

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration *

Between *

City of Jersey City *

and *

Jersey City Police Superior
Officers Association *

Docket No. IA-94-125
Jeffrey B. Tener
Interest Arbitrator

Appearances

For the City:
Martin R. Pachman, Esq.

For the PSOA:
Stephen B. Hunter, Esq.

OPINION AND AWARD

Background and Procedural History

The PSOA filed a Petition to Initiate Compulsory Interest Arbitration with the Public Employment Relations Commission ("PERC") on April 28, 1994. With the assistance of another arbitrator, the parties entered into a memorandum of agreement on October 5, 1994. The membership of the Police Superior Officers Association ("PSOA") rejected the terms of this memorandum and a new slate of officers was elected. Thereafter, I was appointed as the arbitrator on May 4, 1995 in accordance with the procedures of PERC. I met informally with the parties on June 19, 1995 at which procedural and other preliminary issues were discussed and I was taken on a tour of various police facilities on October 20, 1995. Hearings were held on November

13, 1995 and on January 3, 11, 29 and 31, 1996, February 20 and 26, 1996, and March 14, 19 and 26, 1996. At the last hearing, the parties exchanged final offers.

The hearings were transcribed. Following receipt of the final transcript, the parties filed post-hearing briefs and reply briefs. These were received by June 6, 1996. The PSOA attached an affidavit and supporting exhibits from PSOA President Ronald Buonocore to its reply brief. The City made a motion to strike these materials on the grounds that they constituted additional and new factual evidence. The PSOA replied that it was only responding to new evidence submitted by the City in its initial brief and urging that all new evidence, including the Buonocore affidavit and the PSOA's additional exhibits, be rejected. The City retorted that it had submitted argument and not new facts. By letter dated June 19, 1996, I stated that March 26, 1996 was the final opportunity for the submission of factual evidence and that, absent mutual agreement or a motion to reopen the record, I would not consider any additional factual evidence offered by either party subsequent to that date. The Buonocore affidavit and any other new factual evidence will not be considered. Accordingly, the hearing was deemed closed as of June 19, 1996. PERC provided an extension of time to August 7, 1996 for the issuance of this decision.

Testimony in this matter had been taken prior to the effective date of the Police and Fire Public Interest Arbitration Reform Act so the proceedings are governed by P.L. 1977, c. 85.

The parties did not agree upon an alternate procedure. Therefore, this is a final offer proceeding in which the arbitrator is restricted to a choice between the last offer of the public employer or the last offer of the employee representative on all economic issues as a package and to a choice between the last offer of each party on each non-economic issue in dispute. See N.J.S.A. 34:13A-16d(2).

The only non-economic issue was a proposal by the City that Article 15, Clothing Allowance, of the parties' agreement be modified to read: "...the additional Two Hundred Ninety (\$290.00) will be paid on the first Thursday after the regular Council meeting in July..." This proposed change reflects the practice in that in election years, the first meeting of the Council is a reorganization meeting and not one during which other business is transacted. It has been the practice to approve the payment of the \$290 at the regular meeting rather than at the reorganization meeting and the proposed change is designed to reflect this practice. The PSOA did not object to this proposal and it will be incorporated into the award.

Final Offers

The final economic offer of the PSOA is as follows:

1. **Duration** - A three year contract, effective January 1, 1994 to December 31, 1996. All benefits and increases retroactive to January 1, 1994 except where otherwise stated in this proposal.
2. **Staff Schedule** - All Staff Officers included within the PSOA's unit shall work a fourteen (14) day cycle schedule, effective as of the date of the issuance of the interest arbitration award, which shall consist of five (5) days on duty, followed by two (2) days off, followed by four (4) days on duty with three (3) days off after which the cycle repeats itself. The Staff Officers work day shall consist of 8½ hour days.
3. **Line Schedule** - All Line Officers, effective as of the date of the issuance of the interest arbitration award, shall work a fifteen (15) section schedule consisting of five (5) days on, followed by three (3) days off, followed by five

(5) days on, followed by two (2) days off, which each daily tour shall be 8 hours in length.

4. Salaries - All unit personnel shall receive 3.75% increases effective January 1, 1994, 4% increases effective January 1, 1995 and 4.25% increases effective January 1, 1996.
5. Longevity - An additional longevity step, effective March 1, 1996, is to be added to the longevity schedule found in Article 21, Section 2, so that beginning the first year of year 28, an employee will receive 15% longevity.
6. Bonus Payments for Line Officers - A bonus of \$1,500.00 for each Line Officer shall be provided during the 1996 calendar year as a one time only bonus payment. Said bonus payments shall not be considered for any base salary or pensionable purposes.
7. Prescription Drug Insurance - The PSOA agrees to the modification of the co-pay in the current plan to \$8.00 for brand name drugs and \$4.00 for generic drugs, effective July of 1996 (Article 10, Section 3(c)).
8. Vacation - The PSOA agrees to a modification of the existing vacation schedule for new police hires effective as of the date of the issuance of the interest arbitration award as follows:

During the 1st year of service - 1 day per month of employment

During the 2nd -10th year of service - 15 days per year

11 or more years of service - 20 days per year

(Article 9, Section 3(b))

Additionally, the PSOA agrees that during an employee's final year of service, vacation entitlements, rather than being vested on the first day of said year, will be prorated so that the employee would receive 50% of the

last year's entitlement if he/she retires on or before June 30th, and the entire year's vacation allotment if the employee retires on or after July 1st (Article 9).

9. Supplemental Benefits - Clothing Allowance - Effective July 1, 1996 supplemental benefits payments (amounting to \$360.00 per Officer each year) shall cease. In lieu of continued supplemental benefit payments, \$132.00 a year shall be provided by the City to increase each Superior Officers' clothing allowance. For the period between July 1, 1996 through December 31, 1996 each Officer shall therefore receive \$66.00 in increased clothing allowance payments.
10. Optical Plan - The City shall be responsible for paying all appropriate premiums to maintain the existing optical plan presently maintained by the PSOA not to exceed \$48.00 an Officer per year. For the period between July 1, 1996 through December 31, 1996 the City's obligation pursuant to this proposal shall not exceed \$24.00 per Officer.
11. Terminal Leave - The PSOA agrees that new police hires, effective as of the date of the issuance of the arbitration award, shall receive a terminal leave benefit based upon three (3) days per year. All employees currently employed by the City of Jersey City in any Police capacity shall continue to receive the five (5) terminal leave days in accordance with the current Agreement. (Article 16).
12. Hourly Rate - The Officers' hourly rate under the Schedule above for all purposes shall continue to be based on 1939 hours per year.

The final economic offer of the City is as follows:

1. Duration : 3 years - 1994, 1995, 1996.

2. Work Schedule:

- a. The City proposes that effective November of 1994, the Agreement provide that line personnel shall work the 15-section schedule consisting of 5 days on followed by 3 days off followed by 5 days on followed by 2 days off, with each daily tour being 8 hours in length.
- b. The City proposes that as of November of 1994, the work schedule for staff personnel shall be the 21-section schedule consisting of 5 days on followed by 2 days off followed by 5 days on followed by 2 days off followed by 4 days on followed by 3 days off, with each daily tour being 8 hours in length.
- c. The City also proposes that section 3 and 4 of Article 8 be modified to reference the 15-section schedule effective November of 1994.

3. Wage Increase:
- | |
|--------------|
| 1994 - 3.75% |
| 1995 - 4.00% |
| 1996 - 4.25% |

4. Prescription Drug Insurance: The City seeks modification of the co-pay in the current plan to \$8.00 for brand name drugs and \$4.00 for generic drugs effective the date of the award (Article 10, Section 3.c).
5. Vacation: The City proposes a modification of the existing vacation schedule for new hires effective with the date of the award as follows:

| | | |
|--|---|-----------------------------|
| During the 1 st year of svc. | - | 1 day per mo. of employment |
| During the 2 nd -10 th years of svc. | - | 15 days per year |
| 11 or more years of svc. | - | 20 days per year |

Additionally, the City proposes that during an employee's final year of service, vacation entitlement, rather than being vested on first day of said year, would be pro-rated so that the employee would receive 50% of the last

year's entitlement if he/she retires on or before June 30, and the entire year's vacation allotment if the employee retires on or after July 1 (Article 9, Section 2).

6. Terminal Leave: The City proposes two modifications in this area. The first would be that new hires, effective with the date of the award, would receive a terminal leave benefit based upon 3 days per year. Current employees would continue to receive the 5 terminal leave days in accordance with the current Agreement (Article 16, Section 2). The second modification proposed by the City would be to modify the formula contained in Article 16, Section 6.b, to reflect the current 15-section schedule of 8-hour work days effective with retirees who retired on or after February 1, 1995.
7. Supplemental Benefits: The City proposes, effective with the 1995 calendar year, to reduce its contribution to the Union's supplemental benefit fund to \$180 per year (Article 10, Section 5).
8. Longevity: An additional longevity step effective July 1, 1994 is to be added to the current schedule found in Article 21, Section 2, so that beginning the first day of year 28, an employee would receive 16% longevity.

The City also has submitted the following non-economic proposal:

Article 15 shall be modified so that it shall read that, "The additional \$290 will be paid on the first Thursday after the regular Council meeting in July..."

Comparing the Final Economic Offers: Similarities and Differences

This case is quite unusual because of the relative narrowness of the differences between the two final offers. In fact, the final economic offers of the two parties share many significant features. First, both call for a three year agreement covering the term

January 1, 1994 through December 31, 1996 (Article 41). Second, and of particular significance, both provide for identical wage increases of 3.75% retroactive to January 1, 1994, 4.0% retroactive to January 1, 1995 and 4.25% retroactive to January 1, 1996 (Article 21, §1). Third, both provide for a modification of the co-pay in the prescription drug insurance program to \$8.00 for brand name drugs and \$4.00 for generic drugs effective with the award (Article 10, §3c). Fourth, both provide for two changes in the vacation article. Effective with the issuance of this award, new police hires would receive one day of vacation per month of employment in their first year of service, fifteen days of vacation during their second through tenth years of service, and twenty days of vacation after eleven or more years of service (Article 9, §3). They also provide that during an employee's final year of service, vacation entitlement would be pro-rated so that the employee would receive 50% of the last year's entitlement if he/she retires on or before June 30th and the entire year's vacation allotment if the employee retires on or after July 1st (Article 9, §2). Fifth, both call for a change in the terminal leave benefit so that new hires, effective with the date of this award, would receive three days per year of terminal leave with current employees continuing to receive five days of terminal leave per year (Article 16, §2).

In addition to these important areas in which the two final offers are identical, there is another area in which they are equivalent. Both parties have proposed changes in Article 8, §4 which deals with the hourly rate of pay. The current language provides that an eight section schedule shall be the determining factor for the hourly rate of pay for all members of the bargaining unit, including those working the staff schedule. An eight section schedule was in effect for line officers until November 1994. Under that schedule, line officers worked five days and were off three days with each daily tour being eight and one-half hours. The total work year under that schedule was

1939 hours.¹ Thus, the hourly rate was for all officers was based on a work year of 1939 hours. Although both parties have agreed to a change in the line schedule, the total number of work hours for line officers under the new fifteen section schedule remains 1939 hours.²

The PSOA has proposed that the contract provide that the hourly rate for all purposes shall continue to be based on 1939 hours which is the current practice. The City's proposal is that Article 8, §4 be modified to reflect the fifteen section schedule. The net result is that the hourly rate for all members of the bargaining unit would be based on 1939 hours. Thus, the two final offers end in the same place which simply reflects a continuation of what had been done.

The City also has proposed that Article 8, §3 be changed to reflect a fifteen section schedule effective November 1994. This provision would conform the contract language to the reality of the current line schedule. The proposal has no practical impact, however, because Article 8, §3 refers to the "annual work hours" and, as noted above, the annual work hours were 1939 under the prior eight section schedule as well as the current fifteen section schedule.

Thus, while the parties might agree to change the language of Article 8, §3 and §4 to refer to a fifteen section schedule rather than an eight section schedule, the fact is that the such changes would not change the annual work hours referred to in §3 or the hourly rate of pay referred to in §4.

¹ This is computed as follows: 8.5 hours per day times 5 days worked in the cycle equals 42.5 hours divided by 8 days in the cycle equals an average number of hours worked each day of 5.3125 times 365 days equals a total work year of 1939.0625 hours.

² The computation follows: 8 hours per day times 10 days worked in the cycle equals 80 hours divided by 15 days in the cycle equals an average number of hours worked each day of 5.333 times 365 days equals 1946.666 hours minus 8 hours given as compensatory time by the City equals 1938.666 hours.

Furthermore, there are several areas in the two final offers move in the same direction. First, the parties have both proposed that line officers work a fifteen section schedule with five days on followed by three days off followed by five days on followed by two days off with each daily tour being eight hours in length. The only difference is in the effective dates of the schedule. The City has proposed that it be retroactive to November 1994; the PSOA has proposed that it be effective as of the date of the issuance of this award (Article 8, §1).

Second, they have proposed reductions in the supplemental benefit which currently is \$360 per officer per year (Article 10, §5). The City has proposed simply that the benefit be reduced to \$180 per year effective in 1995. The PSOA has proposed that it be eliminated altogether effective July 1, 1996 but that, in lieu of that benefit, the clothing allowance (Article 15, §1) be increased by \$132.00 per officer per year (with a payment of \$66.00 due for the second half of 1996) and with the City making a payment of \$48.00 per officer per year for an optical plan (with a payment of \$24.00 due for the second half of 1996). Thus, under the PSOA's offer, the City would make total annual payments of \$132.00 for the clothing allowance and \$48.00 for an optical plan or \$180.00 per year rather than the current \$360.00 per officer per year for the supplemental benefit. This, of course, is the same as the amount proposed by the City. The economic impact of the two offers differs only because of the different effective dates proposed.

Third, the City has proposed another change in the terminal leave by proposing that the formula contained in Article 16, §6b be modified to reflect the fifteen section line schedule with eight hour days effective for officers who retired after February 1, 1995. This change would apply to both line and staff officers. The PSOA has agreed to accept the change prospectively as it applies to line officers because, under its final

offer as well as the City's, line officers will work an eight hour day. The PSOA, however, is not willing to accept any change in Article 16, §6b as it applies to staff officers because, under the PSOA's final offer, they will work eight and one-half hour days which is the basis of the existing formula.

Finally, there are three areas where the final offers are conceptually different. First, the City has proposed a change in the staff schedule (Article 8, §2) effective November 1994 to consist of a twenty-one section schedule with five days on followed by two days off followed by five days on followed by two days off followed by four days on followed by three days off with each daily tour being eight hours in length. This would result in a work year of 1939 hours, the same as that which the line officers will work. The PSOA, in contrast, has proposed that staff officers work a fourteen day cycle effective with the issuance of this award with five days on followed by two days off followed by four days on followed by three days off with each daily tour being eight and one-half hours in length. This would result in a work year of 1994 hours.

Second, both parties have proposed an additional longevity step beginning the first day of an officer's 28th year of service (Article 21, §2). To this extent, the two proposals are the same. The proposals, however, are different in terms of effective date and they end with different numbers. The City has proposed that this step be an additional 2% (or a total of 16%) effective July 1, 1994 and the PSOA has proposed that the step be an additional 1% (or a total of 15%) effective March 1, 1996 (Article 21, §2).

Third, the PSOA has proposed that each line officer receive a one-time bonus of \$1,500.00 payable in 1996. This bonus payment would not be considered for any base salary or pension purposes.

Cost Differences Between the Final Offers

Obviously, where the final offers are the same, there are no cost differences and the parties are in agreement. In this case, there are no economic differences in terms of the length of the new agreement, the size of the wage increase, the increase in the co-pay in the prescription drug insurance plan, the two changes in the vacation article (which pro-rate vacation in the final year of service and reduce the number of days for new hires), and the change in the number of days of terminal leave to be earned by new hires. They also end up at the same place on the hourly rate of pay, although the words used to get to that point are different.

The PSOA has agreed to the work schedule proposed by the City for line officers with the only difference being in the effective date. The effect of the City's offer is to deal with the period between November 1994 (when the City imposed the schedule which it has proposed in this proceeding) and the issuance of this award at which time the PSOA has agreed to the new schedule.

Obviously, hours of work cannot be changed retroactively and the schedule worked by the line officers since November 1994 has been that sought by the City. The imposition of this schedule by the City at that time led to the filing of unfair practice charges by the PSOA against the City. There was protracted litigation over this issue and the parties are awaiting the report and recommended decision of a PERC hearing examiner. My decision in this case cannot change the hours actually worked by the line officers from November 1994 until the award is issued but if the final offer of the City were to be accepted, it might have implications in terms of any remedy which PERC might impose if it were to find a statutory violation. Line officers will work the same schedule no matter which offer is accepted and that schedule will be the same as the schedule they actually have worked since November 1994. Thus, aside from the

statutory implications, it makes no difference which final offer is accepted and this award has no economic impact in terms of the line schedule.

The supplemental benefit is another area where the final offers are economically equivalent but for the effective date, although here, unlike the staff schedule, this makes a difference in terms of costs.

Consideration of this benefit begins with the current situation. If the status quo were to be maintained, the City would spend \$360 for each superior officer in 1994, 1995 and 1996 as provided in Article 10, §5. Both parties' final offers include changes in this benefit in ways that will reduce the cost to the City. In other words, this is a give-back by the Union.

While the City has made some arguments regarding the possible impact of the PSOA's final offer which I will address below, in pure dollar terms the difference is only in the effective date of the change. The City has proposed that the supplemental benefit be reduced to \$180.00 effective in calendar 1995. The PSOA would eliminate the \$360.00 benefit altogether effective July 1, 1996 but it would have the City spend an additional \$180.00 per officer per year in two other areas: the clothing allowance would be increased by \$132.00 per year and the City would contribute \$48.00 per year to an optical plan. Thus, from an economic point of view, the parties end up at the same place: the City either would pay \$180.00 per officer into the supplemental benefit fund under the City's offer or it would pay \$132.00 in clothing allowance and \$48.00 for an optical plan under the PSOA offer.

The economic difference between the two positions is in their effective dates. Under the City's proposal, the City would spend \$180.00 per officer in both 1995 and 1996 or a total of \$360.00 whereas under the PSOA's proposal, the City would spend \$360.00 in 1995 and \$270.00 in 1996. Put another way, the City has proposed savings

of \$180.00 per year in 1995 and 1996 or a total of \$360.00 whereas the PSOA has proposed savings of \$90.00 in 1996. Thus, the total savings to the City would be \$270.00 greater (\$180.00 for 1995 and \$90.00 for the first half of 1996) under the City's proposal than under that of the PSOA. There are 167 officers in the bargaining unit³ so the City would save an additional \$45,090 if its offer were to be accepted but it still would save \$15,030 under the PSOA's offer.

A second area of difference between the final offers is in the area of terminal leave with the City having proposed a change in the formula to be used in calculating that leave and the PSOA having agreed prospectively as it applies to line officers. The current formula, set forth at Article 16, §6b, bases terminal leave payments for all employees on an eight section schedule with work days of eight and one-half hours. The City proposes to change that formula so that it equates to the current line schedule which is a fifteen section schedule with work days of eight hours. This has two effects. First, it changes the value of days which can be converted to cash annually so that the formula is based on the length of work days now being worked. Second, it changes the value of accrued days - terminal leave days, unused accumulated vacation days, and unused accumulated compensatory days - to eight hours for the purposes of calculating terminal leave. This change would apply to all officers in the unit. Thus, the City would save on its terminal leave payments to retiring officers because their accumulated days would be based on eight hours rather than eight and one-half hours as they are under the existing formula and it would save on all compensatory, holidays and vacation days bought back each year.

³ This is the figure as of March 1996. Of that number, 99 are line officers and 68 are staff officers. The City based many of its calculations on 172 unit members of whom 112 were line officers and 60 were staff officers. The 167 is a good number because it reflects the latest actual figure.

The PSOA is willing to accept the revised formula prospectively based on a fifteen section schedule with eight hour days for line officers who will work that schedule under its final offer but, consistent with its proposal for staff officers, it has not agreed to accept this change for staff officers who will work eight and one-half hours days if the final offer of the PSOA is accepted.

Under either final offer, this represents a significant savings for the City, not only when officers retire but annually. The only question is how significant. Will it apply to the entire unit which consists of some 167 superior officers as the City proposes or will it apply only to the 99 line offices as the PSOA proposes? The savings are significant because for either some or all members of the unit, several categories of accrued days payable at retirement will be based upon work days of eight hours rather than eight and one-half hours and each year holiday pay, vacation buyback and compensatory time will be paid at the rate of eight hour rather than eight and one-half hour days. The City will save one-half hour of pay for each of these days.

According to PSOA President Ronald Buonocore, the Police Department's fiscal office advised him that the average retiring officer has accrued 50 compensatory days, 60 vacation days, and 125 terminal leave days (which are worth 83.33 eight hour days or 666.66 hours under the fifteen section schedule where the officer works ten out of fifteen days and 78.13 eight and one-half hour days or 664.06 hours under the eight section schedule where the officer works five out of eight days).⁴ (See Exhibit PSOA-23, p. 25.)

Additionally, each year, officers are able to sell back compensatory days in accordance with Article 13, §1h; they can exchange one week of vacation for cash in

⁴ Thus, the terminal leave portion of the benefit is actually worth slightly more under the City's formula than under that of the PSOA: 666.66 hours versus 664.6 hours.

accordance with Article 9, §4A; and they are given six of their holidays in cash in accordance with Article 12, §1. Each of these benefits is affected by whether a day is based on eight hours or eight and one-half hours.

The PSOA calculated the savings to the City based upon the change from eight and one-half hour to eight hour days at \$1,938 for the 99 line officers for each day. Thus, it claims, on an annual basis, the City's costs would be \$8,948 less for compensatory time which is bought back, \$9,690 less for vacation time which is bought back,⁵ and \$11,628 less for holiday pay.⁶ These figures total \$30,266 as the annual savings. This figure is based on 1996 salary rates and assumes that all officers receive 15% longevity although not all officers receive that rate of longevity. Thus, the total is overstated somewhat. On the other hand, in terms of annual savings, these will mount in the future as wages are increased.

Turning to the City's savings on terminal leave for the 99 line officers, the PSOA calculated that the City will spend \$213,132 less than it would have spent had the formula not been changed, based on an average of 50 compensatory days, 60 vacation days and 125 terminal leave days.

The City disputed the figures of 50 compensatory days, 60 vacation days and 125 terminal leave days upon which the PSOA based its estimates and has calculated that under its proposal, using the actual number of days accrued by the officers, the accrued liability for banked time is \$1,253,453 whereas it is \$1,369,798 under the PSOA's proposal or a difference of \$116,345. (See Exhibit 6A attached to City's brief.)

⁵ The PSOA's brief listed the figure at \$7,750 but I believe that its calculations under the eight section schedule were incorrect.

⁶ The PSOA listed a figure of \$15,501 but that is based on eight days per year. I believe that the correct figure is six days per year.

In attempting to place an economic value on the parties' positions on this issue, I am uncomfortable with elements of both of their approaches. The City's figures presumably are based on actual accrued days. Yet these numbers are higher than the estimates provided to the PSOA by the fiscal office which purportedly reflected the average number of accrued days at retirement. For terminal leave purposes, it is the final number of these days and not currently accrued days which is significant. The City's figures, therefore, understate the savings that the City will realize.

Even accepting the City's figures, however, the difference of \$116,000 in the current value of accrued time (which is what the City's figures reflect) is significant and that figure will increase as salaries increase and as the number of accrued days increases as the officers approach retirement.

Additionally, the City will save approximately \$15,000 in 1996 as a result of the change in the value of a day under the PSOA's proposal. This figure represent half of the annual savings from the change in the cost of a day to the City for purposes of compensatory time, holidays and vacation days that it buys back from the line officers.

A third area of difference between the parties which has economic implications is the staff schedule. The City has proposed that the schedule be a twenty-one section schedule with five day on, two days off, five days on, two days off, four days on, and three days off with work days of eight hours. This is the schedule which the City imposed in November 1994 and which is the subject of unfair practice charges before PERC. The PSOA has proposed a fourteen section schedule consisting of five days on, two days off, four days on and three days off with work days of eight and one-half hours. This is the schedule that was worked by staff officers prior to November 1994.⁷

⁷ Actually, the staff officers worked eight hours and fifteen minutes each day from November 1, 1994 until May 3, 1995 when their work day was reduced by the City to eight hours. This has no effect on my decision.

Under the City's proposal, the work year would be 1938 hours. Under the PSOA's proposal, it would be 1994 hours. Thus, the officers would actually work 56 more hours under the PSOA proposal than that of the City. The statute at N.J.S.A. 34:13A-16f(2) discusses economic issues and includes as an economic issue the following: "hours in relation to earnings." Thus, the proposal of the PSOA reduces the hourly earnings of the staff officers compared to the City's proposal or provides for a work year which is 56 hours or 2.8% longer. Given a complement of 68 line officers, that works out to an additional 3,808 hours of work in the year or the equivalent of almost two additional officers. This clearly makes the PSOA's proposal economically preferable to that of the City. There are, of course, non-economic implications of the schedule and these will be discussed below.

A fourth area of difference concerns longevity. There are differences between the offers in terms of effective dates and the size of the increase. Both propose, however, that officers at the beginning of their 28th year of service would be eligible for this increased payment. Under the City's proposal, longevity would be increased for those officers by two percent effective July 1, 1994 whereas under the PSOA's proposal, longevity would be increased by one percent effective March 1, 1996.

The cost of the City's proposal during the term of this agreement, as calculated by the PSOA, would be as follows: 1994 - \$8,193, 1995 - \$21,271, 1996 - \$27,057. Additionally, officers who have retired during this period would be entitled to this increase and would add another \$20,285 to the cost. The total cost of the City's proposal during this contract term would be \$76,806. (See Exhibit PSOA-25A.) The cost of the PSOA's proposal during the term of the current agreement would be

\$11,321. (See PSOA Brief, Exhibit C.) Thus, the City's proposal costs \$65,485 more during the term of this agreement than does the PSOA's proposal.⁸

The future cost implications are much greater. The PSOA has projected that the cost of the City's proposal between 1997 and 2002 would be \$430,565 assuming that there are no wage increases after 1996 and assuming no retirements in that period.⁹ (See Exhibit PSOA-25R.) This figure does not include other costs associated with the increase in longevity such as increased overtime, terminal leave and other costs which are based on salary plus longevity. The cost of the PSOA's proposal during this same period would be \$215,283. The net difference between the two offers during this six-year period following the expiration of this agreement would be \$215,282.

The PSOA also projected the savings through 2009 assuming that the officers receive a 4% salary increase each year beginning in 1997. The difference between the 1% and 2% increase in longevity between 1994 and 2009 is \$1,291,748. Again, this assumes that there are no retirements during this period.

⁸ The City placed the difference between the proposals at \$44,953. (See Revised Exhibit 6 A attached to the City's brief.) This is a difference of \$20,532. Over \$11,000 of the difference between the two figures can be explained by the fact that the PSOA included the added cost of terminal leave for the officers who have retired. An additional \$2,000 is attributable to the City's failure to base the 1% increase proposed by the PSOA on ten months of the year. Further, \$3,387 of the difference is due to the City's incorrect double reduction of the figures by 50% reflecting the fact that the increase proposed by the City would be in effect for only half of the 1994. A small part of the difference is due to the fact that the PSOA used a pension cost of 16% and the City used a figure of 8.5%.

⁹ The PSOA provided an exhibit which shows retirements and years of service between 1986 and 1996. These show that the average years of service for officers who retired were as follows: 1986 - 35.2 years (10 retirees), 1987 - 33.7 years (3 retirees), 1988 - 35.9 years (19 retirees), 1989 - 33.3 years (7 retirees), 1990 - 35.1 years (9 retirees), 1991 - 31.4 years (28 retirees), 1992 - 31.7 years (6 retirees), 1993 - 27 years (1 retiree), 1994 - 30.5 years (6 retirees), 1995 - 31 years (4 retirees) and 1996 - 31.3 years (4 retirees). (See Exhibit PSOA-26.) The average number of years of service of retirees in this period, according to Buonocore, was 33.45 years. (Tr.3-26-96, p.19)

Finally, the fifth area of difference involves the one-time bonus of \$1,500.00 for line officers proposed by the City. There are 99 line officers. Thus, the cost of this proposal to the City would be \$148,500.00. Because this payment would be in the form of a bonus, it does not carry over into future years nor does it increase the City's pension costs.

The City submitted as Exhibit A attached to its brief a summary of what it calculated to be the differences in costs between the two proposals. It determined that the final offer of the PSOA over the three-year term of the new agreement was \$285,832 more costly than that of the City. The total included \$168,000 for the one-time bonus payment to line officers,¹⁰ a difference of \$116,345 in accrued liability for banked time, \$30,960 as the difference in the cost of the supplemental benefit plus an additional \$11,352 in clothing allowance and \$4,128 for the optical plan under the PSOA proposal and a lower cost for the PSOA offer of \$44,953 for longevity.

Accepting for the moment the accuracy of the City's numbers, it is true that the PSOA's final offer would cost more than that of the City by the amounts indicated. This, however, presents a misleading picture for several reasons. First, it must be remembered that the City has proposed reductions in two of the areas listed, terminal leave and supplemental benefit, and the PSOA has agreed to reduce both of these benefits. The difference is that the PSOA has not agreed to reduce the benefits to the extent that the City has proposed. Accordingly, the City is seeking to make greater reductions than the PSOA is willing to accept.

Thus, during the term of this agreement, the City is seeking to save \$360 on each officer based on reduced contributions to the supplemental fund. The PSOA, taking in account its clothing allowance and optical plan proposals, has offered to

¹⁰ The City used a figure of 112 line officers in its calculations.

taking in account its clothing allowance and optical plan proposals, has offered to accept a reduction of \$90 in this benefit. Thus, while it is true that the City's offer costs \$270 less per officer than does that of the PSOA, it also is true that if the status quo were to be maintained, the City would have to spend an additional \$360 per officer than it has proposed and an additional \$90 per officer more than the PSOA has proposed.

In order to properly gauge the effect of the parties' supplemental benefit proposals, it is necessary to use the status quo as the starting point and to subtract the amounts from the total costs that each party has proposed to reduce this benefit.

The same is true for the change in terminal leave benefits. The City has proposed to reduce the value of accrued days from eight and one-half hours to eight hours. While I will discuss this in more detail below, it is important to remember that the PSOA has agreed to reduce the value of accrued days for the line officers who make up almost 60% of the unit. The difference is that it has not agreed to reduce the value of these days for staff officers, the other 40% of the unit. There is, nevertheless, a considerably greater reduction in the City's liability for accrued time than there would be if the status quo were to be maintained.

Second, the City has failed to list other concessions made by the PSOA including the increase in the prescription drug co-pay, the reduction in vacations for new hires, the pro-rating of vacation in an officer's final year of service, the reduction in terminal leave for new hires from five to three days per year, and the longer work year which the staff officers would work.

Third, the City has not included the future savings associated with the lower longevity plan proposed by the PSOA.

I believe that these things must be considered in evaluating the parties' final offers.

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:

- (1) The interests and welfare of the public.
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In public employment in the same or similar comparable jurisdictions.
 - (b) In comparable private employment.
 - (c) In public and private employment in general.
- (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.
- (6) The financial impact on the governing unit, its residents and taxpayers.
- (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)

Arguments of the Parties

Prior to reviewing the arguments of the parties on the various issues in dispute, a preliminary observation and comment are in order. The PSOA pointed out in its brief that the City's brief devoted only seven and one-half pages to an application of the statutory criteria. I note that the PSOA's brief did not begin its discussion of these criteria until page 56 of its brief (although that brief was 103 pages in length). I make this observation not to be critical of the parties but because it illustrates the unusual nature of this case as both recognize.¹¹ The parties' briefs include extensive arguments about the differences in the final offers but the disagreement often goes beyond economics which is the statutory focus. The parties' final offers are the same in many significant respects and the differences between the two final offers are relatively small, making the application of the standards to the final offers extremely problematic. It is possible to apply the criteria with some confidence in cases in which there are significant economic differences between the parties' final offers but this becomes more and more difficult as the differences between the parties shrink. Thus, when the wage proposals are the same and when a number of the other items are the same and when several of the few remaining items involve the size of the give-back by the Union rather than an increase in benefits, it is very difficult to apply the criteria.

Having said that, I turn to a discussion of the parties' positions on the issues in dispute.

¹¹ See, for example, pages 8 and 9 of the City's brief, page 15 of its reply brief, and page 24 of the PSOA's brief.

Work Schedule

The issue of the work schedule was undoubtedly the major stumbling block in these negotiations. The City wanted to change the schedule and, following discussions with the two unions who represent the police officers, the PSOA and the Police Officers Benevolent Association ("POBA"), which represents the rank and file officers, the City unilaterally changed the schedule in November 1994.

Beginning in 1988, the schedule for line officers had been an eight section schedule under which officers worked five days on followed by three days off with each work day being eight and one-half hours in length.¹² At that time, the staff schedule was a fourteen section schedule with five days on followed by two days off followed by four days on followed by three days off with work days also being eight and one-half hours in length.

The City unilaterally implemented the new schedule in November 1994 so that line officers work a fifteen section schedule of five days on followed by two days off followed by five days on followed by three days off with each work day being eight hours. Staff officers were assigned to a twenty-one section schedule consisting of five days on followed by two days off followed by five days on followed by two days off followed by four days on followed by three days off with work days being eight hours in length.

When the City implemented the new schedules, the PSOA and the POBA filed unfair practice charges with PERC. They sought but were denied restraints against the implementation of the new schedules. The matter was fully litigated and, as stated, now awaits a hearing examiner's recommended report and decision.

¹² From sometime in the 1970's until 1988, line officers worked the fifteen section schedule which was reestablished in November 1994.

A parallel interest arbitration proceeding involving the City and the POBA took place and resulted in a decision dated March 8, 1996 by Arbitrator Jack Tillem.¹³ Tillem awarded the final economic offer of the City in that case.¹⁴ The final offer of the City included the change in the work schedules for both line and staff officers.¹⁵

Line Schedule The first difference between the parties involves the effective date of the change in the line schedule. As noted above, both parties' final offers include the line schedule implemented by the City in November 1994.¹⁶ The difference in the effective date has no impact on the schedule that the line officers will work either subsequent to the issuance of this award or that they worked prior to its issuance.

The City asserts that while the legality of the City's unilateral implementation of the schedule in November 1994 is before PERC and not the arbitrator, the issue of what that schedule should be and when it is effective is before the arbitrator. The City argues that to award the fifteen section schedule prospectively, as proposed by the PSOA, would leave the period between November 1994 and the issuance of the award in limbo. The City cites several difficulties with the final offer of the PSOA. First, it would mean in theory that the superior officers worked a different schedule from the rank and file in that interim period with its attendant inefficiencies and lack of continuity of supervision. Second, it would mean that line officers who retired during that period would be entitled to increased payments (because the payments would be based on an eight and one-half hour day rather than an eight hour day). Third, it would leave the

¹³ Docket No. IA 94-113.

¹⁴ I have been advised by the City that the award was confirmed on July 24, 1996 by the Superior Court in Hudson County.

¹⁵ It is obvious that the award in the POBA case had a major impact on the positions of the parties in the case before me. The City's final offer is identical and that of the PSOA is very similar. The issuance of that award undoubtedly accounts for the similarities.

¹⁶ During the course of these proceedings, I indicated to the parties that the work schedule which was worked by the line officers of the POBA would almost certainly be the one that I would award for the superior officers. This would be necessary in order to provide the continuity of supervision and other efficiencies which the City has been so anxious to obtain.

matter in dispute before PERC rather than the more desirable outcome of providing finality to the dispute as the law is intended to provide. The Union is said to be seeking a second bite at the apple from PERC. The City contends that it makes no sense to continue this dispute before PERC when the PSOA has agreed with the City that the fifteen section schedule is the most reasonable one, especially since that is the schedule being worked by the rank and file. Furthermore, it insists, the legal issue remains before PERC and that agency is empowered to provide an appropriate remedy in the event that it finds a statutory violation.

The City contends that the effect of the PSOA's proposal is that the former eight section schedule would be in effect until the award is issued even though that schedule has now been abandoned by the PSOA and the City offered compelling evidence that such a schedule did not meet its operational needs. Such a decision by the arbitrator would be wrong because it would mean that the arbitrator had not selected the more reasonable of the two schedules as he is required by do under the statute.

The PSOA counters that for an interest arbitrator to issue a decision which dealt with the City's unilateral schedule change would usurp the exclusive unfair practice jurisdiction of PERC in the pending unfair practice case and would actually be beyond the authority of the arbitrator. The City took unilateral action in November 1994 in changing the schedules and PERC alone is authorized to deal with that situation and to remedy it. As viewed by the PSOA, the City is attempting to legitimize its unilateral action through this interest arbitration proceeding by making its offer retroactive to the date of the unilateral change in the schedules, thereby mooting PERC's exclusive jurisdiction in this area.

The PSOA asserts that the standards applied by PERC and an interest arbitrator are different and that the arbitrator must not render PERC's jurisdiction a

nullity. It is noted that N.J.S.A. 34:13A-21 requires a continuation of wages, hours and other conditions of employment during the pendency of interest arbitration proceedings. According to the PSOA, the City has violation this prescription. Participation in the interest arbitration proceedings cannot cure the statutory violation which the PSOA claims was committed by the City.

The PSOA asserts that a prospective award on the schedule will not adversely affect PERC's jurisdiction, although, as a practical matter, it will limit the City's liability to the period from November 1994 until the award is issued. On the other hand, a retroactive award would deprive PERC of its remedial authority.

Staff Schedule On this issue the parties' submitted different proposals as set forth above. The City acknowledges that the driving force behind the schedule change derived from operational problems in the line schedule and that, as Director Michael Moriarty testified, the staff schedule change was made to equate the two to their pre-1988 situations. As a result of the change, staff officers work 242.3 days and 1938 hours in a year, an increase of eight days but a decrease of 56 hours.

In urging the selection of its final offer, the City points out that the focal point of the PERC proceedings was the line schedule because that was where the problems had been. Also, there was no issue of continuity of supervision for staff officers because rank and file and superior staff officers all worked the same schedule which was basically a Monday to Friday, daytime office schedule without weekends. Continuity of supervision was built into the staff schedule. (Tr. 1-29-96, p. 159)

Arbitrator Tillem issued his award earlier this year and he awarded the City's proposed schedule for both line and staff officers. Thus, rank and file staff officers will continue to work a twenty-one section schedule. The City asserts that it is necessary for staff superior officers also to work that schedule. If this does not happen, the City

claims that superior officers will be at work thirty minutes a day with no one to supervise because the rank and file work an eight hour day and the superior officers under the PSOA's offer would work an eight and one-half hour day. Furthermore, the City asserts that two work days out of thirty the rank and file would work and the supervisors would be off and one day out of thirty the supervisors would work and the rank and file would be off. It is said to make no sense for supervisors and subordinates not to work the same schedules.

The City argues that there is no rational basis for selecting the PSOA's final offer which includes this as part of its proposal. The PSOA did not provide any rationale for its proposed schedule and that schedule must be rejected. Clearly, the proposal of the City is the more reasonable in light of the statutory criteria and it must be accepted. To do otherwise would create the very difficulties that the City undertook to eliminate when it originally changed the line schedule.

To further emphasize the importance of this issue to the City, it notes that its final offer does provide for a work year which is 56 hours shorter than that proposed by the PSOA. Thus, it asserts, its interest is not in economics but in operational efficiency. The staff schedule proposed by the PSOA cannot be justified in view of the schedule being worked by the rank and file staff officers. The Tillem award cannot be ignored by the PSOA or the arbitrator.

The PSOA asserts that the City failed to submit any evidence to justify the staff schedule which it has proposed, either in the unfair practice proceeding or in this one. In the PERC case, the evidence dealt only with the line schedule. No managerial prerogatives were cited by the City. The only reason that Moriarty gave for the staff schedule change was to "equate" the work schedules. He conceded that if PERC were to order a restoration of the fourteen section staff schedule with eight and one-half hour

days, it would not work a manifest inefficiency in the administrative schedule. (See PSOA Exhibit 5, May 16, 1995 PERC Transcript, p. 44.) The PSOA asserts that this constituted an admission that the City expected PERC to order a restoration of the staff schedule.

Similarly, in this proceeding, the only evidence introduced by the City related to the line officers and the City's exhibit, E-3, did not even refer to the administrative schedule. Even after Arbitrator Tillem issued his award on March 8, 1996, the City failed to produce any evidence in this proceeding, which had three days of hearing after March 8 1996, to justify the twenty-one section schedule.

In his award in the POBA matter, Arbitrator Tillem did not discuss the staff schedule. Thus, the PSOA argues, in none of these proceedings has the City presented a justification for the change in the staff schedule. The burden, however, is said to be on the City to justify the change because it is the City which made the unilateral change in the schedule.

The City has consistently agreed that continuity of supervision is not involved in the administrative schedule. The PSOA objects to what it regards as a belated attempt by the City to now make this argument.

The PSOA emphasizes that under the City's schedule, staff superior officers work an additional eight days per year for no additional compensation. Additionally, and significantly, the officers would work 56 more hours per year or an additional 2.8% under the schedule proposed by the PSOA. This makes the PSOA's proposed schedule much more attractive than the City's. With approximately 70 staff superior officers, the extra hours worked will total 3800 each year. With these additional hours, claims the PSOA, the City could perform dozens of extra projects each year.

Finally, the PSOA objects to what it characterizes as "new" evidence offered by the City in terms of the effect of the staff schedule and asks that this new evidence be excluded. It denies that continuity of supervision would be a problem if the rank and file staff officers and superior staff officers work a different schedule.

Thus, the PSOA urges the acceptance of its final offer as being the more reasonable of the two on the basis of the staff schedule.

Supplemental Benefit Article 10, §5 of the parties' most recent agreement provided that the City was to give an annual sum of \$360.00 per employee, payable monthly, "to the Association for it to purchase a package of benefits for the employees in the bargaining unit." Both parties proposed changes in the City's contribution. The City proposed that its contribution be reduced to \$180.00 and that this change be effective beginning in 1995. The PSOA proposed that effective July 1, 1996 the fund be eliminated altogether but that the City's contribution to the clothing allowance be increased by \$132.00 (\$66.00 for second half of 1996) and that the City pay \$48.00 per employee (\$24.00 for second half of 1996) to maintain the existing optical plan which has been purchased with money from the supplemental fund. This net difference in the proposals is \$270.00 per employee or approximately \$45,000.00.

Arguing in favor of its proposal as part of its final economic offer, the City notes that no other Big Six city¹⁷ and no other municipality in Hudson County has this benefit at all. Not only is it unique to Jersey City but it does not exist in the civilian contracts in Jersey City. Furthermore, it was deleted from the fire superior officers' last contract and it has been reduced to \$180.00 in this round of negotiations for both the rank and file firefighters and police officers.

¹⁷ The "Big Six" cities are Newark, Jersey City, Paterson, Camden, Trenton and Elizabeth.

The City asserts that the PSOA has implicitly recognized that this benefit cannot be justified and that the City needs to reduce its costs because it has agreed to a reduction, albeit not until July 1996, and it wants to increase other payments. The City argues that the PSOA's proposal is more costly by approximately \$45,000.00 and also less logical by seeking to reallocate money to other benefits. The Association provided no information regarding the optical plan but the City is concerned that under the PSOA's proposal the City would be assuming an unknown obligation without the benefit of any discussions. If the premium goes up when the contract expires, the City may have to assume responsibility for increased costs.

The City also argues that there is no need to mandate additional expenditures by the City for the clothing allowance because the Association is able to allocate money from the supplemental fund to the clothing allowance if that is what it wants to do. Furthermore, it would be destabilizing to increase the clothing allowance for the police superiors. This benefit now stands at \$400.00 for fire superiors and \$580.00 for both rank and file units. To increase this benefit to a level which is \$132.00 higher for the police superiors will lead the other organizations to seek increases to the same level and, given the history of pattern bargaining, it is asserted that there would serious destabilization in the future.

Finally, the City denies that there is any rule or reason why retroactivity can only work to the Association's benefit as it will, for example, with the wage increases. Public employers have been compelled to deal with retroactive increases and there is no reason why the Association cannot deal with a retroactive decrease, especially when its members stand to receive large retroactive salary payments. There is not even any evidence that there are not sufficient funds in the supplemental fund to deal with this situation.

The Association asserts that under the City's proposal, either the PSOA or the members individually would have to remit \$270.00 per officer or approximately \$45,000.00 to the City. It states that the monies have already been expended. Based on a review of arbitration awards in New Jersey in the last five years, the Association contends that it would be extraordinary if not unprecedented if an arbitration award required the repayment of previously expended monies. Such changes should be prospective only, as the PSOA has proposed, in what must be recognized as a significant concession by the Association to agree to this give-back as proposed by the City.

The PSOA asserts that there is no economic difference in the two proposals except for the effective dates. Under both, the City would pay \$180.00 per year, although this would be divided between two benefits under the PSOA proposal. The PSOA asserts that the City's concerns about the optical plan are misplaced. The City's liability would be limited to \$48.00 per year no matter what happens to premiums. There are no hidden costs for the City. As to the City's professed fears about the effect of increasing the clothing allowance, the Association notes that, as the City pointed out, the amounts provided for clothing now are different in different units. There also are said to be other significant differences among the different groups of uniformed employees, most particularly their work schedules. Also, the supplemental benefit is not now uniform.

The PSOA argues that its final offer in the area of the supplemental benefit is by far the more reasonable of the two.

One-Time Bonus Payment to Line Officers The PSOA has proposed that each line officer be given a one-time bonus payment of \$1,500.00 on 1996. It argues that this is minimal compensation for the prospective agreement of the PSOA that the line

officers will work a fifteen section schedule. Under that schedule, the officers will work an additional fourteen days per year for no additional compensation. The extra days will be worked every year. This will result in the equivalent of one additional calendar year of work for every sixteen years of service or approximately two more years of work over the course of an average career.¹⁸ A one-time payment of \$1,500.00 is said to be de minimis in this context. The City is able to achieve its managerial objectives, continuity of supervision, etc. for a single, one-time payment.

The fifteen section schedule permits an increased police patrol presence without additional expense to the City. As calculated by the City, the new schedule permits the City to have the same coverage with 30 fewer police officers. Thus, when the cost of a one-time payment of approximately \$145,000 is compared to the savings of 30 police officers per year, it is obvious that the City will be saving millions of dollars under the new schedule. Over \$1,000,000.00 would be saved each year in salary and fringe benefits for 30 police officers.

The PSOA calculated the savings to the City associated with its acceptance of the fifteen section schedule for line officers. They will work an additional 14.208 days per year. The value of this, based on the current group of 99 line superior officers and using 1996 salaries and assuming longevity of 15%, is \$440,462 per year. Thus, the PSOA argues, it would cost the City that much more to obtain the same supervisory coverage under the prior schedule. The savings associated with the new schedule are substantial and recurring and they swamp the one-time cost of the bonus payment which the PSOA is seeking in return.

The City denies that the acceptance of the fifteen section schedule by the PSOA for line officers justifies the \$1,500.00 bonus to each line officer. The City points

¹⁸ The average retiree in the last ten years had approximately 33½ years of service.

out that the new schedule does not require any additional hours of work in the year. The City contends that its salary offer, which is greater than that given or awarded to any other group of City employees, more than compensates them for any inconvenience associated with the new schedule. A payment of \$1,500.00 is said to be unjustified in light of the fact that the work year is unchanged and the payment would raise the cost of the wage increase for 1996 from 4.25% to over 4.75%, a totally unwarranted increase in light of the City's fiscal problems.

The City rejects the relevance of the PSOA's projections regarding extra tours worked and its impact on the City. No line superior officer will work one additional minute under the fifteen section schedule than would have been worked under the old eight section schedule. The schedule change has absolutely no effect on the hourly earnings of a line officer. Again, the City asserts that its wage offer, which is .35% higher than the fire units received and over 2% higher than the civilians - many of whom had their hours increased - received, more than compensates the line officers for any claimed "inconvenience." The larger salary increases are built into the salary base and will continue forever. For example, a Police captain will have a base salary which is \$330.00 higher than it would have been if he had received the raises granted to fire superior officers and that will have a perpetual impact. The City denies that it has saved thirty police positions as a result of the schedule change. No positions have been lost due to the change. Instead, coverage has been improved and, significantly, continuity of supervision has been enhanced.

Another problem with the PSOA's proposal, according to the City, is that assignments to line and staff positions are not unchanging. Individuals may be switched from one assignment to another and the allocation of positions between the two groups can change. Some officers might get the bonus even though they are

reassigned to the staff schedule and others might not get it at all if they were not on the line schedule in 1996 or perhaps were not even in the unit in 1996 but then are assigned to that schedule. Thus, the City contends, the PSOA's proposal does not even accomplish what the PSOA has said it wants to accomplish.

A final point is that an award in favor of the PSOA, according to the City, would create a significant morale problem in the Department which would increase rather than reduce management problems. The line officers represented by the POBA work the fifteen section schedule and they did not receive a \$1,500.00 bonus under Arbitrator Tillem's award. There should be departmental consistency, especially on an issue as important as this. Labor peace is intended to be promoted as set forth in the policy statement to the Police and Fire Interest Arbitration Act at N.J.S.A. 34:13A-2 and this bargaining unit should not be rewarded by waiting until the other units settled and then trying to get more.

Longevity The City has proposed that an additional longevity step be added so that officers at the beginning of their 28th year of service would receive 16% longevity, an increase of 2% over the current system. This change would be effective July 1, 1994. The PSOA has proposed that the new step be 15% and that the increase be effective March 1, 1996.

In urging that its final offer is the more reasonable of the two, the PSOA emphasizes that its longevity proposal is not only less costly than that of the City during the term of this agreement because of the later effective date and lower increase but that it will be significantly less costly far into the future. Thus, the PSOA has projected that its proposal would cost \$280,767 less than the City's between July 1, 1994 and 2002. This projection actually understates the savings to the City because it does not

take into account the substantial additional savings based on overtime, terminal leave, compensatory time and vacation buy back, all of which are affected by longevity.

When the projected savings are extended to 2009, they point to savings of over \$1,200,000, assuming that there are annual salary increases of 4% each year beginning in 1997. The savings in 2009 alone would be over \$200,000.

The PSOA argues that it is valid to project the savings into the future, just as the City has projected costs associated with the terminal leave benefit. Both projections are said to be justified and the City certainly cannot project when it perceives this as advantageous to the City but then fail to project when it is advantageous to the PSOA. Within a very few years, the PSOA claims the City will have recouped the full cost of the one-time bonus payment to the line officers and thereafter the savings will mount.

The PSOA asserts that these savings more than offset the cost of the one-time bonus which it has proposed for line officers.

The City asserts that its longevity proposal is an attempt to reward long-term employees and that the cost of its proposal during the term of this agreement is \$57,625. While the PSOA longevity proposal is less costly - it would cost \$12,672 during the term of the agreement, according to the City - the PSOA has added an additional \$168,000 to its package in the form of the bonus payment to line officers.

The City realizes that a longevity payment of 16% at the beginning of an officer's 28th year of service would be the most generous in the Big Six and among the highest in Hudson County. The fact is, however, that this is the longevity in Jersey City among all other units of uniformed employees and, given the uniformity which has existed, it should apply to the police superiors in the interests of stability in labor relations and a relatively equivalent treatment of employees. The proposal of the City

also is said to assure that, when considered with the City's wage offer, the officers will continue to remain competitive within and outside Jersey City.

The City states that the PSOA offered no evidence to support its position regarding either the 15% longevity proposal or the bonus payment. All that the PSOA did was to project savings into the future. The City points out, however, that there will be at least two rounds of negotiations between 1997 and 2002 and it argues that it is unlikely that the Police superiors would continue to have a top longevity step which is one percent lower than all other uniformed groups for that period of time, especially given what the City says is a ten-year history of uniform longevity for the four uniformed groups.

The City also objects to the PSOA's characterization of its offer as "saving" the City money. In fact, all that it does is cost the City less than the 2% offered by the City. Properly understood, the City argues that the PSOA proposal, based on the PSOA's figures, actually would cost the City \$1,241,999 more than it currently does.

Terminal Leave The parties' differences regarding terminal leave are limited to line officers for the period between February 1, 1995 and the issuance of this award and staff officers. The City has proposed that the terminal leave formula in Article 16, §6b be changed to reflect a fifteen section schedule with eight hour days to be applied to officers who retired after February 1, 1995. The PSOA is willing to accept that formula for line officers who will work that schedule but it proposes that the change be effective with the issuance of this award and it is not willing to accept that formula for staff officers who, under its proposal, would work eight and one-half hour days.

The PSOA believes that the appropriate terminal leave formula to apply to line officers who retired between February 1, 1995 and the issuance of this award should be resolved by PERC in the context of the pending unfair practice proceedings. The

change in work schedule was imposed unilaterally by the City and it is the change in that schedule which led the City to propose the change in the terminal leave formula.

The PSOA asserts that the City would reap large savings if the City's terminal leave formula were to be accepted. This is due to the fact that under the City's proposal, for all employees terminal leave payments plus holiday pay, compensatory time and vacation buy backs would be based on eight hour as opposed to eight and one-half hour work days as they are under the existing formula.

At the same time, the City will realize substantial savings as a result of the PSOA's acceptance of the change in the line officers' schedule and the computation of their terminal leave based on an eight hour day. Thus, the PSOA has agreed to a major give-back in this area although it has not agreed to everything that the City has proposed. By basing terminal leave on the hours actually worked by all officers, the PSOA contends that its proposed formula most fairly reflects the manner in which terminal leave benefit payments should be made.

The City's annual, recurring savings - based on vacation, holiday and compensatory time buybacks - will be approximately \$30,000 (half of that for 1996) and the figure will increase in the future. On terminal leave payments - made on a one-time basis to retiring officers - the City will spend \$213,132 less under the PSOA's proposal than it otherwise would have spent.

The PSOA asserts that it is economic savings and not continuity of supervision or any claimed managerial efficiencies which really motivated the City to change the work schedule.

The PSOA also notes that the City has calculated the difference between the parties' terminal leave proposals at a minimum of \$116,00 but the PSOA notes that, even accepting the City's figures, terminal leave benefits are only paid out when an

officer retires and the current members of this bargaining unit will be retiring over the next twenty years. Thus, the impact is spread out over a large number of years.

In defending its proposal to change the terminal leave formula, the City notes that the PSOA has agreed that the formula should be changed for line officers to reflect the hours of their work day. The City argues that it is illogical for the PSOA to want to start this change only with the issuance of this award because in fact the line officers have worked eight hour days since November 1994. The officers who retired since February 1, 1995 and the issuance of the award should have their terminal leave computed on the basis of eight hour days which is the length of the days they worked.

The City contends that if its final offer is accepted, the staff officers will work eight hour days so its terminal leave formula would be appropriate because it would be based on an eight hour day. The City also notes that when the work schedule was changed in 1988 from one in which officers worked eight hour days to one in which they worked eight and one-half hour days, the days which they had accrued at that time at eight hours per day were not reduced in value but made worth eight and one-half hours. This was an unjustified windfall at that time and it is one which the PSOA is seeking to perpetuate for the staff officers. This should not be considered a take back by the City, it argues, but rather as a restoration of a formula based on actual hours worked. Most of the accrued days were eight hour days because they were worked before 1988 when the work days were eight hours in length. Thus, it asserts that its position on this issue simply is fair and reasonable.

According to the City, the PSOA proposal would add between \$116,000 and \$508,000 to the value of banked time compared to the City's proposal.¹⁹ The variation

¹⁹ The City's calculations were based on the actual accumulated time of officers with 25 or more years of service and thus are currently eligible to retire.

comes from the fact that officers can be transferred into staff positions and, according to the City, this is more likely to happen toward the end of an officer's career when seniority would enable them to receive staff assignments. Thus, suddenly days worked or accrued at eight hours would become worth eight and one-half hours for terminal leave purposes when the officer retired. The City used the actual numbers of accrued days in its computations.

The City asserts that its formula is the proper one because it is consistent with its proposed work schedule and it would treat all employees the same, regardless of their assignment. Thus, the staff officers, who enjoy a more favorable work schedule in any event, would not also receive a windfall payment for their terminal leave.

Statutory Criteria

While pointing out the proximity of the two final offers, both parties nonetheless addressed the statutory criteria and argued that their offer was the more reasonable in light of these criteria.

City The City asserted that an efficiently organized department was essential for the public welfare and in order for the City to be able to provide a high level of service. Most of the arguments advanced by the City related to the need for a fifteen section schedule for line officers, which there will be. The City also argues that it is not in the public interest to leave unanswered the status of the schedule between November 1994 and the issuance of an interest arbitration award. The City also contends that the fourteen section schedule proposed by the PSOA for staff officers would be disruptive and throw the staff function into chaos and that only the City's proposal regarding a staff schedule is reasonable.

Furthermore, the failure of the PSOA to accept retroactivity for the line schedule not only will foster further litigation and preserve grievances but it will create dissension

between police officers and their superiors by virtue of the proposed bonus payment. Thus, in terms of the public interest and welfare, the City asserts that only its final offer can be accepted.

Turning to comparability and overall compensation, both on the basis of internal and external comparisons, the City asserts that its offer is reasonable. The City points out that these superior officers rank high both among the Big Six and within Hudson County. Jersey City's officers receive thousands of dollars more than do most others. In fact, the total compensation is higher in Jersey City than in Paterson for a sergeant even though the salary alone is higher in Paterson. When longevity, holiday pay and uniform allowance are added, the Jersey City sergeant moves ahead of the Paterson sergeant. These officers have the best longevity schedule and they are the only officers to have a supplemental benefit. They also have the shortest work year and the most extensive insurance coverage. The City's offer, it is said, will assure that these officers continue to enjoy high overall compensation on an hourly basis and on the basis of external comparables, the City's offer is the more reasonable.

The City's offer to its police employees exceeded the settlements with all other City groups, including the firefighters. Furthermore, the PSOA is seeking to increase the clothing allowance and to establish an optical plan, both of which would be disruptive if adopted. These additions, it is said, cannot be justified on either a comparative or financial basis. Also, the different longevity schedule, work schedule, dual terminal leave provision and supplemental benefit proposed by the PSOA as well as the bonus for line officers would create difficulties by diverging significantly from the other settlements. Furthermore, the different work schedule proposed by the PSOA for the staff officers would be a problem. In each of these areas, the offer of the PSOA is outside the norm and cannot be justified.

As to the authority of the employer, this comes into play only in that the City's right to establish a work schedule consistent with its operational efficiency must not be impeded.

Looking at financial impact, the City notes that the citizens of the City are below not only the State but also the County in terms of both income and education. Much of the development which has occurred received tax abatements so the City still is not collecting taxes at the normal rate. The payments in lieu of taxes ("PILOTS") are less. State aid is flat or decreasing at a time when the needs of the City's school system are rising. The City has had to resort to the bulk sale of tax liens to assist it with its collections and the City has lost 21% of its assessed valuation since 1990 as a result of tax appeals. This translates directly into higher tax rates which climbed between 1989 and 1995. Thus, while the City has succeeded in reducing both the total levy and the municipal levy, the tax rate has gone up. This is made worse by the fact that successful appeals not only reduce tax revenues but require refunds which, in order to pay, the City has had to sell bonds. The debt service on this is almost \$6,000,000 and the city net debt of \$262,000,000 exceeds the 3.5% debt limit established by law. In fact, the debt service is over \$35,000,000 or 12.5% of the budget, a figure close to twice to high as that in Newark.

The City has taken a number of measures to deal with this situation including selling and leasing assets, instituting a pay lag of one week, reducing it work force by over 350, privatizing a number of services and relying on non-recurring revenues, all in an effort to minimize tax increases. Since 1992, the Police Department has not lost personnel and the cost of police operations has increased both in relative and absolute terms. Thus, since 1993, the Police Department appropriations have increased by

\$10,000,000 while all other departmental appropriations have decreased by almost \$3,000,000.

Given this situation, the City insists that its final offer, which will maintain the wages and benefits of these employees at a high absolute and comparative level, must be accepted over that of the PSOA which, according to the City, would cost an additional \$286,000 and could mount to as much as \$700,000, depending on what happens as the officers approach retirement. It is simply not true, according to the City, that the offer of the PSOA is less costly than that of the City.

The final offers of both parties exceed the cost of living so the PSOA cannot argue that its offer is the more reasonable on this basis. It should be kept in mind also that the City pays for health care, thus absorbing the large increases in this area and protecting the employees against such increases.

Finally, the City asserts that its offer is consistent with continuity and stability of employment. It is internally consistent, it is consistent with the Tillem award which covered the rank and file unit, it will not foster morale problems because of a bonus payment or inconsistent schedule, it will not foster additional litigation, and it will not lead to a disruption in long-standing patterns of settlement. In contrast, the PSOA's offer will do all of these things by dividing the Department four different ways and creating numerous morale and other issues. The concessions which the PSOA has made, according to the City, were justified and necessary and reflected areas where the status quo could no longer be maintained, as the PSOA's offer at least implicitly recognized.

The City argues that the position of the PSOA really is a political one developed in an effort for it to save face. Once the Tillem award was issued, the PSOA had nowhere to go. It was forced to accept the basic framework of that award, including the

line schedule, wage increase and a number of economic concessions which the City required. The PSOA knew that this arbitrator would not award a different schedule for the rank and file and superior line officers nor was he likely to grant larger wage increases to these higher paid superior officers.

Thus, the City argues that its offer is the more reasonable of the two in relation to the statutory criteria and that it should be awarded.

PSOA The PSOA also addressed the criteria. It contends that the public interest and welfare will best be served by its offer. The City has not claimed that the PSOA offer creates any CAP problems or will adversely affect the budget and, in fact, over time, the PSOA's offer is less costly than that of the City. The police service is a critical one to taxpayers and businesses. The violent crime rate is behind only those in Newark and Camden in New Jersey. Assaults on officers have increased from 194 in 1991 to 324 in 1995. The number of police officers decreased by 25% from 1974 to 1994 while reported crimes went up by 40%. Morale must be considered. The line officers agreed to work an additional fourteen days per year and are asking only a one-time payment of \$1,500 per officer, a small amount in return for agreeing to the City's continuity of supervision and managerial prerogative concerns. The annual savings associated with this change approach \$500,000 for superior officers alone, without even considering terminal leave savings, so the City will be far ahead. The staff officers would work 3,808 more hours under the PSOA offer than that of the City so this clearly is in the public interest. Their schedule and benefits would simply be the same as they were before the City's unilateral change in November 1994. Other aspects of the PSOA offer also are said to be preferable because they are prospective and, unlike the City's offer, respect the preservation of terms and conditions of employment during the pendency of arbitration proceedings.

The lawful authority of the employer has not been raised in this proceeding and there is no claim, nor could there be since the PSOA's offer is less in the long run, that the City would have to reduce services to meet the PSOA's offer.

The PSOA cited a wealth of data, some of which was taken from Mayor Bret Schundler's 1995 State of the City address, to show that the City's economy and financial picture are improving. It cited the bulk lien sale which greatly increased the tax collection rate from 78% in 1992 to 94+% in 1995, a significant reduction in the tax levy, new construction including the Journal Square area and senior citizen housing, a large reduction in the number of general assistance recipients and broad based job growth. The equalized municipal tax rate declined by 34% from 1992 to 1994 while that rate was increasing by 13% in the Big Six; the overall rate in Jersey City declined by 11% in that period while it was rising by 9% in the Big Six. Both the total and municipal equalized tax rates are well below the Big Six averages. The City has not spent up to its CAP limit since 1993 and the 1996 budget is approximately \$5,000,000 below the 3% index. State aid has increased and not decreased: it went up \$6,000,000 in 1996 over 1995 and \$22,000,000 since 1992. These positive developments have contributed to the improved financial condition in many areas including a decrease in the reserve for uncollected taxes, privatization of the water utility with a significant savings in operations, the sale of City land in Morris County to the State for \$5,600,000 which not only provided revenue but reduced property taxes that the City had to pay, and, according to the Director, and a reduction of over \$1,750,000 in overtime in the Police Department as a result of the schedule change. In Jersey City, the population is growing, the per capita income is the highest in the Big Six and the unemployment rate is the lowest of the Big Six. Furthermore, the PSOA emphasizes that many components of its final offer will assist the City and reduce costs: the line schedule,

changes in terminal leave, reduction in supplemental benefit, a lower longevity step, a longer work year for staff officers, reduced terminal leave and vacation benefits for new hires, etc.

While both final offers exceeded increases in the cost of living, the two offers are very similar and, in the long run, the PSOA's offer is less costly than the City's.

Turning to comparability, the PSOA argues that the Big Six offers the most comparable group and that, except for Paterson in 1996 which also got a 4.25% increase but got larger increases in 1994 and 1995 than Jersey City, the wage increases for every year in each of the Big Six will exceed the wage increases in Jersey City. There is no evidence that any of the Big Six experienced anything approaching the vast number of give-backs and reductions in benefits which these officers will receive. Thus, the relative position of the officers in Jersey City, not only in terms of wages but also in overall compensation, will decline.

Within Jersey City, the PSOA notes that there has been a wide divergence but the two final offers are the same as to wages as well as a number of other important items and they generally conform to the Tillem award. Again, the PSOA asserts that its package is less costly than that of the City. The line officers will work 14 extra days, something which did not occur in the Fire Department, even though firefighters already enjoy a superior work schedule. The PSOA also notes that the POBA receives increments and that these cost 2.3% in 1995 and 2.0% in 1996. Thus, the POBA package exceeds that of the PSOA.

While little private sector data was submitted, the PSOA asserts that the wage increases it will receive are in line with private sector increases and will be exceeded by increases in executive compensation.

The PSOA asserts that its offer, even with its many concessions, will better promote stability and continuity of employment than will that of the City. The lower longevity schedule proposed by the PSOA will keep costs down and permit the City to hire additional police officers. Most of the changes involved in these negotiations are items proposed by the City. It is the City which is seeking to change the status quo and the party seeking the changes has the burden of justifying them. The PSOA points out that the City voluntarily gave bonuses and merit payments in excess of \$500,000 to a number of employees at the same time that it claims to be in dire financial straits. This is simply inconsistent and demonstrates the City's increasing economic viability.

For these reasons, the PSOA urges that its final offer be accepted as the more reasonable of the two.

Discussion

Line Schedule There is no reason in terms of the statutory criteria under which I am obliged to decide this case to select the final offer of one party over that of the other on this issue. Both provide for a fifteen section schedule which is what the City proposed and what it implemented in November 1994. That will be the schedule for line officers, both rank and file as awarded by Arbitrator Tillem, and superior officers, under whichever final offer I select. Also, nothing can change the fact that superior officers actually have worked a fifteen section schedule since November 1994.

The City's "theoretical" concern that the superior officers would have worked a different schedule from the rank and file with its attendant inefficiencies if I were to select the final offer of the PSOA is hard to understand. In any event, everyone knows the schedule that they actually worked. There were no "actual" inefficiencies.

By selecting the final offer of the PSOA, I would not be addressing the terminal leave pay for officers who retired between February 1, 1995 and the date of this award. To whatever extent that is or becomes an issue, the parties can address it in other venues.

While an award in favor of the PSOA on this issue might leave open the schedule between November 1994 and the issuance of this award, that very question has been litigated before PERC and there is no need for an interest arbitrator to address it. Furthermore, the City accepts that an award in its favor on this issue would not end the PERC litigation. Thus, the City's professed interest in "finality" cannot be assured no matter which final offer is selected.

Staff Schedule It is abundantly clear that the predominant concern of the City when it made the schedule change was continuity of supervision and efficiencies for line officers. Virtually all of the evidence related to that concern. At the same time, it is evident that continuity of supervision was not an issue for staff officers because all staff officers, both rank and file and superiors, worked the same schedule. They all worked Monday to Friday with a three-day weekend every other week and with eight and one-half hour work days. Thus, Moriarty testified that it would not be a problem in terms of inefficiency if PERC were to order a restoration of the prior schedule. That was true because under both the new and old schedules, all staff officers worked the same schedules. Continuity of supervision was simply not an issue.

The failure of the parties to present evidence in this area in this or the other proceedings renders my task more speculative than it might have been. The City presented no rationale for the change in the staff schedule for superior officers and now seems to want to change that schedule because it has changed the schedule for the rank and file staff officers. I do not know the extent to which supervision is even an

issue for staff officers nor do I know how many staff superiors supervise rank and file staff officers.

I am not convinced, however, that the scenario presented by the City whereby on three work days out of every thirty, superior staff officers will either have no one to supervise or those under them will be without supervision. The reason that this is not necessarily true is that there is no requirement that all superior officers have the same day off every other week. In other words, days off can be staggered so that if there are two sergeants or one sergeant and one lieutenant working in an area supervising one or more rank and file staff officers, their days off can be different. If there are situations in which there is only one superior staff officer and that person has one or more rank and file staff officers to supervise - as there may be - there will be less than total supervisory coverage but this is a situation which would exist under the City's proposal also. Officers presumably are sick on different days and take their vacations at different times and take compensatory days at different times. Thus, continuity of supervision is not absolute under any schedule.²⁰

Finally, of course, if it is the City's perception that the hours of work and work schedules of the rank and file and superior staff officers should be the same, the City may be able to change the schedules of the rank and file staff officers. As Moriarty acknowledged, this would not work any administrative inefficiencies and it would result in 2.8% additional hours of work. In any event, I am not persuaded that different schedules for the staff officers, as opposed to the line officers, is so detrimental to the

²⁰ While there is no factual evidence to support the statements I have made, they are supported by logic. Also, Article 8, §2 of the prior agreement did not specify the days off for those working the staff schedule so it appears that the City retains the right to stagger days off. In fact, the City may be able to have some officers take Monday as their day off and others take Friday as their day off. Thus, any continuity of supervision issues can be minimized.

interests of the City as to require, on this basis alone, the selection of the City's final economic offer.

Supplemental Benefit The real difference between the two proposals is economic. I do not believe that the PSOA's proposal to allocate the same \$180.00 which the City has agreed to pay to an increase in the clothing allowance and a fixed amount for an optical plan renders that proposal unreasonable. The City surely can explain to the other units and to future interest arbitrators that while the PSOA might get \$132.00 more in their clothing allowance and \$48.00 which goes toward an optical plan, that adds up to \$180.00 per employee which is exactly what the City spends in supplemental benefits for the two rank and file units. It should make no difference to the City that this Association prefers to allocate some funds in these areas rather than in other areas.

I do not find the City's expressed concerns valid. First, the PSOA is simply asking the City to contribute \$48.00 per year per employee toward an optical plan. The PSOA is not asking the City to provide an optical plan to unit members. The City's liability is clearly limited to \$48.00 per year. It should not matter to the City what the plan costs or what it provides. The City's only responsibility is the \$48.00 payment. While it may well be that the Association will seek to increase that amount in the future, that will happen in any event, if not for this benefit then for another one, and would not be fueled by the allocation of funds proposed by the Association.

Second, there is not uniformity in all areas of benefits at this time and this is specifically true not only for the supplemental benefit but also for the clothing allowance. Thus, while an increase in the clothing allowance and a payment for an optical plan might well cause other unions to seek these benefits, the City would be in

an equally strong position to assert when negotiating with other unions that the PSOA has no supplemental benefit and seek its removal from the other contracts as well.

In short, this allocation of the \$180.00 expenditure is not going to create the instability forecast by the City. Different employee organizations may have different priorities and want different things. As long as the economic impact is the same, as it is in this situation, and as long as there are no long-term implications, as there are not in this situation, an arbitrator can respect the preferences of an employee organization without taking anything away from a public employer.

As stated, there is a difference in the parties' positions regarding the supplemental benefit because of the retroactivity proposed by the City. While the PSOA is undoubtedly correct that it would be unusual for an interest arbitration award to award a give-back retroactively, that is exactly what Arbitrator Tillem did in his award covering the POBA. Thus, there would be consistency, for the two police units, if that were to be the result in this case. I do not find the concept so abhorrent, especially given the money due to the officers as a result of the retroactive salary increases, as to render the City's final offer unacceptable on this basis alone.

Having said that, however, given the fact that this is a give-back by the Union, I believe that the PSOA's proposal of a prospective decrease in the benefit is more reasonable. The City would save the \$180.00 per officer each year beginning July 1, 1996 (\$90.00 for the rest of calendar 1996) under the PSOA's proposal and that is significant. In assessing this issue, it must be kept in mind that this is a decrease in an existing benefit and not a new or improved benefit. Thus, it is not a situation in which the PSOA's proposal would add \$45,000.00 to the cost of the package; rather, it is a situation in which the City's proposal would reduce the cost of the package by \$45,000.00 more than would the proposal of the PSOA which, itself, would reduce the

cost of the package by approximately \$15,000.00 or \$90.00 per employee in 1996. Put another way, the \$45,000.00 figure is a one-time savings associated with the retroactivity; the City will save \$30,000.00 on a recurring basis under either offer. Thus, by itself, I find the offer of the PSOA more reasonable than that of the City on the supplemental benefit issue, the Tillem award notwithstanding.

One-Time Bonus Payment to Line Officers This issue is economic and must be considered in the context of the parties' total packages. The cost to the City would be approximately \$150,000.00 in 1996 with no carryover into future years. The Association asserts that this cost is offset by its less costly longevity proposal, an assertion which I shall examine below.

As an abstract statement, I do believe that sound labor relations generally are promoted and instability is minimized when the salary and benefit changes are similar for rank and file employees and their superior officers as well as between corresponding units of police officers and firefighters, both rank and file and superior officers. At the same time, I do not believe that different units must necessarily receive identical packages. If that were to be the case, then the settlement with the first unit, by voluntary agreement or interest arbitration award, would render negotiations and arbitration with other units redundant. There is, however, a heavy burden on the party seeking to justify a deviation from an established pattern. Thus, in the context of this case and the one-time bonus, the burden is on the PSOA to justify that payment to line officers.

Assuming that the economics of the proposal can be justified - and this must await an assessment of the two economic offers in totality - I believe that the PSOA's proposal does not undermine its overall position. Both parties to this proceeding recognize that the work schedule issue is and has been the major issue, both for this

unit and for the POBA. If the PSOA prefers to use some of the money which is available to it for a one-time bonus for those officers who worked the fifteen section schedule in 1996, that is a reasonable determination. Obviously, the PSOA (and the POBA) preferred the former eight section schedule, in large part because it required fewer days of work in a year. Even though the annual hours of work are the same under the two schedules, one which requires fourteen additional appearances can rationally be perceived as less desirable.

While the City argues that an award of the one-time bonus to the line officers who worked this schedule would be deleterious to morale in the Department because the rank and file line officers who also worked the schedule will not get that bonus, it must be recalled that parties' final offers differ in other ways as well. As will be discussed below, the City offered to the PSOA and the POBA received a larger increase in longevity than the PSOA has proposed. Thus, all members of the POBA will receive an additional 2% in longevity at the beginning of their 28th year of service whereas the PSOA has proposed that its members receive only an additional 1% at that time. This lower figure obviously would cost the City less and leave some money for other purposes. The PSOA has determined that it would prefer to allocate that money to the line officers who worked the new schedule rather than to spread it out among all officers of the unit.

Because the bonus is one-time only and because it does not go into the base and is not to be used for pension purposes, it has no implications which extend beyond the term of this agreement. Subject to a consideration of the total cost of the two final offers, I do not find that the PSOA's proposal for a one-time bonus for line officers renders its offer unreasonable or unacceptable,

The City has expressed a concern that if the offer of the PSOA were to be accepted, certain officers who might be deserving of the bonus would not get it and others not deserving of it might get it. I would suggest to the parties agree, although this could not be part of the award, that the bonus be paid only to those officers who were assigned to the fifteen section schedule as of the date of the award. While this is an arbitrary date, it reflects the current situation and avoids payments to officers who worked the fifteen section schedule for part of the year but who subsequently have been assigned to the presumably more desirable staff schedule. It also would result in payments to those who will be working that schedule in the future, although, of course, they City may later assign them to a staff position.

Longevity The cost figures associated with the two proposals were set forth above. Using the PSOA's figures, which, as explained in footnote 8 above, appear to be more accurate than the City's, the proposal of the City would cost the City \$65,485 more than would that of the PSOA during the term of this agreement. That amount can be used as an offset against the cost of the one-time bonus for line officers which, based on the current complement of 99 line officers, would cost \$148,500. That leaves a difference of \$83,000. The \$65,485 figure undoubtedly understates the difference because some of the officers will be promoted in future years so they will have higher salaries which will increase their longevity. Also, the figure does not take overtime and terminal leave payments into account although longevity is included in calculating these costs.

To put that amount in perspective, the City has calculated its incremental costs for salary increases, longevity, holiday pay, pension and overtime for this bargaining unit during the three years of this agreement as \$3,179,751. Thus, \$83,000 represents only 26% of the incremental costs.

While I recognize the possibility that the longevity schedule will be changed in the future and, therefore, that projections are purely speculative, it certainly is possible that the one percent differential will survive for one or two contracts. The City surely would argue that the 1994 to 1996 contract included \$148,500 in bonus payments that went only to employees in this unit and not to rank and file line officers. If the differential survived the next contract and if that were a three-year agreement with wage increases of 4% annually, the City would recoup an additional \$57,000, leaving \$26,000. (See PSOA Brief, Ex. D.) If the differential remained an additional three years through 2002, the City would recoup \$200,000 during that three year period, thus far more than offsetting the cost of the bonus with longevity alone.

The differences in the final offers, of course, go beyond the one-time bonus and the longevity schedule. Thus, an overall assessment of the differences must await a consideration of the two final economic offers in their totality.

Terminal Leave I shall consider under this section the effect of the proposed changes in the terminal leave formula not only in terms of payments to officers who retire but also annual payments based on buybacks.

The annual savings to the City, based on PSOA's proposal, for compensatory time, vacation time and holidays which can be bought back under the contract is \$30,266 based on 1996 salaries and longevity of 15%. While the longevity figure is not accurate for most members of the unit, the use of that figure does not significantly overstate the City's potential annual savings. Most officers receive at least 8% longevity and almost 40% receive 12%. The annual savings will increase, of course, as the salaries increase. Also, not all employees cash in all available time. The figures used in these calculations were based on information which Buonocore testified was provided to him by the Department's fiscal office.

For 1996, therefore, the City would save approximately \$15,000 in these buybacks since the PSOA has proposed that the change be effective with the issuance of the award. The savings could end up being greater, depending upon how the issue of the time before the issuance of this award is resolved.

The value of currently accrued or banked time would be \$116,345 less under the City's proposal than that of the PSOA. In other words, the value of this time would be reduced by that much more under the City's proposal than that of the PSOA. This time, however, would also decrease in value under the PSOA's proposal. The difference is that it would not decrease for staff officers who constitute approximately 41% of the unit. Thus, the City is seeking to save an additional approximately \$80,000.

I disagree with the City's contention that this is not a give-back. It is. The starting point must be the status quo. Under the status quo, these benefits are based on eight and one-half hour days. It does not matter whether this was a windfall when the schedule was changed. This is what the parties agreed to at that time. The City is seeking to change that benefit and this is a give-back, even if it only restores the pre-1988 situation and bases the benefit on the length of days actually worked.

The city argues that the difference actually could turn out to be as much as \$508,000 if all superior officers were staff officers at the time of their retirement. Based on a review of Exhibit D attached to the City's brief, that appears most unlikely. Of the seven retirement-eligible sergeants with 25 or more years of service, five are line officers and two are staff officers; of the nine lieutenants with that much service, six are line officers and three are staff officers. It does not appear that all superior officers end their careers as staff officers.

In terms of the equity of the situation, the PSOA proposal would compensate both line and staff officers on the basis of hours actually worked or scheduled

(assuming they work days of different lengths). That is the fairest system, at least prospectively. There may have been a windfall in 1988 when the schedule was changed but for whatever reason the parties agreed to that formula at the time. Thus, the PSOA's terminal leave proposal is preferable to that of the City.

Statutory Criteria

As stated above, the application of the statutory criteria is problematic in a case such as this one in which the final offers are so close. This extends not only to the wage increase but to a number of other items. It is for that reason that I discussed at length the items in the parties' offers which are not the same, even though the overall packages are very similar.

Given the narrowness of the differences in the final offers, the interests and welfare of the public will be served by either final offer. Subject to a consideration of the total economic packages, however, I believe that offer of the PSOA is preferable on this measure. Not only has the City achieved many important things in these negotiations but the PSOA has accepted a number of changes which detract from benefits and working conditions currently enjoyed by the PSOA's members. Particularly important in this regard is the change in the work schedule for line officers who work fourteen additional days under the new schedule (although the number of hours in the work year has not been changed). Given the concessions accepted by the PSOA, it is in the public interest to accept a final offer which reflects the priorities of the PSOA rather than those of the City assuming that the basic parameters of that offer are compatible with the Tillem award which applies to the POBA and the other settlements in the City. It is clear that the scheduling issue was a major stumbling block in these negotiations and the proposal of the PSOA for a one-time bonus payment in recognition of the less desirable schedule which the line officers accepted is a

reasonable accommodation and one which should help to gain acceptance of that schedule and have a positive effect on morale. While it can be argued, as the City has argued, that to treat the superior officers differently from the rank and file officers may create internal dissension and tensions, the more persuasive position, in my opinion, is that the PSOA has established priorities which reflect its members concerns and interests and as long as these can be satisfied within the general framework of the economic package, they should be. The POBA enjoys other advantages which may be more important to that organization and its members.

Consideration of comparisons and overall compensation do not assist in deciding this case. The narrowness of the final offers precludes a judgment in terms of external comparability, although it is accurate to state that parties' final offers do provide lower wage increases than those received by other Big Six cities and the numerous give-backs and reductions in benefits will result in a relative decline in the standing of these officers. Having said that, it also is true that they are and will remain very well compensated on a comparative basis, both among the Big Six and within Hudson County.

Looking at internal comparisons, the basics of the two final offers both follow the Tillem award (with the City offer following it precisely). There are differences, of course. For example, POBA members are eligible for increments if they are not at the top step of the salary schedule and the cost of these to the City was 2.3% in 1995 and 2.0% in 1996. These figures are on top of the across-the-board salary increases. Assuming that the deviations from the Tillem award proposed by the PSOA offer do not undermine the basic pattern of settlement, that offer can be awarded without creating internal injustices. One area in which the two offers differ relates to the staff schedule but here, it must be stated, the offer of the PSOA provides for 2.8% more hours of work

and there is no evidence that it would jeopardize managerial efficiency. The longevity proposal of the PSOA, of course, is less costly than that of the City.

The narrowness of the differences between the final offers indicates that the lawful authority of the employer is not at issue. The City's budget is well under the CAP index limit (N.J.S.A. 40A:4-45.1).

The financial impact of the two offers on the governing unit, its residents and taxpayers again is similar, given the proximity of the parties' positions. The final offer of the PSOA has the potential of being more advantageous than that of the City in future years and both offers contain numerous elements - reduced vacation schedules for new hires, reduced terminal leave for new hires, reduced terminal leave benefits for line officers, reduced supplemental benefits, pro-rating of the final year's vacation entitlement - which will result in very substantial cost reductions for the City in coming years and decades.

Cost of living increases are of no assistance in deciding this case because the final offers, including identical wage increase proposals, are so similar.

Finally, continuity and stability of employment considerations point to the selection of the PSOA's final offer because of the lower longevity increase which it has proposed. The potential savings associated with this difference in the final offers is considerable and recurring. The areas in which the PSOA's final offer differs from the Tillem award can be explained to other employee organizations and arbitrators and will not lead to the instability forecast by the City.

Accordingly, while the analysis is necessarily imprecise and subjective given the similarity of the two final offers, I believe that the final offer of the PSOA is the more reasonable one in light of the statutory criteria.

Total Economic Packages

As stated, a number of the components of the parties' final offers are the same: duration, wage increase, increase in prescription drug co-pay, reduction in vacation schedule for new hires, pro-rating of vacation in an employee's last year of service, reduction in terminal leave for new hires, line officer work schedule (with a paper difference in effective dates as discussed above), line officer terminal leave (again with a difference in effective dates) and hourly rate. The underlined items represent decreases in existing benefits or, in the case of the line schedule, an improvement in efficiency and coverage sought by the City without increased cost.

Additionally, the offers end at the same economic point - I discussed the non-economic aspects of this above - on the supplemental benefit, although the City has proposed saving some \$45,000 more during the term of this agreement than the PSOA has proposed. Both offers represent annual savings to the City of \$30,000 in 1997 and thereafter.

The PSOA proposed one item, the one-time bonus of \$1,500 for line officers, which adds \$148,500 to the package. This is partially offset by the lower longevity increase proposed by the PSOA. During the term of this agreement, the PSOA's proposal is approximately \$65,000 less costly than that of the City. There will be mounting future savings if the differential in this benefits remains in place so that the City would expend \$57,000 less on longevity during the course of the next three-year contract and \$200,000 less during the following contract. These reduced expenditures, of course, are not guaranteed but they do represent a continuation of the status quo and, as noted above, the party seeking to change the status quo has the heavy burden of justifying any such change.

Additionally, it must be recalled that the final offer of the PSOA provides for staff officers, 41% of this bargaining unit, to work 56 hours or 2.8% more than the City's schedule. I have discussed the non-economic aspects of this issue above but in terms of economics, the PSOA offer clearly is favorable to the City. The additional working time totals 3,800 hours and that is the equivalent of two additional officers.²¹ A sergeant in 1996 will earn a base salary of \$62,786. There are, of course, substantial additional costs due to pensions, longevity, holiday pay, clothing allowance, health insurance, etc. Considering only the salary component, however, two sergeants would cost \$125,000. This cost added to the lower cost of the PSOA's longevity proposal more than offsets the one-time bonus payment during the term of the current agreement even without projecting into the future. Furthermore, these additional hours will be worked every year so this is a recurring gain for the City, unlike the one-time bonus payment.

Finally, note should be made of the significance of the change in the terminal leave computations for line officers. This change has two aspects which I have grouped under terminal leave. First, there is the annual savings associated with the utilization of eight hours as the basis for determining payments by the City for holidays, vacation buybacks, and compensatory time buybacks. The value of this change is approximately \$30,000 each year, assuming that officers exercise their contractual rights as Buonocore testified. Second, the value of accrued or banked time has been reduced significantly as a result of the change. The City computed the reduction in that current value at \$116,000. This is significant but it understates the value of the change to the City because terminal leave of five calendar days per year (reduced to 3.33 paid days per year under the line officer formula) plus banked vacation time and

²¹ The fact that the statute equates working time and earnings was noted above.

compensatory time continue to increase until retirement. While not necessarily representative over a longer period of time, employees who retired since the last contract expired had the following number of days: 187, 245, 377, 182, 432, 199 and 371. Thus, it is evident that this is a major and costly benefit to the City.

Concluding Comments

This case was vigorously and extensively litigated by the parties. Once the Tillem award was issued, however, the nature of the case was changed significantly. Given the importance attached by arbitrators generally, including this one, to patterns of settlement and, perhaps even more importantly, given the line schedule awarded by Arbitrator Tillem and the overriding need of the City to have superior line officers work the same schedule as the rank and file officers they supervise on the front line, the broad outlines of this set of negotiations were clear to everyone.

The PSOA was confronted with two broad alternatives. First, it could hold on to its prior position and be virtually certain that the City's final offer would be accepted. Contrary to the City's contention, I view this alternative as the "political" one in that the Association would preserve its position and blame the arbitrator for the outcome. Second, it could attempt to fashion a final offer which was consistent with the broad parameters of the Tillem award but with a reallocation of the benefits which reflected the interests of its members. This would, of necessity, compel it to accept the City's proposed line schedule as well as the wage increase and a number of other items. The PSOA elected to do the latter. I have determined that the final offer of the PSOA is generally consistent with the Tillem award and included offsetting provisions and, therefore, is the more reasonable one.

Clearly, as the City pointed out, it was the issuance of the Tillem award which provided sharp focus to the parties and which essentially removed large areas from this

dispute. The City was almost assured of achieving its major goals once it prevailed in the POBA proceeding, giving the significance of the line schedule issue.

The City has accomplished a great deal in these negotiations. Not only has it obtained acceptance of its proposed schedule for line officers with its attendant efficiencies and improvements in continuity of supervision and reduction in the annual costs of the several buybacks and retirement costs of terminal leave but it has succeeded in getting the Association to agree to its proposed wage increases (3.75%, 4.00% and 4.25%), increase in prescription drug co-payment, reduction in vacation schedule for new hires (a reduction of ten days per year for employees with eleven or more years of service), pro-ration of the final year's vacation entitlement (saving fifteen days for those who retire before July 1 of any year), reduction in terminal leave for new hires (from five days per year to three days per year), and reduction in the supplemental benefit (from \$360 to \$180 annually). By almost any measure, the City must realize that it has had an enormously successful round of negotiations which not only helps the City in the immediate term but, and this is by no means universal in the public sector, by making a number of changes which will save large amounts of money and enhance its efficiency well into the future.

AWARD

Having carefully considered and given due weight to each of the statutory criteria as set forth above, the final economic package of the PSOA is hereby awarded:

1. **Duration** - A three year contract, effective January 1, 1994 to December 31, 1996. All benefits and increases retroactive to January 1, 1994 except where otherwise stated in this award.

2. Staff Schedule - All Staff Officers included within the PSOA's unit shall work a fourteen (14) day cycle schedule, effective as of the date of the issuance of this interest arbitration award, which shall consist of five (5) days on duty, followed by two (2) days off, followed by four (4) days on duty with three (3) days off after which the cycle repeats itself. The Staff Officers work day shall consist of 8½ hour days.
3. Line Schedule - All Line Officers, effective as of the date of the issuance of this interest arbitration award, shall work a fifteen (15) section schedule consisting of five (5) day on, followed by three (3) days off, followed by five (5) days on, followed by two (2) days off, which each daily tour shall be 8 hours in length.
4. Salaries - All unit personnel shall receive 3.75% increases effective January 1, 1994, 4% increases effective January 1, 1995 and 4.25% increases effective January 1, 1996.
5. Longevity - An additional longevity step, effective March 1, 1996, is to be added to the longevity schedule found in Article 21, Section 2, so that beginning the first year of year 28, an employee will receive 15% longevity.
6. Bonus Payments for Line Officers - A bonus of \$1,500.00 for each Line Officer shall be provided during the 1996 calendar year as a one time only bonus payment. Said bonus payments shall not be considered for any base salary or pensionable purposes.
7. Prescription Drug Insurance - The PSOA agrees to the modification of the co-pay in the current plan to \$8.00 for brand name drugs and \$4.00 for generic drugs, effective July of 1996 (Article 10, Section 3(c)).

8. Vacation - The PSOA agrees to a modification of the existing vacation schedule for new police hires effective as of the date of the issuance of this interest arbitration award as follows:

During the 1st year of service - 1 day per month of employment

During the 2nd -10th year of service - 15 days per year

11 or more years of service - 20 days per year

(Article 9, Section 3(b))

Additionally, the PSOA agrees that during an employee's final year of service, vacation entitlements, rather than being vested on the first day of said year, will be prorated so that the employee would receive 50% of the last year's entitlement if he/she retires on or before June 30th, and the entire year's vacation allotment if the employee retires on or after July 1st (Article 9).

9. Supplemental Benefits - Clothing Allowance - Effective July 1, 1996 supplemental benefits payments (amounting to \$360.00 per Officer each year) shall cease. In lieu of continued supplemental benefit payments, \$132.00 a year shall be provided by the City to increase each Superior Officers' clothing allowance. For the period between July 1, 1996 through December 31, 1996 each Officer shall therefore receive \$66.00 in increased clothing allowance payments.
10. Optical Plan - The City shall be responsible for paying all appropriate premiums to maintain the existing optical plan presently maintained by the PSOA not to exceed \$48.00 an Officer per year. For the period between July 1, 1996 through December 31, 1996 the City's obligation pursuant to this award shall not exceed \$24.00 per Officer.

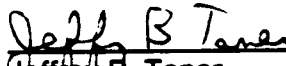
11. Terminal Leave - The PSOA agrees that new police hires, effective as of the date of the issuance of this interest arbitration award, shall receive a terminal leave benefit based upon three (3) days per year. All employees currently employed by the City of Jersey City in any Police capacity shall continue to receive the five (5) terminal leave days in accordance with the current Agreement. (Article 16).

12. Hourly Rate - The Officers' hourly rate under the Schedule above for all purposes shall continue to be based on 1939 hours per year.

The City's non-economic proposal to modify Article 15, Clothing Allowance, is awarded. Thus, the provision will be modified to read as follows: "...the additional Two Hundred Ninety (\$290.00) will be paid on the first Thursday after the regular Council meeting in July..."

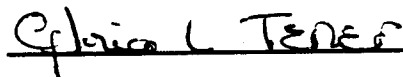
Any items mutually agreed to by the parties shall be included in the new agreement. All other items shall continue unchanged from the prior agreement.

Dated: August 7, 1996
Princeton, NJ


Jeffrey B. Tener
Arbitrator

State of New Jersey)
County of Mercer) ss.:

On this 7th day of August, 1996, before me personally came and appeared JEFFREY B. TENER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


GLORIA L. TENER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES SEPT. 8, 1999