

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Arbitration

Docket #IA-97-8

between

BOROUGH OF BOGOTA,

"Borough"

Hearing: March 20, 1997  
May 13, 1997

-and-

P.B.A. LOCAL NO. 86,

"Union"

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APPEARANCES

For the Borough:

DORF & DORF  
Gerald L. Dorf, Esq.

For the Union:

LOCCKE & CORREIA  
Richard D. Loccke, Esq.

### PROCEDURAL BACKGROUND

The Borough and the Union are signatories to a Labor Agreement which expired on December 31, 1995. Negotiations for a new Agreement began on March 1, 1996. A series of sessions were held. On July 15, 1996, the Union forwarded a Petition to Initiate Compulsory Interest Arbitration to the State of New Jersey Public Employment Relations Commission ("PERC"). PERC marked the petition as filed on July 22, 1996, and assigned it Docket Number IA-97-8. The Petition listed four economic issues as in dispute. They were: Wages; Uniform Allowance; Vacations; and Overtime Compensation. No non-economic issues were listed. The Borough alleges the Union failed to send it a copy of the petition. It claims it first became aware of the petition on July 24, when it received a copy from PERC. The Borough did not initially file a formal reply to the petition.

Negotiations between the parties continued after the petition was filed. The next session was held on August 26, 1996. Andrew T. Fede, Esq., represented the Borough. The Borough maintained the Union's petition was incomplete in that it failed to list all the items in dispute. On August 27, 1996, Fede wrote to PERC, stating, in part:

In fairness to all concerned, I must note that the list of issues in Schedule A of the petition is not complete, and there are other unresolved economic and non-economic issues that have to date been discussed and have not been resolved. These issues include: salary and wages, including court time, recall, and longevity; uniform allowance; vacations; priority for overtime; mutual shift changes; sick leave policy; medical insurance; grievance

procedure; terminal leave; and in-service training. The Borough intends to submit all unresolved issues to arbitration.

A final negotiating session was held on November 27, 1996. The parties were still unable to resolve the dispute regarding the open issues. The Union continued to maintain there were only four issues. The Borough asserted the list was far more extensive.

On December 9, 1996, I was appointed by PERC as the Arbitrator in the dispute. By agreement of the parties, an initial hearing was scheduled for March 20, 1997. At that session, I attempted to mediate a settlement of the dispute. Although some progress was made, no overall agreement could be reached. The Borough continued to assert that the list of issues on the Union petition was incomplete. It strongly pressed for changes in health insurance. (It had proposed a change in the plan currently covering employees.) The Union argued that inasmuch as the Borough had failed to reply to its petition within the time limits specified by the law, all subjects not listed on the petition were beyond the scope of the arbitration proceeding. A formal hearing was scheduled for May 13, 1997.

On April 15, 1997, Gerald L. Dorf, wrote to me on behalf of the Borough. He copied counsel for the Union. He maintained the subjects of the upcoming hearing should be "salary (including salary guides), health insurance and assignment of personnel." Assignment of personnel was a "new" subject. That is, it had never been raised in negotiating

sessions, correspondence regarding these negotiations, or at the March 20, 1997 mediation session. His letter stated, in part:

The third issue regarding assignment of personnel is by direction of PERC Designee Edmund G. Gerber in a decision (Docket No. CO-97-276) dated April 9, 1997, a copy of which is enclosed for your information. The decision is a direct result of an unfair practice charge filed by the PBA and a request for interim relief restraining the Township from hiring of civilian dispatchers while assigning police officers to normal police functions.

Mr. Gerber at page 4 states that: The City is required [to] negotiate with the PBA before it can take such unilateral action.

The letter concludes:

Accordingly, without conceding the appropriateness of the decision of the Commission Designee and/or negotiability of the issue, I will make myself available to meet with Mr. Loccke to discuss and/or negotiate on the subject. Failing a resolution, and without conceding its negotiability, I would also agree to present the issue to you at the hearing.

Richard Loccke, the Union's counsel, replied to Mr. Dorf on April 21, 1997. He maintained that the issues covered by PERC Docket No. CO-97-276 were beyond the scope of these proceedings. He reaffirmed the Union's position that the proceeding covered only those four items set forth in the Union's July 15, 1996, petition.

On May 3, 1997, Mr. Dorf again wrote to me stating "...the Borough of Bogota's final offer covered six subjects: salary (including salary guides); health insurance; assignment

of personnel; uniform allowance; vacation; and overtime compensation.

On May 7, 1997, Mr. Loccke wrote to me regarding Mr. Dorf's May 3rd letter. He stated: "The issues of 'Health Insurance' and 'Assignment of Personnel' were not listed on the Interest Arbitration Petition originally filed in this matter on July 22, 1996." He concluded, "The PBA will not arbitrate the issues of 'Health Insurance' and 'Assignment of Personnel'." He pointed to a Commission decision in County of Middlesex and Middlesex County Police, PERC No. 97-63, November 20, 1996, in support of his position.

A formal arbitration hearing was held on May 13, 1997. A verbatim transcript was made. At the beginning of the hearing, the Borough submitted an extensive brief regarding its request that the issues of health insurance and assignment of personnel be included as subjects in dispute and covered by my decision.

The Borough put forth a number of arguments in support of its position. First, it maintained the PBA's petition to PERC was defective and should not limit the issues. It alleged the PBA failed to conform with the requirements of N.J.S.A. 34:13A-16(b)(2), and N.J.A.C. 19:16-5.3(b), by not filing a copy of its petition with the Borough. The Borough first received the petition as an attachment to PERC's letter of July 24, 1996. That defect deprived the Borough of "several additional days to submit a timely response." The Borough also argued the PBA petition was defective because it "only listed

four (4) of over twenty (20) issues in dispute at the time the petition was filed."

Second, the Borough argued the Act, its implementing regulations and PERC decisions "require a relaxation of regulatory time limits, where applicable." It conceded its August 27, 1996 response to the petition was "approximately three weeks beyond the ... time limit set forth in N.J.A.C. 19:16-5.5." It pointed to N.J.S.A. 34:13A-14, N.J.A.C. 19:10-3.1, and N.J.A.C. 19:10-31(b). It maintained all three regulations stand for a liberal application of the rules when the "...designated officer finds that unusual circumstances or good cause exists...." It asserted both the assignment of personnel and health insurance issues fall within those definitions.

Third, the Borough argued the PBA failed to show it was prejudiced by the Borough's submitting its issues three weeks past the regulatory deadline. It asserted the County of Middlesex decision was inapplicable to the facts here. In that case, the employer submitted a number of issues four months after the petition was filed, and just three weeks before the scheduled arbitration hearing.

Fourth, the Borough pointed out it was ordered to negotiate the assignment of personnel issues by a Commission Designee. The issue first arose when it adopted an ordinance calling for the hiring of civilian dispatchers. It believed, and still does believe, it had that unilateral right. The

unfair labor practice decision was issued on April 9, 1997. The Commission Designee enjoined the Borough's action and directed negotiations. On April 15, 1997, the Borough wrote to me and the Union regarding the issue. When the Union took the position the issue was outside the scope of these proceedings it was, in effect, refusing to negotiate. That left the Borough no remedy except to include the issue in this arbitration.

The Union took exception. It pointed to the regulation and the Commission's Middlesex ruling. The regulation is worded "in the imperative." It requires that "...the respondent shall file within seven days of receipt of such notification or petition a statement of response...." When the Borough failed to take that action it, in effect, accepted the issues as outlined in the petition. In the Union's view, Middlesex is dispositive.

The Union denied it had refused to negotiate on the assignment of personnel issue. It is prepared to enter into such discussions. However, that issue, and health insurance, should not be included in this proceeding or under this docket number. The Union asserted the only proper issues here are the ones identified in its petition.

After reviewing both parties' positions, I issued a bench ruling on this procedural issue. I held that health insurance was properly included as part of this proceeding. I further held the personnel issue involving substitution of civilian personnel for police dispatchers was not a part of this proceeding and that the Borough was barred from raising it in

this arbitration. The Borough took exception to that part of my ruling. I briefly explained the reasons for my holding and stated I would amplify my remarks in my formal written opinion. (TR 32-34) They are set forth below.

The facts regarding the history of the health insurance issue are not in dispute. From the very first negotiating session, the Borough proposed to replace the current health insurance plan with Blue Choice. It continued to press for that change throughout the negotiations. At the time it filed its petition, the Union could not help but know the matter was still in contention. Either through design or oversight, it failed to list health insurance on its petition. The next negotiating session was held a few weeks after the Borough received the petition from PERC. For the first time, it realized the Union was taking the position health insurance was not "off the table." It objected. It immediately wrote to PERC asserting "the list of issues in Schedule A of the petition A is not complete." One of the issues it maintained had been overlooked by the Union was "medical insurance." That was long before I was appointed as Arbitrator and our first meeting was held.

The Union maintains the time periods prescribed in N.J.A.C. 19:16-5.5 must be adhered to without exception. It asserts the Commission's ruling in County of Middlesex stands for that position. I disagree. A close reading of that decision leads to the opposite conclusion. On page 9 of its



decision, the Commission commented:

We will assume that the time periods prescribed in N.J.A.C. 19:16-5.5 may be relaxed where unusual circumstances or good cause exists or where strict compliance would work an injustice or unfairness. N.J.A.C. 19:10-3.1(a). Similarly, we assume that the time periods prescribed in N.J.A.C. 19:16-5.5 may be extended where strict adherence will work surprise or injustice or interfere with the proper effectuation of the Act.

On the medical insurance issue, the Borough has provided persuasive reasons to invoke those exceptions. It should not be precluded from arguing for its long held and clearly communicated proposal just because the Union failed to include it on its petition and the "error" was not picked up for three or four weeks. This would not only be unfair but work an injustice on the Borough. The purpose of the Act is to provide a fair and equitable procedure to resolve the parties' differences. I find the Borough has a right to be heard on its health insurance proposal.

The facts regarding the history of the personnel issue are not in dispute. They are quite different than those regarding the Borough's health insurance proposal. The issue was never raised in these negotiations. In fact, the Borough strongly believed it was not required to negotiate with the Union on this subject, a position it still holds. It did not pass the ordinance calling for civilian dispatchers until January, 1997, more than six months after the Union's petition was filed. It was well after the last negotiation session. It

was after my appointment as Arbitrator in the dispute. In January, 1997, I had scheduled a hearing in this case. It was held on March 20, 1997. It evolved into a mediation session. Since a settlement could not be reached, a formal hearing was scheduled for May 13, 1997. By letter of April 15, 1997, the Borough for the first time attempted to add the assignment of personnel issue to the proceedings. The Union immediately objected, citing Middlesex.

Seldom have I seen a case more on point. In fact, the Borough's actions here are much more serious than those in Middlesex. In that case, the County wanted to add issues less than five months after the petition was filed. It was shortly after the Arbitrator was appointed and prior to the first hearing in the case. Here, the Borough seeks to add an issue first identified some ten months after the petition was submitted. That was not only four months after I was appointed as Arbitrator, but subsequent to the holding of the first meeting.

The Borough alleges that Commission Designee Edmund G. Gerber's decision on the unfair labor practice charge filed by the Union requires the inclusion of this issue. He made no comment on arbitration of this issue. His order is clear. He restrained the Borough from implementing the hiring of civilian dispatchers "...pending negotiations with the PBA Local 96 concerning the transfer of dispatch work..."

As of the May 13, 1997 hearing, when I made my ruling, there had been no negotiations between the parties on

this subject. The Borough maintained that was because the Union "refused to negotiate." It based its position on a single sentence in Mr. Dorf's April 15, 1997 letter. It read: "Accordingly, without conceding the appropriateness of the decision of Commission Designee and/or the negotiability of the issue, I will make myself available to meet with Mr. Loccke to discuss and/or negotiate on the subject." It maintained that when Mr. Loccke reaffirmed the Union's position that the matter was outside the scope of this arbitration proceeding, it was, in effect, refusing to negotiate.

I find no basis for that conclusion. There was no evidence the Borough directly contacted the Union to schedule negotiations on this subject, or that the Union refused such a meeting. In fact, it was the Union which had tried to force the Borough to the table by filing an unfair labor practice charge. Even after Mr. Gerber's ruling, the Borough still failed to comply but appealed his ruling. At the May 13, 1997 hearing, the Union stated it was fully prepared to negotiate on the subject. (TR 25-26) Since those negotiations have not started, let alone concluded, the Borough's demand that the subject be included in these proceedings is inappropriate.

Finally, the Borough asserts that PERC's failure to uphold its position that this issue was non-negotiable is an "unusual circumstance" and "provides good cause" for waiving the N.J.A.C. 19:16-5.5 time limits. I find that argument unpersuasive. The Borough had control of its own fate. It

could have avoided this entire controversy by simply negotiating with the Union in the first place. It cannot maintain that its actions provides "good cause" for waiving the requirements of N.J.A.C. 19:16-5.5.

At the May 13, 1997 hearing, the Borough raised a second procedural issue. It asserted that the Union failed to comply with N.J.A.C. 19:16-5.7(f) by not submitting its final offer on each issue in dispute ten days before the hearing. It concluded the "failure" should lead me to refuse to consider any issues listed on the Union's petition. It argued that the Borough detailed its final position on each issue in its letter of May 3, 1997. It received no such communication from the Union.

The Union maintained it had submitted its final position both to the Borough, and to me, at the mediation session held on March 20, 1997. That position had been repeatedly confirmed to the Borough. In a number of letters the Union stated its position had not changed. Except for not pursuing the clothing allowance issue, its position has not wavered.

I ruled that the Union had submitted its final position to the Borough and me during the March 20, 1997 session. I read its letters of April 21 and May 7, 1997, as reaffirming its final position. Mr. Loccke's April 21, 1997 letter to Mr. Dorf states: "The position of the PBA has not changed." His letter of May 7, 1997 to me, in reply to Mr. Dorf's May 3rd submission states: "For the record, the last

offer position of the employee organization remains unchanged from that which was stated before you and the employer counsel at the last mediation meeting of February (sic.) 20, 1997."

Finally, the Borough makes much of the fact that the Union did not communicate its final position "in writing." I find no such requirement in the rules. It provides only that "...the parties shall submit to the Arbitrator...and to each other their final offers on each economic and non-economic issue in dispute." (Emphasis mine) The Union met that requirement.

As I said on May 13, 1997, when I denied the Borough's procedural motion, "I think it is almost a wooden technicality, given the fact that we all met on the 20th and there were no surprises exhibited that I recall. I think everybody understood what their respective positions were. We didn't reach any accord but the issues were set forth. I thought they were joined then." (TR 42-43)

In sum, I find there are five issues in this dispute: term; wages; overtime compensation; vacation; and medical insurance.\* It is time to turn to the merits of those issues.

#### **THE PARTIES' FINAL POSITIONS**

##### **I. Term**

- A. The Borough proposes a two year term. The Agreement would be effective January 1, 1996, and expire on December 31, 1997.

\*The Union withdrew a proposal for an increase in the current \$800 per year uniform allowance.

- B. The Union proposes a four year term. The Agreement would be effective January 1, 1996, and terminate on December 31, 1999.
- II. A. The Borough presented two different wage proposals. The first was for two four (4%) percent increases, each effective on January 1. That is, 4% on January 1, 1996 and 4% January 1, 1997. This proposal was contingent on acceptance of a change in Article LV(b) of the Agreement which would provide it with the right to hire civilian dispatchers to replace the current police dispatchers.

Its "alternate" position was based upon an assumption that it did not obtain the right to switch to civilian dispatchers as part of these proceedings. In that case, its proposal was for two three (3%) percent wage increases, each effective on January 1. This would result in a 3% increase on January 1, 1996 and a 3% increase on January 1, 1997.

As indicated above, I held the subject of replacing police dispatchers with civilian dispatchers was not covered by this proceeding. Therefore, I will assume the Borough's wage proposal is for two three (3%) percent wage increases.

As part of its wage proposal, the Borough also seeks to establish a "new hire salary guide" effective July 1, 1997. It would freeze the hiring rate at \$29,324 for the life of the

Agreement. It would replace the current five (5) step progression with eight (8) steps. It proposed separate guides dependent upon whether its wage proposal was 4% or 3%. Using the 3% wage increase proposal, the July 1, 1997 "new hire salary guide" would result in the following:

<u>Term</u>	<u>Current Salary</u> <u>Eff. 1/1/95</u>	<u>Borough Proposed</u> <u>Salary Eff. 7/1/97</u>
Hiring Rate	\$29,324.01	\$29,324.00
6 months	31,740.38	33,500.00
18 months	37,950.46	37,600.00
30 months	46,329.15	41,800.00
42 months	54,707.81*	46,000.00
54 months	- - -	50,000.00
66 months	- - -	54,200.00
78 months	- - -	58,039.51

(\*current top step)

B. The Union proposes a five (5%) percent increase effective January 1 of each of the four years. It would make the increases across-the-board for all ranks and positions covered by the Agreement. It would apply the same five (5%) percent increase to each step contained in the current salary guide.

### III. Vacations

A. The Borough's final offer included a modified vacation guide for "new hires" effective July 1, 1997. This new schedule is as follows:

<u>Years of</u> <u>Service</u>	<u>Current</u> <u>Schedule</u>	<u>Proposed</u> <u>Schedule</u>
0 - 1	5 days per	4 days

	calendar year	
2 - 5	10 days	7 days
6 - 12	15 days	12 days
13 - 19	20 days	17 days
20 plus	25 days	21 days

B. The Union did not propose any change in the number of vacation days. It did propose that the "overlap procedure" currently followed by the parties be addressed and cured.

IV.

Overtime Compensation

A. The Union proposed including a provision in the Agreement confirming what it maintains was a settlement between the Borough and the Union permitting Officers to accrue compensation time in lieu of overtime payment.

B. The Borough does not oppose this concept as long as compensation time can be taken only at the Borough's "discretion."

V.

Medical Insurance

A. The Borough proposed replacing the current Blue Cross, Blue Shield, Major Medical Insurance Plan with the "Blue Choice Medical Insurance Plan."

B. The Union opposed any change in the current plan.

FACTUAL BACKGROUND

The Borough of Bogota covers approximately .852 square miles. It is located in Bergen County. It is bordered on the north and east by Teaneck, on the south by Ridgely Park, and on the west by Hackensack and the Hackensack River. A



major interstate highway, Route 80, runs on the south side. The most recent information indicates a population of slightly less than 8,000.

The Police Department consists of 19 employees. There is a Chief and a Captain. The PBA bargaining unit consists of 17 employees. It covers Lieutenants (2), Sergeants (3), and Patrolman (12). During the life of the prior contract, there were a number of changes in the force. On an overall basis, it was reduced from 23 to the current 19. (There now is one less Captain, Lieutenant, Sergeant and Patrolman.) Three other employees left the force but were replaced by hiring three new Patrolmen: Pilterski and Flower on January 1, 1994; and Creange on July 24, 1995. (Borough Exhibit 5)

At the May 13, 1997 hearing, the parties presented extensive testimony, exhibits, and arguments in support of adoption of their economic package. Their presentations were designed to conform with the recent statutory revision to N.J.S.A. 34:13(a)1, et seq. (The Police and Fire Interest Arbitration Reform Act, A-3296, C425L 1995) The Borough presented a pre-hearing brief of 36 pages with some 30 exhibits. It presented two witnesses. Not to be outdone, the Union submitted 56 exhibits. Subsequently, both parties filed extensive post-hearing briefs and additional exhibits.\* Their positions and arguments are summarized below.

\*Because of the massive volume of material to be reviewed, on July 15, 1997 I asked the parties to grant me an extension of time to issue this decision to September 15, 1997. They graciously consented.

### The Borough Position

The Borough argues its tax base is almost exclusively residential. Most of its taxes are collected from single family residences or apartments. Its tax rate, \$3.07 in 1996, was the highest in Bergen County. Even on an equalized basis, it ranks as the third highest in the County. (Borough Exhibit 27)

In January 1996, a new group of officials was elected. They found the previous administration had left the Borough in a difficult financial position. This was caused by "over-expenditures" and a reduction in the level of State aid. In order to resolve the problem, the new officials cut staff, consolidated agencies, reduced some full time employees to part-time, and eliminated some functions.

The Borough maintains that for a municipality of its size and population density, it has a low crime rate when compared with similar Bergen County towns. However, the compensation of its police officers uses a disproportionate percentage of its income. The police force consists of 17 percent of the Borough's work force. Yet their salaries and pensions now use 66.6 percent of the Borough's total salary expenditures. That percentage has been increasing over the years. (In 1993, the figure was only 55 percent.)

The Borough maintains the members of the force receive an excellent salary and benefit package. Base pay for a top rated patrolman is \$58,707.81. A sergeant's base is

\$58,256.44, and a Lieutenant's is \$61,805.06. In addition, they receive a longevity bonus of one percent of base salary for each three years of service, to a maximum of 8 percent. They are paid at overtime rates for court appearances with a base of 1.5 hours if given 72 hours notice and 3 hours if less notice is given. They receive an \$800 annual clothing allowance. They are covered by a full insurance and retirement package, including life, health, dental and the State Pension plan. They get 13 holidays and up to 25 days vacation. They can qualify for 3 days a year of personal leave, bereavement leave and extensive sick leave. It argues these wages and benefits compare favorably with those in similar comparable Bergen County municipalities. The Borough argues that its wage proposal compares favorably with raises granted to police in comparable communities.

The Borough contends the numerous Labor Agreements submitted by the Union have no bearing here. Some are as far away as Asbury Park and Burlington County. A number of the towns in Bergen County, such as Ringwood with 24.97 square miles, and Wayne with a population of over 50,000 are clearly not comparable with Bogota. The Borough also takes issue with the Union's challenge to the factual accuracy of its exhibits summarizing recent Interest Arbitration Awards. The Borough relied upon information published by PERC. If those awards were later challenged or changed, the Borough cannot be held responsible.

The Borough maintains the wage increases it has granted to police officers have been "consistently higher" than the rate of inflation. For 1996, the Consumer Price Index (CPI) in the New York/Northern New Jersey metropolitan area increased by 2.8 percent. Over the past four years, it has averaged just over 2.6 percent. In the Borough's view, that strongly supports its 3 percent wage increase proposal and shows the Union's demand of 5 percent is "unreasonable."

The Borough believes its proposal is reasonable when compared to private sector wage increases in Bergen County. On August 30, 1996, PERC issued a report showing they increased by 3.6 percent between 1994 and 1995. (Borough's Brief, Exhibit 14)

The Borough asserts that its overall proposal is fully justified when the welfare of the public is concerned. It must be considered in light of the Borough's "ongoing effort to reduce the cost of municipal government." It argues its wage proposal "is generous." The proposal to establish a new hire salary guide does not affect current PBA members. Since it is a "no cost" item, it should be adopted. It makes the same argument for its proposed vacation guide. The guide would only apply to employees hired after July 1, 1997. Since it would have no current impact, it too should be granted.

The Borough views its medical plan proposal as just one piece of its attempt to reduce its governmental costs. It asserts the Blue Choice Medical Insurance Plan is "substantially similar to the current plan in all areas." It alleges it even

"surpasses the current plan" in some areas.

Finally, the Borough is willing to agree with the Union's proposal to permit employees to choose compensation time as opposed to payment for overtime. However, it argues it must retain a right of total discretion over such an exchange. It points out that the letter confirming a prior settlement of this matter does not include a signature page. (Union Exhibit 1) Therefore, in its view, the document must be disregarded.

The Union's Position

The Union points out that the Police Department provides active, full service law enforcement for the Borough's citizens. In 1996, it answered over 14,500 calls, made 264 arrests, issued 2,300 motor vehicle and 33 drunk driving citations.

Over the recent years, the Borough has "shrunk" the Police Department. During the prior contract, one Captain, one Lieutenant, one Sergeant, and one Patrolman were not replaced. The force dropped by four, from 23 to 19. Three of those were in supervisory positions, which increased the work load of the remaining officers. It resulted in major savings for the Borough since it, in effect, replaced a highly paid Captain with a "rookie" Patrolman paid at the entry rate. The Union argues that the interest and welfare of the public can only be served by maintaining this highly effective force.

The Union asserts Bogota officers are under-compensated when compared with other police. It presented a

chart showing the 1995 base wages for Patrolmen in 21 Bergen County communities. All were higher than Bogota's. In at least one case, South Hackensack, the difference was more than \$10,000 a year. Bogota officers were \$4,743 lower than average. That is 8.67 percent. Many of the other benefits "lag" behind. The average maximum longevity benefit is 9.695 percent. Ridgefield and Fort Lee are as high as 15 percent, East Rutherford and Wayne are 12 percent. Only Leonia, Warwood, Bergenfield, Carlstadt, and Bogota are at 8 percent. The average top vacation is 26.40 days a year in comparison with the Borough's 25. Holidays average 13.3 against 13 here. Twenty-five towns provide special payment to officers with advanced education. Bogota does not. The Union argues that on balance, Bogota ranks "dead last" in both wages and benefits. Just to catch up with the general salary level would call for increases far in excess of the Union's proposal.

The Union maintains that its exhibits covering 33 Bergen County police units show average increases of 4.95 percent for 1996, 4.428 percent for 1997, 4.36 percent scheduled for 1998, and 4.24 percent for 1999. Since Bogota is already 8.67 percent behind, an extra increase of 6.662 percent would be required just to bring them up "to the average." The Union's proposed 5 percent increase over the four years does little to make up the difference. Even after the increase, Bogota will "still be in last place."

The Union asserts that little weight should be given to the increases or wage levels in outside employment. There

are vast differences and difficulties in attempting to equate outside jobs with police. (It cites the comments in a recent award by William Weinberg in the Village of Ridgewood.)

The Union argues the Borough has not submitted any evidence to counter its position. The three Bergen County towns it reported were not supported by "hard" data. No contracts or settlement agreements were entered. The other settlements were gathered from PERC data, which was in a number of cases clearly "wrong or misleading."

The Union asserts the Borough's "final position" does not meet the requirements of the "statutorily mandated procedure under the Arbitration Reform Act." It requires each party to submit "...their final offers on each economic and non-economic issue in dispute." The Act also requires the arbitrator "...to separately determine whether the total net economic charges for each year of agreement are reasonable under the eight statutory criteria as are set forth in sub-section g of this section." The Borough failed to present a final position on salaries. Instead, it submitted something more akin to a menu." It put forth alternative wage positions and various combinations. This is not permissible under the Act.

The Union argues that its position on overtime compensation and vacation scheduling should be granted as stipulations of the parties. The use of compensatory time versus payment of overtime was the subject of an agreement between the Union and the Borough in settlement of a grievance.

The vacation scheduling procedure confirms a system that has been in place for both 1996 and 1997 vacations. It asks that both be confirmed and made a part of the Labor Agreement.

The Union maintains that its position is well within the lawful authority of the Borough. The Municipal budget shows it is below the 2.5 percent CAP index. It has never utilized its ability to select the higher 5 percent CAP alternative. In 1995 and 1996, it was under the CAP limitation. It has the right to carry those unutilized monies forward for use in 1997 and 1998. Because of that history, there is every reason to assume the Borough will have excess CAP monies to carry forward for use into 1999.

The Union argues the selection of its wage package will not have any perceptible negative financial impact on the Borough, its residents, and taxpayers. The difference between the Union and Borough's salary positions is relatively small in terms of gross dollars. There is substantial flexibility in the Borough's budget and monies in the "CAP bank." In 1997, the Borough will receive \$25,000 from the Federal Government's "COPS Fast" program. Police actively bring in over \$142,000 each year in municipal court fines. The Borough's 1997 budget (Union Exhibit 4) shows there were \$9,528 of unexpended police wage and salary funds in 1996. Further the Borough has "assumed" a tax collection rate of 97.39 percent. In 1996, it actually collected 98.12 percent. This spread results in a "reserve cushion" of over \$84,000.

The Union disputes the Borough's allegation that



taxes rest solely on home owners. Its own records show the 25 largest taxpayers are corporations. The Borough borrowing is more than \$10 million under the "conservative" State standard of a 3.5 percent margin. In the Union's view, all of this clearly demonstrates the Borough can easily absorb the cost of its salary proposal.

The Union maintains the facts show its proposal is needed to assure the continuity and stability of employment. That stability has been solely lacking over recent years. The Borough has decreased the number of officers at all levels from Captain to Patrolman. Its pay rates and benefits are the "lowest" of all of the Bergen County towns in evidence. A number of benefits available to most Bergen County officers, such as educational incentives, are not even granted. The Borough now proposes to compound the problem by granting a sub-standard wage increase of 3 percent.

The Borough also proposed a change in the medical plan. It has provided no justification for such a change. It has not even disclosed the actual cost differential between the two plans. All it presented was a summary of the difference in benefit levels which was prepared by "someone who is trying to sell the plan." That does not constitute sufficient proof to support such a basic change.

In addition, the Borough seeks to install a new, reduced vacation schedule and extended, lower, salary guide. It did not present a single reason to explain why those were

needed. Clearly, it could not be because the current vacations or salaries are out of line. The Union asks that I find none of the reductions are justified.

#### DISCUSSION AND FINDINGS

My authority flows from the provisions of N.J.S.A. 34:13A-16. Since the parties did not agree to an alternative terminal procedure, my findings must be "conventional" as defined by the Act. They are controlled by the eight factors set forth in Sub-Section g. (There is no need to quote it.)

The only matters at dispute here are economic. In order to reach a conclusion, it is necessary to attempt to put each parties' position in financial perspective. Otherwise it is impossible to judge them under the requirements of Section g of the Act. In this case, that is not an easy task. As to some of the proposals, it is actually impossible.

The Union's proposal is straight-forward. It really consists of a single economic item - salary increases. Neither party attributed any real cost to its two other proposals - overtime compensatory time and vacation scheduling. In fact, permitting employees to use compensatory time versus paying overtime at time and one-half could result in a "real" savings to the Borough.

On the other hand, the Borough's proposal is much more complicated. Even though I ruled on the underlying subject, it continued to press alternative salary positions: four percent with permission to replace the police dispatchers

with civilian personnel, or three percent without that proposal. Both were for a two year term as opposed to the Union's four year agreement. The Borough made no offer for the subsequent two years. The Borough also wishes to replace the employees' current medical coverage with a new plan. Although it claimed that would result in "material savings", it presented no firm figures on the cost of either plan, or the actual savings which could be realized. Certainly the data must be available. Absent that data, there is no way I can estimate the impact of the Borough's medical plan proposal. It is just as difficult to place an economic figure on the Borough's proposals to reduce the vacation benefit and to lengthen and modify the step increase for officers hired in the future. Until recent years, there has been little turnover. The Borough submitted no estimates of future turnover projections or its intent to hire new employees.

The result of all this is that I am only able to calculate the total net economic changes of the parties' direct salary proposals over a two year period. Assuming all the Patrolmen are currently at the top step, (an assumption which may not be completely correct for some officers were hired over the term of the expired contract) the total prior base yearly salary cost for the unit was \$954,862.

The Union's 5 percent proposal over two years would produce a cost increase of \$47,748 in 1996, and \$50,131 in 1997. This is a total of \$97,879. The Borough's 4 percent proposal

would add \$38,198 in 1996, and \$39,722 in 1997, which is a total of \$77,320. The difference between the two salary proposals is \$20,559 over the life of a two year contract. The difference is widened substantially when based upon the Borough's secondary proposal of 3 percent a year. That would cost \$28,646 and \$29,505, for a total of \$58,151. The difference on this one item increases to \$39,728.

There is no doubt in my mind that the Borough designed its "double barreled" wage proposal for a single purpose. It wanted to force me to reconsider its proposal to transfer the dispatcher function from the police unit to civilian personnel. It took exception to my ruling at the May 13, 1997 hearing. It spent much of its post-hearing brief continuing to press for a change in that position. I find that action neither in keeping with the letter nor the spirit of the Act. Section (f) 1 requires the parties to submit their final offers on each economic issue at dispute. That is required so that an Arbitrator can apply the various sub-section g factors to reach an appropriate conclusion, to determine whether the total net cost of economic changes are reasonable. An "either/or" position to force an item ruled outside the proceedings defeats that purpose. That said, let me turn to my view of the eight factors in sub-section g and their applicability in this dispute.

First, there is the interest and welfare of the public. Among other factors, that covers the government CAP Law. That law will not play any major role regardless of the

level of increase determined here. The Borough has under-spent the 2.5 percent Cap in the past few years. Its financial data shows it has accumulated substantial "Cap reserves" each year. It did not argue that even the Union's 5 percent proposal would impinge on its ability to meet its Cap obligation.

Rather, it asserted that because of the improper spending of the past administration and the cut back in State aid, its citizens were faced with high property taxes. It detailed the numerous actions it had taken to offset those actions. Those included reducing staff and cutting hours. It did not mention its actions in the police unit. However, I note that Department has not escaped the austerity program. In the last three years, the Borough has reduced the unit by almost 20 percent. There are now 50 percent less Captains, 33 percent less Lieutenants, and 25 percent less Sergeants. This certainly generated major savings in the overall police salary costs.

The comparison of wages and the overall total compensation is in substantial dispute. The Borough maintains that few of the communities listed by the Union are "comparable" with Bogota. I have carefully considered that argument. Even if most of the Bergen County towns are eliminated, there is no question a top-rated Bogota Police Officer's salary is still at the bottom of the list. Their over-all benefits, while competitive with some towns, certainly are not sufficient to explain that.

The Borough makes much of the fact that it

identified four towns which it believes support its salary increase proposal. They are:

<u>Town</u>	<u>1996</u>	<u>1997</u>
Midland Park	3.00%	3.25%
Emerson	4.00	3.50
Rutherford -		
Patrolmen	3.75	3.75
Sergeants/Lieut.	3.25	3.25
Hasbrouck Heights	3.75	3.75

Viewing such percentage increases in a vacuum can be very misleading. The Union entered the full Labor Agreement for two of those towns, Rutherford and Hasbrouck Heights. (Union Exhibits 29, 41A) They show a top-rated Patrolman's base salary at Rutherford was \$63,768 in 1996. That is \$9,061 more than Bogota's. At Hasbrouck Heights, the base salary was \$64,320, or more than \$9,613 above Bogota. The fact that salaries in both communities were more than 12 percent above Bogota's may well explain the relatively low rate of increase.

The Union submitted an extensive list of Bergen Count and other New Jersey police settlements. (Union Brief pp. 26, 28) While those increases are, on average, well above the Borough's 3 percent and 4 percent positions, they do not reach the Union's 5 percent position. The Union argues its 5 percent increase is justified to help the Bogota unit to begin cutting into the differential between its lower salaries and those of other Bergen County units. While that is understandable, it is hardly justifiable in a period when the town is under pressure to keep its finances in line.

The Borough also looks to the level of increase in

the private employment sector in support of its position. It bases its argument on a single document - a report of private sector wage increases in Bergen County between 1994 and 1995. It showed a 3.6 percent increase. That hardly supports the Borough's 3 percent position. There is serious doubt in my mind that such general "shot gun" approach should be given any real consideration in making a determination. There was no evidence regarding "comparative private employment." There was no attempt to equate the work performed by the police officers with any other public or private employment.

I find that overall, these two criteria, G2 and G3, are due considerable weight. On balance, they lend more support to the Union's wage proposal than to the Borough's.

Although there were no direct stipulations of the parties, the Borough indicated it was in basic agreement with the Union's proposal on compensatory overtime. It did, however, assert that it needed to retain final authority on how that time was scheduled and used.

The lawful authority of the employer and applicability of the Cap restrictions were reviewed above. The Borough has not asserted that its lawful authority would be affected by its or the Union's proposal.

Much of the financial impact of this dispute has already been covered. It is not disputed by the Borough that a 4 percent increase over a two-year term would be within its budgetary limits. It has not argued that granting such an increase would result in any major financial impact on its

residents and taxpayers. As set forth above, the difference between a 4 percent and 5 percent increase, is \$20,559 over the two years. The Municipal budget, Union Exhibit 4, and the Audited Finance Statement show significant amounts in the reserve account. As properly pointed out by the Union, the Borough has adopted a very conservative assumption in establishing its reserve for uncollected taxes. If it collects at the same rates experienced in recent years, it will produce additional funds far in excess of the cost of the entire wage increase package.

These comments should not be taken to make light of the problems faced by Bogota. Like other Northern New Jersey communities, its residents face high property taxes. I have carefully studied the financial data supplied by both parties. I do not question that the percentage of salaries and benefits spent by the Borough for police services has increased as compared with its total salary and benefits cost. However, there is no indication that has resulted in any serious impact to the Borough or its taxpayers. Put another way, the evidence establishes that the Borough wage and salary costs are not the real problem.

The Borough's December 31, 1996, audited Financial Statement is a very instructive document. It compares 1996 with 1995. It shows a healthy community. It establishes it is not experiencing a revenue problem. Tax collections increased by some \$45,000. Although miscellaneous revenue decreased, the



overall revenues increased. On the expense side, most items seem under control. There was an increase of some \$85,000 for "Refunds", a slight increase in County taxes, and deferred charges.

Of special note, the expenditure for wage and salaries decreased by over \$125,000. However, that reduction and a decrease of \$49,286 in "other expenses" was fully consumed by an increase of \$205,578 in required payments to the schools. In fact, absent the school increase, the Borough's total expenditures would have fallen by almost the exact amount it saved by reducing salaries and wages.

In sum, there is no evidence that an increase in Police salaries will adversely affect the Borough's financial status.

It is clear that the cost of living has been "under control" over the past few years. That is a strong argument on behalf of adoption of a more reasonable increase.

The continuity and stability of employment is the last of the eight factors. I do not find that it has a major impact on a salary decision. It does, however, have a major bearing on the Borough's other proposals to change medical plans, reduce new hire vacation eligibility, and adopt an expanded and reduced salary progression schedule. It will be discussed below.

#### CONCLUSIONS AND AWARD

##### I. Term

Considering and balancing the eight factors, I find

a two year term appropriate here. The Borough has argued that it is in transition. It needs to examine all of its various functions and seek a shorter term. I believe that is justifiable. Certainly, a longer term would lead to more stability. However, I believe the Borough's arguments outweigh that consideration.

The term of the new agreement shall be from January 1, 1996 through December 31, 1997.

## II. Salaries

The facts convince me the across-the-board salary increase should be 4.5 percent in the first year and 4.5 percent in the second year. This will cost just \$10,500 more than the Borough's 4 percent proposal over the two years. It is fully in keeping with the proofs regarding recent settlements in similar units. The facts show the current police unit is providing the same high level of service with a considerably reduced force. That has generated savings for the Borough. The employees have every right to believe they should receive at least some compensation for performing extra work.

Under these circumstances, I can find no justification for installing a longer, reduced progression for new officers. After all, even with the above increase these patrolmen will be the lowest paid in the area.

## III. Medical Plan

The Borough failed to put forth sufficient justification for switching to a different medical plan. It

provided no economic information on either the current or proposed plan. As I stated previously, absent that information there is no way to judge the impact of that plan on finances of the Borough, its residents and taxpayers. There can be no question the switch would disrupt the lives of employees. The Borough entered considerable information in an attempt to demonstrate the benefits were "comparable" to the old plan. An evaluation of its material shows there are a number of changes which the Union and employees may well view as "take always." There was no showing the plan had been adopted by the Borough for its other employees, or installed in any other police unit. In order for me to affect the stability of employment by granting such a basic change requires much more detail and complete financial justification.

#### IV. Vacations

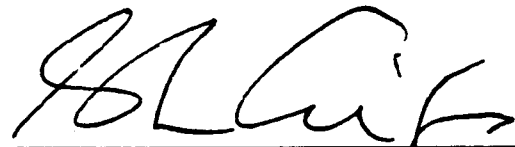
The Borough entered no evidence to support its proposal to reduce the vacation schedule for newly hired officers. The Union's evidence shows that the current vacation schedule is not out of line, I see no basis under the circumstances to adopted the Borough's proposal. It is denied.

The Union wishes to confirm the current "overlap" vacation practice in the Agreement. It seems to me that issue is best left to the parties to work out. Apparently the current practice is operating satisfactorily. I do not believe it was sufficiently defined either at the May 13, 1997 hearing, or in the Union's brief, for me to direct that it be included in the Labor Agreement.

V. Compensatory Overtime

The settlement of this issue was defined by the parties in a December 20, 1993 letter. The Borough did not object to adoption of the concept. The language of the letter contains the various safeguards requested by the Borough. It limits the amount of accrual of compensation time to 40 hours, limits the amount of compensation time that can be used in a given period, and makes its use subject to approval of the Chief of Police. I see no reason not to include that provision in the Agreement.

So ordered.



STANLEY L. AIGES, Arbitrator

DATED: September 10, 1997

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

On this 10th day of September, 1997, before me personally came and appeared Stanley L. Aiges, to me known and known to me to be the individual who executed the foregoing instrument and who acknowledged to me that he executed the same.

SUNNYA PERERA  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Oct. 31, 2001

[Notary]

