

State of New Jersey
Public Employment Relations Commission

In the Matter of the Compulsory :
Interest Arbitration :
-between- : **Opinion and Award**
City of Passaic :
-and- :
Passaic P.B.A. Local No. 14 :
Docket No. IA-95-49 :

BEFORE: CARL KURTZMAN, ARBITRATOR
APPEARANCES: For Passaic P.B.A. Local No. 14
Loccke & Correia
By: Richard D. Loccke, Esq.
For City of Passaic
Jersey Professional Management
By: Daniel J. Mason
Sean Diaz, Esq.

Pursuant to a petition to initiate Compulsory Interest Arbitration, filed by Passaic PBA Local No. 14 (PBA) under N.J.S.A. 34:13A-16 (b), an arbitrator was appointed by the Public Employment Relations Commission (PERC) to hear and decide the contract issues in dispute. On July 23, 1996, the undersigned was appointed by the Public Employment Relations as a replacement arbitrator, to hear and decide the contract issues in dispute.

PERC advised as follows:

In this matter, testimony was taken by the previous arbitrator from the parties prior to the passage of P.L. 1995, c. 425. Therefore, the proceeding before the replacement arbitrator shall continue to be subject to the provisions of P.L. 1977, c. 85.

Interest Arbitration Hearings were conducted on Sep. 16, 1996, Oct. 24, 1996, Jan. 22, 1997, March 14, 1997 and April 9, 1997. At the hearing on Oct. 24, 1996, PBA objected to certain proposals contained in the Final Offer (Exhibit C-1A) of the City of Passaic (City or Employer) which were unrelated to the items included in the PBA petition because they were raised by the City beyond the time limit set in the relevant administrative rule. In addition, PBA claimed that the issue of sick leave was foreclosed by an agreement reached in 1994 between the parties. On Dec. 23, 1996, the undersigned rendered an Interim Ruling which addressed the PBA objection. The undersigned ruled as follows:

Accordingly, all issues, except sick leave, which appear in Exhibit C-1A and are referenced in the PBA Petition or the City response of December 8, 1994 are includable in the City's Final Offer and may be addressed in this proceeding.

A stenographic record of the proceedings was taken and the arbitrator was provided with a copy of the transcript of the proceedings.

After the conclusion of the evidentiary hearings, the parties were provided with an opportunity to file briefs and reply briefs. The final reply brief was received by the undersigned on August 30, 1997. On August 18, 1997 the City's Chief Negotiator requested permission to submit an Interest

Arbitration Award, issued by Arbitrator Tener on July 29, 1997, concerning the City of Passaic and the Passaic Fire Officers Association, The City also asked to submit a settlement reached with the City's Firefighters Association. In a letter dated Aug. 27, 1997, PBA Counsel strongly opposed the reopening of the record at this time, pointing out that the dispute resolution process had already gone on close to three years. On Sep. 29, 1997, the undersigned advised the parties that he had determined that the record should be re-opened for the sole purpose of receiving Arbitrator Tener's Award and the settlement agreement between the City of Passaic and the City's Firefighters Association and any settlements or awards since the close of the evidentiary record that PBA seeks to add to the record. The parties were provided with the opportunity to submit these documents for receipt by the undersigned no later than October 10, 1997. The additional documents were timely received by the undersigned.

The parties agreed to the Arbitrator's request for an extension of time, to Oct. 31, 1997, to file an award in this matter.

FINAL OFFERS

City of Passaic

Economic:

1. Duration:

Jan. 1, 1995 - June 30, 1998.

2. Salary:

A. 1.5% increase for period of 1/01/95 - 6/30/95

B. 1.5% increase for period of 7/01/95 - 6/30/96

C. 1.5% increase for period of 7/01/96 - 6/30/97

D. For period of 7/01/97 - 6/30/98: Wage re-opener clause only.

On or about 10/1/97, parties to negotiate salary increase only for FY 98, which will allow time for both parties to consider the City's financial condition, and other relevant economic factors, at that time, based upon the FY98 budget information and other relevant data. Salary increase for this period, to be effective 7/1/97 shall not be less than 1.5%, nor greater than 5.5%. No other changes in the terms and conditions of the contract will be the subject of negotiations at that time. If a settlement cannot be reached by 12/31/97, arbitration shall commence under the terms of the new Binding Arbitration law adopted in January, 1996.

3. Longevity

A. Only for employees hired 1/1/72 (January 1, 1972) and thereafter, the 14% longevity bonus step shall be eliminated.

In other words, those employees currently receiving the 14% longevity bonus shall continue to do so. Also, those employees currently receiving the 12% longevity bonus shall continue to do so, and shall also receive the 14% longevity bonus in accordance with the current schedule.

However, current employees receiving a 10% longevity bonus, or less, or any new employee hired after the date of this award, shall only be eligible to move to the maximum 12% longevity bonus level, at the appropriate time according to the current schedule, but will never be eligible for the 14% longevity bonus step, regardless if they achieve 30 years, or more, of service.

Non - Economic:

1. Drug Test Policy

- a. Institute written drug test policy as listed in Exhibit # C-48. (in addition to AG's policy)

2. Court Overtime

- a. Clarify conflict in language in contract regarding minimum payment as follows:

In those situations where overtime for Court Appearance(s) is worked by an officer anytime up to 2 hours immediately before or immediately after an officer's scheduled shift, that officer shall be paid time and one-half for each hour or partial hour worked. There shall not be any minimum overtime "call out period" for Court Appearances in these situations.

P.B.A. Local No. 14

Economic:

1. Duration: Jan. 1, 1995 - December 31, 1998.

2. Salary:

1/1/95: 4.0%

1/1/96: 4.0%

1/1/97: 4.0%

1/1/98: 4.0%

The increase is intended to be effective on all rates on Schedule A, J-1, Page 63.

3. Longevity:

In J-1, Page 32, Section 4, change the 25 year plateau to 24 years.

Non-Economic: None

STATUTORY CRITERIA

The eight statutory criteria set forth in N.J.S.A. 34-13A-16G which will guide the disposition of this matter are as follows:

- 1. The interests and welfare of the public.**
- 2. Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally.**
 - a. In public employment in the same or similar comparable jurisdictions.**
 - b. in comparable private employment**
 - c. In public and private employment in general.**
- 3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.**
- 4. Stipulations of the parties.**
- 5. The lawful authority of the employer,**
- 6. The financial impact on the governing unit, its residents and taxpayers.**
- 7. The cost of living.**
- 8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations**

and collective bargaining between the parties in the public service and in private employment.

Positions of the Parties

City of Passaic

Initially, the City calculates the costs and differences between the parties' final economic offers. The City uses \$7,700,000 as the police officer base salary. The City estimates that the cumulative cost of the PBA proposal would be \$3,205,684 at the end of the contract. The City estimates the cumulative cost of its economic offer to be \$1,116,707 if a 1.5% increase is projected for the period July 1, 1997 to June 30, 1998, a cumulative cost of \$2,236,345 if a 5.5% increase is projected for the July 1, 1997 to June 30, 1998 period and a cumulative cost of \$1,275,741 if a 3.5% increase is projected for the July 1, 1997 to June 30, 1998 period. Thus, the City estimates that the PBA proposal would cost between \$969,339 and \$2,088,977 more than the City's final offer. The City estimates the yearly cost of PBA's four year proposal as \$801,421 and its own annual cost at \$364,497 annually, if a 3.5% increase is projected for 7/1/97 to 6/30/98.

The City maintains that it has, unlike the PBA, submitted evidence and witnesses who have addressed each of the relevant statutory criteria that must be considered in this proceeding.

Comparability

The City believes that little weight should be accorded to the fifty five contracts and settlement agreements offered by PBA because PBA has failed to provide geographic or demographic data that would establish the rationale for their use in comparison to the City of Passaic. The City notes that it has offered each of the municipalities in Passaic County coupled with

selected geographic and socio-economic characteristics for each town.

Citing Exhibit C-96, the City shows that the basic salary for a City of Passaic patrolman ranks seventh among the sixteen Passaic County municipalities. However, the City points out that the municipalities with a higher ranking also rank higher in per capita income and median family income. The City maintains that its proposal will retain the current ranking of Passaic's police force in Passaic County.

Citing internal comparisons, the City points out that it is offering police officers more than the average 1.17 to 1.5% provided to the City's blue and white collar employees. The City notes that police officers receive better longevity benefits, more sick days and better health insurance (no concessions) than the blue and white collar work force.

The City claims that the PBA proposal exceeds increases granted to State employees and other employees generally while the City's offer is more in line with these salary changes.

Cost of Living

The City claims that the record shows that police officer salary increases have been substantially greater, from 1988 to 1994, than the rise in cost of living or increases for other municipal employees.

The City claims that the PBA proposal exceeds the cost of living whereas the City proposal more closely tracks the rate of increase in the cost of living. Moreover, the City points out that the Consumer Price Index may be overestimated by 1.1 percentage points as well as the impact of the increased cost of medical care, a cost borne only by the City.

Financial Impact on the Governing Unit, Its Residents and Taxpayers

The City maintains that it is in the process of coming out of a bleak financial condition and must be precise in its budgeting and financial practices to insure that it remains on the road to recovery. The City disputes PBA's claim concerning its surplus fund and claims that the PBA proposal will have a significant negative impact on the City's finances and its residents and taxpayers. The City believes that it has acted prudently in preparing a budget which maintains services, grants fair salary increases and reduces the tax burden. The City points out that, in the 1997 budget, it has anticipated the maximum allowable tax collection rate in order to reduce the impact of the current budget's cost on taxpayers. The City rejects any further maximizing of revenue sources as too aggressive and dangerous to the new, more sound, approach taken by the City in its fiscal affairs. The City objects to sacrificing important programs or services to finance excessive salary increases. Furthermore, the City argues that its taxpayers, among the County's poorest, should not be asked to pay higher taxes (ranging from \$93 to \$198 annually) to fund excessive salary increases for police officers.

Overall Compensation

The City claims it has shown that Passaic's 14% longevity bonus at thirty years of service is the highest among the sixteen Passaic County towns and, therefore, improves their salary ranking. The City notes the twenty days of sick leave for Passaic police officers exceeds all other Passaic County towns except Paterson and its \$18,000 cap on accumulated sick days exceeds the sick leave reimbursement cap in many other Passaic County towns. Additionally, the City points to the substantial rank differentials between Patrolman and Sergeant and between Patrolman and

Lieutenant which compare favorably with other Passaic County towns and which provide opportunities to police officers to receive substantial increases as they receive promotions.

The city maintains that the longevity, sick leave and rank differential benefits in Passaic exceed the norm within the County, exceed the benefits provided to other municipal employees and should be considered when overall compensation is evaluated.

Interests and Welfare of the Public

The City claims that it has attempted to balance the need to maintain existing programs and services, including staffing levels, with a fair compensation program for its employees which does not increase the tax burden on its residents. The City cautions against an Arbitrator's Award which does not consider the significant impact of the Award on the interests and welfare of the public.

Stipulations of the Parties

The City indicates that there are not any stipulations which affect this proceeding.

Lawful Authority of the Employer

The City acknowledges that the Local Government CAP Law is not an issue in this arbitration case.

Continuity and Stability of Employment

The City indicates that this statutory criterion was not discussed by the parties during this arbitration case.

With regard to the Wage-Reopener included in the City's Final Offer, the City disputes the PBA claim that this offer violates the interest arbitration law or PERC regulations. The City claims that its final offer can be

quantified because the salary increase range for the final year has been defined as being between 1.5% and 5.5%. The City argues that it has calculated the cost of this portion of its proposal and provided same to the arbitrator. The City claims that its re-opener proposal is quantifiable (by use of 1.5% or 5.5% or the midpoint) whereas other economic items, such as long term longevity and terminal leave are "future benefits" which can not be quantified until the benefits take effect.

In summary, the City maintains that it has addressed all of the statutory criteria and has adequately shown that it has prepared a conservative budget within tight statutory and fiscal constraints which maintains the existing levels of services and staffing, provides fair salary increases and, at the same time, slightly reduces the residents' heavy tax burden. The City claims that its salary offer is fair and reasonable when one considers that the police officers are now fairly compensated, that these officers have better benefits than other municipal employees and the Final Offer exceeds salary increases to State employees, increases in the private sector and increases given to other City of Passaic unions.

The City asks for an award of its final economic offer because it is more reasonable. The City believes that its non-economic issues are also fair and reasonable.

PBA

Initially, PBA claims that the last best offer position of the employer is statutorily defective and, as a matter of law, can not be awarded. PBA claims that the employer's Final Offer, containing a wage re-opener for the final twelve months, can not be evaluated under the statutorily provided criteria. Since a party's position is not divisible, PBA claims that the City's entire

package is flawed. In addition, PBA points out that implementation of the City Offer would require a bargaining order, a power not available to the arbitrator. Citing a PERC decision, Cherry Hill Township and FOP Local 28, IA-95-10, PBA claims that PERC has ruled that an Interest Arbitrator must evaluate and rule on those facts presented and cannot defer to the parties for negotiation an issue which has been presented to the Arbitrator for his decision. PBA believes that an arbitrator can not, in this matter, send the issue of wages in the final year of the contract back to the parties to negotiate when that very issue is before the arbitrator for decision and acceptance of the City position would require the arbitrator to issue an award which supercedes the statutory timetable.

The interests and welfare of the public

PBA argues that the interest and welfare of the public are best served by an award of the PBA Final Offer. PBA notes the high level of activity and varied special services provided by the City of Passaic police force which has managed these functions in the face of a shortage of personnel in the department. PBA maintains that the record shows that the Passaic police force is a rigorously trained and efficient law enforcement agency which has been recognized as providing a high quality of service at a high level of productivity.

PBA asserts that the interest and welfare of the public is best served by a properly compensated police force and is motivated by a meaningful career path. PBA argues that Passaic police, while working in one of the most difficult law enforcement environments in North Jersey, are paid significantly below the average of law enforcement agencies. PBA points out that adoption of its Final Offer will not move Passaic police higher among

their comparable police officers but will merely reduce the increased shortfall. On the other hand, PBA points out that acceptance of the Employer position would add to the shortfall and will surely act as a detriment to the good order and morale of the officers in this department.

Comparison of the wages, salaries and conditions of employment

PBA compares the salaries of the City of Passaic police with other towns placed in evidence by PBA and notes that the Passaic police are poorly paid and are at or near the bottom when benefits are compared.

Using 1994 figures, PBA compares area police officer top step wage rates and notes that the Passaic 1994 Top Step Patrol Officer's rate (50,021) is \$4,654 below the average (54,675) of twenty one law enforcement agencies surveyed or a difference of 9.3%. Accordingly, PBA argues that it would take an extraordinary increase to approach average and an additional increase in this proceeding to retain that position.

PBA points out that the Passaic police officer's low base rate is not offset by other significant benefits. Citing the contracts in the record, PBA shows that Passaic police have 10 holidays as compared to an average of 13.26 holidays in law enforcement agencies in twenty six other communities surveyed, or a 32.6% differential. PBA notes that, because of this holiday differential, Passaic police work more than three extra days when compared with their peers in the area. PBA also indicates that the Passaic police work 2080 annual hours while their peers work varying work charts which, in some cases, provide for significantly less hours and in no department is it shown that peers work more than 2080 hours.

Citing evidence in the record, PBA shows that the Passaic Police Officer Maximum Annual Vacation days are twenty five whereas the average

in twenty three comparable communities is 25.26 days, .26 days greater. In summary, PBA argues that the Passaic officer works the longest work chart, receives the least number of holidays and below average vacation time which fails to offset the poor base pay rate among the towns included in the survey.

Based on the record evidence surveying fifty four law enforcement agencies, PBA shows that, in 1995, the average increase was 5.083% as compared with the 4% requested by PBA in this proceeding. PBA shows that, in 1996, the average increase is 4.671% compared to the 4% increase sought by PBA in this proceeding. In 1997, PBA's exhibit shows an average increase of 4.385% compared to the 4% request by PBA herein and it shows an average 4.582% increase in 1998 compared to the 4% contained in the PBA Final Offer in this proceeding. Thus, PBA claims that an award of its Final Offer will decrease the relative position of the Passaic Police Officer with regard to base wage in each contract year. On the other hand, PBA points out that the City's Final Offer would worsen the relative position of Passaic police wages in comparison with their law enforcement peers.

PBA questions the value of the low wage settlement among the municipal employees because it is not negotiated within the context of interest arbitration. In addition, PBA notes that there is no evidence concerning the ranking of Passaic wages in various job title positions among their peers in comparable communities. PBA notes that the statutory criteria specifically require a comparison with other employees performing the same or similar services and other employees generally. PBA maintains that the most meaningful comparison is made when comparing Passaic police with employees performing the same or similar services in various jurisdictions.

In any event, PBA claims that the evidence produced by the Employer on specific police comparisons supported the PBA position.

Citing Arbitrator Weinberg's decision in Ridgewood, PBA notes that the greatest weight should be accorded to a comparison of the employees in this dispute with other employees performing similar services and with other employees generally in public employment in the same or similar comparable jurisdictions.

PBA points out that there is no evidence in the record showing any other town agreeing to a wage re-opener in a police contract or any evidence that an arbitrator has ordered a wage re-opener. PBA claims the Employer has presented no evidence to support its case under Criteria 2 and 3 of Subsection (g) of the Act whereas PBA has supported its request for an across the board percentage increase by contracts and other evidence in the record. In addition, PBA notes the lack of evidentiary support for a 31/2 year term either by other police contracts or by the history of bargaining between these parties.

Stipulations of the Parties

PBA confirms that the parties have not agreed on any substantive stipulations and, therefore, this criterion will not have an impact on the determination of the issues in this matter.

Lawful Authority of the Employer

PBA notes that the City of Passaic, in recent years, has met the statutory criteria under the CAP Law. PBA points out that the City has not only used the index figure issued by the Department of Community Affairs rather than the maximum of 5%, it has brought the budget in significantly under the lower index figure. Accordingly, it has been able to bank the

unused sum in later years. PBA notes that the City's Auditor confirmed that, in each of the last four years, the City has not utilized the 5% available under the law and has brought the budgets in below the lower percentages it elected to use. In addition, the Auditor confirmed that the City, in the recent past, has been carrying forward unutilized cap bank money for flexibility in successive years. PBA also cites the testimony of its financial expert, Dr. Werner, that there is significant CAP flexibility in this year's budget as well as the next two years' budgets.

The Financial Impact on the Governing Unit, its Residents and Taxpayers

PBA maintains that the award of its position will have an almost incalculably small impact on the average taxpayer and resident. PBA notes the testimony of its financial expert who testified that, based on budgetary flexibility, surplus funds and the regeneration of surplus, and a costing of the competing Final Offers, it was his opinion that the City had the ability to pay the PBA's proposed increase of 5% annually. Accordingly, PBA maintains that there is sufficient funding flexibility within the existing budget documents, without any increase in taxes, to fund the entire award without any impact on the citizens. PBA notes that it has reduced its wage proposal to 4% annually and, therefore, it is even more apparent that the City has the internal flexibility within budget to fund the PBA position.

PBA points out that there is budgetary flexibility and the City is exhibiting an improved economic posture. PBA cites significant amounts of revenue not anticipated (\$719,201 in 1996) and significant amounts of money lapsing (\$989,825 from 1995).

Citing a census of the Passaic police force, PBA shows an annual base salary of \$7,621,853 and, accordingly, a wage point has a value of \$76,218.

Therefore, PBA maintains, the areas of direct revenue sources, discussed above, show sufficient flexibility to fund the cost of the PBA proposal. PBA also cites outside grants, directed specifically to the City's police department, which will reduce the impact of the cost of police services on the tax paying citizens.

PBA points out that local revenues represent only 67.09% of the Passaic budget and the balance is accounted for by State and federal revenues. PBA indicates that the PBA bargaining unit base wages (\$7,621,853) are 14% of the City's total levy of \$52,000,000. Accordingly, PBA shows that a 1% increase would have a .0014% impact on the total general appropriations of the City, an insignificant impact. PBA also notes that City witnesses have confirmed that the creation of "urban enterprise zones" in the City have helped in revitalizing businesses in the City. PBA also cites City expenditures to improve sewers and roads in the city. PBA cites the testimony of the Passaic City Tax Assessor who confirmed significant increases in building permits and the testimony of another Tax Assessor confirming an increase in net valuation in Passaic, unlike the experience in 14 of the 16 towns in Passaic County. PBA notes that the City has budgeted a reserve for tax appeals which should be able to meet adverse tax judgements.

PBA points out that the Passaic budget has created a "salary adjustment" account which contains \$275,000 in the current fiscal year and a carryover of \$129,700 from 1996. PBA maintains that these sums can be used to meet the difference between the cost of the PBA proposal and the City proposal.

PBA notes that 31 senior police personnel have retired during the term

of the contract renewal negotiations and hearings. PBA claims that very substantial sums of money have been saved in this turnover which can be utilized as funding flexibility for the PBA proposal.

Cost of Living

PBA concedes that the rate of cost of living increase is not high at this time. However, PBA notes that employers disregarded high inflation rates in the past. PBA shows that police increases in Passaic have traditionally been higher than the rate of increase in cost of living. PBA notes that the City Manager confirmed a pattern of police wage increases which exceeded cost of living by approximately 2.5% from 1988 to 1994. PBA notes that continuation of that pattern would further support the PBA Final Offer in this proceeding. In addition, the evidence shows that PBA salaries have exceeded the salaries of other municipal employees. PBA maintains that cost of living is a factor to be considered but should not be determined to be the driving force for an award in this proceeding.

Continuity and Stability of Employment

PBA maintains that it has shown that City of Passaic police officers are paid below the area standard for compensation in the field of law enforcement and the employer's wage proposal is significantly below the going rate of increases in the field of law enforcement. PBA maintains that the City position is supported by comparisons with unrelated job titles PBA points out that the City has introduced various issues which would constitute "takeaways" or modifications of existing terms and conditions of employment. However, PBA points out that the City has failed to meet its burden of proof on these issues. PBA believes both parties in this proceeding have considered the wage adjustment as the essential focus in

this arbitration proceeding.

PBA requests that the arbitrator rule in favor of the last offer position presented by PBA in this proceeding.

City of Passaic Rebuttal

In its rebuttal, the City restates its claim that its Final Offer, including the wage re-opener is legal , appropriate, clearly measurable at the extreme limits or the midpoint and is not foreclosed by any statutory provision.

The City argues that longevity has been determined to be a negotiable and arbitrable economic issue even though its economic impact can not be measured accurately because of changing conditions in the future. Likewise, the City notes that payment for accumulated sick leave, is an acknowledged negotiable/arbitrable issue.

The City maintains that the arbitrator retains the authority to determine whether a wage reopener is appropriate and whether the outer limits of the wage re-opener, as proposed by the City, are reasonable. Furthermore, the City does not believe the statute requires the arbitrator to definitively cost the entire economic package.

The City distinguishes Cherry Hill in that the wage re-opener issue was raised by the City and not by the arbitrator independently.

The City requests an award by the Arbitrator of the City's Final Offer.

ANALYSIS

As noted above, the disposition of the negotiations impasse in this matter is governed by the provisions of P.L. 1977, c. 85, because testimony was taken by the previous arbitrator from the parties prior to the passage of P.L. 1995, c. 425. Accordingly, when the parties do not agree upon an other acceptable terminal procedure for the resolution of the impasse, the award

of the economic issues in dispute shall be confined to a choice between the last offer of the Employer and the Employee Representative "as a single package". The statute provides that, with regard to non-economic issues in dispute, a choice must be made between the last offer of the Employer or the last offer of the Employee Representative "on each issue in dispute". Under the statute, the arbitrator is required to decide the dispute based on a reasonable determination of the issues giving due weight to those factors which are judged relevant for the resolution of the specific dispute.

The parties in this proceeding have failed to agree upon an other impasse resolution procedure so that the decision in this matter is based upon a choice between the last offers of the parties as "a single Package" based on the economic issues presented. The disposition of the non-economic issues will entail a choice between the last offer of the Employer or the last offer of the Employee Representative on each issue in dispute.

The City of Passaic and the Policemen's Benevolent Association, Inc., Local No. 14, were parties to a collective negotiations agreement which expired on December 31, 1994. The negotiations unit includes all full time members of the Police Department and excludes the Chief of Police and the Deputy Chief of Police. The unit includes five Captains, seven Lieutenants, twenty Sergeants and one hundred fourteen Police Officers. Using the above census and the top rates for each category in 1994, the PBA estimates the base wage cost of this unit at \$7,621,853. In Exhibit C-77A, the City estimates the total base salary as \$7,700,000 and bases its cost comparisons on this figure.

The disposition of this matter has been guided by the application of the eight statutory criteria set forth in N.J.S.A. 34-13A-16G.

1. The interests and welfare of the public.

In analyzing and evaluating the interests and welfare of the public, the arbitrator must consider the concerns of both parties and, in selecting the Final Offer, must determine which Offer more reasonably addresses the competing concerns and, therefore, will better serve the interests and welfare of the residents and taxpayers of the City of Passaic.

The City of Passaic is a large urban center in the State of New Jersey with needs for a diverse array of police services. After analyzing the need for police services in the City and the number of police personnel available to perform the required law enforcement services, the U.S. Department of Justice, Office of Justice Programs, issued an Award, on 10/12/94, covering the Budget Period from 10/01/94 to 9/30/97 and authorizing a Community Oriented Policing Services (COPS) Program. In the Summary Description of Project, the Award states the following:

The City of Passaic, NJ will deploy 13 officers throughout 3 target areas which are contributing significantly to the increasing crime rate. Activities will include problem solving, continuing dialogue with residents and businesses to build partnerships, and coordination of social services to be delivered into the target areas. 10 additional officers will be hired under this project.

It is noted that the Grant Terms and Special Conditions were accepted by Richard Wolak, Chief of Police of the City of Passaic Police Department.

Accordingly, it is clear that the City's residents need a stable, well trained and highly motivated police force to confront and address the law enforcement needs of this large urban center.

On the other hand, the City's desire to maintain efficient law enforcement services is balanced by a need to continue an improvement in its budgeting procedures and allocations in order to correct previous budgeting lapses and continue its efforts to reduce municipal taxes.

However, the public interest of the residents of the City of Passaic is served by the continued maintenance of a professional police force which , as a result of high morale, is motivated to continue the productive performance of the diverse law enforcement needs of the City. The City residents seek to maintain a productive police force which is large enough to meet its law enforcement needs while limiting the costs of its police force so that other City services are preserved and, at the same time, the tax rate is kept as low as possible.

Productivity and high morale are achieved and maintained when police officers receive adequate compensation for their training, experience and unique responsibilities. Morale and a commitment to dedicated performance of these unique responsibilities is dependent on a recognition by police officers that there is a reasonable correlation between their working conditions and the working conditions of other police officers in comparable communities.

It is axiomatic that the City's wage offer, less expensive than the final wage offer of the PBA, would be preferable if one were evaluating solely the economic interest and welfare of the public. However, as noted above, the public's interest is also served by a stable, productive police force with a high level of morale. The undersigned believes that the City wage package, which deviates substantially from the range of salary increases provided to other officers in comparable communities, which is lower than the current

rate of inflation and lower than the average rate of increase in private employment will not serve the interests and welfare of the residents of the City of Passaic. On the other hand, the PBA package is more closely related to salary increases in comparable communities, the current rate of increase in the cost of living index and the average rate of increase in private employment. Surely, an evaluation of the "Interest and Welfare of the Public" criterion should not be limited solely to the public's financial interest and welfare. This evaluation must also include a consideration of the residents' interest and welfare in insuring that its police force receives a fair compensation package which will motivate the officers to continue to serve the essential law enforcement needs and services of the City of Passaic.

As will be shown in the analysis of the "Comparability" criterion, the comparison of 1994 top step patrolman salaries among sixteen Passaic County municipalities indicates that, in 1994, the City of Passaic top-step patrolman was eighth. Implementation of the City's final wage offer over the term of the proposed agreement would lead to a further erosion of the relative standing of City of Passaic police among officers in comparable communities. Accordingly, the implementation of the City offer can reasonably be expected to cause a significant decline in police morale. On the other hand, the PBA final offer appears to address both the economic interest and welfare of the City and the need for a fair wage settlement by seeking an annual wage increase which is less than the average increases gained by police officers in comparable communities and will result in minimal erosion of standing among officers in comparable municipalities.

Based on the above analysis, the undersigned believes that the PBA

proposal is more compatible with the "Interest and Welfare" criterion than the City final offer.

2. Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

a. In public employment in the same or similar comparable jurisdictions

PBA, based on contracts placed in evidence in the record, compares the 1994 Top Step Patrol Officer Base Pay of twenty one municipalities and shows that the \$50,021 top step Passaic Patrol Officer rate is \$4,654 lower than the average of \$54,675 in the other communities, or 9.3% lower. Accordingly, PBA argues that it would take an increase of over 9.3% to bring Passaic police to average before any wage adjustment provided in this proceeding. PBA, based on twenty six contracts in the record, shows that Passaic officers receive ten annual holidays compared to an average of 13.26 annual holidays in the other communities. In addition, PBA, relying on twenty three contracts in the record, shows that the Passaic Police Officer Maximum Annual Vacation days are 25 days whereas the average in the other communities is 25.26 days. PBA notes that Passaic police work 2080 hours per year and these hours are not exceeded by any other contract in evidence whereas some municipalities work less annual hours. PBA also lists the settlements and arbitration awards in the various contracts placed in evidence and shows that the average increase in 1995 was 5.083%, the average increase in 1996 was 4.671 %, the average increase in 1997 was 4.385% and the average increase in 1998 was 4.582%. PBA notes that each

of these average percentage increases are higher than the 4% annual increase proposed by PBA for each year of the proposed four year term and PBA argues that an award of the PBA position will decrease the relative position of the Passaic police officer's base wage in each contract year.

The City maintains that the arbitrator should assign minimal weight to the fifty five contracts and settlement agreements placed in the record by PBA because PBA has failed to provide geographic or demographic data that would establish the rationale for their use in comparison to the City of Passaic. The City has offered a listing of each of the municipalities in Passaic County as the appropriate base of comparison in this proceeding. The City maintains that the basic salary for a City of Passaic patrolman ranks seventh among the sixteen Passaic County municipalities, that the municipalities with a higher ranking also rank higher in per capita income and median family income and that its wage proposal in this proceeding will retain the current ranking of Passaic's police force in Passaic County.

The undersigned agrees with the City that a better law enforcement agency comparison exists between the Passaic police force and the police departments in the sixteen Passaic County municipalities because of their geographical proximity and because of similar socio-economic characteristics, such as per capita income, median family income and Net Valuation Taxable. Although the PBA evidence of Law Enforcement settlements and awards in fifty six New Jersey law enforcement units can not be ignored for its value in demonstrating state-wide rates of settlement during a comparable time period, the primary focus in this proceeding must, more appropriately, be placed on a comparison with the Passaic County municipalities.

Listed below are the 1994 and 1995 Base Pay Rates for Top Step Patrolmen in the law enforcement agencies of the sixteen municipalities in Passaic County including the City of Passaic rates proposed by the City:

	<u>1994 Base Pay Rates</u>	<u>1995 Base Pay Rate</u>
<u>Municipality</u>	<u>Rate</u>	
Ringwood	56,583	60,029
Wayne	56,263	59,110
Clifton	54,413	56,317
Pompton Lakes	53,217	56,144
Totowa	52,983	56,162
Hawthorne	51,930	53,488
Paterson	50,135	51,890
City of Passaic	50,021	51,533
Wanaque	49,265	51,235
North Haledon	49,095	51,305
Haledon	48,370	50,789
West Paterson	48,268	
West Milford	48,088	
Bloomingtondale	48,087	50,251
Prospect Park	47,145	49,502
Little Falls	47,115	49,942
Average w/o Passaic:	50,730	53,551
Passaic PBA:	50,021	51,533
Passaic to Avg.	(709) or 1.4%	(2019) or 3.8%

Based on the above analysis, Passaic police officers were \$709 or 1.4% below the average of the other fifteen Passaic County municipalities in 1994. Under the City offer, the Passaic police officers would then be \$2,019, or 3.8%, below the average of the other thirteen Passaic County municipalities in 1995. In the chart above, the undersigned has used \$51,533 for the top step Passaic police officer which is the highest rate achieved in 1995 (on 7/1/95). Under the City proposal, the top step police officer would earn \$50,771 on 1/1/95 and \$51,533 on 7/1/95 and this officer's actual earnings in 1995 would be \$51,152. Thus, the Passaic police officer would actually earn \$2,399 less than the 1995 average of the other thirteen communities or 4.5%.

It should be noted that, in 1994, the Passaic police officer at top step ranked eighth among sixteen Passaic County municipalities and, when actual earnings are utilized, the Passaic police officer, at top step, would drop to tenth place, behind North Haledon and Wanaque, in 1995, under the City offer.

Listed below are the 1994 and 1995 Base Pay Rates for Top Step Patrolmen in the law enforcement agencies of the sixteen municipalities in Passaic County as proposed by the PBA:

	<u>1994 Base Pay Rates</u>	<u>1995 Base Pay Rate</u>
<u>Municipality</u>	<u>Rate</u>	
Ringwood	56,583	60,029
Wayne	56,263	59,110
Clifton	54,413	56,317
Pompton Lakes	53,217	56,144
Totowa	52,983	56,162

Hawthorne	51,930	53,488
Paterson	50,135	51,890
City of Passaic	50,021	52,022
Wanaque	49,265	51,235
North Haledon	49,095	51,305
Haledon	48,370	50,789
West Paterson	48,268	
West Milford	48,088	
Bloomington	48,087	50,251
Prospect Park	47,145	49,502
Little Falls	47,115	49,942
Average w/o Passaic:	50,730	53,551

Passaic PBA: 50,021 52,022

Passaic to Avg. (709) or 1.4% (1529) or 2.8%

Based on the above analysis, Passaic police officers were \$709 or 1.4% below the average of the other fifteen Passaic County municipalities in 1994. Under the PBA offer, the Passaic police officers' rate of pay would still extend the negative differential to \$1,529 below the average of the other thirteen Passaic County municipalities in 1995.

Listed below are the 1996 maximum Patrolman wages under the City proposal and under the PBA proposal:

	<u>City 1996 Base Pay Rates</u>	<u>PBA 1996 Base Pay Rate</u>
<u>Municipality</u>	<u>Rate</u>	
Wayne	62,101	62,101
Totowa	59,813	59,813

Pompton Lakes	58,670	58,670
Clifton	58,429	58,429
Hawthorne	55,092	55,092
Paterson	53,836	53,836
Haledon	53,328	53,328
Wanaque	53,030	53,030
City of Passaic	52,306	54,103
Bloomington	52,261	52,261
Prospect Park	51,977	51,977
Average w/o Passaic:	55,854	55,854

Passaic PBA:	52,306	54,103
Passaic to Avg.	(3540) or 6.3%	(1751) or 3.1%

Based on the above analysis, Passaic police officers would be \$3,540 or 6.3% below the average of the other ten Passaic County municipalities in 1996. Under the PBA offer, the Passaic police officers' rate of pay would still extend the negative differential to \$1,751 below the average of the other ten Passaic County municipalities in 1996.

In the chart above, the undersigned has used \$52,306 for the top step Passaic police officer which is the highest rate achieved in 1996 (on 7/1/96). Under the City proposal, the top step police officer would earn \$51,533 on 1/1/96 and \$52,306 on 7/1/96 and this officer's actual earnings in 1996 would be \$51,920. Thus, the Passaic police officer would actually earn \$3,934 less than the 1996 average of the other ten communities or 7.0%.

Likewise, it should be noted that, in 1994, the Passaic police officer at

top step ranked eighth among sixteen Passaic County municipalities and, when actual earnings are utilized, the Passaic police officer, at top step, would drop to tenth place, behind North Haledon and Wanaque, in 1995, under the City offer and, when actual earnings are utilized in 1996, would drop to last after the other ten Passaic County municipalities.

Applying all of information in the record to the Passaic County municipalities produces the following information concerning percentage rate increases and percentage rate increases between the competing offers:

	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<u>Municipality</u>	<u>Rate</u>	<u>% Inc</u>	<u>% Inc</u>	<u>% Inc</u>
Ringwood	56,583	6.0		
Wayne	56,263	5.0	5.0	
Clifton	54,413	3.5	3.75	4.0
Pompton Lakes	53,217	5.5	4.5	
Totowa	52,983	6.0	6.5	
Hawthorne	51,930	3.0	3.0	
Paterson	50,135	3.5	3.75	
Wanaque	49,265	4.0	3.5	
North Haledon	49,095	4.5		
Haledon	48,370	5.0	5.0	5.0
West Paterson	48,268			
West Milford	48,088		4.0	4.0
Bloomingtondale	48,087	4.5	4.0	4.0
Prospect Park	47,145	5.0	5.0	
Little Falls	47,115	6.0		
Average w/o Passaic:		4.73	4.36	4.25

	<u>1995</u>	1996	1997	Total
<u>Offers</u>	<u>% Inc</u>	<u>% Inc</u>	<u>% Inc</u>	<u>% Inc</u>
City	3.0	1.5	1.5-5.5(*)	6-10.0
PBA	4.0	4.0	4.0	12.0
Average Inc.	4.73	4.36	4.25	13.34

(*) The City proposes a wage re-opener for the period from 7/1/97 to 6/30/98 with a potential range of wage increase from 1.5% to 5.5% for this period. The City has suggested that an increase of 3.5% may reasonably be utilized for the value of the wage re-opener for 7/1/97 - 6/30/98, included in its proposal. However, there is nothing in the record to support the validity of this estimate and it is therefore entirely speculative. Under the City's proposal, there would be negotiations and possibly interest arbitration to resolve the amount of the 7/1/97-6/30/98 increase. However, the wage re-opener would be implemented only if the City offer were awarded in this proceeding. As can be seen from the charts above, the City's offer for the first two and one-half years of the term of the new agreement would provide for a 4.5% increase in rate over a 2.5 year term, or the equivalent of a 1.8% annual increase in rate. It is both questionable and speculative to estimate that either the parties would voluntarily agree on or an arbitrator would award a rate increase for one year which is about double the annual rate of increase in the first two and one-half years.

As can be seen from the chart above, the City offer would result in a 4.5% rate increase over two and one half years, or an average annual increase of 1.8%. The PBA proposal obviously entails an average annual rate increase of 4.0%. Based on the analysis above, the average annual rate increase in the Passaic County municipalities is 4.45%, during the

three years analyzed above.

The undersigned, in the consideration of the statutory criterion of "Comparables" also takes administrative notice of a summary of Interest Arbitration Awards and voluntary settlements issued by P.E.R.C. since January 1, 1997 which generally covers much of the time frame implicated in this proceeding. The charts below reflect only wage increases provided in 1996, 1997 and 1998, three of the years involved in this proceeding. The arbitration awards list all conventional arbitration awards to date. The undersigned has not included the State/SLEU conventional award because of the inability to translate bonuses and dollar amounts to comparative percentages. However, it appears that inclusion of this conventional award would lower the average because the award provides for a \$250 cash bonus in 1996 plus uniform maintenance or clothing allowance. In 1997 and 1998 a 3.5% increase is provided.

	<u>Settlements</u>					
	1/1/96	7/1/96	1/1/97	7/1/97	1/1/98	7/1/98
New Milford	2.0%	2.0%	3.5%		2.0%	2.5%
Franklin	4.0%		4.2%			4.2%
Mendham	4.0%		4.25%			
Bordentown	4.0%		4.5%			4.5%
Montclair	2.0%	3.0%	3.0%	1.75%	3.0%	1.75%
Marlboro	4.0%		4.75%		4.65%	
Hillside		2.9%		3.0%		3.5%
Hamilton		4.0%		4.0%		4.0%
Princeton	3.9%		3.9%		3.9%	
Verona	3.0%		3.0%	3.0%	3.0%	5.0%

Lebanon	4.0%	4.5%	4.5%
Camden	3.9%*	3.9%*	3.9%*

(Co. Pros)

*plus 1.1% for top step

After adjusting for the split increases, the average increase in 1996 is 3.8%, in 1997 it is 4.4% and in 1998 it is 4.38%.

Interest Arbitration Awards

	1/1/96	7/1/96	1/1/97	7/1/97	1/1/98	7/1/98
Far Hills	4.0%		4.0%		4.25%	
Hackettstwn	3.4%		3.5		3.5%	
Emerson	4.0%		3.5%		2.0%	
Hudson Co	5.0%		5.0%		5.0%	
Rutherford	3.75%		3.75%		2.0%	2.0%
Allendale	4.0%		3.75%		3.50%	
W. Caldwell	4.95%		4.0%		4.0%	
Bernards	3.5%		3.75%		4.0%	
Average:	4.19%		3.91%		3.53%	

When one combines average increases in settlements and Interest Arbitration Awards, the pattern of increases for 1996, 1997 and 1998 appears as follows:

	1996	1997	1998
Settlements:	3.8	4.4	4.38
IA Awards:	4.19	3.91	3.53
Average:	4.00	4.16	3.96

Recently, the Public Employment Relations Commission has released a compilation of voluntary settlements in 44 New Jersey police and fire units

which have been completed since 1/1/97. The undersigned has prepared a summary of these settlements, which is attached hereto as Exhibit No. 1 and made a part hereof. The exhibit contains wage rate increases only and does not reflect other benefit changes. Where there are split increases, the total rate increase in each year has been utilized. For the four years implicated in this proceeding, the rate increases in 1997 voluntary settlements average as follows:

1995	1996	1997	1998
4.54	4.14	4.05	4.03

Based on the various charts and analysis listed above, it is clear that the City's offer of an annual rate increase of 1.8% is far below the average rate increases in the comparable Passaic County municipalities as well as the average rate increases in Interest Arbitration awards and settlements throughout the state. On the other hand, the analysis above confirms that the PBA proposal is more closely related to the average rate increases in the comparable Passaic County municipalities as well as the average rate increases in state-wide awards and settlements.

The record also contains the recent Interest Arbitration Award of Arbitrator Tener covering the Passaic Fire Officers Association and the settlement between the City of Passaic and the Passaic Fire-fighters. Arbitrator Tener rendered a conventional award which provided for a term from January 1, 1995 through June 30, 1998, a wage increase of 1.5% on 1/1/95, an additional 3% effective July 1, 1995, an additional 3% effective July 1, 1996 and an additional 3% effective 7/1/97. Tener's award modified the longevity provision to eliminate the 14% step for officers earning 10% or less and it made officers eligible for a longevity step of 12% upon completion

of 24 years of service. The award provided for sick leave changes and incorporated five terms of employment which the parties had previously agreed upon.

It is noted that Arbitrator Tener revised the 14% longevity step because of a prior agreement between the City and the FMBA covering fire-fighters, "because a 14% step is quite generous" and because the Fire Officers had indicated a willingness to waive the 14% longevity for future fire officers. Arbitrator Tener included a 12% longevity stipend upon completion of 24 years of service. Tener's award noted that this proposal had a minimal direct cost impact and might result in savings because it will encourage earlier retirements. Regarding sick leave, Arbitrator Tener noted that fire officers currently receive 360 hours of sick leave and the reduction of sick leave to 240 hours for current employees and to 192 for new employees "will still leave both groups with far more hours than the 160 hours received by the City's police officers and the 120 hours or 105 hours received by the City's other employees".

Arbitrator Tener noted that the change in the longevity would save the City money but, except for the unknown effect of causing officers to retire earlier than they otherwise would have, not during the term of this agreement. With regard to the sick leave change, Arbitrator deemed it significant but could not place a value on this change.

It must be noted that Arbitrator Tener's award was rendered in the context of conventional authority, an authority not available to the arbitrator in this proceeding. For example, in fashioning his award on the longevity issue, he was able to include selected portions of each party's final position on longevity.

In assessing the relevance of Arbitrator Tener's award, the undersigned must accord significance to the salary adjustment portion of the award while according minimal significance to the impact of the longevity and sick leave changes. As noted above, Arbitrator Tener did not anticipate an economic impact from the longevity change during the term of the agreement. Furthermore, Arbitrator Tener could not quantify the current economic value of the sick leave change while pointing out that the modification in sick leave to 240 hours for the fire officers and firefighters would still leave both groups with far more hours than the 160 hours received by the City's police officers. In addition, it is noted that the parties in this proceeding thoroughly addressed the issue of sick leave benefits for police officers in a 1994 Memorandum of Agreement and agreed "that said provisions shall not be negotiable until the expiration of the successor agreement".

As stated above, the salary adjustment in Arbitrator Tener's award is significant. Arbitrator Tener recognized the significant inter-relationship between his award and the instant matter when he stated the following:

The statute requires arbitrators to consider comparisons with other employees in the City. The City and its other public safety units have not concluded agreements for the years after 1994. Therefore, what is awarded in this proceeding would be expected to have a major impact on the results of the other negotiations or arbitration proceedings. In short, the rank and file firefighters and the police officers and police superior officers would be expected to receive increases which are not too dissimilar from those awarded in this proceeding. In effect,

the impact of this award will not be confined to the fire officers but will extend to the City's other public safety employees.

After analyzing all phases of the statutory comparability factors, Arbitrator Tener rejected the annualized 1.7% increase proposed by the City and the annual 5% increase proposed by the Fire Officers Association and issued a 3% annualized award. Arbitrator Tener summarized as follows:

Looking at the Comparability factor overall, the private comparisons support the 3% annualized award, the general public sector comparisons support the 3% annualized award, the comparisons with other municipal employees in the City support the City's position and the comparisons with other fire officers outside of the City support the PFOA's position. The 3% annualized award is between these two positions and serves to preserve the relative position of the fire officers.

In this proceeding, the undersigned can not issue an award "between these two positions" and must select the more reasonable position. The undersigned believes that the PBA proposal of a 4% annual increase more closely follows the Tener award and the firefighters settlement when compared with the 1.8% annualized increase proposed by the City in this proceeding. Moreover, as shown above, the preservation of the relative position of the officers in this unit, a goal embraced by Arbitrator Tener in the fire officers unit, requires the higher percentage contained in the PBA proposal.

The statute requires consideration of other public employment in the same jurisdiction. The City's proposal in this proceeding, for the first two and one half years, is slightly higher than the 1.17% to 1.5% in each of the

two or three years in contracts with other City employees. However, these settlements were achieved in negotiations which are not subject to the interest arbitration law. Accordingly, although this factor has been considered and it clearly favors the City position, the undersigned has accorded far more weight to the comparisons, analyzed above, in public employment in the same or similar comparable jurisdictions which are similarly covered by the interest arbitration statute.

b. In comparable private employment

As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison can be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight.

c. In public and private employment in general.

The rate of wage change in the private sector generally is a consideration which must be accorded significant weight. The rate of wage change in the private sector and the rate of wage change among public sector law enforcement units are affected by the same national and local factors, such as the health of the economy, prevailing interest rates, status of unemployment, rate of inflation and the impact of tax legislation.

Accordingly, this factor merits consideration in conjunction with the rate of wage change in public employment in general and public employment in the same or similar comparable jurisdictions.

In order to address this criterion properly, the undersigned is constrained to take administrative notice of information, excerpted from the Labor Relations Reporter, 152 LRR 398, dated 7/29/96, which indicates that nationwide private sector settlements have exhibited median average increases of 3% for 1996. However, the Labor Relations Reporter notes that wage increases of unspecified amounts and cost-of-living adjustments were not included in the tabulations of the medians. Accordingly, the rate of change in the private sector appears to be somewhat in excess of 3% for 1996. The Public Employment Relations Commission has furnished the arbitration panel with a report of private sector wage changes compiled by the New Jersey Department of Labor. This report, which shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system, indicates a 2.4% increase in Passaic County in 1995 and a private sector wage increase of 3.4% in the State of New Jersey in 1995, a percentage which is much closer to the PBA proposal than the City offer. In fashioning the Award in this matter, the undersigned has given this factor significant weight.

The BLS Report on Negotiations, 8:310, No.1298, dated 3/2/95, published by the Bureau of National Affairs, Inc., notes that State and local government contracts (usually negotiated in 1993 and scheduled for renegotiation in 1995) showed settlement terms that yield annual wage changes (including COLA payments) averaging 2.5% in all State and Local

Government contracts over their contract life. The same BLS Report notes that the rate of increase for protective services averaged 3.1%. However the BLS Report notes the following:

Recent settlements suggest a more favorable bargaining climate for at least some State and local government workers with contracts set to expire in 1995. As noted earlier, for the first time since the second half of 1990, settlements reached in the first six months of 1994 provided wage gains that were larger, on average, than those negotiated in the replaced contracts. Both first-year changes (3.0 percent) and annual changes over the contract term (3.3 percent) were at their highest level since the six month period from July 1990 to December 1990. In addition, the proportion of workers with decreases or no changes in their wage rates was considerably lower than in recent years.

Thus, the BLS Report on Negotiations confirms the emergence of a more favorable collective negotiations climate in the public sector with fewer wage freezes and annual changes over the contract term increasing to 3.3 percent when parties negotiated renewal contracts for contracts expiring in 1995, thus much closer to the PBA proposal than the City offer. This is an additional significant factor to which the undersigned has assigned weight and has been considered in the selection of the Offer.

In summary, based on the above analysis, the comparison of the wages, salaries, hours, and conditions of employment of the employees involved in this proceeding with the wages, hours, and conditions of employment of other employees performing the same services in comparable

communities clearly favors the PBA position. As noted above, a comparison with other employees in comparable private employment merits minimal weight. In the above analysis, the undersigned has found that recent trends showing a more favorable collective negotiations climate in the public sector with fewer wage freezes and annual changes over the contract term increasing to 3.3 percent when parties negotiated renewal contracts for contracts expiring in 1995 were much closer to the PBA proposal than the City offer. As noted above, the private sector average wage increase of 3.4% in the State of New Jersey in 1995 is a percentage which is much closer to the PBA proposal than the City offer. Although the settlement in the non-uniformed employees in the same jurisdiction favors the City's offer, the undersigned has assigned much less weight to this factor than the weight accorded to comparisons in the public sector which are governed by the interest arbitration statute.

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.

In the consideration of this statutory criterion, the undersigned notes that the City claims that the existing longevity schedule for police officers, the existing sick leave benefits and the rank differentials between Patrolman and Sergeant and between Patrolman and Lieutenant exceed the norm within Passaic County for police officers in other towns. However, the PBA has provided evidence showing that Passaic police officers work the longest work chart, receive the least number of holidays and below average vacation time which fails to offset their poor base pay rate.

The undersigned believes that the better benefits received by Passaic police officers in certain conditions of employment are counterbalanced by lesser benefits received in other areas. The most important element of overall compensation, salaries, has been discussed in the above section. Since it has been shown that the relative standing of Passaic police officers in the area of salaries , as compared to the salaries of police officers in the other Passaic County towns, will decrease less under the PBA proposal than under the City proposal, the maintenance of the Passaic police force's overall compensation will best be accomplished by the acceptance of the PBA proposal.

4. Stipulations of the parties.

There are no pertinent, substantive stipulations of the parties which require consideration in this matter.

5. The lawful authority of the employer

This criterion requires a consideration as to whether the limitations contained in the Local Government CAP Law deprive the employer of the lawful authority to implement the final offer of one of the parties in this proceeding. The record indicates that the City has consistently utilized an index figure below the annual CAP limitation of 5%. and has budgeted below the index figure. As a result, the City Auditor confirmed that the City has been "banking" the unused CAP monies and has, in recent years, been carrying forward unutilized cap bank money for flexibility in successive years.

In its brief, the City notes the testimony of the PBA financial expert regarding the CAP law to the effect that the CAP law presented no legal impediments to the paying of the PBA's final economic offer by the Employer.

The City acknowledged that the restrictions under the CAP law are not an issue in this proceeding.

Accordingly, the undersigned concludes that the payment of the PBA final economic offer is not beyond the lawful authority of the Employer in this proceeding.

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

An analysis of the financial impact on the governing unit must begin with a study of the amounts already allocated by the City for wage increases. In City Exhibit C-76-A, the City shows that it has provided \$129,700 for Salary adjustments and it has encumbered \$284,945 for salary increases. In the Summary of Exhibit C-76, the City indicates that the encumbered \$284,945 consists of \$209,535 (96 Police S/W) and \$75,410 (96 Fire S/W). In addition, the City has provided \$275,355 for the 1997 (7/1/96 - 6/30/97) salary adjustment. (See 1997 Budget Sheet 17) Of the grand total of \$690,000 needed to implement salary adjustments for six categories of employees for the period covering 1/1/95 to 6/30/97, \$306,000 or 44.34% is allocated to PBA. Thus, the allocation for PBA increases appears as follows:

96 Salary Adjustment:	129,700
97 Salary Adjustment:	275,355
Total:	405,055
44.34%	179,601
96 Police S/W:	209,535
PBA Wage Allocation:	\$389,136

The City's Final Offer entails the following cost, when applied to a base salary of \$7,700,000 at 1.5% from 1/1/95 to 6/30/95, 1.5% from 7/1/95 to 6/30/96 and 1.5% from 7/1/96 to 6/30/97.

<u>Period</u>	<u>Cost</u>
1/1/95 - 6/30/95	57,750
7/1/95 - 6/30/96	117,232
7/1/96 - 6/30/97	118,991
Total:	\$293,973

Based on the above analysis, the City's offer entails \$95,163 less cost (\$389,136 - \$293,973) than has been allocated for PBA increases during this two and one-half year period. The PBA Offer entails the following cost during the same period:

<u>Period</u>	<u>Cost</u>
1/1/95 - 6/30/95	154,000
7/1/95 - 6/30/96	320,320
7/1/96 - 6/30/97	333,133
Total:	\$807,453

Based on the above analysis, the PBA offer entails \$418,317 more cost than has been allocated for PBA increases during this two and one-half year period. When this differential is annualized, there is an average \$167,326 per year shortfall. When this shortfall is applied to the 1995 Net Valuation Taxable of \$1,330,580,600, it causes a 1.25 cent annual increase in the Municipal tax rate. However, this is a worst case scenario which makes no provision for savings due to personnel turnover. Apparently, the Memorandum of Understanding of Feb. 23, 1994 and the City's adoption of the Early Retirement Incentive Program resulted in a significant personnel turnover, with senior officers being replaced by newly hired officers at considerably lower rates of pay, in accordance with the Memorandum. In addition, the Feb. 1994 Memorandum added three steps and two years to the

pay scale before new hirees reach top level pay. A review of Exhibit C-78 shows the following hirings in 1995 and their salaries as of 3/14/97:

<u>Name</u>	<u>Hiring Date</u>	<u>Salary</u>
Aboyoun	9/18/95	30,000
Aquino	9/18/95	30,000
Clavijo	1/23/95	36,267
Cruz, D.	9/18/95	22,000
Cruz, M.	1/23/95	30,000
Farrallo	9/18/95	22,000
Febles	1/23/95	36,267
Gentile	1/23/95	32,267
Gil	1/23/95	36,267
Green	1/23/95	36,267
Irizarry	1/23/95	36,267
Lewis	9/18/95	30,000
Loconte	1/23/95	36,267
Merkerson	1/23/95	37,567
O'Donnell	9/18/95	30,000
Pagan	9/18/95	30,000
Patti	9/18/95	30,000
Rutherford	9/18/95	30,000
Simpson	9/18/95	30,000
Wheeler	9/18/95	30,000
Zazulkewycz	1/23/95	36,267
Total:		\$667,703

From the above chart, it can be seen that 21 new officers were hired in

1995. The new officers replaced 21 senior officers who, at the Top Step Patrolman rate of \$50,021, cost the City \$1,050,441. As shown above, the 21 replacement officers cost \$667,703, resulting in a saving to the City of \$382,738 in 1997. There were also substantial savings in a portion of 1995 and a full year's savings in 1996, which probably exceeded the 1997 savings because the new-hires were earning less in 1996 since they were on lower steps of the pay scale.. In addition to the salary savings, very substantial longevity stipend savings accrued to the City as the result of the replacement of senior officers with new-hires who receive no longevity stipends until they complete five years of service. Exhibit C-78 also notes the retirement of Police Officer Detective Thomas Hunyadi who was earning \$57,659 and the retirement of Police Captain Detective Samuel Kirshner who was earning \$77,262. These retirements will result in additional personnel turnover savings to the City. The undersigned recognizes that the City incurred a substantial terminal leave liability for the retiring senior officers. However, as recognized by the City when it adopted the Early Retirement Incentive Program, in spite of the initial terminal leave cost, the City is financially well served by the very substantial personnel turnover savings in 1995, 1996 and 1997 and the continuing salary and longevity savings until the new-hires reach maximum pay and the longevity stipends earned by the retirees.

In order to assess the precise financial impact of the significant personnel turnover in 1995 and in order to calculate the true annual costs of the competing offers when compared with the actual personnel salary and longevity costs in 1994 (the last year under the old contract) the undersigned, on April 9, 1997, requested the following: (See Pg. 187 of

Transcript of April 9, 1997 hearing)

The record would be assisted if we could determine what the base salaries for the patrolmen in this – for the members of this unit were in 1994. The same thing for 1995, and the same thing for 1996.

On May 13, 1997, the City Business Administrator forwarded certain computer printouts and stated the following:

The information requested at the April 9th, 1997 arbitration hearing has been sent to you under separate cover.

As discussed on April 9th, the information you requested does not exist in the form you requested. We have searched every possible location for that data, but we were only able to obtain the information that has been sent to you.

Based upon early retirements, new hires, and the balancing effect of higher salaries for retiring employees and lower salaries for newer employees, we continue to believe that the \$7,700,000 figure for PBA salaries for each of the years in question is a solid and reasonable number. It is certainly an accurate number for fiscal year 1997.

The information forwarded on May 13, 1997 could not establish the cost of base salaries and longevity for 1994, 1995 or 1996. Although the Business Administrator acknowledges the “balancing effect of higher salaries for retiring employees and lower salaries for newer employees”, the data forwarded fails to quantify the annual payroll costs or the cost savings incurred. The Business Administrator’s claim that \$7,700,000 is certainly an accurate number for fiscal year 1997 is confirmed by the computer run in

Exhibit C-78 but sheds no light on the actual costs in 1994, 1995 or 1996. In the absence of this information, the undersigned has been unable to determine accurate and reliable year to year annual payroll cost comparisons for inclusion in this award.

Exhibit C-35 shows that the Municipal tax rate was \$2.30 in 1994 and has been reduced in 1995, 1996 and 1997. In 1994, the \$2.30 Municipal Tax Rate represented 59% of the Total General Purpose amount whereas in 1997, the Municipal tax rate has dropped to \$2.10 in 1997 and represents only 54% of the Total General Purpose amount. It is noteworthy that the Police Department Budget History (Exhibit C-73) shows that the Total Police Department expense has dropped from a peak of \$10,259,891 in 1994 to \$9,380,343 in 1997, thus contributing to and tracking the reduction in the Municipal tax rate.

The City has successfully moved from a negative balance in 1992 to positive balances in 1994, 1995 and 1996. As the result of reductions in budget expenditures, increases in its tax collection rate and a decrease in lapsed reserves, the City has managed to reduce the municipal portion of the tax levy in 1995, 1996 and 1997. The record shows that, unlike almost all of the other Passaic County municipalities, the net valuation taxable has increased in the City of Passaic from 1990 to 1995. It appears that a good portion of the tax appeals have been settled and adequate reserves have been set for the remaining appeals. There is also evidence of new construction which will produce additional tax receipts. These factors indicate a continuing improvement in the financial condition of the City. The undersigned believes that this improved financial condition as well as the continuation of a strong national and state economy will assist the City in

meeting the financial impact of the PBA proposal in the balance of 1997 and in calendar 1998. Apparently, the City shares this optimistic outlook. In the firefighters settlement, the City agreed to an additional 3% increase for the period from 7/1/98 to 6/30/99, thus continuing the pattern set by the Tener award and given significant weight by the undersigned in this proceeding.

In the Passaic Fire Officers Association award, Arbitrator Tener similarly reviewed the City's financial condition, the amounts reserved for salary adjustments and concluded as follows:

The City's projections and figures were based on its final offers and assume the same increases for both firefighters and police officers which it offered the fire officers in this proceeding. While it will require some money beyond the amounts already encumbered and reserved as well as that budgeted in 1997 for this purpose, the amount awarded, even if other units obtain reasonably similar increases, is not such as to create a hardship either on the budget or the taxpayers.

The undersigned believes that the PBA proposal calls for "reasonably similar increases" to the increases awarded in Arbitrator Tener's award and the higher increases in this unit are substantially offset by the significant savings accruing to the City from personnel turnover.

The undersigned does not believe that the longevity modification contained in the PBA proposal will have a significant financial impact. The PBA proposal seeks to make police officers eligible for the 12% longevity payment after 24 years of service instead of the current requirement of 25 years of service. This proposal would provide one additional year at a 2% higher stipend for employees with 24 years of service. However, it is reasonable to expect that this additional cost may be offset by the savings

that will accrue to the City by the newly created incentive to retire after 25 years of service.

Accordingly, the undersigned concludes that the PBA proposal will not create a budgetary hardship and is in accord with the "Financial Impact" criterion.

7. The Cost of Living

The undersigned takes administrative notice of Table 16 by Expenditure Category, Consumer Price Index for all Urban Consumers , which indicates a 2.72% increase from January, 1995 to January, 1996 and a 3.32% increase from January, 1996 to December, 1996, amounting to a 6.2 percent increase in 1995 and 1996.

This low level of inflation has persisted for several years and, despite the improved conditions now apparent in the national economy, the inflation rate has not accelerated to date.

Under the City's proposal, the salaries of the police officers in this unit would increase by 1.5% annually. Accordingly, the salaries of these officers would not keep pace with the current increase in the cost-of-living and would, indeed, result in a loss of purchasing power for these officers. On the other hand, the PBA proposal would entail annual increases which are about one percent above the present rate of inflation.

Under these circumstances, the undersigned believes that both proposals are flawed with respect to this statutory criterion. However, the City proposal provides for less than half the cost of living rise in 1995 and 1996 and, therefore, erodes purchasing power. The PBA proposal, though higher than the current rate of inflation, more closely tracks the rise in the cost of living index and will provide a modest gain in real earnings.

In the selection of the offer in this matter, the undersigned believes that the PBA offer tracks the cost-of-living index increase more accurately and, therefore, is more consistent with this statutory criterion.

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.

The City indicates that this factor was not discussed by the parties during this arbitration case. PBA , under this statutory criterion, restates its claim that “area standards” and “prevailing Rate” considerations compel a finding in favor of the PBA position, especially since PBA seeks a below average wage increase.

The undersigned believes that adoption of the City economic package would certainly lower police officer morale because it would result in a significant drop in the City of Passaic’s police force relative standing among police departments in other Passaic County communities. On the other hand, the PBA proposal should encourage continuity of employment because it provides wage increases which do less damage to Passaic’s relative standing. However, there is little evidence in the record to support a concern for the stability of employment in this unit. Although there is evidence of substantial personnel turnover in this unit, this appears attributable to the Early Retirement Incentive Program rather than a voluntary leaving of City employment for higher paying jobs in other communities. Furthermore, it appears from the record that the City has

been able to attract and retain adequate replacements for its retirees. Accordingly, though the PBA position favors this statutory criterion, there is no reason to assign significant weight to this criterion.

Term:

PBA seeks a four year agreement while the City requests a three and one half year agreement which includes a wage re-opener for the period from 7/1/97 to 6/30/98. The undersigned notes that this award will issue approximately four months after the date of the proposed wage re-opener. Based on the history of this proceeding, it appears probable that the final disposition of the terms of the final year of a proposed three and one-half year agreement could again be delayed well beyond the expiration date of the new agreement. Under the City's proposal, the parties would be forced to immediately confront each other in negotiations and, thereby, continue a three year process which has appeared to be quite acrimonious to the undersigned during his involvement in this proceeding. On the other hand, the PBA proposal for a four year agreement would provide for a pause in negotiations, an opportunity to repair a damaged relationship and the ability for both parties to assess, in a timely manner, all relevant changes in circumstances. The undersigned is further convinced of the preferability of a defined four year agreement for the parties in this proceeding by the evidence of the completion of a four and one-half year agreement between the City and its firefighters, another large public safety unit in the same jurisdiction. The City/Firefighters settlement provides for defined terms and conditions of employment over a four and one-half year period without the need for further negotiations or resort to interest arbitration during the term of the agreement. The undersigned believes the City/Firefighters settlement

provides an excellent model for improving the stability of a relationship and influences the selection of the PBA proposal on the term of the proposed agreement.

Accordingly, the term of the new agreement shall run from Jan. 1, 1995 to Dec. 31, 1998.

Summary

Under the statute controlling this proceeding, the arbitrator must select the more reasonable final offer since the parties have not mutually agreed on a different terminal procedure. The undersigned believes that the concerns of the parties could have been addressed more specifically and a better economic package developed if he had been given conventional arbitration authority. In the absence of conventional authority, the arbitrator must select the more reasonable final offer in the context of the application of the statutory criteria.

In analyzing the statutory criteria, the undersigned has deemed each of the statutory criteria relevant (except for the criterion relating to stipulations) and has assigned due weight to the criteria, as discussed above. In addition, the undersigned has carefully considered the evidence and arguments presented by the parties. In this analysis, the undersigned has assigned considerable weight to the trend in private sector increases and other public sector increases generally as well as the current rate of increase in the Consumer Price Index. The undersigned has given great weight to an internal comparison with the award in the Passaic Fire Officers unit and the settlement in the Passaic Fire Fighters unit. The undersigned has considered the average rate of increases among law enforcement agencies in the other Passaic County municipalities and has favored the

somewhat lower percentage package offered by PBA because it adjusts to the City's attempts at economic revitalization while doing less damage to the relative standing of the Passaic police force among comparable Passaic County municipalities. The undersigned believes that the arbitrator's award of the PBA economic package does not require expenditures which will exceed the Borough's lawful authority. The undersigned believes that the interests and welfare of the public will benefit by the selection of the PBA offer which contains a reasonable compensation package and which will have a modest financial impact on the City's residents and taxpayers and contribute to the continuity and stability of employment in this negotiations unit.

Accordingly, based on an evaluation of the evidence submitted and the arguments advanced by each party and, after due consideration of each of the statutory criteria contained in N.J.S.A. 34:13A-16, the undersigned selects the PBA economic proposal as the more reasonable final offer.

PBA has argued that the Employer's position, containing a wage re-opener for the 7/1/97 to 6/30/98 period, is statutorily defective and can not be awarded because an arbitrator can not send an issue back to the parties to negotiate when the issue has been presented to the arbitrator for decision and because an arbitrator can not issue an award which supercedes the statutory timetable for negotiations. The undersigned does not believe it necessary to evaluate the legality or propriety of the inclusion of the wage re-opener in the City position. The undersigned has considered both economic positions and has determined that the PBA position more reasonably and more definitively comports with the statutory criteria for the reasons stated above. The undersigned has rejected the City position in

favor of the PBA proposal because of the damage accruing from the City low wage offer in the first two and one-half years and because of the indistinct and speculative nature of the wage proposal in the last year of the City offer.

Non - Economic:

The Employer included two non-economic proposals in its Final Offer. The first non-economic proposal called for the institution of a written drug test policy. The second non-economic proposal called for the clarification of contract language regarding minimum payment on Court overtime. The record contains no evidence concerning any problems in these areas or regarding the need for the requested contractual changes. Furthermore, the City has not referenced these issues in its final arguments. In the absence of any proof on the need for these contractual changes, the undersigned is constrained to deny the two non-economic proposals submitted by the City.

AWARD

After a thorough and complete evaluation of the testimony, exhibits and arguments presented in this proceeding, the undersigned determines that the Final Offer of PBA Local 14 is the more reasonable under the statutory criteria and awards the following:

Economic:

1. Duration: Jan. 1, 1995 - December 31, 1998.

2. Salary:

1/1/95: 4.0%

1/1/96: 4.0%

1/1/97: 4.0%

1/1/98: 4.0%

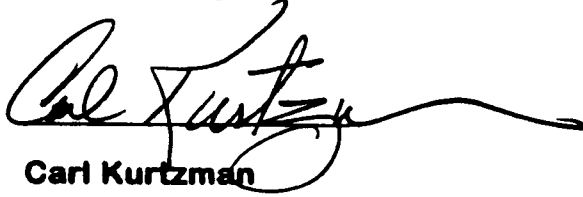
The increase is intended to be effective on all rates on Schedule A, Page 63.

3. Longevity

In J-1, Page 32, Section 4, change the 25 year plateau to 24 years.

Non-Economic: None

4. All other proposals made by both parties are denied.
5. All of the provisions of the prior agreement shall be retained in the new agreement, except as modified by this award or mutual agreement.



Carl Kurtzman

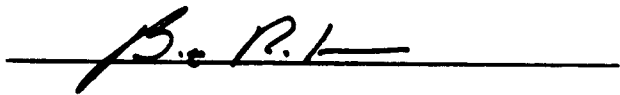
Arbitrator

Dated: October 27, 1997

State of New York)

County of Nassau)

On the 27th day of October, 1997, before me personally came and appeared Carl Kurtzman, to me known and known to me to be the person desribed herein who executed the foregoing instrument, and he acknowledged to me that he executed the same.



**BRIAN R. LEE
Notary Public, State of New York
No. 01LE0067181
Qualified in Suffolk County
Commission Expires October 18, 1999**

Arbitrator's Exhibit No. 1

IA Voluntary Settlements since 1/1/97

	1994	1995	1996	1997	1998	1999
New Milford			4	3.5	4.5	
Franklin Township			4	4.2	4.2	4.25
Mendham Township			4	4.25		
Bordentown			4	4.5	4.5	4.5
Montclair			5	4.75	4.75	
Marlboro Township			4	4.75	4.65	
Warren Co.	5	5	5	4	4	
Hillside			2.9	3	3.5	3.7
Hamilton Twshp		4	4	4	4	
Hamilton Twshp Superiors		4	4	4	4	
Princeton Boro			3.9	3.9	3.9	
Verona			6	6	5	
Lebanon			4	4.5	4.5	
Plainsboro				3.5	3.25	3.25
Camden Co. Pros			3.9	3.9	3.9	
Winslow Tp.				3.5	3.5	3.5
Byram				4.5	4.5	4.5
Hamilton Tp				3.5	3.5	3.5
Margate				3.5	3.5	
Manasquan				4.25	4.25	4.25
Morristown			3.72	3.82	3.45	
Moonachie				4	4	4
Vineland			3.5	3.5	4	4
State/SLEC				3.5	3.5	
Middlesex Co College		4	4	4		
Phillipsburg			4	3.25	3.25	
Newton			3	3.75	3.75	5
Montclair/FMBA			5	4.75	4.75	
Atlantic Highlands		4.5	4.5	4.5	4.25	
Colts Neck				4.8	4.6	4.3
Hillsborough			4.5	4.5	4.5	4.5
South Amboy			4	4	4	2
Bridgewater			4.1	4.1	4.2	
Roselle Pk Boro				2.2	3.9	4.1
Pemberton		5.75	5.75	4	4	
Mansfield				3	4	4
Laurel Springs				4	3	3
Fanwood			4	4.5	4.5	
Hunterdon Co.			4	6	6	
Clinton				5	2	2
Evesham			3	3.5	4	3.5
Passaic Firefighters			4.5	3	3	
Freehold				4.5	4.5	4.5
Harrison			4	4	4	
		27.25	124.27	178.17	169.05	76.35
		4.54	4.14	4.05	4.03	3.82

