSITION:**

Upon recognizing the defects of the two-tiered wage schedule (and attempting to remedy the concerns of the PBA), the Borough agreed that the two wage schedules should be unified in one salary guide. However, the Borough urged that the oppressive cost of the early retirement offering, as well as recent economic hardships within Morris Plains, justified a restrained offer of wage increases and benefits as presented in its final offer. The Borough further urged that it would not be unjust for the current force to bear a portion of the costs of the early retirement package as they themselves realized significant career and wage advancements as a result of the ERP.



## **THE EVIDENCE:**

### **I. THE PBA'S CASE**

#### **A. THE TREND OF NEW OFFICERS DEPARTING FOR BETTER PAY IN OTHER DEPARTMENTS**

The PBA first introduced the testimony of four police officers from different New Jersey communities, each of whom had been employed by the Borough and formerly served on the Morris Plains police department. The testimony revealed that each officer had been a "new hire" under the Borough's two tiered system and resigned from service on the basis of inequitable salaries within the department and better salary opportunities in police departments in other communities. Each officer acknowledged that, at the time of his hire, a commitment was made to continue service on the police force in spite of the Borough's low starting salary. Their commitments were later broken when faced the reality of a two tiered salary guide and a wage rate lower than other officers performing the same work on the same police force. Moreover, the officers were consistent in their testimony that it was only after they had completed their respective training and probationary terms that they first appreciated the "injustice" of the Borough's pay system and sought employment in other police forces which promised greater earning potential.

Although the officers' collective testimony was offered to advance the general points addressed above, their individual representations and the terms which govern their current employment in other departments<sup>12</sup> warrant separate and brief comment.

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12. In support of the PBA's position that more desirable terms of employment were offered by other police departments, each officer facilitated the introduction of Union Exhibits U-1 through U-4 which reflect the terms and conditions of their current employment.

James Peslis who is presently employed by the Hanover Township Police Department

Officer Peslis served on the Morris Plains Police Force for about one year and three months. He had prior experience in the field, but agreed to start at an entry level salary as a patrolman. He received some specialized training and eventually advanced to a position in the detective bureau. Officer Peslis testified that, although he had "better relations" with the Morris Plains community and department, he left the department solely for financial reasons. His salary at the time of departure was approximately \$27,000.00 (which included a stipend for his work in the detective bureau).

A copy of the current (but unsigned) Collective Bargaining Agreement between Hanover Township and its police force was introduced as Union Exhibit U-1.<sup>13</sup> The agreement sets forth a seven step base annual salary guide for patrolmen which, at the time Officer Pestis started with Hanover Township in October of 1995, ranged from \$28,911.00 to \$49,852.00.

Kevin Carroll is presently employed on the Roxbury Township Police Department

Officer Carroll served on the Morris Plains Police Force for one and a half years. He was hired by the Borough as a Dispatcher, and subsequently put through the police academy and trained at the Borough's expense. With regard to his opinion of the Morris Plains police force, Officer Carroll testified that he "loved the job" and noted that Morris Plains was his home town. However, the witness stated that he left the department "solely because of the money, ...the pay system bothered [him]." According to the witness, there was little potential for an income to raise a family in town". At the time of his departure, Officer Carroll was earning approximately \$26,000.00.

A copy of the current Collective Bargaining Agreement between Roxbury Township and its police force was introduced as Union Exhibit U-2. The agreement sets forth a five step base annual salary guide for patrolmen under which Officer Carroll received a starting salary of \$31,815.00. The top step of the guide for that year provided for an annual salary of \$50,440.00.

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13. The PBA (and the Borough) supplemented the exhibit with a letter from the Hanover Township PBA acknowledging existence of that contract. This was identified at the time of hearing as B-2.

Ronald Goodspeed is presently employed on the Colts Neck Police Department

Officer Goodspeed served as a patrolman on the Morris Plains police force for about four months. He initiated his career in law enforcement at Morris Plains and received orientation and training at the police academy at a cost to the Borough. Admittedly, Officer Goodspeed made a commitment to the Borough to remain with the police force, despite an articulated concern over his long (45-50 minute) commute from his residence in Sayreville (New Jersey). He also testified that he "enjoyed the job", but testified that he had to leave for "financial reasons. ...my livelihood and the future. I didn't think that I could reach my goals under a two tier system." At the time of his departure from Morris Plains, he was earning approximately \$23,000.00 (which was his starting salary).

A copy of the current (unsigned but apparently ratified) Collective Bargaining Agreement between the Township of Colts Neck and its local PBA (333) was introduced into the record as Union Exhibit U-3. That agreement sets forth an annual salary guide for patrolmen in their first through sixth years of service. This particular contract went into effect after Officer G's date of hire (he was hired in late October of 1994, the contract governs the 1995 - 1996 term). However, in 1995, salary range for patrolmen was \$27,588.00 - \$43,248.00.

Christopher Guliani is presently employed in the Randolph Police Department

Officer Guiliani initiated his career in law enforcement with the Morris Plains police force and served for about five months. The Borough put him through the police academy and provided him with subsequent training. He testified that he "enjoyed his job" at Morris Plains, but eventually left for financial reasons. According to Officer Giuliani, "once I began to realized that I wasn't going to be making what other were making, I felt that it would be a motivational factor." In this regard, he advised that he was "sad to leave" the Borough, but found a better opportunity with the Randolph Police Department, where he received a starting salary of \$32,939.00. He was earning approximately \$23,000.00 in his job at Morris Plains.

On cross-examination, the witness acknowledged that he has lived in Randolph for over twenty (20) years and was a member of the Fire Department between 1988-1995 (and attained the rank of Chief).

A copy of the January 1, 1992 - December 31, 1994 Collective Bargaining Agreement between the Township of Randolph and its patrolmen was introduced into the record through this witness as Union Exhibit U-4. (A successor agreement is pending). That Agreement sets forth a six step (not including the initial "S" step) annual salary schedule which ranges from \$32,939.00 - \$50,337 for the 1994 year.

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**B. DOCUMENTARY EXHIBITS AND TESTIMONY OF MORE SENIOR OFFICERS REGARDING THE CURRENT WORK LOAD AND CONTRACT ENTITLEMENTS IN THE MORRIS PLAINS POLICE DEPARTMENT.**

Michael Shay - a Morris Plains Police Officer who is retiring in 1996.

Officer Shay testified to serving twenty-five (25) years on the Morris Plains Police Force. He also described the details of his recent retirement (March 1996). Through Officer Shay, the PBA introduced numerous collective bargaining agreements (Parsippany, Morris Township, Morristown, Denville, Rockaway Township and Dover; see U-5 through U-10), an Interest Arbitration Award and subsequent collective bargaining agreement from Lincoln Park - see U-11 and U-12) and two collective bargaining agreements in which the Borough is a party (with Local 866 regarding Public Works employees and with the Board of Education - see U-13 and U-14); and contract settlements in other municipalities (West Milford/PBA, Teaneck/PBA, Teaneck/SOA and Demarest/PBA - see U-15 through U-18).

However, when arguing its position through its post hearing brief, the PBA simply referred to Officer Shea's testimony to support its argument that Morris Plains officers were dissatisfied with their compensation and would leave the Police Department at the first opportunity. (See Union brief at p.10).

Officer Mark Ewert

The testimony of Officer Ewert, a ten year veteran of the Morris Plains Police Department, was not directly referenced in the Union's brief. Nonetheless, Officer Ewert facilitated the introduction of Union Exhibits U-29 (the "tally of voters" in the Borough's 1994/1995 school election); U-30 (1994 Yearly Report for the Morris Plains Police Department); and U-31 (Personnel Records of the Morris Plains Police Department). The witness also testified that recent changes in the law (for example, requiring increased paperwork for sexual offenders and domestic violence reporting), together with recent personnel changes in the police department (the lost ranks of Captain and Lieutenant) and the Borough's inability to retain new hires, have resulted in an increased work load for the current police force.

Significantly, although Officer Ewert voiced his displeasure with the early retirement program and the resulting two tiered salary guide which negatively impacted the current police force, he acknowledged that there were some benefits to the ERP. One such benefit to the remaining police officers was that the exodus of early retirees opened up more positions in the department, resulting in internal promotions and accompanying increases in salary.

**C. RECENT COLLECTIVE BARGAINING AGREEMENTS AND INTEREST ARBITRATION AWARDS FOR NEIGHBORING POLICE DEPARTMENTS**

- U-5 Parsippany Troy-Hills (1/92 - 12/94)
- U-6 Township of Morris (1/92 - 12/94)
- U-7 Town of Morristown (1/94 - 12/95)
- U-8 Township of Denville (1/95 - 12/97)
- U-9 Township of Rockaway (1/94 - 12/96)
- U-10 Town of Dover (1/95 - 12/97)
- U-11&12 Lincoln Park (1/94 - 12/96)

**D. RECENT COLLECTIVE BARGAINING AGREEMENT SETTLEMENTS BETWEEN THE BOROUGH AND OTHER BARGAINING UNITS**

- U-13 Public Works Employees (Teamsters) - (1/94 - 12/95)
- U-14 Education Association (For school years 93/94 through 95/96)

**E. ECONOMIC VITALITY OF MORRIS PLAINS AND ITS CAPACITY TO FINANCE THE PBA PROPOSAL**

- U-19 Morris Plains Audit Report for 1994
- U-20 Morris County Equalization Table for 3/95
- U-21 1995-1996 Comparison of Municipal Aid, by Town, in Morris County<sup>14</sup>
- U-22 1994 Municipal Data Sheet
- U-23 1995 Municipal Data Sheet

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14. This document outlines actual dollar figures, but does not account for the size of each community

- U-24            Annual Financial Statement for 1993
- U-25            Annual Financial Statement for 1994
- U-26            Annual Financial Statement for 1995
- U-27            Official Statement for Morris Plains  
dated (6/26/92)
- U-28    Reports to the Municipal Court Treasurer for the years 1992 - 1995
- U-29 through U-31 (See section B. above)

**F.        THE BOROUGH'S ABILITY TO FUND THE FINAL OFFER OF THE PBA**

**Dr. Robert Werner**

The PBA offered the testimony of Dr. Robert Werner as its "expert in New Jersey governmental finance". Given his curriculum vitae (see U-34) and acknowledgment by the Borough, Dr. Werner was qualified as an expert witness for purposes of the present hearing.<sup>15</sup> Dr. Werner stated, in his expert opinion, that there was "flexibility in the budget (of Morris Plains) to fund the monetary request of the PBA". In this regard, the witness articulated numerous "areas of flexibility" in the Borough's budget which could "conceivably be tapped into" to finance the PBA's proposal.

Specifically, upon reviewing the Borough's financial papers, Dr. Werner first pointed to various items of "surplus" which he opined could "possibly" be tapped into to fund the PBA proposal. The witness also described his conclusions in reference to other evidence, including Exhibits U-35 (indicating a cash surplus of \$835,679.85 in 1995); U-36 (indicating regeneration surplus at the end of the 1994 year); U-37 (indicating an operational regenerated surplus for 1995 in the amount of \$ 529,416.02); U-38 (indicating \$ 42,081.61 in Miscellaneous Revenue Not Anticipated); U-39 (indicating \$ 21,514.46 in funds reserved for police salaries and wages in the year ending December 1994); U-41 (indicating monies available from 1995 operations of the Borough's swimming pool utility); and U-42 (indicating a town reserve of \$250,000 for tax appeals). Beyond this, the Union's expert suggested that the Township was perhaps "too restrained" in its economic ventures and forecasts. As an example, Dr. Werner noted that the Borough had an excellent tax collection history (See U-

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15. Dr. Werner was called as a rebuttal witness after the Borough put on its case.

40)<sup>16</sup> and perhaps the Borough was too prudent in only predicting only a 95% property tax collection rate in its current budget.

Notably, upon cross examination Dr. Werner conceded that he was neither an expert in, nor familiar with, the business operations of Morris Plains. In this regard, he acknowledged that he had never prepared a municipal budget nor had he compared the financial condition of the Borough with the budgets of other municipalities. Dr. Werner further acknowledged that, until the time of hearing, he was not familiar with the Borough's concern over pending tax appeals nor the potential loss of business in the Township. Nonetheless, he opined that these concerns were speculative.

## **II. THE BOROUGH'S CASE**

### **A. THE WITNESSES**

Steven Welsh is serving his second, non-consecutive term as Borough Councilman. Mr. Welsh offered testimony relative to the early retirement program, the implementation of the two-tiered wage schedule, the process of hiring new recruits for the police department, the current economic climate in Morris Plains, and the calculations upon which the Borough's final offer was based.

David Banks is Treasurer and the Chief Financial Officer for the Borough since May 1987. Mr. Banks offered testimony relative to Morris Plain's current financial status and its ability to fund increased salaries and benefits for its police department.

Frank Druetzler is currently serving his tenth year as Mayor of the Borough. Mayor Druetzler offered testimony relative to the early retirement program, the implementation of the two-tiered salary guide, the process of hiring new recruits, and the current economic climate in Morris Plains.

Ralph Rotondo is currently in his fourth year of service as Councilman with the Borough. Although his testimony was not directly referenced in the Borough's brief, he offered testimony relative to the current composition of the Morris Plains Police Department.

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16. The document revealed that the Borough had the following (property) tax collections rates in recent years: 1994 - 98.22%; 1994 - 95.74%; and 1992 - 98.70%.

## **B. THE EARLY RETIREMENT PROGRAM AND ITS AFTERMATH**

The Borough sought to clearly establish that the two-tiered wage schedule was not only a "quid pro quo" for the early retirement incentive program, but the only means by which the Borough could have afforded the ERP. In this regard, both Councilman Welsh and Mayor Druetzler testified that it was the PBA who approached the Borough to adopt the Early Retirement Program. Additionally, both witnesses related that it was only by the Borough's unprecedented attempt to satisfy the PBA's request, and break even in the process, that the two tiered wage schedule was devised. In this connection, the Borough introduced copies of letters which were forwarded to the retiring officers and the PBA President which made it clear that the early retirement program would be contingent upon a reduced salary scale for new employees. (See B-3).

With regard to the actual monetary cost of the Early Retirement Program, both Treasurer Banks and Councilman Welsh explained that, based upon a ten year installment program with the State, the grand total would be about \$1,231,000.00. (See B-4 at tab 1).<sup>17</sup> In this regard, the Mayor explained that the overall cost of the plan was more than the State had originally estimated and, in retrospect, he would not have agreed to the proposal. The Mayor testified that, to his knowledge, Morris Plains was the only town in the surrounding area to extend the early retirement program, and the only reason it did so was because the PBA agreed upon the reduced wage schedule for new recruits.

In any event, the early retirement package was offered and accepted, and the two tier wage schedule went into effect for all PBA members hired after January 1, 1994. (See J-2). According to the Mayor, the result was that retiring officers benefitted, as did the new department. Not only did the program result in promotions for young officers within the department, but it opened slots for new recruits.

With regard to the new recruits (hired after January 1994), the Mayor recalled receiving 169 applications for in its first round of hiring.<sup>18</sup> Those applications were received with the applicants' knowledge of the lower starting salary and a \$ 50.00 application fee. Additionally, both the Mayor and Councilman Welsh firmly asserted that they took place in the hiring process and that each new recruit was not only apprised of his starting salary, but also well advised of the two tiered wage schedule.

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17. Treasurer Banks explained that the base cost of the package was \$649,439.87, however, the Borough could not afford to make an immediate, lump sum payment and, accordingly, making interest penalties inevitable. The witness also acknowledged that the Borough could have opted for a shorter or longer payment plan, but determined that a ten year plan would be most feasible and struck a good balance between manageable payments and accumulating interest payments.

18. Councilman Welsh recalled that there were about 100 applicants for each position.



### C. FINANCIAL STATUS OF THE BOROUGH

The Borough witnesses also detailed various circumstances which have contributed to an economic downturn in Morris Plains. Mr. Banks stressed that the Borough has been hard hit by mounting property tax appeals from its primary commercial industry. In this respect, the witness referenced valuation reports (identified as Exhibit B-4 tab 27) which indicated that since 1986 the Borough has lost tax revenue in the amount of \$6,095,123.83. Mr. Banks added that lost tax revenues had resulted in a steady and dramatic decline in the Borough's ratable base which, in turn, had lead to a steady tax increase. (see Exhibit B-4 at tab 25).<sup>19</sup> The witness also emphasized that there was little room for economic growth in the Borough, since property was almost entirely developed.<sup>20</sup> As a result, Mr. Banks related that the burden of increased costs has ultimately fallen upon the taxpayers.

To this equation, Mayor Druetzler testified that there are additional tax appeals looming in the Borough's future. Specifically, the witness asserted that the Borough's largest tax payer, Warner Lambert, has a pending tax appeal which exposes the Borough to a \$20,000,000. (Twenty Million Dollars) loss. Furthermore, Mayor Druetzler added that as a result of the bankruptcy of Utopia Reality in 1993, there was additional decrease in the ratable base and \$180,000.00 in uncollected property taxes.

Beyond these factors, Mr. Banks testified that the retirement program offered by the Borough had placed an added burden on the budget in the amount ("in the very least") of \$649,439.87. However, he explained that it was most feasible to repay the program cost over time, under a ten year plan which, with interest, would bring the total cost to \$1,231,803.20. In addition to describing his own budgetary concerns, Treasurer Banks also questioned the reasonableness of the optimistic projections offered by the Union's expert. Specifically referring to the Borough's tax collection rate, the witness questioned the PBA expert's conclusion on the Borough's ability to find additional revenue to fund the PBA proposal through by decreasing the reserve for uncollected taxes or by projecting increased property tax collections. Furthermore, Treasurer Banks challenged Dr. Warner's reliance upon monies available to the Borough under the Cap law for additional funds. In this respect, the witness analogized use of budgetary Caps to the use of a credit card, emphasizing that the money available through Cap law appropriations should be reserved for emergencies.

The following exhibits were also referenced through testimony:

B-4 at tab 17. Revenues and Expenditures

B-4 at tab 18 Tax Overpayments Refunded

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19. The exhibit shows that the tax rates have increased from 2.42 to 4.27 within the past ten years.

20. See Exhibit B-4 at tab 32.

B-4 at tab 19. Insurance Appropriations

B-4 at tab 20. Garbage and Recycling Appropriations

B-4 at tab 21. Comparison of Insurance, Garbage and Sewer Appropriations

B-4 at tab 22. Police Salaries & Wage Budgeted & Expanded

B-4 at tab 23. Budget Amount to be Raised

B-4 at tab 24. Budgeted State Revenues

B-4 at tab 25. Local Tax Rates

B-4 at tab 26. Assessed Valuation

B-4 at tab 27. Table: Reduction of Assessed Valuation - Historical

B-4 at tab 28. Tax Collection Experience

B-4 at tab 29. Surplus v. Utilization

B-4 at tab 30. Net Debt Outstanding

B-4 at tab 35. 1994 Morris County Abstract Ratables

B-5 Morris Plains Certification for State Aid for Calendar Fiscal Year 1995 Budgets indicating an Initial Base Formula Apportionment of \$430,692.00 for its CY 1995 Allocation.

B-6 Morris Plains Certification of State Aid for Calendar Fiscal Year 1996 Budgets.

B-8 N.J.S.A. 18:6-4.12 (Liability to former institution for Training Expenses)

B-9 Correspondence regarding reimbursement to Warren County Sheriff's Office for expenses in training new hire Charles Ribaud.

**D. THE BOROUGH'S WAGE PROPOSAL**

Beyond addressing its general financial concern, the Borough offered testimony relative to its wage proposal. Councilman Welsh testified that the proposal was developed to address the problems expressed by the PBA negotiating committee, especially their concern for the low salaries of probationary and newly appointed patrolmen. He also detailed the method by which the Borough arrived upon the figures submitted in its final proposal.

Councilman Welsh offered precise explanations on the Borough's proposed wage schedule which provides for annual salary increases for every officer throughout the contract term. According to Councilman Welsh, the newly "merged" salary structure represents an attempt to raise the base salaries of new hires up to scale with the base salaries of more senior peers. The Borough's goal would be accomplished through step movement or bonuses at top levels, in the contract years 1995-1997, and a 3.5 % increase, in the final year of the Agreement.<sup>21</sup>

Councilman Welsh also described the wage adjustments for the positions of Sergeants and Lieutenants, although admittedly the latter position remains open. (see also, B-1 - Fair and Final Proposal of the Borough).

#### **E. THE MORRIS PLAINS POLICE DEPARTMENT**

B-4 at tab 2. Morris Plains Police Officers Current Salaries

B-4 at tab 3. Morris Plains Police Officers - Historic Schedule of Maximum Step Levels

B-4 at tab 4. Table: Consumer Price Index vs. Morris Plains Police Officer Wage Increases.  
Graph: Wage Comparison: CPI vs. Actual Increase  
Table: Consumer Price Index vs. Morris Plains Sergeant Wage Increases.  
Graph: Wage Comparison: CPI vs. Actual Increase

B-4 at tab 14. Graph: Assaults on Officers

B-4 at tab 15. Graph: Population per Number of Officers

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21. **Note:** Councilman Welch was forthright in explaining that the Borough's salary proposals are intended to unify the salary schedules and permit the lower compensation officers an opportunity to increase their base salaries and to ultimately achieve top step salary levels comparable with officers employed prior to January 1, 1994 (on Schedule A and with higher base rates). While the equalization of base salaries necessarily requires the higher base salaries to remain unchanged (or increase at a lower rate), the Borough decided to offer officers with higher salary levels a bonus in lieu of base salary increases in three of the four years of the Agreement.

**B-4 at tab 16** Graph: Number of Crimes per Officer

**B-24** Graph comparing Township Populations to the Number of Officers for municipalities in Morris County (source reference 1994 Uniform Crime Report).

**B-25** Graph comparing Assaults on Officers in Morris and other Counties. (Morris County has the lowest assault rate depicted).

**B-26** Graph indicating Crimes per Officer in Morris County Townships (source 1994 Uniform Crime Report).

#### **F. DEMOGRAPHICS OF THE TOWNSHIP**

**B-4 at tab 31.** Median and Per Capita Income - Morris County Municipalities

**B-4 at tab 32.** Demographics and Socio - Economic Characteristics of Morris Plains and Surrounding Municipalities

#### **G. ECONOMIC INDICATORS AND WAGE/BENEFIT SURVEYS**

**B-4 at tab 5.** U.S.A. Department of Labor, Bureau of Labor Statistics, News, September 19, 1995

**B-4 at tab 6.** Compendium of New Jersey Wage Surveys, January, 1994

**B-4 at tab 7.** Clothing/Equipment Allowance/Maintenance Benefits

**B-4 at tab 8.** Education Benefits

**B-4 at tab 9.** Holidays and Personal Days

**B-4 at tab 10.** Insurance Benefits

**B-4 at tab 11.** Longevity

**B-4 at tab 12.** Sick Leave Allotment/Accrual

**B-4 at tab 13.** Vacation Benefits

**B-4 at tab 33.** Report of James Chelius

**B-4 at tab 34. Economic Indicators: May 1994**

B-10 News article dated 2/22/96 indicating 12/95 Employment cost Index for the Northeast

B-11 News article dated 2/13/96 indicating the Employment Cost Index for December 1995

B-27 Newspaper Articles

**H. COMPARABLE COLLECTIVE BARGAINING AGREEMENTS**

B-12 News article dated 8/23/95 entitled "Major Collective Bargaining Settlements in State and Local Government, First 6 Months 1995".

**I. MULTI-TIERED SALARY STRUCTURES IN OTHER JURISDICTIONS**

B-13 and B-14: Township of Vernon and its Local PBA.

B-15: Interest Arbitration Award,  
Morris County and Superior Officers Association.

B-16 Interest Arbitration Award,  
Morris County Sheriff and its Local PBA.

B-17 Interest Arbitration Award,  
Town of Morristown and its local PBA.

B-18 and B-19: Recent CBA's between the Morris County Sheriff and the Local PBA.

B-20 CBA between the Borough of Florham Park and its local PBA.

B-21 CBA between the Borough of Wanaque and the Wanaque Police Association.

B-22 and B-23: CBA between the Borough of Ringwood and its local PBA.

**The Parties' Arguments under the Statutory Criteria**

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

The PBA focused on the public's entitlement to a "skilled, trained veteran police agency with the experience and knowledge of the community." (PBA brief at p. 11). The PBA argued that such a force can not be maintained under the Borough's economic proposal which offers comparatively low wages at every level and would presumably encourage all members of the force to seek employment in neighboring departments which offer greater earning potential. Thus, according to the PBA, the Borough's proposal would result in "mortgaging the future" of not only the police force, but the citizenry of Morris Plains who directly benefit from the strength and stability of that service.

In the words of the PBA's counsel, "[u]nder the Employer's proposal, all officers will move along a common guide to a single unacceptable maximum pay rate which will be the lowest in the area and which will undoubtedly continue the loss of police personnel."

The Borough alternatively turned the focus toward other aspects of this statutory criterion and submitted that the Borough was presently facing a bleak economic climate which precluded an proposal greater than the present offer. The Borough argued that an economic package greater than the present proposal would result in a direct burden to the citizenry of Morris Plains, either through a reduction of services or an increase in taxes.

The Borough emphasized the steady and dramatic erosion of its tax ratable base<sup>22</sup> resulting from mounting tax appeals by its commercial industry<sup>23</sup> and causing a steady increase in the tax rates

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22. See B-4 tab 26 and the testimony of Treasurer Banks.

23. See B-4 at tab 27 and the testimony of Treasurer Banks and Mayor Dreutzler.

borne by its citizens.<sup>24</sup> According to the Borough, mounting tax appeals and increased tax rates are a continuing trend which requires fiscal constraint in the years ahead. Additionally, the Borough explained that since it is almost entirely developed, its budget does not anticipate economic growth as a reliable source of future revenue.<sup>25</sup>

Beyond these considerations, the Borough submitted that the Early Retirement Plan also factored a "staggering economic obligation" on the budget and was a consideration to be borne by taxpayers for the next ten years. The Borough contended that the ERP permitted an additional economic opportunity for officers which benefits those officers for future years and, for the most part, provide for earnings of police officers which outpace the economic opportunities of many of the local taxpayers.

Although a "silent party" to the interest arbitration,<sup>26</sup> the public inevitably carries the weight of its outcome. Here, the parties highlight that the public welfare is impacted not only by the cost of the economic increases, but also by the quality of police services.

On the subject of wages, the Borough has moved toward a unified (or "merged") salary guide. This is in large degree a response to the outcry of the PBA, which claimed that the two-tiered wage schedule created turnover in personnel, wasted training costs for the employer and low morale amongst the police force. However, the parties dispute what increments can be absorbed into the Borough's budget to resolve the problem without negatively impacting the public. The figures offered by the Borough are admittedly based upon a conservatively managed budget and because the

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24. See B-4 at tab 25.

25. See B-4 at tab 32 and testimony of Treasurer Banks.

26. See Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82-83 (1994).

Borough believes that the public welfare is best served by fiscal constraints (particularly in light of the current economic climate and in face of rising tax rates). As the Council negotiating committee argued, the Borough cannot afford any greater increases than those offered.

Alternatively, it was PBA's position that the Borough could easily afford its proposal without burdening its taxpayers. Again, the PBA argued that a trained police force serves the best interests of the public.

Still, the public welfare can not merely be evaluated in terms of tax dollars or budget percentages. Quality and reliability of police service is also an important concern. Without question, competitive wages and benefits are considerations necessary to maintain continuity and quality of police force. Adding the consideration, however, is the intangible issue of that police morale and motivation. The facts are undisputed that lower salaried officers, some fresh from the rigors of the training academy, left for greener pastures because they were affected by the compensation afforded them as opposed to their peers.<sup>27</sup> In this respect, the Borough has attempted to eliminate internal dissension by advancing a unified wage schedule. Now, with the merged schedule (and modified advances) the PBA has complained that members at every level will be underpaid, dissatisfied, and anxious to find work in other police departments which offer significantly higher rates of pay.

Both parties addressed the Cap law. Counsel emphasized that the lawful authority of the Borough is statutory and the fiscal constraints established through N.J.S.A. 40A:4-4 et seq. In this

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27. The former Schedule B patrolmen who testified at the hearing maintained that it was not the low salary, but the two tiered system, that prompted them to seek employment elsewhere. Despite these representations, this Arbitrator is convinced that both factors (lower salaries and a two-tier wage schedule) played a part in their respective decisions. Review of the testimony reflects that each stated that a higher salary, not a unified or merger salary schedule, was the reason they transferred to other municipal police departments. Notwithstanding these semantics, the problem of retaining new patrolmen remained a problem for the police force.



respect, the Borough contended that it is constrained by the limitations of the Cap Law not to exceed a 2.5% increase in its budget for each year of the Agreement with the exception of 1997 and 1998 (in which the index has not been established). The Borough maintained that it sought to act with fiscal constraints imposed by law.

The PBA argued that the Borough had the opportunity to increase its budgetary expenditures by an additional 2.5% (or a total of 5%) if it sought to do so by taking advantage of the CAP Banking Law (which permits a municipality to carry forward a budgeted amount which goes unspent in the any year into the next two years).

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

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

On this point, the PBA draws its wage comparisons primarily with neighboring police departments. Notably, the PBA limits its focus attention on the unique qualifications and responsibilities of police work. In this connection, the PBA provided this Arbitrator with charts that outline (1) the **salaries** for top step patrol officers in neighboring jurisdictions (See Chart No. 1 at page 15 of the Union brief);<sup>28</sup> (2) the number of step increases required for officers in neighboring

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28. The chart sets forth the salaries in Hanover Township, Roxbury, Morristown, Denville, Rockaway Township, Dover and Lincoln Park. The corresponding collective bargaining agreements were introduced into the record as Union Exhibits U-1 (offered together with B-2); U-2; U-7; U-8; U-9, U-10; and U-11.

communities to reach maximum pay with longevity comparisons (See Chart No. 2 at page 16),<sup>29</sup> and (3) base wage percentage increases for top step patrolmen in other jurisdictions (See Chart No. 3 at p. 17 of the Union brief).<sup>30</sup>

Accumulatively, the charts indicate that the Borough's proposal would place officers in the Morris Plains police department on a lower pay scale than their peers in other communities. As the PBA argued, the top step salaries proposed by the Borough would not only be significantly lower than officers in neighboring communities, but it would also take longer for officers to reach top wages. Finally, the PBA urged the Arbitrator to move toward percentage increases (at each step) to in practice with other jurisdictions.

The Borough steered away from wage comparisons with other police departments and concentrated on job characteristics to draw comparisons with other police departments. The Borough maintained that, historically, job responsibilities and hazards are much greater in other communities. (See B-4 at tabs 14 through 16).<sup>31</sup> The Borough also offered general wage

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29. The Chart outlines information from the following jurisdictions: Hanover Township, Roxbury, Colts Neck, Randolph, Parsippany, Morris Township, Morristown, Denville, Rockaway Township, Dover and Lincoln Park. The corresponding collective bargaining agreement were introduced as Union Exhibits U-1 through U-11.

30. This chart outlines information obtained from the following departments: Colts Neck, Roxbury, Hanover Township, Morristown, Denville, Rockaway Township, Dover, Lincoln Park, West Milford, Teaneck/ PBA, Teaneck/ SOA, and Demarest. The corresponding collective bargaining agreements were introduced as Union exhibits U-3; U-2; U-1; U-7; U-8; U-9; U-10; U-11; U-15. Note: U-16 through U-18, agreements for the last three departments noted above, were not provided. However, the Borough did not contest information.

31. B-4 tab 14 charts "Assaults on Officers" in Passaic, Camden, Burlington, Hudson, Ocean, Union and Morris Counties. Morris County ranks the lowest assaults per 100 officers.

B-4 tab 15 charts "population/number of officers" in Morris Plains, Hanover, Florham Park, Morris, Morristown, Parsippany and Randolph. The chart demonstrates that the population per

comparisons with bargaining unit employees in state and local government. (See B-4 tab 4, B-11 and B-12). Those comparisons demonstrate that salary increases for state and local government workers have steadily declined in recent years.

However, the comparisons indicate that even under the Borough's proposal, the officers would fare significantly better than other local bargaining units have in recent years.<sup>32</sup> These figures relevantly apply to the Public Works employees of Morris Plains who are represented by the Teamsters. (See U-13).

**N.J.S.A. 34:13A-16(g)(3) requires consideration of the "overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received."**<sup>33</sup>

The PBA's position here is that "[n]o other town in evidence, whether offered by the PBA or the employer, has such a combination of poor compensation and benefit components." In this respect, the PBA submitted that the instant labor agreement is diluted by the multiple wage steps through which officers must advance to attain maximum salaries, the requirement of medical co-

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number of officers is extremely low in Morris Plains.

B-4 tab 16 charts "Crimes/Officer" in Morris Plains, Hanover, Florham Park, Morris, Morristown, Parsippany and Randolph. The chart demonstrates that Morris Plains has the fewest number of officers, but also the lowest number of violent crimes per officer and total crimes per officer.

32. The Borough's proposal sets forth a 4.5% increase in 1995, a 3.0% (and/or bonus) increase in 1996 and 1997, and a 3.5% increase in 1998. Alternatively, state and local government workers averaged increases of 2.5% in 1994 and 2.0% in 1995. (See B-4 tab 5 and 6).

33. The Borough's brief fails to outline this criterion separately. However, its arguments and supporting evidence with respect to this criterion was adequately advanced. Notably, the PBA has also not addressed this criterion separately, but has merged it with subsection (2). This Arbitrator has chosen to address these issues separately.

payments, and the grand fathering of certain benefits, specifically, longevity and terminal leave.<sup>34</sup>

Again, the Borough did not concentrate on comparisons with other police departments, but submitted that officers in Morris Plains enjoy a significantly higher level of benefits than private sector employees. The evidence presented in this respect indicated that the level of benefits for Morris County Law enforcement added costs equivalent to 58.5% of their 1994 salaries, whereas the private sector enjoyed an average of 40.2% in added earnings. (See B-4 tab 33, report of James Chelius at p. 8).

In addition, the Borough submitted that cost containment measures (i.e., medical insurance co-payment and grand fathering of longevity and terminal leave benefits) have been uniformly implemented through Borough contracts with its other organized employee groups.<sup>35</sup> Moreover, the Borough reiterated that the PBA formerly agreed to make these concessions in order to implement the Early Retirement Program. (See J-2 and B-3).

The overall compensation received by all Morris Plains police officers includes a base salary (Article V), holidays and other leave (Articles III & IX), medical/hospital/dental/disability insurance coverage (Article VII), educational incentives (Article VI), the Employer's share of FICA and pension, a clothing (with maintenance) allowance (Article VIII),<sup>36</sup> and longevity benefits (Article V

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34. In addition to referencing the elimination of the grandfather clause relating to longevity, the PBA also questioned the use of grand fathering clauses used to limit terminal leave (Article IX) and health benefits upon retirement (Art. VII § 7 & 8).

35. The evidence in support of this contention, however, was simply that the Borough's public works employees (who are represented by the Teamsters) have agreed to these concessions. (See U-13 at pp. 23, 36 & 37).

36. The only benefit that the PBA conceded was competitive was the clothing allowance. Nonetheless, the PBA proposed that the current clothing allowance be increased by \$25.00 in each contract year.

§4). There is no dispute that police in Morris County fare better in terms of work benefits than do average workers in private sector employment. Additionally, based upon a comparison with other police officers in Morris County, under the terms of their existing collective agreement, Morris Plains officers enjoy a fairly competitive benefits package.<sup>37</sup>

Morris Plains offers one of the better packages for educational incentives and tuition reimbursement (See B-4 at tab 10 and U-1 through U-10) and officers enjoy more personal days than most of their peers (See B-4 at tab 9 and U-1 through U-10).<sup>38</sup> Additionally, the Borough officers enjoy the average number of days in terms of vacation allotments among neighboring police departments. (See B-4 at tab 13 and U-1 through U-10). Holidays meet with a similar conclusion. (See B-4 at tab 9).

Notwithstanding same, the Borough is among only a few others in Morris County which require employee co-payments for insurance. Additionally, its officers fare far less favorably than their peers in terms of longevity benefits. (See Chart No. 2 at p. 16 of the PBA brief & B-4 at tab 3).<sup>39</sup>

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37. The Borough offered several exhibits into evidence which purported to be information compiled to relate benefits currently received by police officers in the various towns of Morris County, even though copies of the agreements and/or awards in support of these figures were not provided. The accuracy of these exhibits was not challenged by the PBA. Moreover, this Arbitrator found that the conclusions drawn by the Borough were similar to those drawn from a review of the various agreements provided by the Union. (see U-1 through U-10).

38. Importantly, both parties seek a change in the allocation of personal days. The Borough seeks to reduce this benefit from three to two days, whereas the Union seeks to increase the allocation to five days by adding two more days over the course of a three year period.

39. As a result of the grandfather clause contained in Article V § 4 of J-1, all officers hired after January 1, 1991 are not entitled to any longevity pay. This accounts for over one third of the Morris Plains police force. (See B-4 at tab 2). Apparently, most every other town calculates longevity benefits in terms of percentages (which is what the PBA now desires for all officers) or at least

Upon considering the overall compensation currently afforded Morris Plains officers, this Arbitrator recognizes that, but for those contract items which prolong their achievement of maximum salary through increased step levels and restrict their longevity benefits, they rank adequately among their peers in other Morris County police departments. And, while none of the strong points in their J-1/J-2 contract are particularly outstanding, the officers' career opportunities and their concomitant earning capacity have been quite favorably affected by the Early Retirement Program.

There is another provision of the Agreement that both parties have sought to amend. The policy concerning "Sick Leave" currently in force permits sixty-five (65) sick days per year, with no accumulation of unused sick days. Councilman Welsh offered testimony on this point, explaining that the 65 day allotment was put in place years ago when there was no short term disability available to workers.<sup>40</sup> In this connection, the Borough has basically proposed an eventual reduction in the number of annual sick days from 65 to 12, with a provision to accumulate up to a maximum of 200 sick days. Allegedly, this is the policy implemented for all other employees of the Borough. The PBA has alternatively proposed a 15 sick day/year program (retroactive to the date of hire) with a provision to carry unused days forward on an unlimited basis. Apparently, the sick day allotment in other Morris County police departments varies equally between twelve and fifteen days per year with a slight majority permitting unlimited accumulation (See B-4 at tab 12).

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provides (a more generous straight) dollar figure

40. The witness added that the Borough's current contract with its public work employees, represented by the Teamsters, has already been amended to account for this factor. (See U-13 at p.22).

41. The new policy would be effective January 1, 1997 and provide for modified carry overs for unused sick days.

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

There were no substantive stipulations entered into by the parties. The only stipulations in this case were with respect to procedural matters.

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

In considering this criterion, the Arbitrator must look to fiscal constraints imposed by the State under N.J.S.A. 40A:4-45.1 et seq. (hereinafter, the "Cap Law").<sup>42</sup> It is well settled that the State Legislature has imposed specific guidelines which "require local governments to follow sound business principles in their budgetary practices." Morris County v. Skokowski, 86 N.J. 419, 423 (1981).

The basic concept is that local government must hold increases of expenditures close to prior appropriations. In this respect, a municipality is encouraged to structure its budget by limiting increased expenditures to a specific "cap index" number. The cap index for 1995 was 2.5%, but it was increased to 3.5% for 1996. Nonetheless, the governing body may, by majority vote and without referendum, increase the cap figure for any given year to 5% (the Cap). Through this "cap banking", a local government has the lawful authority and additional flexibility of carrying forward permissible monetary allocations from prior budgets which remain unspent. Notably, the "cap bank" is not simply limited to monies budgeted and not spent, but includes the total amount brought in under the 5% Cap.

Upon referring to these lawful guidelines, the PBA has posited that there is significant

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42. N.J.S.A. 34:13A-16g(5) does not necessarily limit this Arbitrator's analysis to the Cap Law but, as in the instant case, this is generally the primary focus of discussion.

flexibility in the current budget to lawfully escalate the Borough's resources and fund the wage increase sought by the Union in its final offer. Here the PBA pointed out that Morris Plains has the flexibility of Cap banking in its 1995 and 1996 budgets<sup>43</sup>, and in this respect, calculated that the Borough had the lawful authority to carry forward \$614,678. of budget increases into the next year. Because the Union calculated that the total cost of the wage increase sought by bargaining unit would amount to less than \$40,000 in each contract year (see PBA brief at p. 20)<sup>44</sup>, the PBA argued that utilizing the full cap potential would permit the Borough to fund the six (6%) per cent wage increase in each of the contract years. Arguably, these figures demonstrate that the Borough has been able to maintain its budget well within Cap limits and has, to this extent, accumulated sufficient banking flexibility to include the PBA's proposal within its lawful budget.

Alternatively, while the Borough acknowledged the lawful flexibility of utilizing the Cap limits, it maintained that it would not be fiscally responsible to exceed the cap "index" figure for any given year. In this connection, the Borough, through the testimony of Treasurer Banks, explained that the Cap index represents prudent budgetary constraints (as recognized by the Legislature), whereas utilization of the 5% Cap would be more akin to buying on credit. Moreover, the economic "downtrend" in Morris Plains has driven the Borough to retain any budgetary surplus in preparation for the increasing possibility of worsening financial times.

In assessing the lawful authority of the Employer, this Arbitrator will not presume that the

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43. Obvious to the PBA, the flexibility in cap banking is based upon the Borough's non-utilization of the full Cap expenditures in these years.

44. This figure is based upon the testimony of Councilman Welch who established that the total base wages for this bargaining unit in 1994 was \$584,451. The 6% increase sought by the PBA was then calculated into this figure.



Borough should be required to make full use of Cap limits and flexibility. Nonetheless, in light of the evidence presented, it appears that (at least in 1995)<sup>45</sup> the Borough has been able to contain its expenditures comfortably within a budget built upon the recommended index.

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

The PBA's basic position on this point was that its proposed increases would "have a barely perceptible impact on the Morris Plains taxpayers." (PBA brief at p. 27). In this respect, the Union submitted that Morris Plains is a wealthy community, with a strong ratable base, and one of the lowest tax rates in Morris County. According to the PBA, the low tax rate reflected in the Morris County equalization tables (See U-20),<sup>46</sup> the Borough's high property tax collection rate<sup>47</sup>, and the taxpayers acceptance of the municipal tax rates<sup>48</sup> can lead this Arbitrator to implement the PBA wage proposal. In addition to these representations, the Union also maintained that the overall cost of its proposal would amount, on average, to about \$40,000 for each year of the contract term<sup>49</sup>.

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45. The Borough's 1995 expenditures were \$338,229.00 under budget. (See U-23 and the calculations set forth at p. 21 of the PBA brief).

46. See also Chart # 4 at p. 25 of the PBA brief.

47. The Union postured that property taxes would not be readily collected if they were too burdensome on the taxpayer.

48. See p. 27 of the PBA brief and discussion regarding a low voter turnout for the school budget vote. Notably, education costs account for the highest percentage of the municipal tax imposed on Morris County residents. Alternatively, the Union submitted that the ratio of police salaries to the total tax levy was only about 3.75%.

49. The Union added that this figure was calculated on the basis of the Employer's own gross wage cost figure for 1994. However, that figure, according to the PBA, is apparently too high since the Employer did not account for numerous police resignations.

Furthermore, it submitted that as testified by its expert, Dr. Robert Werner, there are specific areas of flexibility, although fiscally stable, in the municipal budget which would enable the Borough to readily fund the PBA proposal. (See PBA brief at p. 30; U-38; and the testimony of Dr. Werner). Significantly, among those sources, the PBA specifically noted that \$81,656.85 were reserved in the 1995 budget for "police salaries and wages", but were actually not utilized. (See B-17 at sheet 15).

Finally, in addressing the impact of the PBA proposal on the taxpayer, Counsel for the PBA turned the phrase of this proceeding:

... a hypothetical homeowner paying \$4,000. in real estate taxes has allocated of the \$4,000. only \$150.06 for the police salaries and wages. The police are asking a six (6%) percent increase each year of the contract. Using this method of analysis, the impact of the entire police wage schedule on a \$4,000. per year real estate tax rate is about the price of a movie ticket if the homeowner goes along (alone?) and doesn't eat the popcorn. (see PBA Brief at p.26).<sup>50</sup>

According to the Employer, the economic climate of Morris Plains is not as financially stable as portrayed by the PBA. In this respect, compilations reflect a steady decline in property ratables and, as Treasurer Banks and Mayor Druetzler conclude, Morris Plains is experiencing economic challenges. Submitting the report of labor economist, Professor James Chelius, the Borough argued that the entire County of Morris has been "particularly hard hit by the recession." (See B-4 at tab 33).

To this equation, the Borough submitted that under its wage proposal for 1995, top level police officers in Morris Plains would enjoy significantly higher take home pay than the average Morris County worker. (See the Borough's calculations in this respect at p. 38 of its brief, together

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50. From this Arbitrator's observations, it is apparent that the Mayor and Council neither agreed with the analogy of Mr. Loccke nor was willing to treat the municipal taxpayer in a manner similar to the insensitive treatment of the heroine of *Much Ado About Nothing*. (Actually, William Shakespeare wrote the play, Beatrice was the heroine and Mr. Loccke is quite witty).

with references to the Chelius report, B-4 at tab 33). In drawing data from a broader spectrum, the Borough drew the same conclusion when comparing compensation of the police officers with the average New Jersey worker. (See the Borough's calculations in this respect at pp. 36-37 of its brief, together with references to the Chelius report, B-4 at tab 33).<sup>51</sup>

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

The PBA's focus lies with the allegation that, under the Borough's proposal, officers at maximum step levels would suffer from crushing wage freezes<sup>52</sup> over the course of the contract term. Thus, the PBA submitted that these zero increases could never meet any consumer price index figure.

Upon putting forth a less circumscribed argument under this criterion, the Borough submitted evidence which demonstrated that over the past decade, the officers' maximum salary raises have outstripped CPI increases. (See B-4 at tab 4).<sup>53</sup>

In fact, if considering only a bonus payment, the top step officers would exceed the CPI. When considering the salary increases over the past few years, the promotions and step advancements

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51. The report indicates that Morris County citizens have become increasingly more dependent on government aid. Additionally, it indicates an extraordinary increase in mortgage foreclosures since 1989. Notably, the Borough's wage figures are slightly skewed since they are based only on the salaries of top level officers, sergeants and lieutenants.

52. Although **not acknowledged** by the PBA, this Arbitrator recognizes the Borough proposal includes **bonuses in attempt** to compensate these individuals. The PBA's argument is applicable only to **increase base salary levels**. While a freeze in salary levels had both an immediate and future impact on earnings, it is offset herein by bonus payments and a recent history of promotions and considerable step advancements.

53. The PBA did not dispute the figures which are plotted on this graph. However, it is noteworthy that the data here is drawn from the officers' maximum salaries. Nonetheless, the evidence sufficiently indicates that Morris Plains officers have experienced substantial and real wage increases over the past decade.

and the presently proposed wage gains, the police officers in Morris Plains will exceed the CPI.

**N.J.S.A. 34:13A-16(g)(8) requires consideration of the "continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.**

The final criterion requires this Arbitrator's consideration of the continuity and stability of employment. Here again, the PBA contemplates that the Borough's purported failure to follow prevailing wage and area standards would result in a continuing loss of skilled officers in the Morris Plains police force.<sup>54</sup> According to the PBA's counsel, the Borough's defective compensation programs have and will continue to result in the "hemorrhaging of the police department in the loss of skilled young officers."

On this point, the Borough demonstrated that it was willing to make concessions regarding the failing two tiered salary structure and move toward a unified wage schedule. The Borough made further efforts by proposing to elevate the officers' salaries at higher wage levels by providing for bonuses. Overall, the Borough submitted that its proposal, though necessarily affected by recent developments within the economy, still provides officers with a high rate of compensation and excellent benefits. The Borough reflected that the PBA failed to account for the bleak economic climate in Morris Plains, including the Borough's liability in shouldering the Early Retirement Program. Finally, the Borough pointed to the career opportunities presented to officers with less years in service.

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54. The arguments are advanced more fully under the public welfare criterion of paragraph 16(g)(1).

## **OPINION:**

Having considered the testimony and exhibits offered in the context of the relevant statutory criteria, this Arbitrator makes an initial determination that the Borough's wage proposal, with modification for the bonus levels to officers at higher steps on the salary schedule, shall be implemented. It is this Arbitrator's opinion that a single, unified or merged wage schedule, with wage levels adjusted in a prudent and fiscally constrained manner, is in the best interests of the Borough, the taxpayer and the individual (and collective) police officer employed within the Morris Plains Police Department. Moreover, the Borough's wage proposal has been crafted in a fair and equitable manner, with considerations of the PBA's expressed concerns for its Members.

While the positions of the parties and the proofs offered were analyzed above with comment by this Arbitrator, further discussion is required pursuant to the statutory criteria. Specifically, this Arbitrator must address the criteria, identifying and commenting on those criteria found relevant to his decision. In this regard, the parties provided a record of pertinent evidence and, as this Arbitrator determines, met their obligations imposed in Fox v. Morris County Policemen's Association, PBA 151, 266 N.J. Super. 501, 517 (App. Div. 1993), cert. denied, 137 N.J. 311 (1994).

When considering the interests and welfare of the public, the Borough's proposed wage schedule provides for annual salary increases for every officer throughout the contract term. As Councilman Welsh related, the newly "merged" salary structure represents an attempt to raise the base salaries of new hires to a scale ultimately comparable with the base salaries of more senior peers on the police force. The Borough's goal can be accomplished through the step movements and top level bonuses in the contract years 1995-1997, and a 3.5 % increase, in the final year of the Agreement.

Among the items which the arbitrator is required to assess when considering the interests and welfare of the public are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.) or, as commonly referred, the "Cap Law". Under this law, the Legislature sought to prevent fiscal instability and economic disorder. The Supreme Court has similarly and repeatedly upheld the legislative intent and required local governments to follow sound business principles in their budgetary practices. See State v. Boncelet, 107 N.J. Super. 444, 450-451 (App.Div. 1969) [and Morris County vs. Skokowski, 86 N.J. 419, 423 (1981)].

In the opinion of this Arbitrator, the Borough has met its responsibility in proposing a wage structure which meets the financial goal for advancement while constrained within the fiscal conditions of the Borough. In this respect, and noting that the Borough remained within the 2.5% cap established by the Division of Community Affairs (State of New Jersey), there was neither a necessity to exceed the cap index (2.5%) nor ability to extend the cap to 5% (as suggested by the PBA) in order to establish a cap bank or meet the higher wage proposal of the PBA. Instead, the Borough recognized the implications of cap procedures and made successful efforts to control budgetary costs.

When comparing the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wage, hours, and conditions of employment of other employees performing the same or similar service and with other employees generally, this Arbitrator found that the PBA compare favorably with uniformed officers in surrounding communities, have exceeded increases granted to employees public employment and surpassed those wages in private

employment in general.<sup>55</sup>

When considering the overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits and all other economic benefits received, the overall compensation received by all Morris Plains police officers includes a base salary (Article V), holidays and other leave (Articles III & IX), medical/hospital/dental/disability insurance coverage (Article VII), educational incentives (Article VI), the Employer's share of FICA and pension, a clothing (with maintenance) allowance (Article VIII), and longevity benefits (Article V §4). There is no dispute that police in Morris County fare as well, if not better, in terms of work benefits than do average workers in private sector employment. Additionally, based upon a comparison with other police officers in Morris County, under the terms of their existing collective agreement, Morris Plains officers enjoy a fairly competitive benefits package.

There are certain economic items in dispute and proposed for amendment and modification by the parties in the instant proceeding. The PBA proposed an increase in clothing allowance in the amount of \$ 25.00 in each contract year; an increase in the current three (3) personal day allowance per year by two days over the course of the contract; deletion of the grand fathering provision under Article IX (Section 2) so that all employees would receive terminal leave pursuant to paragraph one of Article IX; allowance of fifteen (15) sick days per year, to be used or banked, retroactively to the employee's date of hire; and amendment to the longevity provision to change from a flat dollar figure to one (1%) per cent for each three (3) years of completed service and delete the grandfather

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55. The guidelines of comparisons, to be established by PERC according to the new Act, have not been promulgated as of the time of this Award.

provision set forth at Article V, Section 4. In addition to extensive modifications to the sick leave policy, the Borough also sought to reduce the number of personal days to provide for two (2) personal days per year for each bargaining unit member.

It appears that Morris Plains offers one of the better plans for educational incentives and tuition reimbursement. (See B-4 at tab 10 and U-1 through U-10). Officers enjoy more personal days than most of their peers in other municipal police departments. (See B-4 at tab 9 and U-1 through U-10). Additionally, the Borough officers enjoy a (general) average in number of days of vacation allotments among neighboring police departments. (See B-4 at tab 13 and U-1 through U-10). Holiday entitlements meet with a similar conclusion. (See B-4 at tab 9).

Notwithstanding same, the Borough is among only a few others in Morris County which require employee co-payments for insurance. Moreover, its officers fare less favorably than their peers in terms of longevity benefits. (See Chart No. 2 at p. 16 of the PBA brief & B-4 at tab 3).

In addressing the clothing allowance, the proofs demonstrate that the PBA enjoys a benefit of value comparable to clothing allowances in other municipal police forces. There is no enunciated need, in this Arbitrator's opinion, to increase that allowance.

Similarly, this Arbitrator has long taken the view that, unless a compelling argument is advanced and the requesting party has met its burden of proof, established contract entitlements should not be amended through arbitration. The basic tenets of negotiation require the parties to structure the four corners of an agreement and fulfill their expectations through discussion. It is not for an interest arbitrator to displace that process with a sense of justice or equity nor replace a party at the negotiation. Keeping this principle in mind, the parties' request for changes, modifications, deletions and/or additions to the terminal leave, longevity and personal days provisions are denied.



An issue to addressed, however, is sick leave benefits since both parties propose that changes be made. The policy presently permits 65 sick days per year, with no accumulation of unused days. As noted above, Councilman Welsh offered testimony on this point, explaining that the 65 day allotment was put in place years ago when there was no short term disability available to workers. In this connection, the Borough has proposed a reduction in the permissible number of annual sick days (from 65 days to 12 days), effective January 1, 1997, with the ability to accumulate sick days to a maximum of 200 days. According to the record, this policy has been implemented for other employees of the Borough, specifically for public works employees working under an agreement negotiated with Teamsters Local 866.

The PBA has alternatively proposed a 15 sick day per year program, retroactive to the date of hire, with permission to carry unused days forward on an unlimited basis. Apparently, the sick day allotment in other Morris County police departments varies equally between twelve and fifteen days per year with a slight majority permitting unlimited accumulation. (See B-4 at tab 12). In this Arbitrator's opinion, the reduction of permissible sick days is a modification meeting reality.

There were no substantive stipulations between the parties and the substantive stipulations were addressed during the proceedings.

When considering the lawful authority of the employer, this Arbitrator has considered the fiscal constraints imposed by the State under N.J.S.A. 40A:4-45.1 et seq. ("Cap Law") and observed that Morris Plains has followed sound business principles in preparing their budget practices and structuring their wage proposal. Moreover, it was observed that the Borough held proposed expenditures close to prior appropriations and limited those increases within the cap index. The cap index for 1995 was 2.5% and increased to 3.5% for 1996. While it is recognized that there is a

degree of flexibility in the current budget, it is not significant. However, the figures demonstrate that the Borough has been able to maintain its budget well within Cap limit.

When considering the financial impact on the Borough of Morris Plains and its taxpayers, this Arbitrator has relied on the testimony of Treasurer Banks and Councilman Welsh and has accepted their assessments and conclusions to be precise and accurate. Councilman Welch was forthright in explaining that the Borough's salary proposals were intended to unify the salary schedules, a point repeatedly raised by the bargaining unit representatives during negotiations, and will permit the lower compensated officers an opportunity to increase their base salaries and ultimately achieve top step salary levels comparable with the officers employed prior to January 1, 1994 (on Schedule A and with higher base rates). As expressed to the PBA, this Arbitrator believes that the equalization of base salaries requires officers with higher base salaries to constrain their view of salary increases. However, the Borough properly compromised their initial response of a freeze for top step officers by offering with the higher salary levels a bonus in lieu of base salary increases in two of the four years of the proposed Agreement.

The Borough prepared their offer with fiscal restraint and the financial impact on the municipality and local property taxes will be within the current contemplated budget. Moreover, there was no question raised by the governing body that existing local programs and services would be affected by implementing its proposal. Thus, this Arbitrator feels comfortable in concluding that the award will fit suitably within the ability of the Borough to fund.

With respect to the cost of living, the Borough provided proof that the officers' maximum salary raises have outstripped CPI increases and increased 73.7% from December 1985 to the present.. (See B-4 at tab 4). In fact, if considering only a bonus payment, the top step officers would

exceed the CPI. When considering the salary increases over the past few years, the promotions and step advancements and the presently proposed wage gains, the police officers in Morris Plains will exceed the CPI.

When considering the opportunity and stability of employment, the facts of the record reveal that turnover of newly trained and loss of lower salaried patrolmen will be reduced. There will be less potential for departure of recent police academy graduates and less financial incentive for lower salaried patrolmen to leave for a higher salary in another community. Morris Plains will no longer experience the costs of training new patrolmen for employment in other communities nor be a training grounds for other municipal police departments. Instead, the Borough can enjoy the results of new appointees remaining within the police force and gaining experience for the benefit of the Morris Plains Police Department.

### **Conclusion**

Having considered the testimony and exhibits offered in the context of the relevant statutory criteria, this Arbitrator is convinced that the Borough's wage structure, with modification for the bonus levels to officers at higher steps on the salary schedule, be implemented.

In consonance with the proof, and upon all the foregoing, the undersigned Arbitrator hereby renders, decides, determines, and issues the following

### **INTEREST ARBITRATION AWARD**

1. Article XIII, Duration, of the Collective Bargaining Agreement shall be amended to read:  
  
"This Agreement shall have a term from January 1, 1995 through December 31, 1998".
2. Article V, Salaries, shall be amended as follows:

### **Probationary Patrolman Salary Guide**

	<u>1995 - 1997</u>	<u>1998</u>
Academy	\$ 20,900.	\$ 21,631.
Probationary Period	24,035.	24,876.
Step 1	27,170.	28,120.
Step 2	Step One of Regular Patrolman Guide	

### **Regular Salary Guide**

<u>Patrolman</u>	Effective <u>1/1/95 - 1/1/97</u>	Effective <u>1/1/98</u>
1st year	\$ 31,350.	\$ 32,447.
2nd year	33,544.	34,718.
3rd year	35,557.	36,822.
4th year	37,601.	38,917.
5th year	39,685.	41,073.
6th year	41,890.	43,356.
7th year	44,181.	45,727.
8th year	46,472.	48,098.
9th year	48,765.	50,471.

<u>Sergeant</u>	Effective <u>1/1/95 - 1/1/97</u>	Effective <u>1/1/98</u>
1st year	\$ 51,367.	\$ 53,164.
2nd year	52,504.	54,341.
3rd year	53,713.	55,592.
4th year	54,923.	56,845.

<u>Lieutenant</u>	Effective <u>1/1/95 - 1/1/97</u>	Effective <u>1/1/98</u>
1st year	\$ 52,733.	\$ 54,578.
2nd year	55,509.	57,451.
3rd year	56,646.	58,628.
4th year	57,856.	59,880.

### Bonus Payments

\$2,000. to 9th year Patrolmen effective 1/1/96 and 1/1/97.

\$2,000. to 4th year Sergeants effective 1/1/96 and 1/1/97.

\$2,000. to 4th year Lieutenants effective 1/1/96 and 1/1/97.

3. Sick Leave shall be amended to conform to the following policy, definition and procedures:

"Sick Leave" is defined as absence from duty of an officer or employee because of illness, accident, or exposure to contagious diseases. A certificate by a licensed physician attending the officer may be required, upon the written request of the Chief of Police, as proof of the officer's need for sick leave.

Officers or employees using sick leave for three or more consecutive scheduled working days must provide a doctor's certificate.

### Policy

Officers or employees will be permitted to accumulate unused sick days up to a maximum of 200 days.

Effective January 1, 1997, regular full-time officers or employee with one (1) or more years of service will be allowed to carry over and accumulate sick days as follows:

<u>Employees Entitled to</u>	<u>Will be Allowed to Carry</u>
65 days	65 days
40 days	30 days
20 days	15 days
10 days	5 days
Less than 10 days	0 days

Regular Full-time officers or employees shall be entitled to the following sick leave with pay, which is computed from the officers' or employees' anniversary date:

**Length of Service**

**Time Allowed**

0 - 3 months

None

3 months to 1 year

1 day per month

After 1 year of continuous service

12 days full pay

Upon severing employment, officers or employees will be paid for accumulated sick days based upon a percentage of the officers' or employees' sick days at officers' or employees' prevailing hourly rate in the following manner:

1. Upon retirement, 50% of accumulated sick days.
2. Upon the death of an officer (on the rolls of the department), the family shall receive 100% of the accumulated sick days.
3. Upon being laid off, 50% of accumulated sick days.
4. Upon voluntarily leaving, 25% of accumulated sick days.
5. Upon being discharged, 0% of accumulated sick days.

**Sick Leaves: Extension**

Extension of sick leave beyond the maximum allowed in the schedule set forth shall require special approval of the Borough Council.

**Sick Leave: Regulation**

One-half of each work day shall be the smallest unit to be considered in computing sick leave used.

Sick leave shall not be allowed for ordinary medical appointments.

**Procedure:**

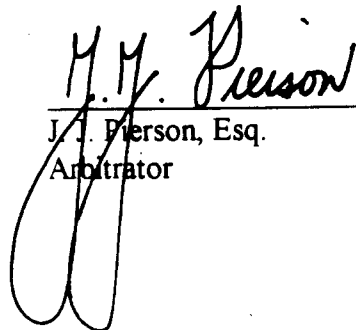
An officer or employee who becomes ill is responsible for notifying his/her Supervisor four (4) hours in advance of the scheduled starting time, either personally or through an emissary.

The Police Chief or his designee will maintain records for each officer or employee upon which he/she shall record the total sick leave used. All sick leave earned and used for each completed continuous service year shall be shown on the record.

In protracted illnesses or disability, weekly or biweekly health reports may be requested by the Borough Council. The request shall be in writing and addressed to the individual employee and the Chief of Police. The choice of the reporting physician, attending or Borough-designated, is at the discretion of the Borough.


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

Dated: July 15, 1996

  
\_\_\_\_\_  
J.J. Pierson, Esq.  
Arbitrator

State of New Jersey   )  
                                  ) :ss  
County of Morris       )

On the 15th day of July, 1996, before me personally came and appeared J.J. Pierson, Esq., to me known and known to me to be the person described herein who executed the foregoing instrument, and he acknowledged to me that he executed the same.

  
\_\_\_\_\_  
Alashia Chan, Esq.  
Attorney at Law  
State of New Jersey

