

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

BOROUGH OF FAIRFIELD,

"Public Employer,"

-and-

FAIRFIELD PBA LOCAL 81,

"Union."

**INTEREST ARBITRATION
DECISION
AND
AWARD**

**Before
James W. Mastriani, Arbitrator**

Appearances:

For the Employer:

Angelo J. Genova, Esq.
Mason C. Miller, Esq., on the Brief
Genova, Burns & Vernoia

For the Union:

Richard D. Loccke, Esq.
Loccke & Correia

I was appointed arbitrator by the New Jersey Public Employment Relations Commission on February 18, 1997 in accordance with P.L. 1995, c. 425, in this matter involving the Township of Fairfield (the " Township") and PBA Local 81 (the " PBA"). A pre-arbitration mediation was held in Fairfield, New Jersey on May 6, 1997. Because the impasse was not resolved, formal interest arbitration hearings were held on June 20 and July 11, 1997. The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

At the arbitration hearing, each party argued orally, examined and cross-examined witnesses and submitted extensive documentary evidence into the record. Post-hearing briefs were received on August 19, 1997.

The PBA represents 34 employees of the Fairfield Police Department in the rank of Patrolman, Sergeant, Lieutenant, and Captain. The Police Chief is excluded from the unit. In 1996 there were 25 patrolmen, 7 sergeants, 1 lieutenant, and 1 captain. On January 1, 1997, the Chief of Police retired and the Captain was promoted out of the bargaining unit to the position of Chief.

FINAL OFFERS OF THE PARTIES

Before the commencement of formal hearings, the Township and PBA submitted the following final offers:

PBA LOCAL 81

Economic Issues

1. **Duration** -- January 1, 1997 to December 31, 1999.

2. **Salaries** --

Annual base salary increase by the following amounts:

5% effective January 1, 1997

5% effective January 1, 1998

5% effective January 1, 1999

3. **Senior Officer Differential** -- For employees with 20 years of service, the benefit would be an increase in the base pay rate by an amount equal to one-half the difference between the employee's then current base rate and the next higher rate of pay.

4. **Article 5** -- Delete the 40 hour maximum accumulation limit on compensatory time.

5. **Article 9** -- Calculate paid time off days on a "day for day" basis.

Non-Economic Issues

The PBA has proposed to modify the prior contract (J-1) at Article XI (p. 151). Specifically, the PBA proposes the deletion of the third paragraph which reads as follows:

Neither party will be required to negotiate with respect to any matter whether or not covered by this agreement and whether or not within the knowledge or contemplation of both of the parties at the time they negotiated or signed this agreement.

TOWNSHIP OF FAIRFIELD

Economic Issues

1. **Duration of Successor Agreement**
January 1, 1997 to December 31, 1999
2. **Salary**
Annual base salary shall increase as follows:

3% effective January 1, 1997
3% effective January 1, 1998
3% effective January 1, 1999

3. **Health Benefits**

Increase the prescription plan deductible from \$1.00 per prescription to \$5.00 for generic drugs and \$10.00 for brand name drugs. Article 6, Section A(6).

Clarify that Fairfield Township will only pay Article 6 retirement benefits for retiree and spouse.

4. **Longevity**

Eliminate longevity for all members hired after July 1, 1997. Article 7.

5. Uniforms

Implement a purchase order system for the replacement of uniforms. Article 8.

6. Vacations, Holidays, Terminal Leave & Personal Days

Amend Article 9, Section B to provide for vacation time as follows:

First Year: 1/2 working day per month of employment
Second Year through Sixth Year: 10 working days
Seventh Year through Eleventh Year: 15 working days
Twelfth Year through Nineteenth Year: 20 working days
Twentieth Calendar Year and thereafter: 25 working days

Reduce number of holidays from 13 to 10. Article 9, Section A.

Reduce terminal leave from 90 days to 30 days. Article 9, Section J.

Reduce personal days from 3 days to 1 day. Article 9, Section H.

7. Bereavement Leave

One day reduction in bereavement leave. Article 17.

8. Tuition Reimbursement

Cap the amount that the Township will reimburse to a member for the cost of tuition and books at \$500 per year. Article 22.

The Township and the PBA have each offered extensive documentary evidence in support of their respective positions on the above issues. Ninety-six Township exhibits were received into evidence as well as sixty exhibits proffered by the PBA. In addition, the Township presented testimony from Molly Cusano, the Township's Financial Officer, its Chief of Police, Edward Facas and Joseph Catenaro, its Business Administrator. The PBA presented testimony from Patrolman Louis Cammarotta and Dr. Robert Werner, an expert in the field of public finance in the State of New Jersey.

I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I deem relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, compensation, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, salaries, compensation, hours, and conditions of

employment of other employees performing the same or similar services and with other employees generally:

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

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes

element, or in the case of a county, the county purposes element, required to fund the employee's contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposal local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

BACKGROUND

The evidence submitted reflects that the Township of Fairfield is a well-run, fiscally responsible municipality which provides a police department which is professional, effective and productive. The Township has a population of approximately 7,600 residents within its 10.6 square miles.

Although the Township could increase its municipal spending using a cap calculation as high as 5%, it has opted to utilize the cap index figure of 2.5%. By using the lower indexed figure, it did not exercise its lawful option to increase its spending by an additional \$163,549 in 1997. In addition, the 1997 budget was developed to spend \$225,206 less than what it could have spent when it opted to use the lower index rate of 2.5%. These fiscal decisions reflect its desire to control expenditures and restrain municipal tax levies. However, the PBA cites this budgetary evidence as providing support for its final offer of 5% because the Township has had the lawful flexibility to increase its revenues. But the Township responds that its budget is intended to meet the objective of fiscal stability by not increasing taxes, while maintaining services. In 1993 through 1997, the municipal tax rate has been increased by a total of 1.9%. The municipal portion of the total tax levy is 17%. The PBA cites these figures to demonstrate that the differences in the parties' respective positions on salary would have a minimal impact on the total tax levy of the Township and financial impact on the residents. The Township disagrees citing, among other things, its responsibility to budget in a prudent manner to avoid the need for future increased taxation.

The Township has also recently undertaken several cost-cutting measures to produce budget savings. For example, the Business Administrator

has assumed the responsibilities of the Municipal Clerk and the Township has entered into a shared services agreement with West Caldwell to share the services of the Health Officer. The Township has also reduced the salary of the Municipal Prosecutor and has decreased its budgeted appropriations for expenses in several of its departments [T-11 and 12]. In the instant case, it seeks to continue to implement its cautious fiscal policies.

There is no dispute that the Police department is effective and productive and well-supported within the Township's overall budget. The Department works on a recently introduced 4-squad concept within a 12-hour schedule. The Chief of Police stated that this schedule has reduced both sick time and overtime expenditures. In a report to the Mayor and Council earlier this year, the Chief provided the Township with evidence of increased productivity. For example, DWI arrests increased by 52% over the previous year and the number of investigations by the Detective Bureau increased by over 25%. There was also a substantial increase in the arrests of both adults and juveniles as well as charges filed against individuals by the Department's narcotics section [P-14]. The Township has also enhanced police services through modern equipment such as mobile data terminals in cars and updating of its computer-aided dispatch system.

Upon cursory glance, the Township appears to be a somewhat serene community. However, the evidence reflects that the Township has an extremely busy Police department due, in part, to the major roadways of Route 23 and Route 46 which produce substantial traffic throughout the day. They are major arteries carrying commuter, commercial and industrial traffic. There are also a substantial number of commercial structures within the Township and along the major roadways.

The Uniform Crime Report rankings reflect that Fairfield ranks fifth out of 21 towns in the County with respect to crimes per 1,000 persons [P-7]. According to the 1997 municipal budget, the Township's Municipal Court has generated \$420,344 to the Township's general treasury [P-43].

The Township believes that the crime statistics are somewhat misleading because the crimes per resident are based upon nighttime populations and that the nighttime population is only 1/6th of the daytime population. The PBA acknowledges the heavier day time responsibilities but disagrees with the Township's conclusions. It cites the 50,000 daytime population as well as the many thousands who travel through the Township's roadways as a testament to the 34-member police force's productivity and efficiency. The PBA asserts that it has continued to insure and protect the

public's health, safety and welfare with status quo staffing despite substantial increases in the demands placed upon the department.

The central areas in dispute concern salary and compensation related issues. The parties essentially agree on the figures which represent total base wage costs for all bargaining unit personnel. Their estimates differ by only \$5,035.00. For the purpose of costing out the final offers and the award, I will accept and utilize the figures offered by the Township that annualized total base salary costs for 1996 were \$1,730,219 and that one percentage point is \$17,302.00. The \$17,302.00 is only \$51 above the PBA's estimate of the cost of an additional 1% increase in base salary.

THE PBA'S POSITION AND ARGUMENT

The PBA asserts that when the statutory criteria is applied to the evidence, an award supporting its final offer is clearly justified. The PBA cites the evidence in departmental activity reports and uniform crime statistics to show that the public interest and welfare is well served by the police officers. Increased productivity by a work force which has not increased demonstrates greater output per police officer and less cost per activity. Efficiencies were

also achieved by the work schedule change which reduced sick leave and overtime costs.

The PBA also asserts that the public interest and welfare in Fairfield includes serving a unique combination of residential and commercial needs as well as state and interstate roadways. This configuration requires a multi-talented police force equipped to deal with virtually every type of law enforcement activity. These activities are clearly reflected in the activity and crime data.

In addition to less cost by virtue of productivity and efficiency, the PBA seeks notice and credit for its role in the generation of \$420,344.00 in revenue by the municipal court in 1996. This figure reflects that there has been increased activity by the police officers despite the failure of its work force to expand in recent years.

The PBA also believes that the factor of comparisons or comparability support its proposals. Here, the statute authorizes that comparisons may be made not only with employees performing police services, but with private sector and police sector employment in general and in public sector

employment in general and in public employment in the same or number comparable jurisdiction.

The PBA seeks comparison of the top step police officers base wage in Fairfield with those in selected departments in the "immediate area." These include Lincoln Park, Pompton Lakes, Wayne, Essex Falls, West and North Caldwell, Caldwell, Roseland, East Hanover and Montville. Such comparison leads the PBA to conclude, that the Fairfield police officer is 3.9% or \$2,012 below that of the average of this grouping. The PBA asserts that a more than average increase in wages is necessary to narrow this gap.

The PBA additionally points to contracts submitted into evidence by both parties which it believes supports its final offer. These contracts all reflect increases which average more than 4% annually, and also include a 6% for Verona and South Orange in 1997, 5% for Irvington in 1997 and 1998, 5% for Roseland in 1997 and 1998, and 5% for Verona in 1998. Although these selected percentages are well above the average increases, many of the Essex County municipalities reflect raises between 4% and 4.5%.

The PBA's data on comparability places great emphasis upon that of police officers in other jurisdictions. However, the PBA also cites a 5%

increase which the Township has provided in 1997 for employees in its public works department. The PBA also cites a 5.2% increase in 1996-97 for employees covered by the Fairfield School Board's contract with the Fairfield Principal Association.

The PBA has also submitted data with respect to certain benefit comparisons among other departments in Essex County. This data reflects several departments having greater benefits in the area of maximum vacation leave, holidays and longevity maximum. The PBA cites its lack of a senior officer differential and educational incentive program benefits which, while not commonplace, do exist in some surrounding communities.

The PBA also offered evidence concerning the lawful authority of the employer including the local government cap law N.J.S.A. 40A:4-45.1 et seq. With respect to this factor, the PBA asserts that its position can be awarded without interfering with the Township's lawful financial obligations. The PBA cites the Township's decision to opt for the lower index figure of 2.5%. Despite using the lower figure, the Township is not impeded in its ability to fund its final offer. The Township's budget for municipal purposes for 1997 was set at \$6,803,790.00, some \$225,206.00 below the allowable \$7,028,996.00 when using the 2.5% index rate. Because the difference is available for cap banking

into 1998, the 2% difference per year of \$34,604.00 between its salary proposal and that of the Township can easily be funded within the Township's lawful authority without exceeding its obligations under the Cap Law. The budgets in evidence show annual regeneration of surpluses.

The PBA also contends that its final offer can be met without adverse financial impact on the governing unit, its residents and taxpayers. The PBA points to the municipal portion of the tax levy which is only 17% and that a 1% difference between salary positions is only \$17,306 or .0006% of the total tax levy thus impacting an annual \$4,500 municipal tax bill by only \$2.70. The PBA believes that an increase even in this minimal amount is not necessary citing testimony of the Township's financial officer that a 4% increase has already been budgeted for 1997.

The PBA also cites the budget savings resulting from promoting the Captain to Chief. The alleged savings of this move is computed by the PBA at 4.84% of the bargaining unit's cost.

The PBA believes that the budget as a whole is sufficiently healthy to award its offer without adverse impact. It cites the actual tax collection rate versus the budgeted rate as yielding a substantial surplus in funds, as well as

an expanding tax base containing a ratio of 60% from commercial and industrial rates and 40% from residential rates.

The PBA acknowledges that the Consumer Price Index (CPI) does not favor its position in this proceeding. It believes, however, that this is not a controlling factor. It cites inflation cycles in the past where wage increases did not match increases in the CPI. The PBA also cautions that the CPI is not a measure of future inflation and that any wage increase in the future cannot serve as a guarantee against cost of living increases which could take place during the terms of this agreement.

Lastly, the PBA asserts that its proposal supports the continuity and stability of employment for its members. It cites the loss of one unit member to Wayne which has a higher compensation package. It believes an award supporting the Township's position would seriously erode unit members' comparable standing which could undermine the continuity and stability of employment and the morale of the work force.

The PBA also believes it has justified its non-salary economic demands for a deletion of the 40 hour maximum accumulation of compensatory time and the inclusion of a "day for a day" formula for the taking of paid personal leave

time. In both situations, the PBA asserts that there is minimal impact because all leave time must have prior approval. It believes that the economic impact of these proposals would cause more time off and less cash payments to the employee.

On the non-economic issue, the PBA asserts that its proposal to delete the third paragraph of Article XI simply removes what it believes is a waiver of the statutory mandate to negotiate proposed new or modified rules governing working conditions [See N.J.S.A. 34:13A-5.3]. Thus, the asserted conflict between the contract language and the statutory mandate would be removed by the deletion of paragraph 3, Article XI.

The PBA also urges rejection of all of the Township's "concessionary" demands as not being justified on the record.

THE TOWNSHIP'S POSITION AND ARGUMENT

The Township asserts that when the statutory criteria are applied to the evidence it has submitted, the record strongly favors the adoption of its final offer over that of the PBA. It has also submitted comprehensive evidence in support of its position.

A theme running through the Township's evidence and argument is its desire to maintain a fiscally responsible budget which it defines as maintaining current taxation levels without cutting municipal services. It believes that its offer supports the interest and welfare of the public while the PBA's runs counter to this criterion because less expenditures is more compatible with its goal and government policy objections.

The Township acknowledges the public is currently being served by a well run, properly staffed and well-equipped police department. It has maintained high morale in the work force by providing state of the art law enforcement technology and equipment coupled with an excellent and comprehensive wage and benefit package.

The Township also asserts that the continuity and stability factor favors adoption of its position. In short, its current contract with the PBA does provide for continuity and stability of employment and its present offer maintains it. No layoffs have occurred within the last ten years and when openings occurred in 1994, there were over 700 applicants for the vacancies. Although there has been some turnover, it has been at a minimal rate especially when compared with the 11 year seniority average within the unit. Because it has an excellent

retention rate and no difficulties in filling any vacancies, the Township asserts that its salary proposal is justified as well as its concessionary package which includes the elimination of longevity for new hires as well as other benefits which it desires to modify downward to equate with those in its non-law enforcement contracts and various police contracts within Essex County.

The Township further supports its wage proposal by reviewing the overall compensation benefits presently received by its police officers and comparing such compensation with police officers in other jurisdictions and in public and private employment in general. The Township asserts that the average annual base salary of the Fairfield police officer is \$50,888.00 and the current top step is \$51,748.00, the third highest of the 22 Essex County municipalities behind only Irvington and West Caldwell. When longevity and uniform allowance are added to overall compensation the police officers at top step are second only to West Caldwell. However, the Township points out that the per capita income of Fairfield is \$21,522 compared to \$25,409 in West Caldwell, and ranks only 15th out of 22 in Essex County in per capita income.

The Township also cites that salary increases for police officers in Fairfield averaged 5.5% per year during 1994, 1995 and 1996 compared to an average of approximately 4.5% for other police departments in Essex County

and an average of 4.75% for non-uniformed employees of Fairfield Township. Thus, there no catch up is warranted, and a result less favorable with surrounding communities would still leave the police officers with longer term parity.

The Township's also urges review of police officer salaries with those Township's employees in bargaining units represented by AFSCME and IBEW which are \$25,323 and \$24,710 respectively. An award in the amount of the PBA's 5% offer in each of three years would further aggravate this imbalance. The Township also submits evidence that the PBA's overall benefit structure (holidays, vacations, bereavement, personal days) is superior to the non-uniformed employees and it seeks a reduction in these areas to mirror that of the non-uniformed employees. For the same reason, the Township proposes that longevity benefits be discontinued for new hires as was done for the other Township employees in 1991. Another benefit which the Township seeks reduction in tuition reimbursement to provide uniform treatment with other Township employees. Currently, the PBA receives 100% reimbursement for tuition and books while other employees are capped at \$500.00 per year. The Township proposes that this plan be adopted for the PBA.

The Township also urges that its decision to raise and spend less funds than it is lawfully allowed should not be prejudicial to its bargaining position. It believes that it has decided to spend only what is fiscally prudent and within its financial resources. The differences in the parties' positions should not be granted merely because the Township could lawfully raise or spend funds to cover the additional costs. Such a decision would constitute "borrowing" against the cap and have an adverse effect on its overall budget, individual budget items, and future financial planning.

With respect to the financial impact criterion, the Township cites applicable judicial case law that it need not prove a "substantially detrimental result" or that it has an "inability to pay" the PBA's offer in order to succeed in its offer.

The Township does not agree with the PBA's assessment of its financial health. It cites the increase in property tax appeals and the resulting decline in land values from successful appeals. Many appeals have come from commercial taxpayers which, in turn, cause undue hardship on residential taxpayers. While it has sought to decrease spending in other areas, it has increased police department expenses by 20% from 1996 to 1997 (\$167,439

to \$200,000). By having to fund the PBA's offer, this disproportionate spending would be exacerbated.

The Township also cites decreases in its receipt of discretionary funds from the State, a decline in recycling fees, and an elimination in its Utility Operating Surplus. It also cites a 19% increase in its insurance expenditures and an enormous increase (900%) in its contributions to the PERS and PFRS retirement systems.

The Township disputes the PBA's conclusion that its surplus figures warrant its receipt of 5% annual increases. These figures are deceiving because of several factors. It received lawful approval to pay successful tax appeals over a six-year period to ease what would have been an adverse immediate impact and it has had to pay interest because of the extension of the obligation. The 1997 budget also contained non-recurring revenues such as settlement payment of \$136,884 from the Essex County Improvement Authority, \$85,000 from a Library Debt Service, and \$25,000 from the U.S. Department of Justice for the COPS program. In any event, the Township's policy has been to reappropriate available surplus into the next year's budgets. In short, to be forced to spend from existing surplus will cause financial hardships by decreasing the amounts which assist in the development of future budgets.

An additional factor which the Township believes favors its proposal is the cost of living. The Township cites the increases the PBA has received during its last contract as exceeding the CPI and the PBA's proposal for 1997-99 as also exceeding the CPI and its projections for the future. The Township's 3% proposal slightly exceeds the 2.5%, 2.8% and 3.0% increases in the CPI for 1994, 1995 and 1996, respectively and should be adopted.

In addition to the above, the Township asserts that the existing usage and benefit package available to the PBA, as modified by its proposal, has been sufficient to attract a large number of candidates for vacant positions. This fact, in addition to the employment security it has maintained for its police officers, supports that the "continuity and stability of employment" factor is in its favor in this proceeding.

In addition to seeking selection of its salary proposal, the Township contends that its other economic proposals are also justified. It proposes to have the PBA's vacation plan, its bereavement leave, and tuition reimbursement plan reduced to mirror the benefits provided to its non-police employees. Because non-police employees hired after August 15, 1991 are

not eligible for longevity payments. the Township proposes the discontinuation of this benefit for police officers hired after July 1, 1997.

The Township also seeks to reduce the amount of terminal leave from ninety (90) to thirty (30) days based on its survey of other Essex County contracts which provide less than ninety days. For similar reasons, it seeks an increase in the prescription plan deductibles from \$1.00 per prescription for generic and brand name drugs to \$5.00 for generic and to \$10.00 for brand name drugs. The Township cites several municipalities in Essex County which have higher co-pays and a majority of municipalities who do not provide employer funded prescription plans.

Additional proposals of the Township include a clarification of its retiree benefits program and the implementation of a uniform purchase order system. The Township asserts that it erroneously covered one child under the retiree benefits plan and seeks clarification to provide this benefit to only the retiree and spouse as it believes was the original intent of Article 6. Its uniform allowance proposal would maintain the existing \$440.00 allowance, but require that documentation be provided when uniforms are purchased. Each officer would be guaranteed a \$220.00 payment if the allowance is not used. The

Township believes that its proposed program in these areas is compatible with its overall policy of fiscal responsibility.

DISCUSSION

As stated above, I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The Township and the PBA have each clearly and expertly articulated their positions on each issue and have submitted evidence and argument on each statutory criterion to support the respective positions taken. The evidence and arguments have been carefully reviewed, considered, and weighed.

The statutory criteria have been considered and I conclude that all are relevant to the resolution of the dispute, although, as set forth below, not all have been accorded equal weight. As required by law, I have also decided the total net annual economic changes for each year of the three-year award.

At the outset, I note that the number of issues in dispute are many and broad in scope. I remain unconvinced that either party has submitted a persuasive case warranting many of the contractual changes which each has

sought in this proceeding. One principal which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the bargaining process in both public and private sectors is that a party seeking such change bears a burden of demonstrating the need for such modification.

I conclude that this burden has not been met with respect to the PBA's proposals for a senior officer differential, a deletion of the forty (40) hour maximum accumulation limit on compensatory time, and a modification in the calculation of paid time to a "day for day" formula.

The cost of the PBA's officer differential proposal approximates a full percentage point (\$15,488) for eligible officers in 1997 alone and substantially more for officers who become eligible in 1998 and 1999. The financial impact of the proposals during this contract would negatively affect the governing unit, its residents and taxpayers given the salary expenditures required by this award and there is no evidence that other jurisdictions in Essex County enjoy this benefit. Although the Township of Wayne provides the senior officer differential, this fact standing alone is insufficient to warrant that it be awarded in Fairfield.

I am also not persuaded that the PBA's proposal to modify Article 9 to provide a "day for day" formula to paid time off be awarded. When the PBA proposed the twelve (12) hour work schedule in 1995, an agreement was reached to implement that schedule. The issue of calculation was also discussed and addressed by a Memorandum of Agreement implementing the schedule change. It did not provide for a conversion to "day for day". A modification so soon after the implementation of the new work schedule would modify the underpinnings of the agreement and substantially expand the amount of paid time off already provided. This issue should be addressed in the next round of negotiations. I do not award it here.

The PBA has also not presented sufficient evidence to support its compensatory time proposal. There is presently a 40-hour maximum limit on the accumulation of such time. The expansion of this limit would likely result in the banking of compensatory time and there is no evidence that police officers have experienced loss of time or money as a result of the present standard set forth in Article 5. No need has been shown to expand on the amount of paid time off already been provided for in the agreement.

I have also carefully examined the PBA's proposal to modify the contract by deleting the third paragraph in Article 11. This paragraph states:

Neither party will be required to negotiate with respect to any matter whether or not covered by this agreement and whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this agreement.

The fear of the PBA is that the above language could constitute a waiver of its statutory rights contained in N.J.S.A. 34:13A-5.3 which states that "proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established."

I do not award the deletion of paragraph 3, Article 11 for the following reasons. The meaning of paragraph 3 in the abstract is not readily ascertainable. It is commonly referred to as a "zipper clause" which is not intended, nor can it be used, to waive statutory rights. There is no evidence that the Township has attempted to apply this provision to any issue in the manner in which the PBA asserts. If and when this should occur, the PBA may pursue its claimed rights through the statutory unfair labor practice procedures or the contractual arbitration clause. I do not award this proposal.

I now turn to the various non-salary proposals submitted by the Township. The essence of these proposals is to reduce many of the existing benefits currently contained in the expired labor agreement. In addition to cost

savings, the Township's desire is to reduce these benefits to compare more favorably with other municipal police departments in Essex County and also with the non-uniformed employees in the Township.

Although the Township correctly assesses that the existing benefits of vacation and tuition reimbursement are more favorable than those received by its non-uniformed employees, this fact is not sufficiently persuasive to warrant that these benefits now be reduced. These benefits are the result of prior negotiations. There are no demands by the PBA to improve these benefits and other than the Township's desire to reduce unit labor costs or reduce benefits to provide uniform levels for all of its employees, no underlying need or inequities are apparent to support this result. The interests and welfare of the public have not been shown to be better served by such reductions. Further, the financial impact of these reductions on the governing unit, its residents and taxpayers have not been sufficiently quantified nor demonstrated to be necessary by way of financial relief to the community as a whole. I do not award these proposals. Similar reasoning leads me not to award the Township's demands to reduce holidays, terminal leave, personal days, bereavement leave, or to impose an elimination of longevity benefits for new hires.

With respect to the latter demand of the Township, there is no evidence that municipal police departments in Essex County, where such benefit is commonplace, have discontinued this benefit. Although such result would reduce unit labor cost in the future and equalize this benefit with the Township's non-uniformed employees, there are alternative avenues to meet the Township's belief that new employees' terms and conditions of employment should be addressed, given the high number of applicants for vacant positions. The Township cites the current salary of \$36,230, which is higher than the starting base salary of 17 of the County's 21 municipal police departments. I have addressed this issue in the salary segment of this award.

I do find that the Township's proposal to modify the prescription plan co-pay to be meritorious. A majority of Essex County municipalities do not enjoy this benefit. Where they do, all have a higher co-pay for brand name prescriptions. A modification to \$5.00 for brand name prescriptions will provide an easing in the financial cost of this benefit, but also preserve the desirability of the benefit to unit members. It will also encourage the use of generic drugs where medically feasible which will have a positive financial impact on the premium cost to the Township.

I find insufficient evidence of a need to modify the uniform allowance program to a purchase order system. While I am cognizant that the Township's proposal will guarantee a maximum payment to police officers of \$220.00, there are no facts which reflect abuse of the current system or evidence that the police officers have presented themselves in less than a professional manner at all times. I do not award this proposal.

An additional demand of the Township is to clarify the retiree benefits section of Article 6. Its concern is that it would be read to cover a retiree's child or children because of an asserted misapplication of these benefits to a child in the past. This provision, in pertinent part, states:

Section A-2. If at retirement, a member has completed 25 years or more of service, the municipality will continue to provide medical benefits substantially similar in nature to those provided during the member's employment and similar to those health benefits being provided to employees presently working. This benefit will cover the member and spouse only. In the event of disability retirement, the member, his wife and dependents shall be covered by this benefit. If the member dies while on disability retirement, his wife and dependents will be covered until such time as the spouse remarries or dies. Whenever health insurance is available to a retired member or his spouse from another source at no or nominal cost, said insurance shall become the primary coverage and the municipal coverage shall become secondary.

This provision, as written, does not appear to require any clarification inasmuch as this benefit is clearly defined for "member and spouse only." The disability retirement benefit covers "wife and dependents" (I assume that the intent of wife is to mean spouse). Because the present language appears to be clear, and in the absence of a specific dispute where this language would be applied, I will not disturb the existing provision.

The Township and the PBA have placed great emphasis in the of evidence and arguments which each has submitted on the issue of salary. The Township has proposed a salary increase of 3.0% per year. Based upon a total annualized base salary figure of \$1,730,219 in 1996, the amount of increase proposed by the Township is \$51,906 in 1997, \$53,463 in 1998 and \$55,068 in 1999. The PBA has proposed an increase of 5.0% per year or an increase of \$86,501 in 1997, \$90,836 in 1998 and \$95,378 in 1999. The difference in the proposals in terms of new money cost is \$34,605 in 1997, \$37,373 in 1998 and \$40,310 in 1999, or a total of \$112,288. If these costs are calculated based upon cumulative costs over the three years, the difference escalates to a total of \$218,871. The Township further notes that there are also "roll up" costs which measure the increased costs of benefits based on increases in salaries. These costs include increased overtime expenditures

and pension payments. The Township estimates "roll up" costs to be an additional one-third (1/3) of one percent for each percentage increase in salary.

Based upon the arguments and evidence submitted, and after applying the statutory criteria, I have determined that wage increases shall be set at 4.0% in 1997, 3.875% in 1998 and 3.75% in 1999, for a total net economic change of \$69,200 in 1997, \$69,600 in 1998, and \$67,638 in 1999. The difference in new money cost between the Township's proposal and the award is \$17,300 in 1997, \$16,139 in 1998 and \$12,570 in 1999. The difference in new money cost between the PBA's proposal and the award is \$17,300 in 1997, \$21,234 in 1998, and \$27,740 in 1999. These figures are exclusive of roll-up costs and assume no retirements or hiring. The analysis which leads me to this award is as follows.

The Interests and Welfare of the Public are currently being served by the Township's police department. The Township has provided state-of-the-art equipment which has assisted the department and its employees in providing a very high level of law enforcement services. It is a productive department generating an increasing amount of activity and revenue. The overall level of compensation and benefits provided have helped contribute to the motivation and morale which produces this excellence. The Township's proposal is less

than the police comparable in the County and the PBA's proposal is more. The fiscally responsible strategy of the Township which seeks to lessen the financial impact of the services provided to the residents requires a lower level of increase than demanded by the PBA, but one which reasonably compares to police salaries in jurisdictions which are comparable. A salary increase averaging 3.875% over a three year period accomplishes this balance.

The interest and welfare of the public requires that the limitation imposed on the Township by N.J.S.A. 40A:4-45.1 et seq. be assessed. As I have stated below in the Lawful Authority of the Public Employer section, this award is well within the cap constraints and does not interfere with the Township's lawful authority.

The aspect of this award modifying the prescription co-pay also evidences that the Township is not insensitive to the increasing costs of health insurance and thus addresses the interests and welfare of the public in restraining those costs while maintaining the benefit at an attractive level. I recognize that the public's interest in having control over costs can be at odds with the police officers' need to have their work properly compensated respected and recognized by the public. All of these are legitimate needs which I believe have been harmonized by this award.

The comparability data has been carefully examined. There are many aspects to this criterion. These include comparisons with similarly situated police officers, and with public and private employment in general. All of these comparisons are relevant with the data reflecting figures which are sometimes at odds with one another and with each party's position on this factor.

Clearly, the data in evidence which reflects comparisons with police officer units within Essex County, West Essex and those outside the County, but contiguous to the Township of Fairfield, favors a salary award well above that offered by the Township. These include the nearby jurisdictions of West and North Caldwell, Livingston, Millburn, Glen Ridge and Verona. Most reflect increases of 4% and slightly above. The urban districts of Newark and Irvington are also reflective of these numbers. The Township of Wayne shows an increase averaging 4.3% during this same contract period.

The Township, however, cites the admonition of the New Jersey courts that comparability with police salary increases are not dispositive and that the statute is not intended to allow for "whipsawing." The Township offers many reasons why it believes that the comparability statistics should be given little weight. Among them are the last contract which provided sizable increases

averaging 5.5% in 1993, 1994 and 1995 and the relative high ranking for top step patrolmen in Fairfield within the County. At \$51,748 in 1996, Fairfield ranked third in the County, only behind West Caldwell and Irvington. Irvington was \$40 above. When the Township factors in longevity and uniform allowances, top step police officers only rank behind West Caldwell at \$464.00 per year less. The Township also points out that 60% of its police officers are at the top step and that the per capita income in Fairfield is some 18% less than that of West Caldwell. The Township also cites the communities of North Caldwell and Millburn whose per capita income exceeds Fairfield, but who offer less top step salaries.

The Township also asserts that its offer is reasonable and the PBA's unreasonable when compared to public employment in general, other Fairfield Township employees, and private employment in general. These comparisons are required by statute although no one disputes the fact that the actual functions and duties of other occupations in both the private and public sector are difficult to compare with that of police officers. The Township has provided evidence that comparable wage increases in the private sector and in the public sector generally, are both more compatible with its proposal than that of the PBA. Median first year wages increases in 1997 for private sector contracts are approximately 3% on a national basis. With respect to non-law

enforcement public employees, the Township emphasizes that a Fairfield Township police officer already averages approximately double what Township employees earn under AFSCME and IBEW contracts.

The award contained herein does provide for a higher wage increase than what the record evidence reflects in private employment and in the data provided for public employment in general and for other Township employees. However, the comparability data for similarly situated police officers within the County and in adjacent jurisdictions are also relevant considerations and more directly relate to the work performed and services provided by the Fairfield police officers. However, no single aspect of the comparability data submitted by either side dictates a particular result. The award which I have entered averaging 3.875% over a three year period is higher than the comparability data in both the private sector and public sector in general, but generally beneath the comparability data for similarly situated police officers both within the County and in adjacent jurisdictions. I do note that the Township has submitted awards and settlements well below those figures. However, I believe that more weight should be given to awards and settlements in the surrounding communities within the County than those well beyond.

I have addressed the evidence submitted by the Township that vacant positions have attracted substantial applicants. This evidence does not address quality or experience relative to the existing staff of police officers but it does suggest that the salary guide set forth in page 26 of the agreement does not require an across the board application at each step of the percentages I have awarded at the junior levels. Thus, the Academy Level and first year of service steps shall receive the increase provided for in 1997 but shall remain at that level without adjustment for 1998 and 1999.

I also conclude that this award is consistent with an examination of the overall compensation and benefits currently received by the police officers. With the exception of a moderate increase in the prescription co-pay, this award neither expands or contracts the existing level of overall benefits. I have concluded that none of the evidence presented justifies a change in either direction. Although the Township feels that its demands to reduce several fringe benefit areas are justified given what it terms the generous package currently enjoyed by unit members, the Township must recognize that the productivity of its police officers is high and continues to increase. Without increasing the size of the force, output and services have substantially grown as well as the seriousness of the offenses which occur within the borders of the Township. This is a factor which I believe is relevant in the maintenance of the

overall level of compensation and benefits received. A reduction in benefits would decrease cost but the Township has not demonstrated neither a financial need nor a justification for a reduction in benefits.

The cost of living data submitted does tend to support the Township's offer more than the offer of the PBA. In 1996, the CPI for all urban consumers in New York and northeastern New Jersey rose by 3.0%. I have given this figure very careful consideration, but I cannot conclude that this factor, standing alone, should be dispositive of salary increases. When this data is weighed, it reduces the reliance and weight the PBA seeks to be given to the comparability data it has submitted into the record, but it is not a controlling consideration. It is also a well recognized principle that increasing productivity reduces unit labor cost which serves as an offset to increases which slightly exceed the cost of living.

This award is also consistent with the lawful authority of the employer after considering the limitations imposed upon the employer by the cap law. All witnesses testifying on this issue acknowledged that the Township has not experienced cap problems with its budget. The Township has budgeted less than the maximum cap index figure of 5.0%. The budget did not spend the amounts which could have been spent under the lower index rate of 2.5% and

yet has produced a substantial remaining funds available for cap banking. The funds for the 1997 increase have been budgeted and the amounts in 1998 and 1999 can clearly be spent without jeopardizing the CAP requirement.

I have also taken into consideration the financial impact of this award on the Township, its residents and taxpayers. Based upon the evidence submitted, I cannot conclude that the award's financial impact will have an adverse result on the governing unit, its residents and taxpayers. Township representatives testified that a 4.0% increase was budgeted for police salaries in 1997. This award does not exceed the amount set aside. I also conclude that the additional \$16,139.00 in 1998 and \$12,570.00 in 1999 beyond what the Township has offered will not adversely impact upon the Township, its residents or taxpayers. I am mindful that the burden is not on the Township to prove that it cannot pay these salaries and that a conclusion that these sums can be spent is not dispositive factor in determining that they should be spent. However, the salary amounts which I have awarded are reasonable on this record and that the financial impact of these amounts will not adversely impact upon the Township's finances. The declining percentages and costs of the increases awarded are responsive to the fact that tax ratables have decreased by approximately 10% since 1995 as a result of succesful tax appeals and that

surpluses beyond 1997 might not be as high because of the Township's six year funding obligations to pay the appeals.

The last criterion which I have considered deals with the continuity and stability of employment. The turnover in the police department has been minimal and that which has occurred does not appear to be related to the overall levels of compensation and benefits received by the Township's police officers. But this award should maintain the continuity and stability of employment within the department and not serve to decrease the attractiveness of remaining in department for a staff which provides high performance to the Township and its residents. The lesser amounts provided to the first two steps of the salary guide are responsive to the demand for entry level positions and will ease the costs of new hires in the future.

Accordingly, I hereby enter the following award:

AWARD

Duration

There shall be a three year agreement effective January 1, 1997 through December 31, 1999.

Salary

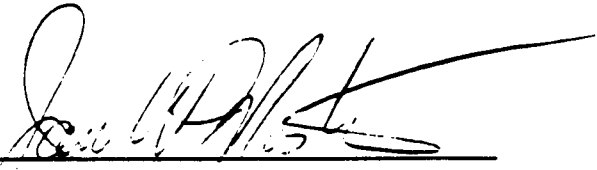
The salary guide set forth in Schedule A shall be increased by the following percentages and will be retroactive to January 1, 1997. Effective January 1, 1997, Schedule A shall be adjusted by 4.0%. Effective January 1, 1998 Schedule A shall be adjusted by an additional 3.875%. Effective January 1, 1999 Schedule A shall be adjusted by an additional 3.75%. Police Officers not at top step shall be advanced on Schedule A subject to the standards set forth in Article 4 - Incremental Increases. The Academy Level and first year of service step shall receive a 4% increase for 1997 but remain at that level thereafter and not be adjusted in 1998 and 1999.

Prescription

Effective January 1, 1998 or as soon thereafter as can be implemented by the Township, the prescription co-pay shall be set as follows: \$1.00 for generic and \$5.00 for brand name.

AWARD


Sea Girt, New Jersey


James W. Mastriani

Arbitrator

STATE OF NEW JERSEY)SS.:

COUNTY OF MONMOUTH)



KARI LEE DONOVAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Oct. 3, 2000

On this **22nd day of December, 1997**, before me personally came and appeared **JAMES W. MASTRIANI** to me known and known to me to be the individual described in and who executed, 1999 agreement.