

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

BOROUGH OF SEASIDE PARK,
(Employer)

AND

SEASIDE PARK P.B.A. LOCAL NO. 182
Docket No. IA-99-67

BEFORE: ERNEST WEISS, INTEREST ARBITRATOR

APPEARANCES:

FOR THE PBA: RICHARD D. LOCCKE, ESQ.
LOCCKE & CORREIA

FOR THE BOROUGH: THOMAS G. GANNON, ESQ.
HIERING, HOFFMAN & GANNON

PRELIMINARY STATEMENT

The above parties are signatories to a Collective Bargaining Agreement with termination date of December 31, 1998. The bargaining Unit consists of all regular full time Police Officers employed by the Borough except the Chief of Police. As of 1998, there were eight Patrolmen, three Sergeants and one Lieutenant in the Unit.

Since the parties were unsuccessful in negotiating a successor agreement, I was designated to serve as Interest Arbitrator in accordance with the rules of the Public Employment Relations Commission. However, prior to my appointment the parties engaged in a series of collective bargaining sessions in December 1998, and were successful in resolving some outstanding issues.

At several early sessions with the parties I attempted to mediate the remaining disputes in order to help them resolve the remaining issues voluntarily. All the remaining issues, except those set forth below, were eventually resolved by the parties. They also agreed that the duration of the new Agreement will be for three years.

As a result, I convened a formal Arbitration session on July 23, 1999.

During the formal hearing the parties were afforded the opportunity to present documents, testimony and argument in support of their respective position. The

parties were also afforded the opportunity to submit post-hearing briefs which I thoroughly considered in making my decision herein.

Since the parties failed to agree upon an alternative form of submission, I am mandated by statute to decide the outstanding issues with conventional authority and in accordance with the revised statutory criteria, which is set forth below:

STATUTORY CRITERIA

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

1. The interest and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A: 4-45.1 et seq.)
2. Comparison of the wages, salaries, 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 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 jurisdiction, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however that each party shall have the right too submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- 3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other benefits received.
- 4. Stipulations of the parties.
- 5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering the factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45. 1 et seq.)
- 6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in dispute in which the public employer is a count or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will effect 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 employee' 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 taxpayer 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 © initiate any new programs

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

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

THE BOROUGH'S LAST ECONOMIC OFFER:

1. **Duration:** Three years
2. **Salary:** 3.5% across-the-board increase for 1999, 4% across the board for the year of 2000 and 4% across the board for the final year of 2001.
3. **Holidays:** Exchange two Lincoln's Birthday and Election Day for two additional personal days as outlined in Article 9 of the Agreement.
4. **Medical Insurance:** Increase employee dependent coverage contribution from \$50.00 per month to \$1000.00 per month. Change prescription co-pay from \$5.00 to \$10.00/\$5.00/ \$0 as outlined in Article 13 of the Contract.
- 5 **Tuition Reimbursement:** Increase from \$75.00 per credit to \$100.00 per credit as provided in Article 17 of the Contract.

NON ECONOMIC

1. The Borough proposes to adopt the language entitled "Work Incurred Injury" located in the PBA contract proposal 7-D

THE PBA LAST ECONOMIC OFFER:

1. Duration: Three years

1. Wage Increase: 4.5% increase across the board at each rank, step and position represented by the PBA effective each successive January 1st of each year of the agreement.

2. Longevity: The PBA has proposed the addition of a longevity benefit which was specified as 2% for each four (4) years of completed service.

NON-ECONOMIC PROPOSALS OF THE PBA

1. Article IV, Negotiations Procedure- The PBA has proposed a modification of this Article by deleting Section 2. This proposal appeared as Item no. 3 on the original PBA proposal sheet (P-1).

2. Departmental Investigations - The PBA has proposed new language to be added to the agreement which is sometimes referred to as the "Police Officer Bill of Rights". The specific language proposed appeared on the original proposal sheet (P-1) as item 7A.

3. Article VIII, Vacations - The PBA has proposed that vacation day may be requested at any time during the calendar year. Any vacation utilization is always subject to the prior approval of the Chief of Police or the Chief's

designee. This proposal appeared as item no. 6 on the original P13 proposals sheet (P-1).

4. Priority for Overtime - The PBA proposed new language be added to the contract. The precise language is set forth on an attachment to the original proposal sheet (P-1) wherein it was identified as issue 7E.

The only substantive point of agreement between the parties, in the presentation of their last offer position, is the fact that both have proposed a three year agreement.

THE POSITION OF THE PBA

The PBA maintains that the Borough's position is not arbitrable in this proceeding. The employer has not submitted an offer consistent with the statutory mandate of a single position for consideration. The employer's offer is in the alternative with two "menu" type approaches which give the option of wages and benefits upon the selection of either. At hearing the PBA objected to this form of offer and the Arbitrator reserved ruling. The PBA hereby renews its motion to strike the last offer position as was presented at hearing. In support of this motion the PBA also argued that:

"A party to an Interest Arbitration proceeding must make a single definable offer so that an arbitrator may fulfill the statutory mandate set forth in the Interest Arbitration Act NJS 34:1 3A-1 6, 2, d, (2) The referenced statutory mandate requires that a last offer be made. The entire section is phrased in the singular. There is no provision for a multiple or alternative last offer."

THE INTEREST AND WELFARE OF THE PUBLIC

The PBA argued that the interest and welfare of the residents and taxpayers of the Borough of Seaside Park is well served by the members of this Police Department. However, it pointed out that there has been a significant reduction in numbers of sworn officers and certain supervisory positions. As a result the productivity of the remaining officers has significantly improved. It further pointed out that the Seaside Park Police Department is a full service police agency providing many types of police functional. The bargaining unit consists of 1 Lieutenant, 3 Sergeants and 8 Patrolmen. The PBA also pointed out that in 1992 there were 16 sworn members of the department as compared to the 12 members in 1998. The position of Captain has not been filled and there is one less lieutenant.

At the same time, the reduced staff is performing at a higher work load. The parking summonses were up 20.4%, non-parking summonses increased by 32.6% and DWI summonses were up 111.1%. The PBA further noted that as of June 1999 the summons activity continues to increase. Non-parking 8.5% drunk driving 50%, criminal arrests-adult 117%, and criminal arrests-juvenile 72% increase. Notwithstanding the smaller workforce, the police activity continues to increase substantially. In addition the PBA argued that the level of training and professionalism continued at the highest standard. The officers completed training in virtually every area of police expertise and specialty training.

The PBA concluded that the interest and welfare of the public is well served by this police Department. They have absorbed the loss of other sworn personnel since their number has been reduced over the years through attrition. As a result there are less promotional opportunities to the ranks of lieutenant and captain as in the past.

With respect to this first statutory factor, the PBA concluded that the interest and welfare of the public in Seaside Park is certainly well served by the members of

this department who perform their assigned tasks with excellence, in spite of a shrinking work force and a shortened career path.

The Borough insisted in this regard that the interest and welfare of the residence and summer visitors of Seaside Park would be best served by awarding the elements of the Borough's economic and non-economic proposals. It pointed out that the Borough's workforce continues to be well paid and furnished with exceptional benefits. It argued that the PBA's proposal which calls for higher wages and a restoration of the longevity would jeopardize the lawful authority of the employer by exceeding the cap.

With respect to the non-economic issues the Borough argued that maintaining the existing rules regarding vacations which have been in force for many years are vital to the maintenance of the health and safety of the public and the summer residents. Therefore awarding the Borough's final offer would best serve the interest and welfare of the residents and visitors of Seaside Park.

COMPARISON OF WAGES, HOURS AND TERMS AND CONDITIONS OF EMPLOYMENT

Here the PBA argued that the compensation program of Seaside Park Police, is one of the lowest in the entire central Jersey area.

It pointed out in this regard that the base pay in Seaside Park is, with one exception, the lowest in all the towns with contracts in evidence. Only Long Beach is lower but their pay rate is more than offset by the longevity program found in that community which is non-existent in Seaside Park. Chart no. 3 below compares the 1998 top step non-supervisory pay rates in the towns in evidence. The Year 1998

was used as a base year since it is the last year with a known pay rate for Seaside Park.

CHART NO. 3

COMPARISON OF 1998 TOP STEP PAY RATE

**1998 TOP STEP
BASE PAY RATE**

BRICK TOWNSHIP	\$64,671
POINT PLEASANT	55,298
LONG BEACH	52,093
DOVER	59,521
BERKELEY	58,243
SEASIDE HTS	57,062
LITTLE EGG HARBOR	54,773
OCEAN CO. PROS.	54,148
MANCHESTER	62,338
BRADLEY BEACH	55,593
MANASQUAN	57,638
SEA GIRT	57,953
 AVERAGE	 \$57,444
 SEASIDE PARK	 \$53,004
 SEASIDE PARK	 (\$4,440)
 COMPARED TO AVERAGE	 (8%)

With respect to this statutory factor, the PBA argued in its post hearing brief in relevant part that:

“Clearly illustrated on Chart No. 3 is the substantially below average position of the Seaside Park Police Officer. It would take a \$4,440 increase attributable to 1998, the last year of the last contract, just to catch average. In effect, to consider the Seaside Park Police Officer as average there would have to be an 8.4% wage adjustment prior to any additional wage increases being provided in this contract term at issue in this proceeding. The public employer in this case has provided an extremely poor pay program to its Police Officers as evidenced by the last contract. The wage rates for 1997 and 1998 are not set forth in the prior collective bargaining agreement (J-1). Rather, one must refer to the Borough of Seaside Park ordinance no. 12225 (J-2) for this information. The reason for pay rates being set forth in an ordinance and not in a contract is that there was a formula used to develop the wage rates. The increase generated by this cost of living formula provided only a 2.8% increase in 1997 and a 2% increase in 1998. These below average pay raises created significant short fall in comparable wage standing. For example, neighboring Dover Township provided its Police Department with a 4.5% across the board wage increase for 1998 (P-27, P-27a). Point Pleasant provided its police employees with an across the board 3.9% increase for 1998 (P-13). Both Berkeley Township Police (P-18) and the Ocean County Prosecutor (P-21) provided their law enforcement employees with a 4% increase. The short fall was, therefore, substantially increased in the term of the last contract with respect to the relative standing of the Seaside Park Police Officers. The critical change in the last contract term was, of course, the loss of longevity. Virtually every municipality in evidence has a longevity program. The longevity benefit varies from town to town however it is substantial with respect to total compensation.

Chart no. 4 below compares longevity benefits in the various towns. Column (A) on Chart no. 4 describes the longevity formula and column (B) puts a fixed dollar

value using the formula from column (A) and applying it to the base pay rates for 1998 as are set forth on Chart no. 3, supra.”

CHART NO. 4
COMPARISON OF LONGEVITY BENEFITS

	(A) LONGEVITY FORMULA	(B) 1998 LONGEVITY MAX VALUE
POINT PLEASANT	12%	\$6,636
LONG BEACH	10%	\$5,209
BRICK TOWNSHIP	11.5%	\$7,437
STAFFORD	11%	\$6,167(99)
DOVER	10%	\$5,929
BERKELEY	\$800	\$ 800
SEASIDE HTS.	9%	\$5,136
LITTLE EGG HARBOR	10%	\$5,477
OCEAN CO. PROS.	8%	\$4,332
LAKEWOOD	8%	\$5,436
BRADLEY BEACH	12%	\$6,671
MANASQUAN	8%	\$4,806
SEA GIRT	3%	\$1,738
AVERAGE		\$5,060
SEASIDE PARK		NONE

In support of its position to restore longevity payment the PBA argued in part that:

“Established by Chart No. 4 is a \$5,060 short fall attributable to the lack of longevity benefits alone. Reading Charts no. 3 and 4 together one can see that the last place position is secured in relative compensation comparisons for Seaside Park Police Officers. The revised Interest Arbitration Act requires a total compensation

comparison. One may not analyze just one facet of compensation. Chart no. 5 below uses the comparison of the same area towns with respect to the 1998 base rate (see chart no. 3 supra) and the 1998 longevity value (see chart no. 4 supra). Column (C) of chart no. 5 below provides the total of the combined base pay and longevity components of compensation.”

**CHART NO. 5
BASE PAY COMBINED WITH
LONGEVITY COMPARISONS**

	(A) 1998 BASE RATE (See Chart 3)	(B) 1998 LONGEVITY (See Chart no.4)	(C) BASE + LONGEVITY Col. (A) + Col. (B)
BRICK TOWNSHIP	\$64,671	\$7,437	\$72,108
POINT PLEASANT	55,298	6,636	61,934
LONG BEACH	52,093	5,209	57,302
DOVER	59,521	5,929	65,450
BERKELEY	58,243	800	59,043
SEASIDE HTS.	57,062	5,136	62,198
LITTLE EGG	54,773	5,477	60,250
OCEAN CO. PROS.	54,148	4,332	58,480
BRADLEY BEACH	55,593	6,671	62,264
MANASQUAN	57,638	4,806	62,444
SEA GIRT	57,953	1,738	59,691
 AVERAGE			 \$61,924
 SEASIDE PARK	 \$53,004	 NONE	 \$53,004
 SEASIDE PARK			 (\$8,920)
 COMPARED TO AVERAGE			 (16.8%)

Here, the PBA argued in relevant part that:

“The cumulative impact of poor base pay (Chart no.3) and the absence of any longevity program whatsoever (Chart no. 4) results in an absolute last place finish among any form of total compensation comparison. As is illustrated at the bottom of Chart no. 5 above it would take an \$8,920 pay increase on the first day of this contract just for the Seaside Park Police Officer to catch average for the year 1998, the last contract's final year.”

There would have to be a front adjustment of 16.8% to bring Seaside Park Police Officers up to average prior to any wage increase being determined or considered for this contract at issue in this case. The short fall from average is obvious and it is inexcusable.

There are no offsetting benefits which could in any way justify the relative position of total compensation earlier discussed. Vacations at maximum in Seaside Park provide its Police Officers with a below average maximum. Chart no. 6 below establishes the below average Seaside Park vacation maximum program.”

CHART NO. 6
VACATION COMPARISON

	ANNUAL VACATION DAYS
POINT PLEASANT.....	30
LONG BEACH	24
BRICK TOWNSHIP.....	25
STAFFORD	26
DOVER	6 WEEKS
BERKELEY	30
LITTLE EGG HARBOR	30
OCEAN PROSECUTOR.....	25
LAKEWOOD	25
MANASQUAN	28
AVERAGE	27 DAYS
 SEASIDE PARK	 25 DAYS @ 25

The PBA further argued that: "The comparison of educational incentive benefits. Seaside Park does not provide any form of annual stipend or general increase attributable to the attaining of a degree of any level, There is only a partial tuition reimbursement set forth in the contract (J-1, Art. XVII, page 24) Even this benefit is below average." Additionally the PBA provided a random sampling of unique benefits existing in various comparable communities in evidence. Also, the PBA provided Chart No.9 illustrating the annual base wage increases for the three years in question herein.

**CHART NO. 9
ANNUAL BASE WAGE INCREASES
BASED ON PBA EXHIBITS**

	EFF. 1/1/99	EFF. 1/1/2000	EFF. 2/2/2001
DOVER	4.75		
STAFFORD		4.4	4.6
LONG BEACH	4.5		
POINT PLEASANT	3.9	3.9	
BRICK TOWNSHIP	3.9	3.9	
SEASIDE HTS	4.5	4.5	
LITTLE EGG	4.	4.	
OCEAN PROS.	4.		
LAKEWOOD SOA	4.	4.	
BRADLEY BEACH	3.95	4.	
MANASQUAN	4.25		
SEA GIRT	4.		
AVERAGES	4.159%	4.1%	4.6%

Here the PBA argued in relevant part, that: "Illustrated on Chart no. 9 is the annual average calculated based upon evidence placed in the record by the PBA. It would take a cumulative 12.8% just to maintain status quo To have any type of closing down or adjustment it would require a higher percentage, For example, the cumulative value of the averages for each contract year is 12.8%, however one must also add the 16.8% short fall which is illustrated on the cumulative compensation chart, Chart no. 5, supra. In order for the Seaside Park Police Officer to be brought up to a no more than average position among said officer's peers on compensation there would be required a 29.6% increase in this Interest Arbitration Award (16.8% on Chart 5, combined with 12.8% from Chart no.9). Obviously these numbers are higher than the PBA has even sought in this proceeding. Clearly established however is that it would take more than the PBA is even asking for just to catch average."

The PBA further argued that there is no reason why Seaside Park police should not have a cost contained and relatively minimal longevity program. While it may be that the benefit was rolled into the base pay in the prior agreement, but given the comparisons on the charts it is evident that the base rate short fall was even more disgraceful prior to the roll in of the longevity benefit. The PBA also pointed out that the Borough failed to produce evidence contradicting the comparisons in the Charts above. The one attempt to do so was the submission of the Lavallette Police Officer contract. However, an examination of the compensation reveals that Seaside Park is \$1,473 below Lavallette when their longevity is calculated in.

With respect to the comparison to the private sector, the PBA argued that such comparison is difficult but that given the unique tasks of the police there is strong justification for significantly higher compensation. The PBA further asserted "that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that of a police

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

With respect to the second statutory factor involving comparisons of wages etc., the Borough argued in relevant part that Exhibit M20 demonstrates that the OPEIU white collar settlement consisting of 12 Borough employees was 2.5%, 3.5% and 3.5% for the three year agreement. The Public Works unit of the Borough consisting of 14 employees, settled in February 1999 for 2%, 3% and 3% for the three years of the contract. This is in contrast to the 3.5%, 4% and 4% offered to the PBA. Here the Borough argued that this difference is compelling since it demonstrates that the Borough recognizes the services performed by the members of the Police Department and at the same time maintains the differential with the other employees of the Borough. The Borough insisted that an award in favor of the PBA would skew that differential beyond that which is necessary and would fly in the face of the history of negotiations.

In addition the Borough also introduced a comparison of 4 Ocean County municipalities which it claimed to be comparable to Seaside Park. The Borough of Lvallette, Beachwood, Barnegat and Point Pleasant Beach Borough. The Borough also argued that "Point Pleasant Beach and Lavallette, while considered resort towns, are more permanent resort vacation spots, which cater more to summer residents and visitors who maintain homes there on a year-round basis."

Also, in defending the comparability of the four municipalities the Borough stated that: "Exhibit M-7 sets forth the police employment by municipality as of 1997. The Borough of Beachwood, in 1997, had total municipal police employees of 18, which includes 2 civilians. They maintain approximately 16 police officers on a year-round basis. The Borough of Point Pleasant Beach has a total of 30 municipal police employees, of which 22 are uniformed officers. The Township of Barnegat employs 27 municipal police employees of which 21 are uniformed police officers. The Borough of Lavallette employs a total of 16 municipal police employees, of which a total of 11 are uniformed police officers. The Borough of Seaside Park maintains a total number of police employees, of which 13 are uniformed police officers. The totals for Seaside Park, Borough of Point Pleasant Beach, and Lavallette Borough do not reflect seasonal employment of special police officers. (Exhibit M-7). Exhibit M-24 sets out the recent salary and wage increases for recently conducted or concluded negotiations:"

Borough of Beachwood. 1998 - 3.8% across the Board, 1999 4% increase across the board. The Borough of Beachwood also achieved certain medical give-backs.

Borough Point Pleasant Beach. 1999-3.9%, 2000-3.9%, 2001-3.9%. The Borough also achieved certain cost savings through medical give-backs by the union.

Township of Barnegat. 1997-3%,1998-3.5%,1999-4%.

Borough of Lavallette. 1997-3%,1998-3%,1999-3%.

The Borough also argued that the over 30 contracts submitted by the PBA were from Monmouth and Ocean counties. It insisted that the county of Monmouth is not comparable since it is more populated, industrialized and is greatly influenced by the New York City area. Additionally there is a great difference in ratables and per capita income between Ocean and Monmouth Counties.

With respect to the statutory comparison in private employment, the Borough argued that the "annual wage" for 1996 was at \$16,678.00 whereas the average annual wage for the Borough employees is \$23,221.00. the Borough insisted that on the basis of exhibit M10 it is clear that public employment in most municipalities in Ocean county pays a higher wage than in the private sector in Ocean County. The Borough pointed out that an award of wages greater than in the private sector would undermine the ability of the taxpayers to fund the increases of the public employees. However, the Borough noted that Exhibit P37 indicates 4.5% increase from 1996 to 1997. The Borough concluded that "any wage offer of the Borough exceeds the trend for those years and given the relative stability of the economy meets or exceeds all other economic indicators."

STIPULATION OF THE PARTIES

The PBA pointed out that the parties have not agreed to any substantive issues before the arbitrator with the exception of an agreement on the three year term of the Contract.

LAWFUL AUTHORITY OF THE EMPLOYER

The PBA argued that this statutory criteria focuses on the "cap law". It further argued that "there is absolutely no question whatsoever that there is no cap problem in the Borough of Seaside Park."

In this regard the PBA argued that the threshold question under this criteria is whether the Borough has the ability to fund the difference between the two economic offers. The answer, according to the PBA, is unequivocally in the affirmative. In support of its position the PBA pointed out that 1% of the 1998 base wage is \$6,569.00. This number is somewhat over stated since it assumes that all the Officers are at the top step.

The PBA calculates the difference in the respective economic offers of the parties, for the entire three year period of the Agreement, to be \$13,794.00. The PBA pointed out that the Borough elected not to use the 5% cap allowed, but imposed a 1.5% cap. However, even with this self imposed limitation for 1999, the Borough under utilized it cap by \$233,266.00 which may be carried over to in the "cap bank" for up to two years. The PBA concluded that there is absolutely no cap limitation in the Borough of Seaside Park.

With respect to the Lawful Authority of the Employer, the Borough argued in relevant part that the PBA total economic proposal exceeds even a three year 15% cap assuming a maximum cap of 5% per year.

THE IMPACT ON THE TAXPAYERS AND RESIDENTS

The PBA argued in this regard that the economic impact of awarding the PBA position will be almost imperceptible on the Borough and its residents. There are sufficient t reserves both in the Borough's and the Police budget to more than amply cover the cost of the PBA position.

The PBA pointed out that the Borough elected not to fill the position vacated by Lt. Dison which resulted in a saving of some \$60,384.00. It reasoned that since the difference between the parties positions of 1% is merely \$6,569.00 there is ample

savings to fund the PBA proposal on the Police Salary line item alone, with no resulting economic impact on the Borough and its taxpayers.

The Borough argued in relevant part that the financial impact on the Borough and its residents is obvious, since any wage increase must be funded through increased taxation. The Borough calculates the total base salaries of the PBA unit in 1998 to have been \$587,146.00 (Exhibit M1) it calculates a 1% increase to be \$5,871.00. As a result, the Borough calculates the 1999 PBA proposal including longevity to be \$77,930.00 which is equivalent to a 2.2 cents increase to the tax rate. Therefore, according to the Borough, the total monetary increase of the three year PBA proposal would be 28.69% which would equal to 5 cent increase on the tax rate.

The Borough also pointed out that Seaside Park is primarily a residential community and any increase municipal spending must be absorbed by the homeowners of the Borough. Additionally, although in the last couple of years the beach revenues have been fairly good due to moderate weather conditions, a bad weather season could have a considerable negative impact on beach revenues placing a subsidy burden on the taxpayers.

COST OF LIVING

The PBA acknowledged that its last offer position is somewhat higher than the cost of living statistics distributed by PERC. However, the PBA argued that this is only one of the eight criteria and should not be the key consideration in this award. The PBA also argued that it is already paid below average with respect to other surrounding communities subject to the same cost of living considerations.

The Borough argued in this regard that all the economic indicators reveal that the cost of living in this area is below 3%. It pointed out that the Social Security Administration recently announced a 2.7% COLA increase for this fiscal year. It also argued that the BLS calculated the 1999 CPI to have increased only approximately 2.6%. It further argued that the Borough's proposal exceeds both the COLA and the CPI which reflect inflationary trends of less than 3%.

THE CONTINUITY AND STABILITY OF EMPLOYMENT

Here the PBA argued that this factor in the statute relies on the private sector concepts of "prevailing wage" and "area standards". Both of these concepts, argues the PBA, weighs heavily in favor of its wage position, since the employees in this Unit are underpaid as compared to other municipalities in evidence.

The PBA insisted that the evidence does not support the Borough position. It pointed out that even the Department of Labor statistic document in evidence demonstrate 4.5% increase of average wages, which is what the PBA is seeking in this case and would not even catch average. The PBA insisted that an adjustment in longevity is also important in this instance since having folded this benefit into the base wage failed to bring the PBA up to average with comparable municipalities.

The PBA defended its modest additional proposals of changes in Departmental investigation clause, vacation requests and priority for overtime, which would not result of additional costs to the Borough. In concluding the PBA asks for some consideration in relief in the area of longevity benefits.

The Borough argued in part that the continuity and stability of employment is best achieved through budgetary vigilance that results in a stable workforce not only in the Police Department but in other units of the Borough as well. The Borough

stressed that there is little if any turnover in the workforce of the department and that the PBA did not present evidence that employees of the Police Department were leaving to go to other departments as a result of economic considerations.

The Borough concluded that its economic offer exceeds that inflationary factors and reflects the salaries of other members of police departments in the county while maintaining a high level of services to the residence and taxpayers of the Borough. It further stressed that the demand of the PBA had been anticipated by the Borough in its budget planning and if awarded may "...force the Borough to further reduce personnel..." Therefore, the Borough's proposal should be awarded.

DISCUSSION AND OPINION

Since the parties did not elect an alternate method of resolution of their wage dispute, I am mandated by the amended Interest Arbitration statute to decide the issues under the conventional method of arbitration, giving appropriate weight, where relevant, to the eight statutory criteria.

The interest and welfare of the public is the first factor in the amended statute. However, it is axiomatic and somewhat contradictory that a well paid police force and a low tax rate are both in the interest and welfare of the public. Therefore, it is desirable to maintain a balance between these seemingly contradictory interests of the public.

It is obvious that the residence and taxpayers of Seaside Park benefit by having a competent and efficient Police department. This requires among other things, the maintenance of a competitive wage rate in order to reduce turnover and preserve a reasonable continuity of experienced and well-trained officers.

I agree with the sentiment of both parties that **the interest and welfare of the public** is best served by providing fair wages and conditions of employment to the

officers who serve and protect the citizens of the community. However, differences exist in the definition of what and how much is fair. That, obviously is the essence of this Interest Arbitration.

I recognize that increased productivity in a police department is not necessarily a reason, by itself, to increase wages. In this instance however, with the reduction in force of one high ranking officer who was not replaced, and the reduction in force by attrition, the additional productivity cited by the PBA was significant, beneficial to the Borough and also resulted in meaningful savings to help fund the economic package awarded herein.

The difference in the wage positions of the parties is 1% in the first year and only about .5% in the last two years of the proposed three year contract. For all the statutory reasons stated below and after reviewing the evidence in the record, I found that 4% in each year of the contract is the appropriate increase. This is merely .5% greater than the Borough's wage proposal of 3.5%, 4%, and 4%, absent the roll up effect. The Borough's second and third year wage proposal is awarded.

However, in considering the PBA's longevity proposal I was mindful that in prior negotiations, the parties folded the longevity benefit into the existing base wage. Consequently, given the recent fold-in, I found the 2% after 4 years of service proposal of the PBA, somewhat ambitious. Nevertheless, I also found that, according to the record before me, the fold-in of longevity benefits did not increase the base wage beyond the average wages of other police departments in evidence who continue to enjoy traditional longevity benefits. Therefore, I determined that some recognition of the longest service employees after 24 years of service should continue to exist. This benefit would obviously effect very few employees at this time and only for a brief period of time prior to retirement. However the restoration of a full longevity schedule as requested by PBA is not granted. The restoration of a full

longevity benefit so soon after the parties folded it into the base wage, is hereby not awarded. The parties may of course revisit this benefit in future contract negotiations. The above 2% longevity adjustment to the most senior employees only after 24 years of service, is intended to continue to recognize and reward dedicated long service, as the parties no doubt intended when they originally negotiated the longevity schedule contained in Article VI of the predecessor Agreement (J1).

Regarding health benefits, I was not convinced by the Borough's arguments with respect to the premium and co-pay prescription increases by covered employees. Therefore, I leave the existing medical insurance arrangement of the parties unchanged.

The Borough's proposed increase in tuition reimbursement from \$75.00 to \$100.00 per credit is hereby adopted.

The language as contained in PBA proposal 7-D regarding "Work Incurred Injury", which was also contained in the final proposal of the Borough, is also hereby adopted.

The non-economic vacation proposal of the PBA is hereby granted since it merely permits the Chief of Police to grant vacations during the year based on his staffing needs and his reasonable discretion. Such discretion of the Chief to maintain necessary staffing should not be restricted in the Collective Bargaining Agreement as is the case under Article VIII of Joint Exhibit 1.

In reaching the above decision, I also considered the Comparison of Wages and Terms and Conditions of Employment. In this regard, both parties were able to put forth statistics of other recent settlements favoring their respective positions.

The PBA produced Chart No. 3 showing that the base-wage for a top patrolman in Seaside Park is 8.4% below average of the Municipalities in evidence.

Consequently, the PBA reasoned that just to bring this unit up to average, would take a wage increase of \$4,440.00 attributable to 1998. However, I believe for the reasons stated herein, that the 4% per year wage increase awarded herein is reasonable in light of all the statutory sub-criteria.

While the comparison with the **private sector** is always difficult for many of the obvious reasons. I must consider that the taxpayers of this community are predominantly in the private sector and therefor, the average wage increases in that sector necessarily effect the community's economic ability to shoulder the increases herein.

The overall compensation presently received by the **other employees in the Borough** was also considered to be significant. This sub-criteria supports the Borough's position that the 4.5% wage increase sought by the PBA was somewhat less reasonable. However, it must be noted that the other Units were not shown to have had a dramatic increase in productivity as did the PBA and do not have the same responsibilities to protect the citizens of the community and enforce its laws.

The **Stipulation of the Parties** essentially contained an agreement for a three-year contract. However, this does not foreclose any other agreements of the parties, that may have been reached prior to my arrival and the procedural changes inevitably necessary to conclude the contract.

In the **Lawful Authority of the Employer** factor, the PBA essentially argued that the Borough had the authority but elected not to use its discretionary cap ability which is as high as 5%. Instead, the Borough elected to use only 1.5%, as its cap limitation for 1999. Cap flexibility for the three years of the proposed agreement appears to be assured. However, this is obviously not money actually available but merely the amount by which the Borough could legally exceed its budget. I must

also note that the ability to pay was not an issue herein. Moreover, the ability to fund the entire PBA proposal does not necessarily mean that the entire proposal is reasonable.

The Financial Impact on the Governing Unit, its Residents and Taxpayers, would not be immediately devastating even if the entire PBA proposal were to be awarded. However, as stated above, being able to afford the increase is not necessarily the controlling factor in determining its reasonableness. When all eight statutory factors are taken into consideration the 4% per year wage increase and the minor adjustment in the longevity for the most senior of the Unit, appears in this case to be most reasonable.

The Cost of Living criteria favors the Borough position since the CPI increases have not been significant in recent years and inflation has been mostly under control. The Borough argued convincingly here that since the CPI has been decreasing recently the wage increases should also reflect this factor. Consequently, the base-wage proposals of the Borough in two of the three years of the Agreement were granted herein.

I must note that there was no hard evidence that the **Continuity and Stability of Employment** would be negatively affected by the Borough's proposal or enhanced by the PBA proposal. However, such evidence is difficult to gather and most often it is merely speculation. The best evidence of course, in this regard, is the turnover of employees, where officers give up their seniority in order to seek a position elsewhere for greater compensation. However, I have nothing in the record to indicate that such a condition exists in Seaside Park on a significant level.

Nevertheless, both sides agreed that maintaining a competitive and fair compensation program in the police department is desirable and is in the best interest of the citizens and taxpayers. With this in mind and considering all the above revised statutory criteria, I have concluded, for the reasons stated above, that the PBA wage proposal was somewhat high and the Borough's proposal was found to be somewhat low in the first year. Therefore, after thoroughly considering all the evidence in light of the revised statutory criteria as required, and after reviewing the respective positions and the post hearing arguments of the parties, I make the following:

AWARD

- 1. Duration of three years. 1/1/99 through 12/31/01**
- 2. 4% base wage increase across the board, effective January 1st of each of the three years of the agreement.**
- 3. A 2% longevity payment after 24 years of service effective in 20001, the final year of the three year Agreement.**
- 4. Tuition reimbursement increase from \$75.00 to \$100.00 per credit.**
- 5. The PBA proposal 7D contained in P1 involving "Work Incurred Injury" is hereby adopted.**

6. **Article VIII Vacations shall be modified to permit vacation requests during the entire year subject to the staffing needs and the reasonable discretion of the Chief of Police.**



ERNEST WEISS, ARBITRATOR

STATE OF: NEW JERSEY
COUNTY OF: MONMOUTH

On this 10th day of January, 2000, before me personally came and appeared Ernest Weiss, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.



JILL E. FARKAS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 3, 2000

