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In the matter of Compulsory Interest Arbitration  
concerning the negotiations impasse between

The Borough of Haworth, New Jersey

DECISION AND AWARD

and

of

New Jersey Police Benevolent Association  
Local 206

Frank A. Mason, Arbitrator

Re: PERC Docket IA-2003-090

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#### APPEARANCES

FOR THE BOROUGH: Mark S. Ruderman, Esq., Ruderman & Glickman, P. C.

Peter J. Scandariato, Esq. Borough Attorney

Arthur W. Berman, Police Commissioner

Stephen J. Chral, Councilman

FOR THE ASSOCIATION: Richard D. Loccke, Esq., Loccke & Correia

Thomas Ryan, Patrolman, Haworth Police Dept.

Michael Gracey, Patrolman, Haworth Police Dept.

#### PROCEDURAL BACKGROUND

The Borough of Haworth and PBA, Local 206 are parties to a contract which was in effect from January 1, 1999 through December 31, 2002 covering a unit consisting of police personnel in the ranks of Patrolman, Sergeant, Lieutenant and Captain. Negotiations for a successor Agreement reached an impasse and in May of 2003 the PBA filed a Petition to Initiate Compulsory Interest Arbitration with the Public Employment Relations Commission which identified the matter as PERC Docket IA-2003-090. This arbitrator was mutually selected by the parties under the authority of the PERC to conduct

appropriate proceedings as required to effect a resolution of the impasse. The parties met in mediation sessions on July 22, 2003 and October 15, 2003. These were not entirely successful although significant progress was made toward narrowing the issues between the parties. As a result a formal hearing was scheduled for November 25, 2003 at which the parties presented argument and evidence and were given opportunity to examine and cross examine sworn witnesses. A certified record of these proceedings was made and later presented to all participants. The parties opted to submit post-hearing briefs which were received and the record closed on February 23, 2004.

#### **POSITIONS OF THE PARTIES**

The parties agreed that the term of the new Agreement should be for a period of four years from January 1, 2003 through December 31, 2006 with the understanding that appropriate salary adjustments would be effected retroactively to January 1, 2003. Further it was agreed that the authority of the arbitrator was to be the conventional method of resolution of the issues presented in this matter.

#### **FINAL OFFER OF THE BOROUGH**

1. **WAGES:** The Borough proposed that wages be increased by 3% in each of the four years of the Agreement to be effective on January 1st of each year. The current increment system would remain in effect providing that individuals on steps in the salary guide would move to a higher step on an annual basis as has been the practice.
2. **FREEZE:** In exception to the provision above the starting salary rate of \$26014, as set forth in the prior Agreement, shall be continued throughout the four year term of this Agreement without adjustment.
3. **SALARY GUIDE MODIFICATIONS:** The current salary guide shall be modified so that the number of steps be extended from seven steps in six years to eleven steps in ten years. The Academy step to be continued during Academy training and the 'During First

Year' step then to apply for the remainder of the first year of service. The new salary guide would be so constructed as to provide equidistant steps from starting salary to maximum. This new guide to become effective upon the service of this award and not to impact on employees already in service.

4. **PERSONAL DAYS:** The current provision of three personal days per year shall be continued for employees already in service but discontinued for persons employed after January 1, 2004.

5. **VACATION:** The Borough proposes to reduce the vacation allowance for new employees by subtracting three days from each of level of entitlement so that instead of ranging from 10 days to 26 days the allowance would become 7 days to 23 days.

#### **FINAL OFFER OF THE ASSOCIATION**

1. **WAGES:** The PBA proposes that there be a 5% across the board increase in each of the four years of the Agreement effective on January 1st of each year and retroactive to January 1, 2003. The increment system be continued as in past practice.

2. **VACATION:** The vacation allowance be improved by forty hours added to the entitlement after twenty years service.

3. **PERSONAL DAYS:** The PBA seeks an additional personal day to increase the allowance from three to four days.

4. **WORK SCHEDULE CODIFICATION:** The PBA seeks to have the current work schedule be incorporated in the Agreement so that the text matches the schedule now in practice. This would mean the Agreement language defining the normal work day as eight hours be modified to reflect the current schedule of twelve hours.

#### **STATUTORY CRITERIA**

The statute under which these proceedings are held requires that the arbitrator consider and give due weight to certain expressed criteria in the determination of the issues before him. In consideration of these the arbitrator must carefully determine the degree of relevance or non-relevance each criterion should be given and explain why he has reached those conclusions. They are as follows:

1. The interests and welfare of the public. Here he shall include 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 same or other employees performing the same or similar services and with other employees generally:

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

[b.] In public employment in general with the same condition as in [a.] above.

[c.] In public employment in the same or similar comparable jurisdictions which shall be in consonance with the guidelines for determining the comparability of jurisdictions promulgated by the Commission.

3. The overall compensation presently received by the employees, inclusive of direct wages and all economic benefits.

4. Stipulations of the parties.

5. The lawful authority of the employer.

6. The financial impact on the governing unit, its residents and taxpayers.

7. The cost of living. [COL]

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 other terms and conditions of employment.

It is my intent to faithfully abide by the obligations set forth above and carefully consider each of those criteria in crafting the determination of all issues at impasse.

## INTRODUCTION

Haworth is a small borough in the north-east portion of New Jersey, approximately four miles west of the Hudson River and six miles south of the New York State border, consisting of approximately two square miles, heavily wooded and within 20 minutes of New York City. There are 1125 homes in the borough and 3390 residents in this bedroom community. It is bordered by Closter, Demarest, Oradell and Harrington Park. There is virtually no industrial activity and a small proportion of commercial ratables in the borough. The resident property taxpayers provide about 85% of the tax revenue. Within the borough is the United Water Filtration Plant which is the source of potable water for 1.2 million people and as such is considered a potential target for terrorist activity, rated in the top 100 of such sites in the State of New Jersey.

According to figures published by the Moody's Investors Service the per capita family income is 169% of the State average and the median family income is 172% of the State average. Moody's described the per capita full value of real property to be \$173213 and noted that it had increased an average of 6.9% annually during the prior three years. The assessed valuation of property has grown by only 1% annually due to the fully developed nature of the community. The borough's assessed valuation was said to be 69.87% of true value in the 2003 Final Equalization Table published by the County of Bergen.

The police force is relatively small but it has developed mutual assistance practices with adjoining communities. Closter provides for Haworth a contracted dispatch service for off hours, a service it also extends to other local municipalities which relieves them of the expenses of maintaining such in each police department. There exists a program for response to "Columbine" incidents, crises in schools, which involves the surrounding municipal police organizations and the regional school district. The inter-relational concept involves training and information exchange as well as assistance on an incident basis. A shared DUI program intended to be instructional at the high school level is a further example.

There are several issues posed in this dispute. The clear focus is on economic matters and in particular the wide gap between the salary increase offers of the Borough and those of the PBA. Both parties presented extensive data in the support of their positions, the Borough claiming it has offered a fair and equitable salary and benefits plan within its limited means and the PBA claiming the proposals it has put forth would minimally overcome the perceived inadequacy of the compensation currently received. The discussion and analysis below is intended to more fully describe these differences and support a determination of the award.

## SUMMARY OF THE EVIDENCE

### THE POSITION OF THE BOROUGH

There are several important elements which the Borough advanced to defend its position. In the first place it is apparent that the Borough has adopted a conservative approach to the management of the revenues available to it. In part this is a reflection of the fact that there is very little land available for development and virtually no likelihood of commercial taxable additions. This means that the vast majority of tax revenues are provided by residents of the community. The perception of the financial management team is that the primary factors present in the Borough, which influence budgetary planning, compel a realistic recognition of the limits being imposed.

In preparation for this hearing process the Employer set forth its financial considerations in a detailed summary presentation of Haworth's ability to pay argument. I will attempt to condense those points emphasized and considered most important. It should be noted that the body of that presentation included a line item review of all elements having consequential impact on the total budget. It can hardly be said that this treatment was less than comprehensive or that the reader would fail to be cognizant of the underlying consideration of maintaining all public services within carefully crafted cost containment measures.

The 2003 budget included provision for salary adjustments for this negotiations unit at the annual rate of 2.75%. During the negotiation process the Borough extended the offer to 3% per year in an effort to reach a voluntary settlement. This did not happen primarily because the PBA has described the offer as inadequate and has claimed the employees involved are under paid and would become more so if the 3% offer was to be implemented. The Borough takes sharp issue with that claim and described its offer as fair and equitable and a reflection of its ability to pay.

The Borough noted that the high rate of property taxation, at 3.09 points is among the highest in the County and then provided data to show that the per capita costs of property taxes was also among the highest in Bergen County. The figures presented indicate that the average per capita cost of 70 municipalities in the County was \$2078 compared to Haworth where the per capita property tax was \$2632 or 26% higher than average. In combination the conclusion advanced is that the tax burden in Haworth is comparatively very high which supports the policy of containment which it has adopted. In spite of this other factors had propelled the property tax rate for 2003 to increase by 7.74%. Because of this the Borough budget for 2003 was cast with primary regard to the tax revenue anticipated and well within the 1% Cap limit imposed by the State. There was no support for adoption of an ordinance which would have allowed the budget to increase by as much as 5% for those items within CAP regulations. In fact the 2003 budget approved did not utilize even the flexibility available within the 1% CAP limitation. That figure was \$3,593,248 but the total appropriated was some \$233,398 less at \$3,359,850. The reason for this was the attempt to employ fiscal restraint and to minimize further anticipated tax increases which had grown from a previously expected assessment move from .82 to .865, an increase of 5.49%, to .884 from which the 7.74% figure noted above was calculated. There are other factors which influenced the adoption of this conservative policy. One of those was the extraordinary increases in the costs of health care insurance at some 24+% entering 2003. Another was the 19% increase in Workers Compensation premiums and

the escalation of liability premiums following the added threats emanating from the 9/11 terrorist situation. Additionally rapidly rising fuel costs were well beyond the rate which could have been anticipated and were continuing to grow. All of these items are necessary expenditures which are largely out of the control of the Borough. Beyond these relatively measurable considerations the ongoing recession with the concurrent loss of employment, investment resources and other economic factors affecting the residents encouraged a conservative approach and the avoidance of commitments which would adversely impact on the economic stability of the Borough.

Another singularly significant factor was the reduction by Moody's Investment Services of the Borough's rating from A1 to A2 on the Borough's \$6.6 million parity debt and the extension of that rating to include \$1.9 million of Haworth's general improvement bonds. This was described as being due to the financial position of the Borough being weakened because on narrowing financial reserves. Moody's indicated that there had been a significant narrowing of the Borough's cash position in 2002 and that there was little management flexibility to address unforeseen circumstances. It noted an increased reliance on cash flow borrowing which had increased from \$361,000 in 1999 to \$990,000 in fiscal 2003. Also it was noted that 20% of the Borough's annual expenditures were appropriated for debt service.

A further problem noted was the questionable reliability of state aid as the Governor has indicated this to be problematic and the State budget process has required consideration of reduction where possible. In the 2003 year the Borough submitted a request for extraordinary assistance to the State in the amount of \$263,000 and received \$150,000, a reflection on the position of the State as to assistance to local governments. It is not anticipated that this condition will improve and may be a harbinger of tighter budgeting on the part of the State. The conclusion drawn is that State aid is not dependably available in the future and caution must be exercised as to dependence on that source of funds.



Another consideration as to the conservative approach to the budget is the shrinking annual surplus. The surplus balance on January 1, 2003 declined from the previous years. It was down from 2001 by \$123,431 or 38% and again down from the 2002 budget by \$79,010. This is seen as a dangerously low trend in of itself but also as a decreasing resource cushion for anticipation in the following budget period.

Beyond these considerations are needs for capital improvements, vehicles and other maintenance and repair items which are increasingly costly, as well as contracts for services such as the Closter dispatch program and the collection of recyclables and garbage, where costs are not entirely within the control of the Borough and where alternatives are more costly or may be non-existent.

As part of the summary statement the Employer indicated, "The Borough has availed itself of every possible option within the "CAP" to create the greatest flexibility within the current expense portion of the budget, taking into account the current tax rate, per capita income, etc." "Any deviation from the budget as prepared, with respect to any line item, either through Interest Arbitration or otherwise, could have a severe impact on the balance achieved by the Borough between wage increases and the level of services provided to the Borough's residents and taxpayers." It was also noted that, "In the narrow sense, if a municipality is not budgeted up to "cap", there is room in the Current Expense Budget to appropriate monies for additional expenditures." "However, to narrowly focus on this fact excludes the necessary considerations of long-term versus short-term budget strategies, necessary capital improvements, debt service and revenues."

Beyond the presentation concerning the Borough's ability to pay the Borough offered a critical examination of the proposals of the PBA and comparisons of the costs of the Borough's last offer with those of the Association. I will discuss the cost comparisons below.

With reference to interest arbitration awards it was noted that the average of awards in 2001 was, as to wage improvements, 3.75%, a figure well below the demand of PBA for

5%. The awards issued for the period 2003 - 2005 included average increases of 3.67%. Citations of awards included East Orange at an average increase of 3.67% for the 2003-2005 period; Borough of Middlesex with average increases of 4% for the period; Union City at average of 4% for the 2003-2004 period; County of Hudson with 3.75% for 2003; Piscataway Township with average increases of 3.9% for the 2003-2006 period, giving consideration to an added .5% in July of 2002; Union City with a 4% increase in 2003. Other elements of "recent" awards were provided for years prior to the period at issue here and were not considered relevant. The Employer made note of the fact that none of these awards granted the level of increases demanded by the PBA.

The Employer also provided information as to its negotiated agreement with a unit of public works employees, its only other group of organized employees, citing the wage increases were at the 3% level for 2003 and 2004. It is contended that this constitutes a valid pattern of settlement which should be acknowledged as controlling in the instant dispute.

The Employer was critical of the PBA for having selected only a random sampling of Bergen County municipalities as the basis for its comparability statistics. The Borough claims to have used all communities in the County and supplied data on several topics including: The population figures showing Haworth to be 63rd of 67 communities with only 3,390 residents as compared with an average of 13,006 for all communities in its listing: The area in square miles of each community with Haworth ranked 47th with 1.96 sq. mi. as against the average of all communities at 3.33 sq. mi.: The aggregate true value of property in Haworth to be \$586,812,652 versus the average of \$1,530,002,684 for all others. It also showed certain data related to the terms of agreement such as the average number of steps in the salary guide for patrolman being 7.85 contrasted to Haworth at 7: The average clothing allowance being \$785 while Haworth pays \$1050: Longevity plans showing 41 having more generous payment than Haworth, 14 equal to Haworth and 10 less; the complexities of these programs preclude a detailed analysis but the range of

payment is from zero to 15%. The average number of holidays being 13.1463 for 41 communities selected and Haworth at 13. The average number of personal days provided to be 2.357 with Haworth granting 3 among 12 at that level.

Separately there were included several agreements for Bergen County police departments without an expression as to why they were selected or as to their comparability with Haworth. Ramsey agreement shows patrolman at maximum [step 8] to be earning \$81500 in 2002 and improving to \$84354 in 2003, an increase of 3.5%. An agreement involving Hillsdale showing annual increases from 2003 through 2008 at the rate of 3.75% with a maximum salary in 2003 of \$78738. An agreement in Cliffside Park showing the maximum salary of \$69381 for 2003, up 3.5% from 2002. An agreement in Fairview showing a maximum pay rate of \$70426 in 2002 but no information beyond that. An agreement in Hasbrouck Heights showing the maximum patrolman salary for 2002 to be \$81534 reflecting an increase of 4% for 2003 and two increases of 2.125% [equal to 4.25%] for 2004. An agreement for Dumont showing the maximum patrolman pay for 2002 to be \$72098 and an increase to \$75163 or 4.25%. The average maximum pay for 2002 of these six municipalities placed in evidence is \$74629 which is 8.7% greater than Haworth's maximum. The average of the five describing the rate of increase is 3.8%. It is the contention of the Employer that these statistics reinforce its claim as to the excessively high demand of the PBA which is 5% per year.

The Borough is critical of the list of municipalities about which compensation data were offered by the PBA to demonstrate their position as to the comparability criterion. In its presentation the Borough referred to prior decisions at interest arbitration wherein this issue was addressed by the arbitrators rendering determinations concerning Haworth. In the 1984 award of Arbitrator Laura he addressed the concept of comparable communities and said, "There is no standard therefore which would warrant any lock-step relationship between wages in Haworth with anyone of the other Northern Valley Communities." This statement seemed to reflect his comments as to the nature of Haworth as a "bedroom"

community where local taxes are essentially borne by residents in the absence of significant commercial ratables. He noted that the intensity of the police work in Haworth was not equivalent to that of other communities where more activity was present related to peak traffic patterns and commercial properties. He also noted that, "in considering these percentage wage increases it must be kept in mind that the Haworth police officer is the lowest paid police officer in the northern Valley..." He indicated, "The recent wage increase history in the Borough of Haworth has shown moderate increases, even in those years when inflation was rampant." "There has been therefore a progressive shortfall in wages as compared to increases in the CPI...for Borough police personnel." "Given the posture of the public employer at the bargaining table in the setting of its offers, it would appear that the employer intends this trend to continue." He went on to state, "Needless to say, the interest and welfare of the residents require that Borough police officers be paid a salary and enjoy benefits commensurate with their workload and comparable to other municipalities in Bergen County and the Northern Valley section of Bergen County in order to maintain their morale and well being, which is necessary to perform the dangerous work assignments." Arbitrator Laura determined the position of the Borough to be the most reasonable of the final offers before him. He acknowledged that Haworth police officers were the lowest paid in the Northern Valley, the location of comparables I've selected, and surrounding areas. He also pointed to the fact that the offers before him at the time were so close as to be, "essentially the same." This, of course, is not the situation presented here.

In a subsequent interest arbitration proceeding before Arbitrator Stochaj the issue of comparable communities was addressed. He rejected communities suggested by the PBA for several reasons. Alpine was considered to have such a substantially higher level of per capita income as to remove it from comparability. He observed that Dumont was almost six times larger in population and significantly [\$5000] ahead in per capita income and had a tax revenue base which was much more weighted to commercial and apartment

properties. He rejected Tenafly and New Milford for similar reasons and concluded that Closter and Harrington Park were as close as one could get in comparability.

The Employer then suggests that, "Haworth's demographic uniqueness renders comparability to Bergen County municipalities doubtful, destroying any justification for a lock step between Haworth police salaries and police salaries in other Bergen County municipalities." Notwithstanding that conclusion the Borough defended its compensation program on comparison's with other communities. It noted that the salary guide has only seven steps compared to 7.85 for the County as a whole, and about half have more steps which is claimed to be a sufficient basis for awarding the Borough's position to add four steps to the guide for new employees thus making the guide the third longest of all communities in the County and then to be 3.15 annual steps longer than average to reach maximum pay. It also noted the superior value of the clothing allowance noted above as part of the compensation enjoyed by Haworth police officers exceeding that of the average community by \$265 or 33.8%. The longevity program was also declared to be a "commensurate" benefit and noting that Harrington Park provides only 7% at maximum versus the 8% in Haworth. Haworth also provides almost the same holiday benefit as do the average communities in the County and provides 3 personal days whereas the average of 42 communities used for comparison was only 2.357. The Employer notes that six communities in the County do not provide any personal leave days and this fact should be supportive for the Borough's demand to eliminate same. The vacation benefit which provides 26 days after twenty years service exceeds the County average of 24.44 thus providing nearly one and a half more vacation days to these officers than that average. The Borough claims this to be a sufficient reason to refuse the demand of the PBA to add forty hours vacation time.

In addition to the salary increases negotiated in the Ramsey case, noted above, the Borough points out that the PBA there accepted a two tiered longevity system which delays achievement of the maximum payment of 10% and valuable insurance give-backs in

the form of adoption of a PPO at 100% coverage for in plan services and only 80% coverage if out of plan services are used. The Borough noted that in the Hillsdale case the 3.75% annual increase is well below the demand of the PBA illustrating the greater fairness of the 3% offered here. In addition Hillsdale resulted in an increase of one step in the salary guide and acceptance of a PPO as the principal health services provider with the payment to each officer of \$1350 to consummate the deal. This is seen as a support for the movement from seven steps to eleven steps in this situation as a reasonable demand.

In several of the cases cited there was an agreement to freeze the starting salary, in most instances for the life of the new accord. This is seen as sufficient reason to award the same to the Borough in this matter.

#### THE POSITION OF THE ASSOCIATION

The PBA contends that the compensation package as now in effect is well below any comparison one would logically make with similar municipalities. The key differential placed in evidence is that the maximum salary paid in Haworth for the year 2002 falls below the average of 28 communities in Bergen County chosen for comparison by some \$9930 per year. The chart placed in evidence erred by showing the average to be \$5000 lower than it actually is according to my cross checking of the underlying data. Thus the difference shown to be \$4930 in the chart, undoubtedly a clerical error, at a negative 7+% is actually 14.5% using the particular selection of municipalities offered by the PBA. This would clearly highlight the claim for underpayment as contrasted to comparable employment but begs the question as to what group of communities actually should be used for such comparisons, if any. My review as to the argument of the Borough, to the point that there is no other municipality in Bergen County, or presumably anywhere else, to use as a basis for comparison is that it is flawed. Below I will identify a comparison group which I believe to be rational and appropriate for the purposes anticipated by the stated legislative intent wherein it specified comparability as one of the criteria to be considered.

The PBA contends that Haworth is an upper class suburban community whose physical boundaries with neighboring communities would be difficult to recognize and where there is a comparable evidence of general wealth. Haworth police officers perceive their primary responsibility to be provision of a safe community. The record, supported in great detail by evidence entered by the Borough, suggests that this goal is fully satisfied. There is a substantial effort and level of success with regard to cooperative working relationships with police departments in the surrounding areas, particularly with the adjacent communities and which is probably most clearly obvious by the example of the shared dispatch services which are functionally centered in Closter. There is shared attention to other programs such as DUI enforcement, student driving and safety plan and an inter-municipal senior alert program. In addition there is an overall plan for emergencies including terrorist threats, accident response and in general mutual aid as required. The communities most commonly involved are Closter, Harrington Park and Demarest. They also maintain a juvenile conference committee which functions as a court involving juvenile offenders and which includes residents sitting as part of the process. A regional detective function expands from these four municipalities to include Norwood and Northvale, which are closely situated to the north of Haworth, with Norwood adjoining Harrington Park and bordering Northvale.

The PBA is critical of the rate of turnover and provided several examples to demonstrate the opportunity for greater earnings to have been the underlying incentive for officers to leave Haworth. It is also noted that Haworth is highly respected for the quality of its personnel and this is a factor in the successful application for new employment to the detriment of Haworth where the investment in skills training should be paying off. One such employee left to work in Paramus where the 2002 maximum pay was over \$90,000. Sergeant Campbell, who testified extensively and who provided much of the information condensed above noted that he knew of no other police department in the area where the

pay was lower than Haworth's. He indicated that money was the biggest challenge facing Haworth as far as retention of officers was concerned.

In a second chart, an abbreviation of that cited above, the PBA included only what it called immediately bordering towns for comparison purposes. They were Alpine, Demarset, Dumont, Harrington Park, Oradell, Emerson and Closter. Those paid an average maximum salary of \$76471 in 2002 an amount \$7815 greater than Haworth or 11.4% more. The claim is made that there are no offsetting benefits which close that gap leaving one to conclude that Haworth is well behind the area in maximum pay.

PBA is also critical as to benefits levels. In particular it claims the longevity benefit paid at maximum of 8% is below the maximum of other communities and as a result of the lower pay in Haworth is worth even less in dollar terms. Again the PBA used a particular list for the comparison but the conclusion was drawn that the maximum payment of longevity based on 2002 wages was \$5492 in Haworth but in the average of the comparables it was \$7838 or \$2346 more than Haworth pays. When added to the basic compensation differential of \$9930, noted in its larger comparison chart, it results in a cash compensation deficit of \$12276 which is partially offset by the \$265 greater clothing allowance in Haworth.

If the shorter chart of the so-called bordering towns named above is used the average longevity maximum based on 2002 pay rates would be somewhat less at \$7121 but still greater than the \$5492 by \$1629 per year. Thus if both wages and longevity are calculated on the basis of the bordering towns the result is a shortfall in total compensation of substantially less than when using the first chart presented by the PBA but still \$9444 lower which amounts to 12.7% of combined elements of compensation.

The PBA particularly noted that the non-competitive compensation rate in Haworth meant a lifetime imbalance of earnings as well as a substantially lower pension than is received by other police officers with whom they work on a daily basis performing the identical jobs and serving a wealthy population with outstanding performance.



In further criticism of the Haworth proposal the PBA noted that the short chart group of bordering towns were providing salary increases for 2003 at an average rate of increase of just over 4%. The increases for 2004 were only available for 3 of the 7 towns and averaged 3.97%. The application of these increases is not only at 33% higher rate than offered by the Borough but also produces actual dollar increases which widen the gap between that proposed for Haworth and the average group.

In defense of its suggestion that private sector wages not be given significant consideration the PBA noted that there is no other comparable job in private employment. Public sector police are uniquely entrusted with the safety of the population, the right and obligation to carry weapons and to use them in the application of their responsibilities to maintain peace and enforce the laws even in their off-duty hours.

In its presentation as to the Borough's ability to pay the PBA noted that the effective municipal tax rate was below the average with reference to nearby communities. This view is in sharp contrast to that of the Borough which was stated to just the opposite position. The Borough quoted the rate as 3.09 on assessed valuation. The PBA has chosen to use true value as the basis for the tax rate and in doing so used that same approach to determine the rates paid in neighboring towns. This produced an average rate in effect for 2003 for the group of comparables selected at 2.46 and the rate for Haworth using true value would be 2.15. Thus Haworth is lower than the average by .31 points. I shall examine this in greater detail below.

The PBA argues that all of its demands, if met, would not be a burden on the Borough from a financial standpoint as there is plenty of room within the adopted 1% budget CAP increase to pay the associated costs if the Borough chose to make the appropriations. In addition it asserts that even if all demands were awarded the relative position of Haworth police officers as contrasted to comparably employed officers in surrounding municipalities would remain very nearly constant with Haworth at the bottom of the list in total compensation. However it emphasized that an award only equal to the advances

achieved in the area municipalities will serve to further exacerbate a bad situation by allowing the negative gap in dollar value of total compensation to grow.

## DISCUSSION AND ANALYSIS

The Borough has advanced two basic rationalizations in the defense of its position. The first of these is the inability to pay more than has been offered and the second is that the police officers are well compensated and there is no definable comparison group against which to measure the appropriateness of that treatment. These two approaches are very much intertwined. The PBA on the other hand has attacked the problem on the basis of what it characterizes as a sub-normal and inadequate compensation plan considering the quality of services and dedication to safety of residents being enjoyed in the Borough and it advances the thesis that there is more than adequate financial flexibility available to afford better treatment of these officers. I will attempt to provide a resolution to this impasse while taking careful account of each party's arguments and by application of the statutory criteria to my analysis and conclusions.

### COMPARABILITY

One of the first issues to be confronted is the question of comparability. This is an element of consideration required to be evaluated as a criterion set forth in the statute. It is improbable to find that no comparable employment exists or that there are exact replicas to guide one's judgment. I believe the truth is somewhere in between these extremes. For one thing the work performed is basically the same as is done in most communities. There are differences in special cases and in intensity but all of these officers perform work every day which is replicated in most community police departments. The fact that communities differ as to wealth, geographic makeup, presence and degree of criminal activity, complexity of traffic and fiscal stability does not suggest the work to be incomparable. What is required is the definition of a most comparable group taking many of such conditions into consideration. It would not be normal if each party did not try to find

information most useful to the positions they have defended at the negotiations table. What must be done is to determine a reasonably comparable basis for comparison and utilize it as a guide as opposed to viewing it as dispositive of issues at impasse.

It is a curious thing that the Borough has declared there isn't comparability anywhere. Their view is supported to a degree by arbitrators' comments in years past. At the same time much of the Borough's testimony and evidence as well as arguments in its post-hearing brief revolves around comparisons whether they address pay rates, longevity pay-out, time off or other issues incidental to this process such as per capita tax and tax rates all compared to other communities.

I have determined that a relatively small list of communities in the area bear sufficient relativity to Haworth to constitute a basis for comparisons as to the terms and conditions of employment at issue and to be determined in this proceeding. The municipalities chosen are Closter, Demarest, Harrington Park, Norwood and Northvale. One of the underlying reasons for these being chosen is that they are geographically very close to Haworth all being within approximately four miles. Additionally they, unlike other communities just as close, are relatively small as measured by population and, except for Closter, have small police forces ranging from 10 to 15 officers. Closter has 22 and is also larger in terms of population. Another factor has to do with the close working association of Haworth police with these communities which has been described above. This element was addressed and confirmed by both parties in testimony and in post-hearing briefs. Further these communities are suburban in composition with predominantly residential environments and are removed from the heavy traffic associated with major through highways or activities such as airports or other commercial endeavor. Based on a rather dated [1996] exhibit provided by the Borough they generally receive less than half the level of tax revenues from commercial/industrial endeavor as is the case in the County as a whole although Northvale is an exception and ranks higher than average due to industrial activity. They collectively enjoy far less incidents of crime than the average of other

County communities with Haworth virtually at the lowest of all, perhaps a reflection of the intense effort of the police to interact with community residents especially through school and recreation programs.

The residential parcels as a percent of valuation in an Employer submitted table dated 1996 is also interesting. Haworth's percentage was 85.88 at that time. The group of comparables averaged 82.58 and this figure was skewed by the situation in Northvale where its revenue due to industrial presence reduced the residential portion to 61.02%. Without Northvale the remainder compared very closely to Haworth with an average of 87.97%. These figures, however outdated, demonstrate the similarity of the environments, demographics and financial structures of these closely knit communities.

As one of the key elements involved in establishing or justifying compensation has always been the value set by market comparisons and as the statutory criteria include the obligation to make a comparative analysis part of the basis of any interest arbitration award I conclude that the communities identified above, sharing the many characteristics noted, provide a proper basis for comparability. It seems obvious that the prospect of finding identical communities is zero thus it must be assumed that comparables may have substantial differences but remain qualified to be considered comparable.

Having taken the posture that there are no comparable communities with which Haworth's compensation plan for police officers should properly be made the Borough made little attempt to identify specific comparisons except as to note the general level of wage and benefits changes which were typically reflective of the end product of interest arbitration proceedings. These were frequently taken from decisions involving communities far removed from Haworth, such as the City of East Orange, Middlesex Borough, Union City, Hudson County and Asbury Park and were used only to demonstrate the general level of improvements and concessions which were incorporated therein. There was no information provided as to the compensation levels of those communities or of their ability to pay. No attempt was made to illustrate they were in any sense comparable

communities to Haworth. Some of the detail presented in those awards was illustrated above but I purposefully avoided included information not related to contractual time periods consistent with the focus of this proceeding. There was no detail presented as to the similarity or dissimilarity of those communities to Haworth, however it was apparent that there was little or no comparability when measured against the rigorous standard the Borough applied in its explanation as to the determination that the communities surrounding it did not so qualify. In one of its examples closer to home the Borough cited the award for Hasbrouck Heights, a community which I would not choose as a proper comparable, where the salary award was 3.75% for 2003 and 4.25% for 2004. If I were to presume the Borough used this as if it should be considered a comparable community I would have to further examine the terms of the award. As it happens the maximum salary for a police officer in Hasbrouck Heights in 2002 was \$81,534, a far cry from the \$68,656 offered here and a lead rate of \$12878 or nearly 19%. The Borough noted that the increases in that award supported the 3% offered more than the 5% demanded by the PBA

#### THE ABILITY TO PAY

A major thrust of the Borough's case had to do with the inability to pay. The tax burden became a focus of this argument and as noted above appeared to have been somewhat misleading in contrast to when the true value of property was used to make more rational comparisons with other communities. Beyond the observations concerning the 3.09 rate realistically becoming 2.15, when adjusted to the common denominator of true property value, there were other elements which need to be addressed. The Borough made special note of the property tax per capita burden as being 26% greater than that of the average resident in Bergen County. In actual dollars of taxes paid that assertion was correct assuming the data, which was dated 1994, still has any relevance. Clearly this outdated information provides no insight to the individual or average relative home value differential between those in Hawthorn and those of the average in the County. The suggestion the mere per capita tax payment is indicative of a higher level of taxation is

entirely without foundation unless one were to have possession of the actual true value averages of residential properties in each of the communities being investigated as well as the population density per home. None such data was provided. During this hearing the PBA indicated that homes in Haworth had been selling for an approximate price of \$450000 in 2003. Clearly if that is accurate the only way to fully evaluate the relative per capita tax burden would be to know the current home values in the communities being compared. If the home values in Haworth were found to be 50% higher, on average, than the remainder of the County a per capita tax in dollars which was less would suggest that living in Hawthorn was a bargain. A higher per capita tax might also prove to be very logical if it were known that the average homes were more highly valued and/or the average number of inhabitants were fewer. However these and other data are very significant elements of information which have not been presented for that research and analysis. My judgment is that the average home present market value in Hawthorn is in fact considerably higher than the average of homes throughout the County and this leads to the probability that even on an absolutely equal tax rate level there should be an expected higher amount, in dollars, of tax payments required in Hawthorn. The notion that there is a higher average home value in Hawthorn is supported by the detail of average income reported by Moody's. There it was indicated that per capita income in 1999 was, as a percentage of the average for the State as a whole, 169%. This figure would suggest the likelihood that home values in Hawthorn would be substantially higher than the average in the State, and probably in the County, if only because the level of resident income would support such expenditures. I could not find sufficient information in the data submitted to complete such a comparative calculation. But I do conclude that the assertion that the greater level of per capita tax paid in 1994 has no dispositive value in making any determination as to whether the Hawthorn residents are paying an unusually high level of taxes and that, if the information provided is the best data available to support that contention, it is not persuasive. Thus the arguments advanced by the

Borough which are that the per capita tax burden is unusually high relative to the rest of the County; that this fact reinforces the logic of the determination of the Borough to limit tax increases and that this supports the conclusion as to inability to pay is not substantiated by the evidence presented.

The more current tax rates, 2003, for the comparable group based on true value were; Closter, 1.99; Demarest, 3.78; Harrington Park, 2.17; Hawthorn, 2.16; Northvale, 1.89 and Norwood, 1.85. The average of the group is 2.30. Hawthorn is below that average by 6.5% and even if Demarest were to be excluded as an aberration the average would become 2.01 and Hawthorn would be higher at +6.9%. Certainly not a difference which would compel the conclusion that Hawthorn residents were being assessed at a very high relative tax rate.

Moody's made a particular note of the fact that the debt burden of the Borough , "...is a low 1.4% of full value and increases to an average at 2.9% of full value when overlapping obligations are taken into account." "Debt service payments accounted for a substantial 20% of annual expenditures in fiscal 2002, driven by an aggressive amortization of debt, with 100% of principal retired in 10 years." "The borough has no plans for additional borrowings." The budget reflects this by showing appropriation of \$908,738 for 2003 which included the "aggressive" reduction of bond principal in the amount of \$555,000. The 2002 payment of bond principal was \$535,000. The Borough could have chosen to extend the period of bond principal payment if it had been convinced it was in the interest of the taxpayers in the community. I do not fault this aggressive approach to the elimination of debt but observe that it reflects a conservative financial management policy. That policy is replicated in the establishment of the 2003 budget as a whole. The Employer's post-hearing brief included a lengthy dissertation addressing the provisions of the CAP law as it affects the Borough's financial circumstances. More to the point it was intended to be instructive to the arbitrator as to the potential impact of an award which might exceed the proposals of the Employer. In a summary paragraph this statement was

set forth, "To the extent the PBA's total package [here referring to cost of demands made by the PBA] exceeds the index rate, it requires the Borough to reduce other expenditures which fall within the Cap to the extent the cost of the economic demands exceed the index rate." This is a fair statement of the potential limitations of the CAP law. However, for the year 2003 the index specified above was 1%, meaning that the budget of items within CAP must not be expanded by more than 1% over the amount of the CAP for 2002. In a separate financial summary, introduced as Employer exhibit #1, previously referred to above, this statement appeared with reference to the 2003 budget, "The "CAP" law permitted the Borough to appropriate \$3,593,248." "The Borough appropriated \$3,359,850 in an attempt to employ fiscal constraint and minimize the impact of a tax increase on its already highly taxed residents and taxpayers." This fiscal restraint tactic meant that the budget was cast \$233,398 below the imposed 1% increase limit of the CAP law. 1% of the permitted maximum budget would amount to \$35932. The budget was actually cast at 6.49 times that 1% less than would have been allowable, essentially showing no utilization of CAP flexibility and appropriating 6.5% less than was available in the CAP limitation. The CAP limit was not as factor.

The Chief Financial Officer of the Borough testified as to the effect of PBA demands and in part indicated the base salary [payroll] of the police officers unit to be \$669,860 in 2002 or 1 point being equal to \$6698. During his continued sworn testimony he interrupted to state, "Excuse me, Mr. Loccke. That 6698 - you have to add the percentage for longevity because they'll get that increase on that as well as the holiday pay." "And it's more closer to \$7000." When then asked if the \$7000 was a more accurate number the CFO responded, "I think its closer to \$7300." It would have been unfair to expect him to give a precise answer to the question without having performed detailed calculations but the \$7300 number was one he felt comfortable with. Mr. Loccke then asked him what the \$48000 surplus in the police budgetary allocation for salary and wages would cover in



terms of salary increase not yet determined and they agreed it would be 6.596 points, "If you did it that way."

In the Borough's post-hearing brief the relative costs of the Borough's offer and those of the PBA were compared. These were based on the 5% demand of the PBA and the 3% offered by the Borough. In the first year, 2003, the Borough's cost was said to be less than that of PBA by \$14238. In the second year, 2004, the difference was \$31415, in the third year, 2005 the difference became \$50125 and in 2006 the difference was said to be \$70771. This would amount to a total of \$166,549 spread over a four year period assuming the full 5% demanded was awarded.

Turning our attention to 2003, it is obvious that the \$48,000 surplus in the police department payroll account would have been more than sufficient to absorb the increases sought by the PBA without impacting in any way on the CAP limitations. And should the unused balance of the 2003 salary account have been shifted to the same line item in the 2004 budget there would have been enough funds to accomplish that same purpose.

It becomes apparent that the ability to pay for the product of these proceedings has nothing to do with the CAP limitations. It is a matter of fiscal priorities. Moody's explanation of the downgrading of Haworth's debt was clearly stated to have been because of the diminishing financial reserves. It took note that the A2 rating was justified on the basis of the Borough's affluent, moderately sized tax base and manageable debt position. In examining all information available it is clear that the Borough has elected to accelerate payment of its debt principal which has the effect of draining heavily on cash flow even though the annual surplus is diminished. This decision is the responsibility of those making fiscal policy at the highest level of Borough management. However as a consequence of the application of that policy a balance was created to restrict the level of tax increase required to fund the budget, limit the creation of surplus and withstand the reduced A2 rating. Beyond that it impacts on the spending program which is related to tightening all elements of the budget. The CFO provided extensive detail to illustrate the

means taken to hold spending to a minimum and to create elements of budgetary surplus. The question before me is not whether there is ability to pay for any unanticipated excess which an award might create in this process. Rather it is to what extent should the burden of the fiscal policy be born by police officers as contrasted to taxpayers. I shall attempt to balance that equation.

#### **PATTERN OF COMPENSATION SETTLEMENTS**

The Borough has asserted that it has created a pattern as to wage increases for the period 2003 through 2004 by virtue of the negotiation of an Agreement for a unit of Public Works Employees wherein those adjustments were set at 3% annually. It maintained that Borough's offer of 3% should be awarded in this proceeding as it directly reflects the increases provided to the DPW. The Employer advanced this instruction as to the "pattern" criterion involved, "...which directs the Interest Arbitrator to consider a comparison with other employees in the same jurisdiction, requires the Interest Arbitrator to consider evidence of the employer's settlements with other unionized groups and its non-unionized employees, and whether those settlements create an internal pattern."

When the Borough negotiated with the DPW and reached an accord on February 14, 2001, which provided 3% increases for a four year period, the provisions of the PBA police unit prior Agreement then in effect, which called for increases of 3.75% in 1999 and 2000 and 4% increases in 2001 and 2002, apparently did not rise to the underlying concept of a pattern to be used as a guide in negotiations with the DPW Employees. Thus it seems the Borough's dedication to the concept of patterns controlling its approach to negotiations must be newly adopted. However, in the year 2003 although the DPW workers were contractually entitled to only 3% the Borough made other arrangements for its non-unionized personnel. According to the Financial Summary provided by the Borough the basic improvement for "non-contractual" employees was 3.75% except that such as were part time employees got 2.75%. The dispatchers were granted 4% and the Municipal Clerk 3.75%. Crossing guards got 5.5% based on a contract for their services

entered into by the Borough. The Financial Administration personnel and the folks in Revenue Administration also were budgeted at increases of 3.75%. The Planning Board secretary received 2.75%. At the time when the budget was cast with those increases the proposal for the Police which was incorporated into the budget was not 3% as a reflection of a pattern but 2.75% which was modified to 3% during these proceedings. After giving careful consideration to this collection of data I cannot find that there was a compelling pattern of wage increases in the Borough and thus reject the suggestion that I am bound by such a pattern in considering this issue.

#### THE COST OF LIVING

As part of its overall argument in support of the 3% annual salary increase the Borough presented data to demonstrate that those proposed increases were at higher rates than the changes in the rate of COL. However the post-hearing brief of the Employer contained a summary of changes in the Consumer Price Index for the nine years including 1994 through 2002. During that period the CPI rose an annual average of 2.48% while salary increases were granted at the rate of 4.4% in Haworth. This means the rate of pay increases was higher than that of the CPI and the difference was at a factor of 1.774 times. Presumably those increases were determined to have been appropriate. While none can say with certainty what the CPI changes will be for the period of this Agreement, hypothetically, it can be seen that if the average of the past 9 year period was to continue the expected change in salary increases would produce an annual rate of 4.4%. This criterion is one to be weighed in determining the propriety of an award. In situations where the future is concerned it suggests educated guess work or the application of forecasts. Right now the CPI has been very close to the average cited above. It is widely speculated that it will rise even if only modestly as the economy proceeds from the period of recession endured during the past 2.5-3 years. It is interesting to note that the rate of salary increases has generally been in the near vicinity of 4% for contracts having to do with the comparable group defined above [or those cited by the Borough] which was quite

close to the somewhat higher percent increases supplied by the PBA [4.1857% for 2003 and 4.127 % for 2004] based on the larger sample of Bergen County communities PBA considered to be comparable.

#### **OTHER RELATED COSTS**

The Borough provided extensive data regarding the escalating cost of health and related benefits. It was done to demonstrate the rising costs of the fringe benefits associated with each employee. With recent annual increases in excess of 20% and evidence that double digit increases would likely continue it was obvious that these benefits costs, as part of total compensation were driving the total higher. However, no position was advanced as to any reduction of coverage or cost sharing. Thus this seems to not be an issue for the Arbitrator's consideration except as it reflects the costs of employment. This element of escalating costs is not peculiar to Haworth. It is an issue being dealt with in every community apart from the modifications of direct payroll changes. Some communities have approached this by negotiating a sharing of those costs and that is a growing trend in itself but not proposed here and thus not before me for consideration.

Beyond the health benefits rising costs the Borough is concerned about the potential for State fiscal reactions to its budget problems, most likely in the form of reduction of municipal aid and possibly the reinstatement of the employee pension contributions which have been waived for some time. These developments would not be within the control of the Borough, are real as to the potential to impact on the Employer's costs and undoubtedly are some of the underlying factors contributing to the conservative spending plans as set in the 2003 budget.

#### **REVIEW OF THE APPLICATION OF STATUTORY CRITERIA**

##### **THE INTERESTS AND WELFARE OF THE PUBLIC**

This is a criterion which deserves careful consideration and one which I gauge to be highly relevant to the resolution of this impasse. As a general proposition the key element of this criterion which had captured the greatest amount of attention has to do with the

application of the CAP Law as a restriction on the budget process in local governmental units. It was intended to preclude exorbitant increases which would necessarily be borne by the residents and other taxpayers. The requirement to consider this limiting control is stated in the law. Were an award to be of such magnitude as to exceed those limitations it would require the Employer to make adjustments of other expenditures to avoid violation. Each year there is published a limit on the change to be allowed. As discussed above the limit for 2003 was 1% with the option of the municipality to adopt, by ordinance, a 5% increase limit. Hawthorn accepted the 1% index as its guide and proceeded to execute a 2003 budget which called for appropriations more than 6% lower than would have been permissible. Without addressing the rationale for this it is safe to state that the CAP Law limitations do not play any role in the determination of this matter. Nothing proposed by the PBA, which proposals are more costly than the offer of the Employer, would, if granted in total, have the effect of pushing the appropriations in the budget close to the CAP limits available under the 1% index control.

The interests and welfare of the public are, however, affected by any new costs to the extent that they represent an expenditure which might otherwise not have been required would contribute to higher taxes or that could have been used for an alternate purpose. In its post-hearing brief the Employer made several cogent observations which bear on this criterion. "...a public employer best serves the public interest by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services." And, "...the municipality should not sacrifice fairness to its employees so that it may provide its residents with a plethora of frivolous services." "On the other hand, a municipality should not reduce essential government services to satisfy the economic demands of over-reaching public employees."

In the Interest Arbitration award of Arbitrator Laura, which involved Haworth and the PBA in 1984 and which was presented in evidence by the Employer and quoted above, Laura made a relevant statement, "Needless to say, the interest and welfare of the

residents require that Borough police officers be paid a salary and enjoy benefits commensurate with their workload and comparable to other municipalities in Bergen County and the Northern Valley section of Bergen County in order to maintain their morale and well being, which is necessary to perform the dangerous work assignments." He also noted, "It is apparent that the Borough police officers receive salaries and fringe benefits that are competitive with respect to these other communities and will continue to do so." At the time of Arbitrator Laura's analysis he noted that Haworth's compensation package did measure up to surrounding communities, notwithstanding his conclusion of their being the lowest paid. It is noteworthy that in spite of his suggestion as to the stand alone depiction of Hawthorn without comparables his further analysis certainly embraced such comparisons. Using his figures the difference between Haworth's pay rate at maximum, in the rank of sergeant, [he did not present maximum pay for patrolman] four of the five communities I consider to be comparables were included, they provided an average of 4.175% higher rate in 1984. Examination of those same communities now produces an entirely different figure with the comparables ahead by 14.03%. The differential between Closter and Haworth has risen from 10.6% to 20%, Demarest has risen from 2.76% to 10.9% and Norwood, which was behind Haworth by -1.1% is now ahead by 15.4%. Northvale extended its lead from 4.4% to 9.8%. Clearly Arbitrator Laura's prediction as to continuation of competitive compensation has proven to be not entirely accurate. His observation that the intent of the Borough as to continuing the short fall in wages in contrast to the relatively steep changes in the CPI has not been accurate. However, had his focus been on competitive wages with other communities, that is Haworth being at the bottom, his foresight would appear to have been precise.

Neither the Borough nor the PBA indicated anything which would lead one to believe that the services of the police officers in Hawthorn was anything less than excellent. The testimony and evidence received would support that. In considering the welfare of the

public it appears that the police are achieving an excellent record and appear to be dedicated to improvement of services to the advantage of the public.

#### COMPARISON OF SALARIES COMPENSATION AND OTHER TERMS OF EMPLOYMENT

As can be presumed from the information discussed above there is a predominance of attention given to considerations of compensation costs and rates of pay. I see this as the core criterion in this matter and it has been addressed as such by the parties. It will receive the attention it requires as highly relevant to my determinations. Many of the specifics as to comparability were addressed by the parties. In particular the Borough insisted that the pattern of its treatment of other employees was sufficient to warrant the award of its proposal. I found the concept of a pattern to be non-existent and thus not controlling. The further suggestion as to their being no comparable communities to use for comparison was also rejected for reasons stated above.

The reliance of the Borough on private sector data requires more attention. It is clear that the private sector has been advancing relatively slowly during the recession period. However, the average rate of wage improvement has, according to data quoted by the Employer, shown the sector to have averaged 3.4% in 2002 and an expected 3.8% for 2003 which is below the rate sought by the PBA. It is notable, however, that all facts available demonstrate that Bergen County as a whole and comparable group show an average improvement of 4% or more. Many of these results have been achieved through the interest arbitration process and must therefore reflect the relative importance ascribed to the private sector data as compared to other factors. In most of the arbitration decisions there is scant reliance on private sector data and none that have been brought to my attention where private sector data was said to be dispositive of a compensation award.

In support of the Borough's reliance on private sector it provided much data as to economic circumstances present in early 2003. One element was the national loss of 308,000 jobs in March of 2003. It is a curious coincidence that in March of 2004 there

were 308,000 jobs created. As we are intent on fair terms of an agreement for a several year period I take note of this development as an indication that the critical part of the recession may now have been put behind us and that statistics reflecting the worst portion may not be predictive of the future.

My conclusion is that private sector data are less meaningful when considering the public sector police employment situation. In addition I note that the facts presented suggest that the proposal of 3% for this unit is lower than the pace at which private sector wages were moving. As there is much anticipation of greater numbers of employment gains and the possibility of inflation having bottomed out as well as more heartening reports as to corporate earnings it would seem likely that the private sector may experience greater rather than lessor movement of wages in the next two plus years of this anticipated term of contract.

I conclude that the primary focus as to comparability should be on compensation changes of police. The post-hearing brief of the Employer noted that voluntary settlements of police and fire agreements published in January of 2002 reflected an average increase of 3.91%. Those in the next period were lower at 3.75%. The Borough also used the results of recent arbitration decisions, quoted above, which showed that they were around 4% for the period of this agreement where such data was available. This was said to justify its position that the 5% demanded was less deserving of support than the 3% offered.

My intention herein was to show the significance of the comparative data available and the rationale for my concentration upon public sector comparables. In this regard I note again that the average increases provided by the group of comparables previously identified to warrant consideration is just about 4% per year. In addition I have reviewed the actual salaries received in that comparison and note that over the past 20 years the actual income differential between Haworth and the average of comparables has been increasing both as to relative percent and actual dollars. The offer of the Borough in this matter would



certainly accelerate the declining trend of comparison of Haworth's police officers to those employed by the comparables with whom there is a close working relationship.

#### THE OVERALL COMPENSATION

This is a criterion which generally deserves more consideration than I believe is justified in this instance. My reason for reducing this in importance is that there is little confrontation of the parties on this with the possible exception of the claim of the PBA that the longevity plan is less productive than others and that the Borough has granted another personal day off to the DPW unit. The first of these I consider to be subsumed in determination of the proper salary increases to be awarded as it was raised by the PBA as part of its rationale for improving the across the board increase and not as a separate demand. With the focus of the dispute on relative economic gain I believe it should be effectively dealt with as part of the salary issue. Another reason is that although there is justification for the PBA's claim as to the somewhat lesser value of the longevity plan it is one commonly applied to other employees of the Borough and should not be disturbed unless there was very sufficient reason. I see longevity as a part of overall compensation and intend to try to balance the varied concerns of the Employer with those of the PBA. The personal day will be dealt with.

The demand of the PBA as to increased vacation allowance would propel the current maximum allowance of 26 days beyond that of most of the comparables. There is no justification for this presented. The Borough's attempt to remove vacation allowance from new hires must be dealt with on a hypothetical basis.

As a general comment these employees enjoy a comprehensive and very adequate array of benefits including a generous pension plan, comprehensive health insurance and paid leave allowances which, unlike their salaries, are highly competitive with that afforded by the comparable communities selected. Perhaps as importantly the costs of these benefits are escalating rapidly and absent a convincing argument with supporting evidence as to their being inadequate I find no substantive reason to change them.

## STIPULATIONS OF THE PARTIES

There were none except the accord as to the term of the Agreement, four years.

### THE LAWFUL AUTHORITY OF THE EMPLOYER

The focus of this criterion is generally upon the issue of the range of budgetary restriction imposed by the CAP Law. As noted above there is no expectation that an award herein would have such impact. I consider this to be a relevant criterion and worthy of considerable concern but only in the circumstance where there is likelihood given to costly mandates which would endanger the Borough's capacity to budget comfortably within the limits of that law. There is nothing before me which would precipitate such a result if granted and for that reason I do not find this criterion to warrant much consideration.

### THE FINANCIAL IMPACT ON THE GOVERNING UNIT, ITS RESIDENTS AND TAXPAYERS

This is a criterion which is always relevant and deserving of grave consideration. The Borough's efforts to contain costs at a time when revenues may become increasingly unstable represents a motivation not to be taken lightly. While the Borough has not yet had the problem of being squeezed in making its priority judgments about programs to be funded due to CAP law limitations there is considerable reason for concern as to meeting certain costs of operations, many of which are beyond the control of the Employer. In the pursuit of a financially sound management plan the Borough is determined to improve its surplus while delivering all ordinary public services and to accomplish this without adding to the residential property tax rate. In this respect it has advanced a financial proposal for the police officers which it claims to be fair and reasonable. It is apparent that the outcome of this proceeding is viewed as a threat to those goals. To support its position the Borough has claimed that taxpayers are paying more per capita than most of the communities in the County and that the rate of taxation on their properties is very high. In the above presentation of facts and discussion I have found those claims to be overstated

and have explained my reasoning. I perceive it to be my obligation to carefully balance the objectives of the Borough to avoid tax increases with the obligation to fairly treat the employees who are represented here. I do not find the denial of the existence of any comparable place of employment to be real and certainly not justification for the perverse imposition of what are obviously lower than average salary increases on a work force which is already the lowest paid in the area. This is particularly so where the performance of that working group is of excellent quality and highly regarded in the community. If there is a reason to constrain the costs of their employment that is understandable, however to meet a reasonable level of compensation increases will do very little to endanger that objective. Of course it will require some additional outlay of money but the requirement of fair treatment should be considered a proper justification. Even Arbitrator Laura noted this in his comments. He also noted the apparent objective of the Borough to maintain a trend in lower than average salary adjustments for the lowest paid police officers in the County. That trend has continued for the past twenty years and has resulted in a steady decline in the competitiveness of the base salary paid as compared to the improvements afforded in all other communities considered to qualify as comparable places of employment. The result is that these officers are now earning between approximately 10% and 20% less than is paid in surrounding municipalities where the work is very similar and frequently shared with officers of Haworth. In addition the implementation of the Borough's offer for a four year agreement would substantially increase the gap in pay. Hypothetically, if Closter continued its current pace of 4% increases per year the comparison with Haworth's program would be: the difference in pay at maximum in 2003 would be \$14095 and in 2006 it would become \$19252, increasing from 21.3% to 24.9%; in the case of Demarest the 2003 differential would be \$7427 moving to \$11495 in 2006 or a change from 11.9% to 14.9%. These increasingly negative differences are certain to have a detrimental impact on employee morale and most likely performance or commitment to the Borough. These differences are even now

being reflected by the PBA assertion of unrest and discontent. To overcome the current gap would be entirely beyond my intention. However the salary plan offered is a reflection of the relative imbalance of consideration given to employees as contrasted to taxpayers. My conclusion is that there is a dual obligation of the Borough to find a balance in these considerations and given the current circumstance that translates into a more generous salary plan than offered for the four year period. I am aware that this flies in the face of fiscal concern and the politics of maintaining the current level of taxation but it is my obligation to weigh the criteria assigned and to make difficult decisions. There is the need to carefully craft a program which will largely slow the increasing gap in the above illustrated salary plans but to do so with the greatest respect for the objectives of the governing body. My award will reflect these considerations.

The added costs will not disturb the level of appropriations which were committed to the 2003 budget and will have a considerably lessened impact than what was forecast in the Borough's cost analysis of the PBA proposal. I see the terms of the award as minimally addressing the legitimate requests of the PBA and perhaps providing a basis in theory which may influence negotiations in the future. One further point I would like to make: what is done for this four year period is unlikely to have a profound impact on taxpayers but it should have an uplifting effect on the officers involved. I believe the prospect is that the terms of this award will very likely be viewed as having been a favorable deal for the Borough as the economy of the next three years unfolds. None of us can foretell the future but it appears that the economics of crisis are likely to improve in a growing economy. The bottom line is the police officers are deserving of a better contract than was advanced based on all the evidence provided and this award will, to a degree, afford a reasonable level of improvement with the objective of slowing the negative difference between the compensation in Haworth compared with that of the comparable group by a provision of a nominally higher percent increase than the average now known or anticipated.

## **THE COST OF LIVING**

This is a criterion which I believe has been relegated to secondary considerations in recent years of negotiations in general. In the discussion above I have noted that the salary increases over the past nine years have far outstripped the changes in the CPI. The terms of this award will be reasonably consistent with the past relativity with the index. Clearly to here impose the absolute index level of change, which has been near historical lows, for a multi-year agreement term would be a very substantial departure from practices in the field of labor relations. This is obvious as it is evident that virtually all negotiated and voluntary settlements of negotiations concerning police in New Jersey or private sector employment reflect a distinct indifference to that index. I therefore place very small relevance on this criterion under the circumstances presented in this proceeding.

## **THE CONTINUITY AND STABILITY OF EMPLOYMENT**

The terms of this award are not seen as to so upset the financial plan of the Borough to cause a disruption of employment of police. The more vital impact will be to provide a reasonably acceptable level of compensation so that the employees affected will readily be retained and productive. The performance of this group of vital service employees has been outstanding. This award will encourage the highest quality of performance and morale. There should be no negative impact on the stability of employment. I have determined this criterion to be important and have included it in my considerations of the other criteria.

## **THE REMAINING ISSUES AND CONCLUSIONS**

### **OF THE BOROUGH**

The Borough has requested that a new salary guide be included in the new agreement to afford some economic efficiencies by establishment of more steps before attainment of maximum pay. This is happening in many settlements and arbitration awards as the public opinion has focused on the size of annual increments plus across the board increases. I will provide such new guide but will refrain from extending it by four steps as this is not in

keeping with changes made in any contracts placed before me in evidence and because it would mean the extension of the guide to being among the longest in the County while still providing one of the lowest attainable maximum income levels.

The Borough also proposed that the starting salary, the Academy rate, be frozen for the life of the Agreement. It is well known that police employment is highly sought after for a number of reasons. It is also true that not every one who is given a chance to attend a police academy is successful. Thus the amount of pay provided to such applicants can become a waste of taxpayers money. This being the case the Borough's request is seen as a means of controlling the pay for doubtful results. I will award this request but provide the annual increases set forth in the award to the remainder of the year in which an academy graduate is appointed to full time employment.

The Borough proposes to eliminate personal days and the reduction of vacation credits to those hired after this award is effected. These changes may have the beneficial savings of future costs but certainly would be a departure from the Employer's claim of providing a pattern of compensation elements on a consistent basis. In fact the Borough, in the last agreement with the DPW indicated the personal days to be four per year as compared to three enjoyed by the police. There was no compelling evidence offered in the advancement of these demands. Not having good sound reasons to make such changes they are therefore rejected.

#### OF THE PBA

The PBA proposed increasing the vacation benefit by 40 hours per year for employees with 20 years or more of service. There was little evidence introduced to suggest that this was justified. The current vacation provision is not the highest but it is certainly competitive with most County municipalities including the comparables. The need for services in the Borough could be affected negatively by additional paid leave. I am sensitive to the need for more adequate compensation but the added costs of this award

are intended to be concentrated in the salary improvements it affords. For these reasons this demand is rejected.

The PBA also has asked for an increase in the number of paid personal days. While this is an issue emanating from the improvement of the DPW negotiations the circumstances of these officers is distinctly different in that they already have much more time off to accomplish personal needs due to the 12 hour schedule. Thus the need is not the same as might be for persons working a five day weekly schedule. And my decision not to grant this demand is as above stated, that is, the total new costs of this award are intended to focus on the salary issue. It is therefore rejected.

The final issue presented was the demand for the inclusion of the currently worked twelve hour work schedule in the Agreement. My examination of the contract reveals that the eight hour day is set forth as if it were controlling. This is clearly misleading and could lead to controversy. I am thus ordering the parties to meet and to modify the terms of the Agreement in two ways. The first is to place therein a sufficiently detailed description of the current twelve hour work schedule so as to be a complete guide for all to understand. The second is to include a provision which allows the Borough to make changes in the work schedule providing advanced notice is given of not less than 45 days. This will allow the Agreement to be up to date in its description of the work schedule and still provide the flexibility to make changes, including a return to the eight hour day, should management determine it to be appropriate. Lastly as I do not wish to undertake the crafting of this change of the Agreement in this award, not having detailed information as to how it works, I shall retain jurisdiction so that should negotiations become an insoluble task it will be presented to me for final determination. Should neither party inform me of an impasse within 90 days of the receipt of this award I will presume the matter has been resolved and my retention of jurisdiction shall elapse.

The annual salary increase shall be 4.4%. This is a reflection of the movement in comparable jurisdictions which average just about 4% with the addition of .4% or one

tenth greater increase than the nominal average to help reduce the continuing negative expansion of the actual salary differentials. The .4% will accomplish this only in the circumstance where the current salary differential is 10%, the least of the comparables. As noted above the differentials are actually as high as 20+%. I have not attempted to make a correction at that level because of my recognition of the fiscal problems faced by the Borough and its adopted policy to be as conservative as is practicable. However the added costs of this award should be seen as a reasonable expenditure having the effect of providing some balance between the interests of the taxpayers and fairness to these employees.

The Borough provided an analysis to demonstrate the cost of the salary plan it offered compared with the cost of the PBA suggested changes. The depiction shows a variety of modifications including new hires and increment costs with the total cost to the Borough for the four years of the contract period escalating by \$166,549 if the 5% program sought by the PBA is awarded as contrasted to the implementation of the 3% plan of the Borough. The application of the 4.4% annual award will produce a somewhat lower differential than the 5% plan. The total additional expenditure for the four term will amount to approximately \$116,584. In the year 2003 the non-expended balance of the payroll appropriation for police will cover the added expense of \$9967, the reduced value of the Borough's stated additional cost for that year at 5%, with a considerable margin. The 2004 added expenditure should be \$21990, the 2005 difference will be \$35088 and the 2006 difference will become \$49540. I view these costs as a very conservative, perhaps even minimal, approach to provision of fair compensation, a result well worth the price to be paid.

#### **THE AWARD**

1. There shall be a 4.4% increase applied across the board, with the exception only of the Academy rate, and shall be implemented on January first of each year of the Agreement with the appropriate retroactivity. The Academy rate shall remain \$26014 for the full term



of the Agreement, however, should conditions arise which, in the judgment of the Employer, suggest an increase in that rate, it may be done at its sole discretion.

These salary increases are to apply to all ranks represented and to each step on the salary guide. The increment plan will be continued as in the past practice.

2. There shall be implemented a new salary guide on May 1, 2004 to be applied to individuals employed on or after that date. The Academy rate shall be set as stated above at \$26014. The 2004 salary for the remainder of the first year of employment shall be \$35725. There will be seven additional yearly steps at these pay rates: 3rd, \$41311; 4th, \$46902; 5th, \$52492; 6th, \$58083; 7th, \$63674; 8th, \$69238; 9th, \$74831, equal to the maximum of the prior guide. This salary guide will be adjusted then on January 1, 2005 and again on January 1, 2006 by application of the 4.4% increase plan awarded above.

3. As noted above, in the section devoted to review of Remaining Issues and the PBA demand concerning the required adjustment of contract language having to do with hours of work, it is my intent that the parties meet and negotiate appropriate changes to the Agreement related to the hours of work. The conditions set forth in that discussion shall be construed as to be part of this award including my reservation of authority should there be an impasse.

4. All other elements of the prior Agreement are to be continued with the exception of date references. All demands not included in the award are to be deemed rejected.

  
Frank A. Mason

Pennington, Mercer County New Jersey

On this date before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who, in my presence, executed the foregoing opinion and award and he acknowledged to me that he executed the same.



