

In the Matter of Interest Arbitration Between:

CITY OF PATERSON

"Public Employer,"

- and -

PATERSON PBA LOCAL NO. 1

"PBA."

Docket No. IA-2004-110

CITY OF PATERSON

"Public Employer,"

- and -

PATERSON SOA

"SOA."

Docket No. IA-2004-111

**INTEREST ARBITRATION
DECISION
AND AWARD**

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the City:

Gerald L. Dorf, Esq.
Christopher J. Vaz, Esq. on the brief
Dorf & Dorf, P.C.

For the Unions:

Richard D. Loccke, Esq.
Loccke & Correia PA

Mark C. Rushfield, Esq.

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I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in matters involving the City of Paterson [the "City"] and Paterson PBA Local No. 1 and the Paterson Superior Officers Association [the "PBA, the "SOA" or the "Unions"]. Several pre-arbitration mediations were held. Because the impasse was not resolved, formal interest arbitration hearings were held on April 5, May 16, May 18 and July 5, 2005 at which time the parties examined and cross-examined witnesses and introduced documentary evidence into the record. The petitions were not formally consolidated. However, all parties recognized that the goals of economy and efficiency would be met by receiving evidence which was common to each negotiating unit during the course of the hearings without having to independently resubmit documentary or testimonial evidence in duplicate fashion. Many of the issues extended to both units. I have issued a single decision covering both units based on the hearings involving both units.

Testimony was received from Detective Steve Olimpio, President of PBA Local 1, Councilman Thomas Rooney and Anthony Zambrano, Chief Financial Officer. The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party. Post hearing briefs and reply briefs were submitted by

both parties and transmitted by the arbitrator, the last of which was received on or about December 5, 2005.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

FINAL OFFERS OF THE PARTIES

PBA Local 1 & SOA

1. Wage Increase –
 - A. The Associations propose an across-the-board six percent (6%) annual wage increase at in each of the four (4) years.
 - B. The PBA proposed a modification of the Salary Guide.
2. Temporary Assignments – The Associations propose that the current thirty (30) day exclusionary period for work performed in a higher rank be removed so that there is no waiting time and persons assigned to work in a higher rank would be compensated at the rate of said higher rank from the outset of the service being performed. This was described as the same provision as currently exists in the Paterson Fire Department contracts.
3. The Associations propose the addition of a "Work Program" Article which specific language was set forth in an attachment to Exhibit P-1.

The City of Paterson

1. Wages

A. The City proposes annual wage increases for the PBA as follows:

August 1, 2003 – 3%
August 1, 2004 – 3%
August 1, 2005 – 3.25%
August 1, 2006 – 3.25%

B. The City proposes annual wage increases for the SOA as follows:

August 1, 2003 – 3%
August 1, 2004 – 3%
August 1, 2005 – 2.75%
August 1, 2006 – \$2,825 lump sum payment

C. The City proposes that the arbitrator not unilaterally adjust the salary guides, but instead allow the parties to negotiate mutually agreeable adjustments.

2. Recognition

Change "Police Division, Department of Public Safety" to "Police Department."

3. Association Security and Privileges

Eliminate Section 2.9 which requires the assignment of police officers who are on duty to sell window shield decals to local businesses.

4. Police Officers' Rights

5.3.9.1. Delete the first sentence in its entirety. [Note: The destruction of investigative records created during an internal affairs investigation is regulated by the "Records Retention and Disposition Schedule for Local Police Departments" issued by the New Jersey Division of Archives and Records Management. The Internal Affairs Policy and Procedures issued by the Attorney General of the State of New Jersey (Revised 2000 and as may be further revised from time to time) and adopted by the Department states

that law enforcement agencies should maintain these files as they relate to a particular officer for the career of that officer plus five years.]

5.11.1. Delete in its entirety and replace in its stead:

5.11 No employee shall be ordered to submit to a polygraph or other form of lie detector test unless an employee voluntarily requests to take such an examination. However, employees who are the subjects of internal investigations may be compelled to submit to various forms of physical tests (e.g., breath sample, blood sample, requiring employees to speak, voice recordings, participation in a lineup, handwriting samples, hair and saliva samples, urine specimens, video taping, and field sobriety tests) in accordance with the Internal Affairs Policy and Procedures issued by the Attorney General of the State of New Jersey (Revised 2000 and as may be amended from time to time) and adopted by the Department."

5. **Grievance and Arbitration Procedures**

6.1 Grievance Purpose and Definitions

6.1.1. No change.

6.1.2. Delete and replace with the following:

"A grievance is an alleged violation, misinterpretation or misapplication of the terms and conditions of this Agreement."

6.1.3. No change.

6.1.4 No change.

6.1.5. Delete in its entirety and replace in its stead:

"The term 'grievant' shall mean an employee, group of employees, the Association at the request of and on behalf of an employee or group of employees, or the City."

6.1.6. Delete the section in its entirety.

6.2. Procedure

6.2.1. Delete "working days" and replace with "calendar days."

6.2.2. Delete "announce the appeal of a" and replace with "submit the" in the last sentence.

6.2.3. Correct "ad" to "and."

6.2.4. Delete in its entirety and replace in its stead:

"An employee who files a grievance may be represented in the grievance procedure, or any part thereof, by the Association or an attorney selected by and paid for by the employee. However, in the event an employee chooses legal representation in lieu of Association representation, the Association may participate in or continue to participate in the grievance procedure and may attend any meetings or hearings or submit its position orally or in writing at any step of the grievance procedure. In such cases, the Association shall be entitled to receive copies of grievances, responses and meeting notices at each step of the grievance procedure."

6.2.5 No change.

6.3 Basic Standards and Principles

6.3.1. No change.

6.3.2. No change.

6.3.3. No change.

6.3.4. Change "Step 3" to "Step 4."

6.4. Steps of Grievance Procedure

6.4.1. Delete in its entirety and replace in its stead:

"Employees, supervisors and the City are expected to make reasonable efforts to amicably resolve their differences prior to filing formal grievances. However, in the interest of implementing uniform standards and in order to expedite the processing of grievances, an employee shall submit a grievance in writing at Step 1 no later than fifteen (15) calendar days from the date of the incident or matter giving rise to the grievance. Any grievance that is not filed within the time required above shall be deemed waived."

6.4.2. Delete in its entirety.

6.4.3. Delete in its entirety.

6.5. Delete in its entirety and replace in its stead:

"Step 1 – Commanding Officer. The Commanding Officer shall respond to the grievance in writing within three (3) calendar days."

6.6. Delete in its entirety and replace in its stead:

"Step 2 – Reviewing Officer. If no satisfactory resolution is reached at Step 1, then within three (3) calendar days the grievance shall be submitted in writing to the Reviewing Officer. The Reviewing Officer shall respond to the grievance in writing within three (3) calendar days."

6.7. Delete in its entirety and replace in its stead:

"Step 3 – Chief of Police. If no satisfactory resolution is reached at Step 2, then within three (3) calendar days the grievance shall be submitted in writing to the Chief of Police. The Chief of Police shall respond to the grievance in writing within five (5) calendar days."

6.8. Delete in its entirety and replace in its stead:

"Step 4 – Director of Public Safety. If no satisfactory resolution is reached at Step 3, then within three (3) calendar days the grievance shall be submitted in writing to the Director of Public Safety. The Director of Public Safety or the Director's designee shall respond to the grievance in writing within ten (10) calendar days."

6.9.1. Insert "calendar" before "days."

6.9.2. Delete in its entirety and replace in its stead:

"Only the Association may submit a grievance to arbitration on behalf of an employee or group of employees."

6.9.3. No change.

6.9.4. Amend to read: "The arbitrator shall render a decision in writing with reasons therefore after the close of the hearing."

6.9.5. Amend as follows:

"The arbitrator shall be bound by the provisions of this Contract, the single issue presented and shall be restricted to the application of facts presented through and involved in the grievance."

6.9.6. No change.

6.9.7. No change.

6.9.10. No change.

6.9.11. No change.

Add a new section:

"6.12. Grievances initiated by the City shall be filed directly with the Association by the Director of Public Safety within fifteen (15) calendar days from the date of the incident or matter giving rise to the grievance. A meeting shall be held within ten (10) calendar days after the filing of the grievance between the Director of Public Safety or a representative of the Director of Public Safety and the Association. The Association shall respond to the grievance in writing within five (5) calendar days after the date of the meeting. If the

grievance is not settled at this step, the City may request binding arbitration in the manner set forth above. In the event the Association fails to respond to a grievance in writing within the time limit specified above, then the failure to respond shall be construed as a negative response and the City may proceed to submit the grievance to binding arbitration."

6. **Work Schedules and Conditions**

The City seeks to require that the Chief of Police must pre-approve "swaps" in which officers request an additional day off and agree to cover another officer's shift in exchange.

7.1.4. Add the following at the end of the first sentence: "with the approval of the Chief of Police." Following the last sentence add: "The hours that the replacement employee works as a substitute shall be excluded by the City in the calculation of the hours for which the employee is entitled to overtime compensation or compensatory time."

The City seeks to delete in its entirety Article 7.4 which currently states that before all major changes affecting employees' health, welfare, and working conditions are to take effect, they shall first be discussed.

7. **Maintenance of Standards**

10.1 Delete this section in its entirety.

10.2. Amend the end of the sentence as follows:

"... provide them with a reasonable opportunity to meet those requirements."

8. **Table of Organization**

Change the title of this section to "Maintenance of Eligible Lists."

9. **Terminal Pay (Formerly Terminal Leave)**

14.0 Terminal Pay (Formerly "Terminal Leave")

14.1. Delete and replace with:

"After twenty-five (25) years of service as an employee of the City the employee shall, upon retirement, be entitled to receive a lump sum payment equal to seven hundred twenty (720) work hours based on the employee's regular hourly rate of pay."

10. **Sick and Injured Leave**

17.0 Sick and Injured Leave

Delete the section in its entirety and replace with the following:

"17.1. Sick leave may be used by employees who are unable to work because of:

- (a.) personal illness or injury;
- (b.) exposure to contagious disease;
- (c.) care, for a reasonable period of time, of a seriously ill member of the employee's immediate family; or
- (d.) death in the employee's immediate family, for a reasonable period of time.

17.2. Employees shall be entitled to annual paid sick leave as set forth below:

a. Newly hired employees shall receive 8 hours for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and 4 hours if they begin on the 9th through the 23rd day of the month.

b. After the initial month of employment and up to the end of the first calendar year, employees shall be credited with 8 hours for each month of completed service.

c. Thereafter, at the beginning of each calendar and in anticipation of continued employment, employees shall be credited with one hundred twenty (120) hours of sick leave.

17.3. Sick leave credits shall not accrue during a suspension or leave of absence without pay but shall continue to accrue during a furlough extension leave or voluntary furlough.

17.4. Sick leave credits shall not accrue after an employee has resigned or retired although the employee's name is being retained on the payroll until exhaustion of vacation or other compensated leave.

17.5. An employee who exhausts all paid sick leave time in any one year shall not be credited with additional paid sick leave until the beginning of the next calendar year.

17.6. Unused sick leave shall accumulate from year to year without limit.

17.7. If an employee is absent for reasons that entitle the employee to sick leave, the employee's Commanding Officer shall be notified promptly but no later than one (1) hour prior to the employee's usual reporting time, except in cases of emergency as approved by the Commanding Officer.

a. Failure to so notify the employee's Commanding Officer may be cause for disciplinary action.

b. Absence without notice for five (5) consecutive scheduled tours of duty shall constitute a resignation not in good standing.

17.8. An employee who is absent on sick leave for three (3) or more consecutive tours of duty may be required to submit acceptable medical proof substantiating the illness and fitness for duty. Before returning to work from a sick leave of five (5) consecutive tours of duty or more, an employee must provide a physician's statement verifying that the employee may safely return to work.

17.9. An employee who has been absent on sick leave for an accumulation of ten (10) tours of duty in one (1) calendar year consisting of periods less than three (3) tours of duty, may be required to submit acceptable medical proof for any additional sick leave in that year unless such illness is of a chronic or recurring nature requiring absences of one (1) tour of duty or less in which case only (1) medical certificate shall be necessary for a period of six (6) months.

17.10. Notwithstanding the above, the City may require proof of illness from an employee who is on sick leave whenever such requirement appears warranted under the circumstances. Abuse of sick leave may be cause for disciplinary action.

17.11. The Chief of Police may require an employee who has been absent because of personal illness or injury, as a condition of the employee's return to duty, to be examined, at the City's expense, by a physician designated by the City. The examination

shall establish whether the employee is capable of performing the employee's normal duties and that the employee's return will not jeopardize the health and safety of the employee or other employees or citizens.

17.12. Any employee using paid sick leave shall be confined to the employee's designated domicile during the employee's regularly scheduled tour of duty, excepting periods of hospitalization and examinations at a doctor's office or medical facility, and visits to a local drug store for purposes of obtaining medications.

17.13. An employee using paid sick leave shall not engage in any other work or employment during the employee's period of sick leave.

17.14. The Chief of Police may require proof of illness, accident, disability, injury, disease or death of an employee's immediate family member when the employee's use of paid sick leave is due to the serious illness or death of an immediate family member.

17.15. Failure to follow sick leave notification and verification procedures may result in a denial of sick leave for that specific absence, be considered an abuse of sick leave and/or constitute cause for disciplinary action."

11. **Bereavement Leave**

20.0. Bereavement Leave

20.1. Delete in its entirety and replace in its stead:

In the event of a death in the employee's immediate family, which for purposes of this section shall be defined as the employee's spouse, children, mother, father, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparents, spouse's grandparents, and grandchildren, the employee shall suffer no loss of regular straight time pay, up to a maximum of three (3) consecutive work days, one of which shall be the date of death or the day of the funeral.

20.2 Delete in its entirety and replace in its stead:

In the event of a death in the employee's extended family, which for purposes of this section shall be defined as the employee's brother-in-law, sister -in-law, niece, nephew, uncle, aunt, half-brother and half-sister, the employee shall suffer no loss of regular straight time pay for the day of the funeral.

Add a new subsection as follows:

"20.3. In addition to the bereavement leave provided for in this section, an employee may use any other available paid leave time."

12. **Blood Donors**

Delete this section in its entirety.

13. **Overtime**

27.6. Delete the section in its entirety and replace in its stead:

27.6. Compensatory Time. The Director of Public Safety or the Director's representative may determine, in his or her sole discretion, to offer compensatory time off (CTO) for overtime worked in lieu of cash overtime payments. Scheduling of CTO must be approved in advance by an employee's Commanding Officer but employees will be permitted to use such time within a reasonable period after making the request if such use does not unduly disrupt the operations of the Police Department.

27.6.1. CTO may accrue to a maximum of forty (40) clock hours. Employees who accrue the maximum forty (40) clock hours of CTO shall thereafter be paid cash overtime payments for all approved overtime in excess of the forty (40) clock hours maximum. (40 clock hours = 60 total compensatory time hours.)

27.6.2. The Director of Public Safety may substitute cash, in whole or in part, for CTO in any workweek or work period.

27.6.3. The Director of Public Safety may require employees to use CTO and may accordingly schedule time off for employees in his sole discretion.

27.6.4. CTO shall be calculated at the rate of time and one-half (1.5) hours of CTO for each hour of overtime work.

27.6.5. An employee shall use all of the employee's CTO no later than December 31st of the year in which the CTO is earned. The Director of Public Safety shall substitute cash for any and all CTO that is not used by December 31st.

27.7. Delete in its entirety.

27.8. Delete the section in its entirety and replace in its stead:

In calculating an employee's eligibility for cash overtime or CTO, all paid leave time, excepting sick or injured leave and compensatory time, shall be considered work hours.

14. **Detective Pay and Night Differential**

The City seeks to delete the provision at 29.7.1 allowing all employees in certain details to be paid as Detectives and 29.8 allowing night differential payments.

15. **Longevity Adjustment**

30.0 Longevity Adjustment

30.1. Amend to provide for flat dollar payments instead of percentage payments as follows:

<u>Completed Years</u>	<u>Increase</u>
5 years	\$750.00
10 years	\$1,500.00
15 years	\$2,250.00
20 years	\$3,000.00
24 years	\$3,750.00

30.2. Delete 30.2. in its entirety and replace in its stead:

"Employees hired on or after August 1, 2003, shall not be entitled to the longevity increment provided for in this subsection."

16. **Health and Welfare Benefits**

31.2. Delete in its entirety and replace with the following:

"The City agrees to pay the premiums or costs related to providing major medical and hospitalization coverage for a retired employee and the employee's spouse and eligible dependents provided the employee has retired after 25 years or more of service credit in a State or Locally administered retirement system and a minimum period of service of 25 years with the City at the time of retirement; or has retired and reached the age of 62 years or older and retires with a minimum period of service of 10 years with the City."

17. **Term**

The City proposes a four year contract commencing August 1, 2003 and terminating July 31, 2007.

18. **Fully Bargained Provision**

The City seeks to add the following section to the successor agreement:

Fully Bargained Provision

A. This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such 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.

B. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing only executed by both parties.

19. **Off Duty Employment**

The City seeks to add the following section to the successor agreement:

Off Duty Employment

A. The City retains its lawful authority to regulate off-duty police related employment of City of Paterson police officers.

B. Requests for off-duty assignments covered by the City's off-duty police related employment ordinance are strictly voluntary. No police officer shall be ordered to perform off-duty police related services that are covered by the ordinance. However, once a police officer's request for an off-duty assignment is approved by the Chief of Police and a contract is entered into with the applicant, the police officer shall be subject to an order of the Chief of Police to perform the off-duty assignment in order that the City may fulfill its contractual obligation under the contract.

C. The Chief of Police may, in his discretion, deny requests for off-duty assignments in consideration of the changing business necessities of the Police Department.

D. Off-duty police related employment will be assigned on a rotating seniority basis.

E. Employees so assigned shall be compensated at a rate of pay equal to the greater of one and a half times the employee's regular rate of pay or a flat rate to be determined through negotiations.

BACKGROUND

The City of Paterson is an urban center located in the southeast portion of Passaic County. The City serves as the county seat. It is the third largest city in New Jersey with a population (according to the 2000 Census) of 149,200. Consisting of 8.4 square miles, Paterson has a population density of 17,500 residents per square mile.

The Census figures also indicate that the City has a household income of \$32,778 and a per capital level income of \$13,257, as compared to statewide levels of \$55,146 and \$27,006 respectively. In addition, 55% of Passaic County residents living below the poverty level reside in Paterson.

For FY 2004, Paterson adopted a municipal budget of \$170,528,216. The municipal tax levy to fund that budget was set at \$74,961,000 requiring a municipal tax rate of \$16.16 per \$100 of assessed value. The ratio of assessed value to true value was 13.5% in 2004 because the City has not revalued its properties for more than 30 years. Because of this, the total tax rate for all purposes is very high and has been set at \$23.49 per \$100 of assessed value.

Applying the ratio to the tax rates yields effective rates of \$1.75 for municipal purposes and \$3.12 for the total tax rate, the highest in the county.

The bargaining units at the time of hearing consisted of 97 superior officers and 347 police officers. The latest collective bargaining agreements expired on July 31, 2003. An extended period of time elapsed prior to the filing for interest arbitration.

The record of this proceeding is voluminous and concerns many economic and non-economic issues. The City's main focus is on retention of its managerial prerogatives and on its fiscal health, factors that are asserted to support its proposals and warrant the rejection of the Unions'. The Unions' main focus is on improving its comparability levels with other law enforcement jurisdictions and reversing pay conditions that are alleged to have hindered the continuity and stability of the police force.

These main areas of focus have caused the parties to submit a wide array of documents and testimony in support of their positions. These include, but are not limited to, official budgets, annual financial statement, tax rate comparisons, dozens of labor agreements from many law enforcement jurisdictions, grievance arbitration decisions, PERC rulings and court decisions. The presentations of the City and the Unions have been expert and thorough.

Against this general background, the parties offered their respective positions on the disputed issues as well as argument evidence statutory criteria to those positions. I summarize these positions as follows.

THE UNIONS

The Unions contend that the adoption of their last offer, particularly the elimination of the two-tier pay scale system, will further the interest and welfare of the public by enhancing the ability of the Paterson Police Department to attract and retain young officers.

The Unions presented evidence showing that the two-tier pay scale system was created in 1998 when the housing police were merged with the Paterson Police Department. Prior to that time housing authority officers were in a separate unit with a lower salary schedule. The first tier provides that police officers hired prior to August 1, 1998 now reach a maximum of \$66,665 in six steps. They are all on Schedules A, B and C. All of these officers are at the \$66,665 maximum set forth in Schedules A, B and C. Officers hired after that date, including those that were employed by the housing authority, are on Schedule D and reach a maximum of \$60,755 in thirteen steps. The minimum salary on Schedule D is \$20,125. Detective Steve Olimipio, PBA President, testified at the hearing that as a result of this two-tiered system, officers doing the same jobs have different maximums and take much longer to reach those maximums. This is said to cause instability, morale problems in the department.

as well as rapid turnover. Olimpio's uncontradicted testimony is that in the past four years, 40% of the department's workforce has resigned for jobs in other police departments. In his view, "we are a training ground for the suburbs." He further testified that he has interviewed each and every officer that has left the department. According to Olimpio, all cited low pay and the length of time it takes to reach the maximum as the main reasons for leaving.

Through their PowerPoint presentation, the Unions presented an analysis that contends that half the department is eligible for food stamps and WIC benefits as a result of low pay.

Based upon the contracts placed into evidence, the Unions assert that Paterson police officers are the worst paid in Northeast New Jersey. The following chart summarizes the comparisons presented by the Unions.

Chart No. 4
Base Pay Top Step Patrol Officer Comparisons Based on PBA Exhibits

	2003	2004
West Milford		\$76,643
Asbury Park City		70,981
Clifton City	\$76,152	79,190
Elmwood Park		89,434
Englewood City		88,032
Garfield City		82,613
Hackensack City		86,346
Hawthorne	76,030	79,072
Passaic City	69,698	72,486
Passaic County Sheriff	69,395	72,171
Prospect Park		75,033
Saddle Brook	63,010	86,746
South Orange		66,792
STFA	75,565	

Union City	67,663	71,618
Wayne	91,684	95,581
West Paterson	71,206	74,054
Bergenfield		96,667
Bloomingtondale	68,651	72,674
Fort Lee	81,799	84,856
Glen Rock	82,590	85,984
Little Falls		71,325
Lodi	72,585	82,768
New Milford	75,997	78,413
Pompton Lakes	77,131	80,139
Ringwood	82,748	86,058
Rutherford		88,805
Totowa	77,020	80,176
Elizabeth	67,341	71,436
AVERAGES	\$72,844	\$80,218
PATERSON	\$60,755	
Paterson compared to Average	(\$12,089)	
	(19.9%)	

The Unions contend that because of the extremely low wages and the two-tier pay system, a traditional or average wage increase is not sufficient. The Unions assert that it is in the interest of both parties and the residents of Paterson to completely revise the compensation program. If that is not accomplished, the exodus of talented police personnel will continue thereby negatively impacting on the continuity and stability of employment.

The Unions also point to the lengthy amount of time it takes to reach maximum as causing similar impacts as low pay. On this point, the Unions submit the following chart:

Chart No. 5
Police Officer Pay Steps Comparison Based on PBA Exhibits

West Milford	6
Asbury Park	6
Clifton	8
Elmwood park	8
Englewood	5
Garfield	8
Hackensack	6
Hawthorne	7
Passaic	7
Passaic County Sheriffs	7
Prospect Park	8
Saddle Brook	5
South Orange	7
Wayne	6
West Paterson	7
Bergenfield	5
Bloomingtondale	7
Fort Lee	6
Glen Rock	7
Little Falls	7
Lodi	5
New Milford	7
Pompton Lakes	8
Ringwood	7
Rutherford	8
Totowa	5
Elizabeth	8
AVERAGE	6.48 Annual Steps
PATERSON PBA	13 Steps
Paterson Compared to Average	+6,518 Steps

Based on this data, the Unions submit that Paterson police officers must wait twice as long to reach maximum as officers in other jurisdictions. The Unions also contend that the five-step guide for Sergeants also compares unfavorably to other police departments:

Chart No. 6
Pay Steps for Sergeants Based on PBA Exhibits

	Annual Steps
West Milford	1
Asbury Park	1
Clifton	1
Elmwood Park	1
Camden	2
Englewood	3
Garfield	1
Hackensack	1
Hawthorne	1
Passaic	1
Passaic County Sheriff	2
Prospect Park	1
Saddle Brook	1
South Orange	2
Wayne	2
West Paterson	2
Bergenfield	1
Bloomingtondale	1
Fort Lee	1
Glen Rock	1
Little Falls	1
Lodi	1
New Milford	1
Pompton Lakes	2
Ringwood	1
Rutherford	1
Totowa	1
Jersey City	1
Elizabeth	3
AVERAGE	1.37 Steps
PATERSON SOA	5 steps
Paterson SOA Compared to Average	+3.63 Steps

The Unions assert that there are no benefits that serve to offset the low pay and length of time for Sergeants to reach maximum. In addition, the five step guide contains lower salary steps than exist for police officers at maximum step. Most benefits are argued to be average at best. Others such as holidays are alleged to be below average.

The PBAs contend that the wage proposals submitted by the City in this proceeding will only exacerbate the already low pay for Paterson officers in comparison with police officers in other departments. Based upon the data submitted by the Unions, contract settlements for comparable jurisdictions provided average wage increases in 2004 of 4.168%, 2005 of 4.098%, 2006 of 4.163% and 2007 of 4.204% while the City has only offered 12.5% adjustments to the salary schedule over four (4) years:

Chart No. 8
Average Base Rate Changes Based on PBA Exhibits

	2004	2005	2006	2007
West Milford		4	4	4
Asbury Park	4	4	4	4
Camden	4.5 (2/2.5)			
Clifton	4			
Englewood	4.1	4.1	4.1	
Englewood SOA	4.1	4.1	4.1	
Garfield	4	4	4.2	4.2
Hackensack	4	4	4	4
Hawthorne	4	4	4	
Passaic Sheriffs	4	5	5	
Prospect Park	4	4	4	
Saddle Brook	4.5	4.25	4.25	4.25
South Orange		4.1	4.1	4.2
Union City	4	4	4	4
Wayne	4.25			
West Paterson	4	4	4	4
Bergenfield	4.75	4.75	4.75	4.75
Bloomingtondale	4.1	4.2		
Fort Lee	3.9	3.9	3.9	
Glen Rock	4	4	4	
Little Falls		4.5	4.5	4.5
Lodi	4.25			
New Milford	4			
Pompton Lakes	3.9	3.9	3.9	
Ringwood	4			

Rutherford	4.25	4.25	4.25	4.25
Totowa	4.1	4	4.2	4.3
Elizabeth	6(2/4)			
AVERAGES	4.168%	4.098%	4.163%	4.204%

The Unions contend that an "equity adjustment" is required as a remedy. In support of its contention that an "equity adjustment" must be made to police officer salaries in order to bring them to a competitive compensation level, the Unions pointed to the salary increases granted to the Mayor, Council and department directors. They summarize their increases as follows:

Position	Percentage of Increase	New Salary
Mayor	50%	\$95,000
Council President	72%	\$35,870
Council Members	75%	\$34,870
Community Development Director	15%	\$13,330
Finance Director	25%	\$75,349
Human Services Director	15%	\$71,741

The Unions also draw attention to the testimony of Councilman Rooney who, on cross examination, stated:

"Q. Now ... with respect to your survey and experience in local government, do you recognize the need to obtain and retain talented persons to work within the City?

A. Yeah. We like that talented people want to work in the City.

Q. And do you see the value in a stable workforce?

A. Certainly. If it's stable – if the level of performance is high enough, you want to keep them. If it isn't then that's different."

The Unions submit that comparisons of police officers to private sector employment and, in fact, to other government employees who are not law enforcement officers, should not be given as much weight as comparisons to other police officers. Police officers are said to require highly specialized training, are directed to work in a very structured environment governed by statutes, court cases, explicit rules and regulations, carry a weapon and are authorized to use deadly force. They are "always on duty" meaning that they are required to respond to public safety emergencies even when not working a shift.

Through the testimony of PBA President Olimpio and their PowerPoint presentation, the Unions submit evidence that the workload of Paterson police officers has increased over the past few years. This increase is said to be coupled with a decline of 69 police officers. The police officer to population ratio of 2.5 to per 1,000 is asserted to be considerably below the average for the other major cities in New Jersey according to the following chart:

CHART NO. 2

**Police Officers to Population Ration
In the Six Largest New Jersey Cities (Source P-22)**

	<u>Police Officer/ Population Ratio</u>
Camden City	5.44
Newark	4.89
Trenton	4.35
Jersey City	3.36
Elizabeth	2.80
Paterson	2.52
Average without Paterson	4.17
Paterson Compared to Average	(1.654)
	(65.4%)

Olimpio testified that the department remained extremely busy while the number of officers was declining. In the last year, there were over 190,000 calls for service. The Unions assert that Paterson ranked first in every major crime statistic in comparison to the other towns in Passaic County, especially in violent crimes:

Chart No. 1
Relative Standing of Paterson City Among All Sixteen
Passaic County Municipalities with Respect to Measurable
Crime Statistics (Source C-46)

Uniform Crime Report Category	Relative Position Among 16 Towns	Percent Comparison to All of Passaic County
Crime Index	1	41%
Violent Crimes	1	51%
Non-Violent Crimes	1	39%
Crime Rate per 1000	1	167%
Violent Crime Rate per 1000	1	129%
Non-Violent Crime Rate Per 1000	1	130%
Murder	1	52%
Rape	1	52%
Robbery	1	58%
Aggravated Assault	1	44%
Burglary	1	54%
Larceny	1	31%
Arson	1	52%
Domestic Violence	1	49%

The Unions claim that there is support for their salary proposals because the City's fiscal health is improving. They point to a number of economic development projects that will provide additional business within the City and needed tax ratables including the following:

Lowe's
Home Depot
City Center
Allied Textile Products
Panther Academy
Transit Village
Robert A. Rowe Federal Building
Passaic County Administration Building

The Unions also assert that Moody's Investor Service, in a letter dated February 14, 2005, has upgraded the City's credit rating. This point is in reference to the City's management of its debt. The City was complemented for having an aggressive program of amortizing debt. However, the City disputes that its credit rating was upgraded. A review of the hearing transcript indicates that Chief Financial Officer Zambrano testified that Moody's Credit Service downgraded the City's credit rating by letter specifically stating that "Moody's Investor Service has actually downgraded the City of Paterson."

The PBAs contend that because of Paterson's overdue reevaluation, the equalized values are only 11% of true market value. As a result, the City's tax rate is skewed compared to other municipalities. The best way to see a true comparison of values and tax rates is to review the "net evaluation of county tax apportionment." This, according to the Unions, shows that Paterson is the third highest municipality in Passaic County in terms of valuations and that "its

effective tax rate” is more than manageable and is actually competitive with most of the towns in Passaic County.

The Unions acknowledge that the City of Paterson is not a wealthy municipality. But they contend that the fiscal trends are showing improvement. As evidence of these trends, they cite Annual Financial Statements that reflect that surplus has been regenerated for the last three fiscal years as follows:

FY2002	\$4,960,119
FY 2003	\$7,755,362
FY 2004	\$6,980,950

The Unions claim that the City is also realizing excess budget revenues of:

FY 2002	\$4,016,504
FY 2003	\$4,582,670
FY 2004	\$3,974,181

and “Miscellaneous Revenues Not Anticipated” of

FY 2002	\$440,112
FY 2003	\$619,023
FY 2004	\$770,021

and Unexpended Appropriation Reserves of

FY 2002	\$349,074
FY 2003	\$561,945
FY 2004	\$749,953

All of the above are said to have helped to produce fund balances that can be used as revenue to reduce the tax levy as follows:

FY 2002	\$9,681,927
FY 2003	\$7,755,362
FY 2004	\$6,980,090

The PBAs also cite an improvement in the City's tax collection rate as reported in the 2004 Audit as follows:

Month/Year	Percentage
June 2004	98.40%
June 2003	98.10%
June 2002	96.71%
June 2001	96.67%
June 2000	95.97%

In summary, the Unions contend the City's fiscal picture is one of improvement with significant development occurring that will result in an expanding tax base that will stabilize the tax rate.

The Unions argue that the City of Paterson does not have a budget CAP problem pointing to approximately \$4.7 million in allowances that were not utilized in FY 2005. The PBAs presented evidence indicating that the City's CAP allowance for FY 2005 was \$106,724,081 while the City utilized \$102,025,043.

The unutilized CAP allowance was "banked" by the City for future use, thus reflecting that the City is living within the CAP.

The Unions argue that the consumer price index should be given minimal weight because police officer salaries are "disgracefully low" and would remain that way by awarding the City's salary proposals.

The Unions have proposed a modification to Section 11.1 Temporary Assignments. This would eliminate the 30 day exclusionary period for work performed in a higher rank in order to receive compensation at the rate of the higher rank. The Unions contend that the language change would make the contract consistent with language in the Paterson Fire Department contracts.

The PBA's also propose a new article to govern off duty work that they contend is flexible enough to maintain the current employer job base, permit the negotiation of rates on a case by case basis, provides equal access for all officers and one that limits the ability of the City to impose an administrative fee that does not reflect actual costs.

The Unions argue that their proposal best supports the continuity and stability of employment. It is said to address the extremely high turnover rate resulting from low wages and the excessive number of steps required to reach the maximum salary levels. The Unions contend that without an "equity

adjustment" in the salary guides, Paterson will "continue the hemorrhaging of young law enforcement talent " resulting in a destabilized and inexperienced workforce.

Turning to the City's many proposed contract language changes, the PBAs argue that no evidence was presented except for arbitration awards, PERC decisions, and court decisions relating to some of the proposals. They contend that these do not provide sufficient justification to support the modifications the City has proposed.

The PBAs dispute the need to modify various terms of the grievance procedure as proposed by the City. They contend that this language has been in the collective bargaining agreement since 1976 and that no evidence was presented to establish the need for the proposed changes.

The PBAs argue that the City's proposal to eliminate Section 7.4 is unwarranted because the language that requires the City to discuss with the unions major changes affecting employees' health, welfare and working conditions before effectuating a change has been in the Agreement for almost 30 years and has been honored by the City all that time. In addition, the Unions point to the collective bargaining agreements that the City has submitted in support of its case from other municipalities that contain similar clauses to Section 7.4.

Turning to the City's proposal to eliminate Section 10.1, Maintenance of Standards, the Unions point out that this clause has been in the contract almost thirty years, that similar clauses are in the collective bargaining agreements of other jurisdictions submitted into the record by the City and one is also included in the Paterson Firefighters Association contract. The Unions argue that the only rationale submitted by the City was that this clause was utilized by an arbitrator in a decision that was later overturned by courts. The PBAs contend that the courts found that the arbitrator had misapplied this provision of the contract since the contract had already contained language dealing with the matter at hand. Thus, the Unions contend that there is nothing inappropriate about the language contained in Section 10.1 and that it should not be rescinded merely because an arbitrator was found to have misinterpreted the contract.

The Unions argue that the City's proposed changes to Sections 14.1 and 14.5 effecting terminal leave benefits are not supported by the evidence. They point out that these benefits have been in the contract for almost 30 years and should not be modified. The Unions argue that the narrow scope of an arbitration award cited by the City, that affected individuals involuntarily retired on a disability pension, should not be used to justify modifying the language in the contract. The benefit itself continues to be negotiable and the City presented no evidence to justify a change.

The Unions oppose the City's lengthy proposal to modify Article 17 Sick and Injured Leave. The Unions' take specific issue only with the proposal concerning Sick Leave Confinement in Section 17.12. The new proposal requires that an employee remain at home during their regularly scheduled tour of duty except for hospitalization, examinations at the doctor's office or visits to a drug store to obtain medication. The Unions submit that no evidence was submitted to justify this proposal and it should be rejected.

The Unions also take issue with the City's proposal under Section 20 to reduce Bereavement Leave. The Unions claim that no evidence was presented to justify the change and point out that these benefits have been in the contract since 1978. Likewise the Unions claim that there is no justification for eliminating Section 22, a provision that allows the Director of Public Safety to allow one day off to any officer donating blood to another officer.

The Unions take exception to the City's proposals under Article 27 for overtime. They argue that no evidence was presented by the City to justify the changes to language that has been in the contract for almost thirty years. The proposals would effect the accrual of compensatory time, compensation for changes to an employee's tour of duty and eliminate sick and compensatory time from the work week for the purposes of calculating overtime.

The Unions urge rejection of the City's proposal to eliminate longevity payments for new hires and to modify the existing schedule from a percentage of salary to a flat dollar amount. They contend that this would provide a disincentive for officers to continue their employment in Paterson and that a two-tiered system eliminating longevity for some officers would exacerbate the existing morale problem that exists with present the two-tiered pay system.

The Unions argue against the City's proposal to modify Section 31 concerning retiree medical benefits. The Unions point out that the City has provided retirees with health benefits since 1977 and for their dependents since 1978. They argue that the City has presented no evidence to support its proposal nor documented the amount of savings that would accrue from its elimination to an arbitrator's recent award ordering the City to continue to provide these benefits. The Award was recently confirmed in Superior Court.

The Unions also oppose the City's proposal to add a "fully bargained provision" to the Agreement. They claim that such a provision would be in conflict with Sections 7.4 and 10.1 of the existing agreement and that the City presented no rational for including such a provision.

Turning to the proposal regarding off-duty employment, the Unions acknowledge that PERC has determined that the City has a managerial prerogative to administer the program. But they claim that the terms of the

program such as rates, fees, allocation of off-duty opportunities must be negotiated. The Unions specifically argue that the City's proposal to make assignments on a rotating basis based on seniority and pay officers one and one-half times their regular rate of pay make it impractical and cost prohibitive for many Paterson businesses to hire Paterson police officers. In contrast, the PBAs' proposal would allow for the negotiation of rates on a case by case basis with the private employer, thus allowing for greater flexibility and permitting consideration of the type of services and jobs to be provided and ability of the private employer pay the hourly rate.

THE CITY'S PRESENTATION

The City of Paterson, through its witnesses and exhibits presented at the hearing, acknowledges that its police department has dedicated leadership and good officers who are entitled to wage increases. However, the City submits that it has proposed a fair and reasonable increase and that it cannot afford the proposal advanced by the Unions due to its poor financial condition. The City points to the restriction placed upon on it by the CAP law, the increasing cost of pension payments, health insurance and other costs, a stagnant ratable base and a growing number of tax exempt properties. These are said to hinder the City's ability to afford more than the proposals it has advanced.

During the hearing, City Councilman Thomas Rooney, Chairman of the Council Finance Committee, testified to the details of a study he conducted. He

testified that over the past 30 years, the City's tax exempt properties have more than doubled to \$306,000,000 and now comprise nearly 35% of the City's assessed property values.

VALUE OF PATERSON PROPERTY ASSESSED VALUES SINCE LAST REEVALUATION

Ratables			Tax Exempt		
Year	Assessed Value	% of Total Property	Year	Assessed Value	% of Total Property
72	630.1	81.3	72	145.2	18.7
73	618.5	77.6	73	178.2	22.4
74	621.7	76.1	74	195.4	23.9
75	618.7	75.1	75	204.6	25.1
76	621.0	74.9	76	207.6	25.1
77	617.2	74.0	77	216.8	26.0
78	625.1	73.6	78	224.7	26.4
79	629.5	73.5	79	226.7	26.5
80	625.9	72.8	80	234.2	27.2
81	624.2	71.8	81	245.2	28.3
82	619.9	71.6	82	245.9	28.2
83	619.6	69.8	83	268.5	30.2
84	618.4	69.5	84	271.3	30.5
85	610.8	69.2	85	271.4	30.8
86	627.3	69.2	86	278.9	30.8
87	624.6	68.4	87	289.0	31.6
88	627.2	67.8	88	298.0	32.2
89	636.4	67.9	89	300.9	32.1
90	644.7	68.4	90	298.2	31.6
91	640.1	68.1	91	300.5	31.9
92	639.5	67.9	92	303.0	32.1
93	633.0	67.4	93	305.8	32.6
94	622.9	66.9	94	307.9	33.1
95	615.5	66.2	95	314.7	33.8
96	607.8	65.8	96	315.6	34.2
97	602.4	65.5	97	317.3	34.5
98	597.4	65.2	98	318.4	34.8
99	588.8	64.9	99	318.2	35.1
00	584.9	64.9	00	316.4	35.1
01	583.4	65.4	01	309.0	34.6
02	581.0	65.6	02	304.5	34.4
03	580.2	65.6	03	303.9	34.4
04	577.8	65.4	04	305.1	34.6
05	574.9	65.2	05	306.7	34.8

Note: All values for Ratables and Tax Exempt properties were obtained from the table of aggregates supplied each year by the Passaic County Board of Taxation.

Councilman Rooney further testified that as a result of the increase in tax exempt properties "less than 2/3s of the properties in the City have to pay 100% of the tax burden."

The City also contends that the economic redevelopment that is occurring in Paterson has not been evidenced by a growth in ratables. A number of the projects the Unions have pointed to are in fact tax exempt government buildings such as the Robert Roe Federal Office Building and the Passaic County Administration Building. In addition, other projects cited have yet to be constructed. On cross-examination Councilman Rooney testified that one project, Center City, has had two groundbreakings since 1989 but has yet to be started. Councilman Rooney testified " . . . I am skeptical. When I see it I believe it. I hope it will happen but so far there's not a penny in revenue."

The City's Finance Director Anthony Zambrano offered testimony on the City's finances. He testified that Moody's Investor Service recently completed a review of the City's finances. Moody's recognized that while there is a potential for new ratables, they cannot be considered as revenue sources or when setting the City's bond rating because the development has yet to occur.

In support of its contention that the City of Paterson is in poor financial health, the City presented a Moody's Investor Service Report. This indicated that the City's bond rating has been downgraded from Baa2 to Baa3. The report

specifically cited the City of Paterson's declining fund balance as one reason for the down grade.

The City submits that its financial position is not healthy. According to the testimony of Zambrano, in past years the City has relied on a number of "one shot" revenue streams in order to balance its budget including the sale of City foreclosed properties and other City owned real estate assets. In FY 2006, the City is expecting increases in a number of expense areas including a 27th pay period costing approximately \$3,000,000, insurance increases of \$1,500,000, labor costs of 3.5%, and pension payment increases of \$1,600,000.

The City points out that pension costs will continue to escalate because municipalities are currently only paying 60% of their total pension bill. The percentage will continue to increase until 2009 when municipalities will then be paying 100%. In addition, the current fund balance has now declined from \$11,000,000 to \$1,000,000. In recent years the City had been able to anticipate as much as \$6,800,000 in surplus in its annual budget. However, for FY 2005 that figure had declined to approximately \$5,700,000 and for FY 2006 Finance Director Zabrouno testified that fund balance was down to approximately \$1,000,000.

In addition, the City contends that its revenue streams are also declining. Since 1995, state aid has been reduced from \$10,000,000 to \$3,000,000 in 2005:

Additional State Aid

Fiscal Year	Amt Received
1995	10,200,000
1996	9,000,000
1997	9,000,000
1998	7,000,000
1999	5,000,000
2000	7,000,000
2001	3,770,187
2002	3,770,187
2003	3,800,000
2004	3,400,000
2005	3,300,000

The City argues that its ability to adopt its budget and fund employee salary increases is restricted by the local government CAP law. This prohibits the City from increasing its final appropriations by more than 2.5% or the COLA whichever is less, subject to certain exemptions. The City also points to changes in the law in 2004 that eliminated a number of exemptions and reduced the allowable amount under the COLA rate ordinance to 3.5% and required that an ordinance be adopted to permit CAP banking.

The City contends that its proposed salary increases are in line with the current Consumer Price Index (CPI). The City points out that during the PBA's last contract period, the average annual increase in the CPI did not exceed 3.4%.

The City contends that its residents have a limited ability to fund additional salary increases. According to Moody's Investor Service, Paterson has "weak socio-economic indices." The 2000 Census reports that Paterson's per capita

and median family income levels are at only 50% of the state median levels. In addition, the unemployment rate as of October 2004 of 9% is nearly twice the state's unemployment rate. The number of City residents living in poverty is 22%, also more than double the state's level.

In further support of its contention that City residents have a limited ability to pay for salary increases, the City presented a special report prepared by North Jersey Media Group. The report indicates that according to U.S. Census numbers, Paterson is the disability capital of the U.S. Approximately 35% of Paterson's working age residents are disabled according to the report. While some disabled residents are able to work, almost 4,000 of the City's households, or approximately 9%, are receiving SSI income. This is twice the national rate.

The City contends that its residents are already faced with the highest tax burden in Passaic County and that this burden has been steadily increasing over the years. According to the City, the demands advanced by the PBA's will only exacerbate the tax burden of City residents.

TAX RATE BREAKDOWN SINCE 1980

Calendar Year	Municipal	School	County	County Open Space	Total
1980	2.03	1.95	1.02	0	5.00
1981	2.656	2.43	1.144	0	6.23
1982	4.513	3.029	1.118	0	8.66
1983	4.772	2.776	1.152	0	8.70
1984	4.577	3.101	1.252	0	8.93

1985	4.618	3.109	1.353	0	9.08
1986	4.60	3.024	1.436	0	9.06
1987	4.455	3.817	1.518	0	9.79
1988	5.264	5.309	1.607	0	12.18
1989	6.0226	5.7084	1.829	0	13.56
1990	6.92	5.9	2.09	0	14.91
1991	6.96	5.84	2.09	0	14.89
1992	6.59	6.03	2.49	0	15.11
1993	6.87	6.11	2.5	0	15.48
1994	7.20	6.70	2.61	0	16.51
1995	8.88	5.89	2.68	0	17.45
1996	10.17	6.66	2.77	0	19.60
1997	11.65	6.47	2.75	0	20.87
1998	12.06	6.03	2.78	0	20.87
1999	11.924	6.118	2.823	0.005	20.87
2000	11.809	6.158	2.867	0.036	20.87
2001	12.17	6.175	3.081	0.054	21.48
2002	12.376	6.205	3.47	0.059	22.11
2003	12.984	6.247	3.674	0.065	22.97
2004	13.16	6.234	4.02	0.076	23.49

A document in evidence reflects that the general tax rate is several fold more than other municipalities in the County. In addition to this chart, the County Abstract of Ratables for 2004 shows the effective tax rates:

2004 ABSTRACT OF RATABLES

Taxing Districts	Municipal Purpose Tax	Municipal Open Space Tax	General Tax Rate	Effective Tax Rate
01: Bloomingdale Boro	1.061	.026	4.390	2.740
02: Clifton City	.866	.000	3.480	2.540
03: Haledon Boro	1.119	.000	4.110	2.960
04: Hawthorne Boro	.788	.000	3.730	2.440
05: Little Falls Twp	.857	.000	3.890	2.040

06: North Haledon Boro	1.352	.000	5.040	2.030
07: Passaic City	2.705	.000	4.550	3.090
08: Paterson City	13.158	.000	23.490	3.120
09: Pompton Lakes Boro	.860	.009	4.350	2.740
10: Prospect Park Boro	1.241	.000	3.890	2.790
11: Ringwood Boro	.820	.011	4.160	2.640
12: Totowa Boro	.665	.000	2.910	2.010
13: Wanaque Boro	1.071	.010	4.820	2.790
14: Wayne Twp	.685	.021	3.300	2.190
15: West Milford Twp	1.056	.009	4.650	2.750
16: West Paterson Boro	.793	.000	3.420	2.260

The City argues that contract settlements in comparable jurisdictions for police officers support its wage proposal. The chart below summarizes the contracts that were submitted and the salary increases that were granted.

Municipality	Bargaining Unit	Contract Date	Maximum Salary Increase
City of Newark	FOP	2002	4%
City of Newark	Superior Officers	2000	3.5%
City of Newark	Identification SOA	2000	5%
New York City	Sergeant's BA	2000	5%
New York City	Lieutenant's BA	2000	5%
New York City	Detectives Endowment	2001	5%
City of Trenton	PBA	2001	3.75%
City of Trenton	SOA	2001	3.75%
City of Camden	FOP	2005	4%
City of Camden	Superior Officers	2005	4%
City of Elizabeth	PBA	2003	4%
City of Elizabeth	SOA	2003	4%
City of Jersey City	SOA	2002	3.5%
City of Jersey City	POBA	2002	3.5%

The City also points to a report issued by N.J. PERC summarizing interest arbitration awards for the period January 1, 1996, through December 31, 2004. Arbitration awards ranged from a low of 3.63% to a high of 4.24% and for voluntary settlements the range was 3.71% to 4.19%.

The City also contends that private sector salary increases support its proposal as well. It cites a report from PERC indicating that, for the period 2002 through 2003, private sector salaries increased by 2.5% in New Jersey. The report also provided statistics on government sector employment in the state indicating that federal employees increased 4.6%, state employees 2.5% and local government employees 3.2%.

Citing a U.S. Department of Labor Report on Employment and Wage Estimates, the City contends that New Jersey is the top paying area for police and sheriff officers. And in addition, police and sheriff officers employed by local governments in the Bergen and Passaic metropolitan area are among the highest paid employees in this category in the country.

The City also argues that the compensation package does not only include wages but also includes additional payments for longevity (based on an escalating percentage of salary), terminal leave, sick and injured leave, maternity leave, personal leave and holidays. All of these should be considered by the arbitrator as part of the total compensation package.

The City was critical of the PBA's position on the salary increases that had recently been granted to the Mayor, City Council and department heads. While the salary ordinance adopted in September 2004 did grant the Mayor a 50% increase in salary, the City pointed to a report that justified the increase. According to the study, prior to the adoption of the ordinance, 635 other city employees were earning a salary greater than the Mayor. Even after the adoption of the ordinance, 32 employees still received a higher salary. Councilman Rooney testified that in 1974 the Mayor had been the highest paid city official. Since that time the Mayor's salary increases had averaged only 2.25% while other employees received considerably more. As a result, the Mayor and Council salaries were increased in order to bring them in line with the salaries of other city employees.

The City submitted 2003 uniform crime reports into evidence. These reports show that Paterson's overall crime total had declined from the previous year by approximately 400 cases from 6,847 in 2002 to 6,433 in 2003. This reduced the crime rate from 45.9 per 1,000 to 42.7 per 1,000. The reduction in the overall crime rate resulted from a reduction in non-violent crimes because the violent crime rate rose from 7.8 to 8.2 per 1,000.

The City presented a number of language proposals. It characterized these proposals as simply codifying the results of scope petitions, arbitration

awards and court actions in which it prevailed. In addition, a number of the proposals are in the opinion of the City, merely "housekeeping in nature".

The City has proposed the elimination of Section 2.9. This requires the assignment of police officers while on duty to conduct a survey of businesses and to sell window shield decals. The City argues that PERC has determined that this section is not negotiable [*City of Paterson and Paterson PBA*, 30 NJ PER 153 (2004)]. The City also cited a management review report prepared by the State Division of Criminal Justice that recommended that the surveys be discontinued, particularly since on duty police officers were soliciting contributions to the PBA.

The City also proposes to eliminate the first sentence of 5.3.9.1. This requires the destruction of certain investigative records when an officer has been exonerated as part of an internal affairs investigation. The City maintains that guidelines for internal affairs investigations require that these files be maintained. The City points to *City of Paterson and Paterson PBA Local No. 1*, 30 NJ PER 153. The City goes on to propose new language that draws a distinction between personnel records and internal affair investigation records. Officers who have been exonerated will have no indication of an investigation in their personnel file. However, the records will be maintained in an internal affairs investigation file.

The City has proposed modifications to Section 5.11.1. This stipulates that employees will not be required to submit to a variety of tests such as polygraph, blood, breathe analyzer, etc. The City's new language would permit certain types of physical tests, such as breath samples, blood samples, requiring employees to speak, video recordings, participation in a line up, handwriting samples, hair and saliva samples, urine specimens, video taping and field sobriety tests. All these are said to be in accordance with Attorney General's guidelines. As justification, the City cites a scope of negotiations petition determined by PERC ruling that the language in the collective bargaining agreement was not mandatorily negotiable (*City of Paterson and Paterson PBA, id*).

The City also proposes significant changes in the grievance and arbitration procedures. While many of the changes are housekeeping in nature, others were more substantive.

The City has proposed adding the following to Section 7.1.4 "with the approval of the Chief of Police". In effect, this would require that the Chief of Police would approve any swaps of schedules between officers. Additionally, the City proposed language that would exclude the hours employees work as a result of the swap when calculating overtime or compensatory time. As justification the City again cited PERC's decision on negotiability (*City of Paterson and Paterson PBA, ibid*).

The City has proposed eliminating Section 7.4. This requires that it discuss with the PBA any major changes affecting employees' health, welfare and working conditions. The City argues that this modification is necessary since, over time, the PBA has expanded the meaning of discussion to become negotiation. Thus, by eliminating this Section, unnecessary grievances and litigation would be eliminated.

The City has proposed eliminating Section 10.1 covering Maintenance of Privileges and Benefits. The City also proposes to modify Section 10.2 that deals with changes to the educational requirements for promotion. The current language states "provide them with a full and fair opportunity to meet those requirements". The language proposed by the City would change that clause to "provide them with a reasonable opportunity to meet those requirements."

The City has proposed changing the title of Section 12 from "Table of Organization" to "Maintenance of Eligible Lists."

The City has proposed language to modify Section 14 Terminal Leave. Currently the language states that employees are eligible for terminal pay upon retirement. The proposed language would specify that they would only be eligible for terminal pay upon retirement with 25 years of service. As justification, the City cites an arbitrator's decision that found the current language was ambiguous

but still ruled that the employee was not entitled to terminal leave because he had less than 25 years of service. Under the City's proposal, only employees retiring with 25 years of service would be eligible for terminal pay.

The City has proposed an extensive rewrite of Article 17, Sick and Injured Leave. The City indicates that the most important addition is the Section that would grant the Chief of Police the right to require proof of illness when an officer is on sick leave for three or more tours of duty. The City argues that its position is supported by PERC's decision in the ***City of Paterson and PBA Local No. 1, 30 N.J. PER 153(2004)*** which held that such a clause is not mandatorily negotiable.

In regards to bereavement leave, the City has proposed changes that would limit bereavement leave for certain classes of relatives to a maximum of three consecutive work days and for the day of funeral for another class of relatives. The City also proposes eliminating Section 22 that allows the Director of Public Safety to grant an employee one day off with pay for purposes of giving blood for another officer.

The City has proposed modifications to Section 27 Overtime. The changes would modify the manner in which compensatory time is earned, accrued and used. The City cites an Appellate Division decision in ***Paterson Police PBA Local No. 1 v. City of Paterson, A-4353-03T3 (2004)*** which

overturned an arbitrator's award. The City argues that the decision allows it to impose certain limitations upon the accumulation and use of compensatory time.

The City proposes to delete the provision at 29.7.1. This section allows employees on certain details to be paid as detectives and also the deletion of 29.8, allowing night differentiation payments. The City argues that its position is supported by an Appellate Division Decision ***City of Paterson v. Paterson Police PBA Local No.1, A-5759-03T5 (2005)*** in which the court upheld the vacation of an arbitration award that prohibited the City from ending the "past practice" of paying certain employees for detective and night differential even though they were not contractually eligible for those extra payments.

The City also seeks to modify the longevity schedule that is now based upon percentages, to one based upon specific dollar amounts. The City would also eliminate longevity payments for officers hired after August 1, 2003.

The City proposes to replace the language currently in the CBA at 31.2 that deals with medical coverage for retired employees. The City seeks to clarify that it has been its intent to provide medical coverage only for those employees who have retired with a minimum of twenty-five years of service with the City or who are aged 62 or older with a minimum of fifteen years of service with the City or on a disability pension with a minimum of ten years of service with the City. The City argues that a modification to this section is necessary because an

arbitrator recently ruled that the current language permits employees to receive health benefits on retirement even though they do not have twenty-five years of service with the City of Paterson. To bolster its argument, the City points out that, under 31.3.2.1, employees are only eligible for the drug prescription plan at retirement if they have attained 25 years of service with the City, or 15 years and age 62, or five years and a disability retirement. The City claims that if the medical benefit clause is not modified to reflect the language under the prescription drug clause a violation of N.J.S.A. 40a:10-23 would occur since the contract would not have uniform conditions. The City also argues that virtually all of the other bargaining units in the City require that employees have certain years of service with the City in order to be eligible for health benefits at retirement. The City also cites PERC's decision in *Township of Pemberton and Pemberton Township PBA Local 260*, 25NJPER 369 (1999), which held:

"The employer next argues that an interest arbitrator may not rule on a proposal that would affect employees over whom the arbitrator has no jurisdiction. It cites *Manalapan Tp.*, P.E.R.C. No. 98-136, 24 NJPER 269, 270 (¶ 29128 1998).

We recently held that where an employer or a majority representative proposes to codify an existing uniform benefits, such a proposal would not affect other employees or create non-uniformity in retiree health benefits. *Borough of Matawan*, P.E.R.C. No. 99-107, 25 NJPER 324 (¶ 30140 1999). Where an employer or majority representative proposes to change or institute provisions concerning employer payment of retiree health benefits under N.J.S.A. 40A:10-23, such a proposal must be made contingent upon the uniformity requirements of N.J.S.A. 40A:10-23 being met. *Matawan; Ocean Tp.*, P.E.R.C. No. 95-12, 20 NJPER 331 (¶ 25172 1994). The concern that an interest arbitrator not issue an award that would bind another unit is addressed if any change in employer payments takes effect only when uniformity requirements are met. *Matawan*.

The PBA asserts that the employer has paid for retiree health benefits for some employees who do not have 25 years of service with the employer and that therefore it does not seek a change in benefits. The employer asserts that the PBA proposes to change retiree health benefits and create non-uniformity. Absent a showing that all employees subject to the uniformity requirements of *N.J.S.A. 40A:10-23* are currently eligible for retiree health benefits without any service requirement with this employer, we assume that the PBA's proposal, in some way, seeks to change the status quo. Accordingly, we find its proposal not mandatorily negotiable unless modified to clarify that it does not take effect until the uniformity requirements of *N.J.S.A. 40A:10-23* are met."

The City also seeks to add a new section entitled "Fully Bargained Provision." No specific argument was presented in support of this addition.

Finally, in regards to language changes, the City proposes to add a new section entitled Off Duty Employment. Currently the PBA administers an off-duty employment program whereby officers not on duty may be hired by local businesses to perform security functions. The City cites a PERC decision which upheld its right to administer the off duty employment program and to make assignments of officers subject to the Police Director's approval. [***City of Paterson and Paterson PBA Local No. 1, SN-2003-039 (2003)***] Under the City's proposal the officers would be assigned on a rotating seniority basis and the rates would be based upon the officer's salary at time and a half or a flat rate to be determined through negotiations.

The City argues that based upon the poor economic health of Paterson, its entire proposals must be awarded. Otherwise, in its view, the City's governing body may be forced to eliminate existing programs or raise the property taxes of its already over burdened residents. The City also contends that the evidence it presented in regards to increases in cost of living and both private sector wage increases and increases for police officers in comparable jurisdictions support its position over the position advanced by the Unions.

DISCUSSION

The City and the Unions have offered testimony and considerable documentary evidence in support of their last offers. Each submission was expert and comprehensive in nature. The entire record of the proceeding must be considered in light of the statutory criteria. 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 find relevant to the resolution of these negotiations. 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, 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 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 the 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 employees' 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 on 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 its proposed 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.

In interest arbitration proceedings, it is traditional that the party seeking to change the conditions of employment bears the burden to prove the basis for such modifications. I apply that principle as part of my analysis to each of the issues in dispute. The issues in dispute are both economic including wages, overtime, bereavement leave, terminal leave, longevity, health benefits, detective pay, night differential and off duty employment; and non-economic including recognition, association security and privileges, police officer rights, grievance procedures, maintenance of standards, table of organization, leave procedures, blood donors and fully bargained provisions. While I must address the merits of the disputed proposals individually, I refer to criterion N.J.S.A 34:13A-16(g)(8), which that directs the consideration of factors ordinarily or traditionally considered in a determination of wages and benefits. One such element requires

a consideration be given to the totality of the changes to be made to an existing agreement. This consideration is consistent with the statutory requirement that the arbitrator must determine that the total net annual economic changes for each year of the agreement are reasonable under all the criteria. Thus, any decision herein to award or deny any individual economic issue in dispute will include consideration as to the reasonableness of the individual issue awarded in relation to the terms of the entire award. On non-economic issues, the burden to be met must be at a level beyond merely a request for change without evidentiary support.

ISSUES IN DISPUTE

The City has proposed several language changes in non-economic areas that it has termed as merely "housekeeping". In view of that fact the PBA did not object to certain changes and having reviewed each to determine that they are consistent with their stated intent, I award the following language modifications. Section 1.1 RECOGNITION change Police Division, Department of Public Safety to Police Department; Section 12.1 change the title Table of Organization to Maintenance of Eligible List.

Grievance Procedure

The City has proposed extensive changes in to the parties' grievance and arbitration provisions. These provisions appear in Section 6. Some of the City's

proposals are meant to clarify or correct existing language. Upon review of these proposals, I award the following:

6.2.2. Delete “announce the appeal of a” and replace with “submit the” in the last sentence.

6.2.3. Correct “ad” to “and.”

The remaining proposals extend beyond clarification and correction and there is insufficient record evidence to support the changes proposed.

Bereavement Leave

The City has proposed three changes in the bereavement leave provision set forth in Section 20. The first proposal is to change Section 20.1 to limit immediate family bereavement to three consecutive work days, one of which shall be the date of death or the date of funeral in contrast to the existing provision that grants leave from the day of death through and including the day after the day of burial. The second proposal would change Section 20.2 that grants one working day leave in case of the death of certain specified relatives. The City would specify that the day must be the day of the funeral. The third proposal would be to add a new Section 20.3 stating that an employee may use any other available paid leave time in addition to the bereavement leave provided for in Section 20.0.

There is insufficient evidence to support the changes proposed by the City. Therefore the bereavement leave proposals are denied.

Blood Donors

The City has proposed to delete Section 22.0 that states, at Section 22.1: "At the sole discretion of the Director of Public Safety, an employee may be granted one (1) day off with pay for the sole purpose of giving blood for a brother officer." The record does not reflect the number of days that a police officer is granted a day off to give blood for a brother officer. Further, given the fact that this provision operates "at the sole discretion of the Director of Public Safety," I find insufficient justification to award the deletion.

Maintenance of Standards

The City proposes to delete the Maintenance of Standards provision set forth in Section 10.1. That provision now states:

- 10.1 All the rights, privileges, and benefits which the employees covered by this Contract enjoyed prior to the effective date of this Contract are retained by the employees except as those rights, privileges, and benefits are specifically abridged or modified by this Contract, and the Rules and Regulations except as otherwise prescribed by law.
- 10.2 In the even that the City establishes any change in the educational requirements for promotion which may be applied retroactively to incumbent employees covered by this Contract, it shall immediately notify all incumbent employees of the changes and provide them with a full and fair opportunity to meet those requirements.

The City also proposes to add the following language to the end of the sentence in Section 10.2: "... provide them with a reasonable opportunity to meet those requirements."

The record reflects that Section 10.1 is a provision that has been in the Agreement for a very long period of time. The City has presented evidence that one arbitrator improperly used this provision to supercede clear contract language. The City succeeded on this appeal thus enforcing that portion of Section 10.1 that prohibits the maintenance of a claimed right if doing so would modify or abridge a provision of the Agreement. The decision of the court defines and limits the extent to which Section 10.1 applies to a grievance. Based upon this, there is insufficient justification to delete Section 10.1. Section 10.2 would delete "full and fair" and replace those words with "reasonable." The reference is to providing an incumbent employee with an opportunity to meet educational requirements for promotion that have changed. It may be that the term "reasonable" opportunity represents a more narrow obligation than a "full and fair" opportunity. However, there is insufficient evidence that the existing standard has somehow affected the City in any adverse manner that would be rectified by the proposed change. Accordingly, I deny the City's proposals with respect to Sections 10.1 and 10.2.

Fully Bargained Provision

The City has proposed a new provision it identifies as a “fully bargained provision.” The proposal states:

A. This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such 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.

B. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing only executed by both parties.

This proposal has merit to the extent that this proposal relieves the parties of any obligation to negotiate language that could have, and should have, been raised during the negotiations process after that process has been completed. Upon the conclusion of this Agreement, neither party should be allowed to demand negotiations over any issue that could have been raised unless it mutually agrees to do so or is required to do so by the provisions of the New Jersey Public Employee/Employer Relations Act. I award the following modifications to the City’s proposal to reflect these principles. The remaining part of the proposal extends well beyond these principles and there is insufficient justification for those proposed changes:

A. This Agreement represents and incorporates the complete and final understanding and settlement by the parties.

During the term of this Agreement, neither party will be required to negotiate with respect to terms and conditions of employment unless they mutually agree to do so or are required to do so by the New Jersey Employee/Employer Relations Act. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing only executed by both parties.

THE PERC RULINGS

Some of the City's proposals flow from recent PERC rulings dealing with this Agreement. The City filed scope of negotiability petitions with PERC on a number of sections of the contract. As a result of PERC's rulings, the City has proposed the elimination or modification of contract language. I have reviewed each of the City's proposals to ensure consistency with the decisions rendered by PERC and after doing so, I award the following City proposals.

Security Shield Excusal

Section 2.9 requires the assignment of police officers while on duty to survey and distribute security shield decals to local business establishments. Consistent with the PERC decision, this language shall be deleted.

Police Officer Rights

Section 5.3.9.1, Police Officers Rights, shall also be modified consistent with the PERC rulings. Delete the first sentence and replace it with the following: "Records of Internal Affairs investigations shall be maintained in accordance with the records retention and disposition schedule for local police departments

issued by the New Jersey Division of Archives and Records Management and in accordance with the Internal Affairs Policies and Procedures established by the New Jersey Attorney General's Office." Section 5.11.1 shall be deleted and replaced with the following: "No employee shall be ordered to submit to a polygraph or other form of lie detector test unless the employee voluntarily requests to take such examination. However, employees who are the subjects of Internal Affairs investigations, may be compelled to submit to various forms of physical tests (e.g., breath sample, blood sample, requiring employees to speak, voice recordings, participation in a line up, handwriting samples, hair and saliva samples, urine specimens, videotaping and field sobriety tests) all in accordance with the Internal Affairs Policies and Procedures issued by the Attorney General of the State of New Jersey, revised in 2000 and as may be amended from time to time and adopted by the Department."

Work Schedules and Conditions

Section 7.1.4, Swaps shall be modified by adding "with the approval of the Chief of Police" at the end of the first sentence. This is consistent with the PERC decision. The City had an additional proposal under this section dealing with the calculation of overtime and compensatory time which was not part of the PERC rulings and will be dealt with separately.

The City has also proposed to delete Section 7.4 in its entirety. Section 7.4 now states:

All major changes affecting an employee's health, welfare, working conditions, including Division Rules & Regulations, will first be discussed with the Association President prior to the decision being made to effect such change.

This provision has not been shown to be unworkable or adversely affect the City's ability to make changes that are within its lawful or contractual authority. For this reason, this proposed change is not awarded.

Sick and Injury Leave

PERC has ruled that Sections 17.1 and 17.2, Sick and Injured Leave, as currently written is not mandatory negotiable because it restricts the ability of the City to require a doctor's note upon return of an employee from sick leave. As a result, the City has proposed an extensive rewrite of the entire article including the deletion of Section 17.1 that, as phrased, does not allow for docking for any occurrence of sick leave. Sections 17.1 and 17.2 shall be deleted. The proposed language changes extend well beyond the PERC ruling. I will limit the award to language concerning sick leave verification and the proper use of sick leave. The following language is awarded:

17.___. An employee who is absent on sick leave for three (3) or more consecutive tours of duty may be required to submit acceptable medical proof substantiating the illness and fitness for duty. Before returning to work from a sick leave of five (5) consecutive tours of duty or more, an employee must provide a physician's statement verifying that the employee may safely return to work.

17.____. An employee who has been absent on sick leave for an accumulation of ten (10) tours of duty in one (1) calendar year consisting of periods less than three (3) tours of duty, may be required to submit acceptable medical proof for any additional sick leave in that year unless such illness is of a chronic or recurring nature requiring absences of one (1) tour of duty or less in which case only (1) medical certificate shall be necessary for a period of six (6) months.

17.____. Notwithstanding the above, the City may require proof of illness from an employee who is on sick leave whenever such requirement appears warranted under the circumstances. Failure to follow sick leave notification and verification procedures may result in a denial of sick leave for that specific absence. Proven abuse of sick leave may be cause for disciplinary action.

17.____. The Chief of Police may require an employee who has been absent because of personal illness or injury, as a condition of the employee's return to duty, to be examined, at the City's expense, by a physician designated by the City. The examination shall establish whether the employee is capable of performing the employee's normal duties and that the employee's return will not jeopardize the health and safety of the employee or other employees or citizens. In the event that such examination results in the unnecessary delay of an officer's return to work from the date the officer sought to return the officer shall have his time restored.

17.____. An employee using paid sick leave shall not engage in any other work or employment during the employee's period of sick leave.

17.____. The Chief of Police may require proof of illness, accident, disability, injury, disease or death of an employee's immediate family member when the employee's use of paid sick leave is due to the serious illness or death of an immediate family member.

ARBITRATION AND COURT DECISIONS

The City has also proposed the elimination of certain sections and modifications to existing language that it contends are supported by grievance

arbitration awards and/or court actions vacating or sustaining such awards.

Litigation between the City and the Unions involve the following cases:

- City Exhibit 3A Paterson PBA Local 1 and SOA v. City of Paterson, Superior Court of New Jersey Appellate Division, Docket No. A-4353-03T3 decision dated December 22, 2004 confirming the trial court vacating the award of Arbitrator Thomas Ziccardi
- 3B Order of Superior Court Judge George E. Sabbath dated March 25, 2004 vacating the award of Arbitrator Thomas Ziccardi
- 3C Award of Arbitrator Thomas Ziccardi in Docket No. AR-2003-697 (Comp Time Accumulation) dated November 26, 2003
- 4 City of Paterson and Paterson PBA Local 1, PERC Docket No. CO-2003-269 and 270 PERC Decision dated March 31, 2005 granting the City of Paterson's request for summary judgment and dismissing the complaints concerning compensatory time
- 5A City of Paterson and Paterson PBA Local 1/SOA, Superior Court of New Jersey, Appellate Division Docket No. A-5759-03T5 March 16, 2005 decision of the Court affirming Judge Humphreys' vacating the arbitration award of Thomas Ziccardi dated October 20, 2003
- 5B Superior Court of New Jersey, Chancery Division, Passaic County Docket No. C-140-03 Order denying motion for reconsideration dated May 25, 2004 by Judge Burrell I. Humphreys
- 5C Superior Court of New Jersey, Law Division, Passaic County Docket No. C-140-03 Opinion of Judge Burrell I. Humphreys vacating the arbitrator's decision
- 5D Award of Arbitrator Thomas Ziccardi in Docket No. AR-2003-576 (Detective Pay and night differentials) dated October 20, 2003

I next review each of the City's proposals.

Terminal Leave

The City has proposed to delete Section 14.1, Terminal Leave, and replace it with the following language. "After 25 years of service as an employee of the City, the employee shall upon retirement be entitled to receive a lump sum payment equal to 720 work hours based upon the employee's regular hourly rate of pay."

Under the City's language change, only employees with 25 years of service with the City of Paterson would be entitled to the terminal leave benefit. The City argues that it is merely attempting to clarify that this benefit all along was only intended for employees with 25 years of service with the City of Paterson and not simply for those employees who may be retiring from City employment having also served in other jurisdictions and who have less than 25 years of service with the City. In support of that claim, the City cites a grievance arbitration award that was in favor of the City. The award denied terminal leave benefits to an employee retiring on disability with less than 25 years of service with the City, although the employee had a total of 25 years of service as a police officer. In this regard, the award sustained the position the City is now proposing. In fashioning his award, the grievance arbitrator cited the totality of the language in the existing contract and the past practices of the parties. The arbitrator determined that the intent of the word "retirement" meant an employee

who had at least 25 years of service with the City of Paterson. The City is concerned that the existing language is subject to interpretation. The City's proposed modification will clarify the language, end any ambiguity that may exist with the current language and mirror the interpretation of that language consistent with the prior arbitration award. Accordingly, the City's proposed language modification for Section 14.1 is awarded as follows:

"After twenty-five (25) years of service as an employee of the City the employee shall, upon retirement, be entitled to receive a lump sum payment equal to seven hundred twenty (720) work hours based on the employee's regular hourly rate of pay."

Overtime

The City has made several proposals under Article 27 Overtime that would primarily affect the manner in which compensatory time is earned, accumulated and used. As its main justification, the City cites a grievance arbitration award that it had initially lost. However, in turn, the City appealed the award. The award was then vacated by a trial court judge. That decision was subsequently upheld by the Appellate Division. The case concerned a memorandum issued by the City that limited the amount of compensatory time police officers could accumulate, when they could utilize such time and whether such time could "be cashed out". The modifications proposed by the City are not unwarranted because the memorandum at issue that resulted in the grievance resulted in a decision that supported the City's interpretation of the existing contract language. Specifically, the Trial Court stated, "I find that the contract language is not ambiguous and does not suffer from any lack of clarity." Consequently, because

the City and the Unions are bound by the decision of the Appellate Division there is no need for the language modification proposed by the City because the parties are bound by the court's interpretation. I award no other changes to the parties' Agreement on the use of compensatory time or the calculation of overtime.

Call In Pay & Authorized Leave

The City has also proposed eliminating two other benefits set forth in Sections 27.7 and 27.8. These concern call in pay and whether authorized leave time can be considered part of the workweek when calculating overtime pay. These two issues were not ones that were either addressed by PERC or by grievance arbitration or court decisions. Insufficient evidence was presented by the City to support either of these changes. Thus, I find the City has not met its burden for the changes it has proposed to Article 27.

Detective Pay & Night Differential

The City proposes to delete Section 29.7.1 which provides detective pay for officers assigned to certain divisions within the department. The City also proposes to delete Section 29.8 which provides for a night differential for employees working certain defined shifts. As justification, the City again cites the fact that the Court vacated an arbitrator's award. The City's reliance on the Court cases to support its argument for the elimination of these two sections is not warranted. The grievance award held that the City was obligated to maintain a

past practice wherein the City had permitted certain officers not enumerated in Section 29.7.1 to receive detective pay regardless of the fact that they were not specifically listed. This award was appealed by the City and vacated by the Court. The City had also allowed certain officers who did not meet the eligibility criteria under 29.8 to continue to receive night differential payments as well. The arbitrator in the grievance matter had allowed those practices to continue as binding and enforceable past practices. The grievance arbitrator found that "the City contends only those officers who serve in the departments specifically mentioned in 29.7.1 and 29.6.2 are entitled to the \$2,000 per year differential." The City maintained that the arbitrator modified or abridged the contract. The court, ruling in the City's favor, found that the contract language is clear as to which officers are eligible for the payments and, therefore, the past practice was held to be contrary to the contract and unenforceable. This left the City with the language interpretation it had sought. The City now proposes modifications that would eliminate these two long-term contractual benefits. The elimination of these benefits goes well beyond the Appellate Division decision that allowed the City to end practices in which it had previously allowed employees to receive benefits for which the court found they were not eligible to receive. Thus, the decision supported the City's reliance on the contract language. The City's proposals would now eliminate detective pay and night differential from the Agreement thereby rescinding the existing contractual benefits. The City has not presented sufficient evidence to meet its burden to eliminate these benefits and its proposals are not awarded.

Health Benefits for Retirees

The City has also proposed modifying health benefits for retirees and their dependents. The current language obligates the City to provide such benefits when an employee retires on a paid pension. The City proposes to impose certain years of service time limits before an employee becomes eligible for such coverage. As justification for this proposal, the City makes similar contentions here that it previously made before a grievance arbitrator. The arbitrator ruled against the City's interpretation. The City appealed the decision. After review of the City's appeal, a Superior Court Judge dismissed the appeal and affirmed the arbitrator's award. Because the City's reasoning and legal positions have already been rejected by a grievance arbitrator and the Superior Court, I decline, in the absence of compelling evidence to the contrary, to reverse an existing interpretation of this provision that has been affirmed on judicial review.

Off Duty Employment

Both parties have submitted proposals concerning off duty employment. This matter was the subject of a PERC decision that determined that the City has a managerial prerogative to administer the off duty employment program but that the City must negotiate certain of its terms. The Unions have expressed concern in two areas of the City's proposal. First, that employees will be compensated at one and a half times their regular rate of pay. The Unions assert that this might be too high of a financial burden on Paterson's business community. However,

the City's language states ... "or a flat rate to be determined through negotiation". Secondly, the Unions propose that they shall have the right on a quarterly basis to demand and examine justification for any administrative fee charged by the employer. Since local governments may only establish an administrative fee by ordinance which requires two readings before council and a public hearing, the Unions' concern would appear to be addressed by these requirements. However, in order to ensure that the Unions' concerns are met, I will add the following additional paragraph to the language proposed by the City with a limited modification. "F. The City retains the right to impose an administrative fee to recoup the costs of administering the off duty employment program. Fees will be established by ordinance. The City will provide, upon request of the Unions, an annual breakdown of administrative costs associated with the off duty employment program." Accordingly, I award the following language:

A. The City retains its lawful authority to regulate off-duty police related employment of City of Paterson police officers.

B. Requests for off-duty assignments covered by the City's off-duty police related employment ordinance are strictly voluntary. No police officer shall be ordered to perform off-duty police related services that are covered by the ordinance. However, once a police officer's request for an off-duty assignment is approved by the Chief of Police and a contract is entered into with the applicant, the police officer shall be subject to an order of the Chief of Police to perform the off-duty assignment in order that the City may fulfill its contractual obligation under the contract.

C. The Chief of Police may, in his discretion, deny requests for off-duty assignments in consideration of the changing business necessities of the Police Department.

D. Off-duty police related employment will be assigned on a rotating seniority basis.

E. Employees so assigned shall be compensated at a rate of pay equal to the greater of one and a half times the employee's regular rate of pay or a flat rate to be determined through negotiations.

F. The City retains the right to impose an administrative fee to recoup the costs of administering the off duty employment program. Fees will be established by ordinance. The City will provide, upon request of the Unions, an annual breakdown of administrative costs associated with the off duty employment program.

Temporary Assignments

The Associations propose a modification to the provision on temporary assignments. The current language states:

11.0 Temporary Assignments

11.1 When an employee is assigned to perform the duties of a higher rank for thirty (30) consecutive working days or more, the employee so assigned shall be paid the rate of the first step of the higher rank for the entire period in which the employee has performed the duties of the higher rank.

11.2 Employees who are assigned to work the "4 and 4" schedule and are temporarily assigned for training purposes (2 weeks or less), shall not have their pay reduced, nor shall they be required to work longer than employees who are not assigned to Patrol.

The proposal would change paragraph 11.0 as follows:

Temporary Assignments – The Associations propose that the current thirty (30) day exclusionary period for work performed in a higher rank be removed so that there is no waiting time and persons assigned to work in a higher rank would be compensated

at the rate of said higher rank from the outset of the service being performed. This was described as the same provision as currently exists in the Paterson Fire Department contracts.

The Unions have made reference to a similar provision that exists in the fire department. That provision states:

18. Acting Officer

18.10 Any employee who serves in an acting capacity in a higher classification at any time, shall upon completion of a total seven (7) days, once in a career, receive the rate of pay for the higher classification from and after the seventh (7th) working day.

18.11 Any employee who works in said acting capacity for more than two (20 hours on a tour shall be credited with one (1) day toward the seven (7) working days. If the seven (7) days have been reached, he shall be paid at the higher rate.

18.12 Any employee who is recalled to duty and acts as a officer in a higher capacity shall be credited with one (1) day toward the seven (7) working days.

18.13 Management shall not arbitrarily relieve any employee from an acting assignment for the sole purpose of preventing him from serving the required number of days specified in this Article.

The proposal to modify the current thirty (30) day exclusionary period has merit in that it is not reasonable for a police officer to work as long as thirty (30) days in a higher rank in order to receive acting pay. However, the PBA's proposal goes too far in the modification it seeks. The fire department provision has only limited applicability to the police department given the sharp differences in the mission of each department and the Unions have not established that there must be a parallel provision for police officers that mirror the one for firefighters.

However, it is reasonable for there to be compensation for acting in a higher classification for periods less than thirty (30) days. Accordingly, I modify paragraph 11.1 to read:

11.1 When an employee is assigned to perform the duties of a higher rank for fourteen (14) consecutive working days or more, the employee so assigned shall be paid the rate of the first step of the higher rank for the entire period in which the employee has performed the duties of the higher rank.

Longevity

The City has proposed modifications to the Article on longevity. It would convert the existing schedule, based on a percentage of salary, to one based on flat dollar amounts. In addition, The City would eliminate the benefit for any employee hired after August 1, 2003. The City submitted a number of contracts from comparable jurisdictions in support of its arguments during this proceeding. A review of those contracts indicates that all except New York City detectives provide for a longevity schedule based upon a percentage of salary. The New York detective schedule provides payments considerably in excess of those proposed by the City. In addition, Paterson's fire fighter contract also provides for the same schedule of longevity benefits as is now included in the PBA and SOA contracts. Finally, none of the contracts presented by the City eliminates longevity for future hires. These considerations do not stand alone. An additional factor is the very high rate of turnover for police officers in Paterson. This evidence is uncontradicted. The modification sought by the City could reasonably adversely affect the continuity and stability of employment of the

City's police officers and would not be in the public interest. In the absence of evidence that the turnover rate has eased, I decline to award a proposal that would adversely effect current and existing compensation levels for Paterson's police officers. Accordingly, I find that the City has failed to meet its burden to sustain its proposals. Therefore, they are denied.

Salary

Turning to the issue of wages, the Unions seek an annual salary increase of 6% in each of the four years of the proposed agreement, a modification to the salary guide which will reduce the number of steps required to reach the maximum salary, and the elimination of the two tiered pay system so that all officers are on one salary guide with one maximum salary. The Union's propose annual wage increases as follows:

1. Wage Increase –

- A. The Associations propose an across-the-board six percent (6%) annual wage increase at in each of the four (4) years.
- B. The PBA proposes a modification of the Salary Guide.

The City proposes the following wage increases:

A. For the PBA as follows:

- August 1, 2003 – 3%
- August 1, 2004 – 3%
- August 1, 2005 – 3.25%
- August 1, 2006 – 3.25%

B. For the SOA as follows:

August 1, 2003 – 3%
 August 1, 2004 – 3%
 August 1, 2005 – 2.75%
 August 1, 2006 – \$2,825 lump sum payment

In addition, the City proposes that the arbitrator not adjust the salary guides as the Union's propose but instead permit the parties to negotiate mutually agreeable adjustments to the salary guides.

I first turn to the estimated costs of the parties' proposals. The roster provided to the arbitrator appears to be effective as of October 2005. It indicates that the base salary for the patrolmen and detectives is \$16,876,445. I have computed the projected costs of the annual increases for the parties' proposals for this unit based upon percentage changes to the existing salary schedules:

PBA

Base Salaries	8/1/03	8/1/04	8/1/05	8/1/06	
	6%	6%	6%	6%	
\$16,876,445	\$1,012,587	\$1,073,342	\$1,137,742	\$1,206,007	\$4,429,678

City

Base Salaries	8/1/03	8/1/04	8/1/05	8/1/06	
	3%	3%	3.25%	3.25%	
\$16,876,445	\$506,293	\$521,482	\$581,887	\$600,798	\$2,210,461

For the Superior Officers unit, the PBA proposes SOA increases as follows:

SOA

Base Salaries	2003 6%	2004 6%	2005 6%	2006 6%	
\$8,004,216	\$480,251	\$509,068	\$539,612	\$571,989	\$2,100,920

City

Base Salaries	2003 3%	2004 3%	2005 2.75%	2006 \$2,825	
\$8,004,216	\$240,126	\$247,330	\$254,750	\$274,025	\$1,016,231

The projected costs do not take into consideration the PBA's proposal to modify Schedule D from 13 to 5 steps. This would yield a substantially higher projected cost over the 6%.

It is obvious from the projected costs set forth above that the Unions and the City are light years apart on the issue of salary increases. This is due to the City's focus on what it believes its finances will allow compared to the Unions' focus on comparability, the elimination of the two-tier salary schedules and the elongated steps on salary Schedule D.

In evaluating and weighing the relevant factors that would support a reasonable determination of the wage issues, I note that both parties have made reasonable arguments as to what points must be considered. It cannot be denied that Paterson is not a wealthy city. The budget data reflects that the City does not have a strong financial foundation. The Unions, however, argue that the City's ratables are improving and cited many new businesses which have gained approval to undertake construction. The City has responded that

redevelopment has not yet yielded the enhancements the Unions have envisioned. It is also undeniable that the existing wage structure for police officers compares unfavorably both within the County of Passaic, in surrounding communities as well as with other urban municipalities. As of this date, the number of police officers (182) on Schedule D, with a maximum of \$60,755, exceeds the number of police officers (165) on Schedules A, B and C who have a maximum of \$66,665. All new hires are placed on Schedule D.

The Unions have presented a strong case that Paterson's police officers (considering the total complement of 347) are the lowest paid among comparable jurisdictions including urban units such as Elizabeth, Jersey City, Newark, Camden and surrounding communities such as Clifton, Passaic, West Paterson and Hackensack. The Unions have also documented that the officers on Schedule D take almost twice as long as the average police officer in other jurisdictions to reach their maximum salary levels. The average number of steps in comparable jurisdictions is 6.48 while in Paterson it is 13. The Unions have also submitted evidence concerning the high turnover rate of Paterson police officers, particularly at the lower end of the salary scale where salaries commence at \$20,125. This salary is the lowest among all labor agreements in evidence. Turnover rates may also be aggravated by the fact that the salaries on each step of Schedule D have been frozen since November 1, 1998. Also, Paterson police officers work in a challenging and dangerous environment with a significant crime rate that generates a high level of police activity.

While the above facts must be given serious consideration, I must also closely examine evidence submitted by the City that relates to the financial impact of the salary terms that are awarded. The City is not in a strong financial position. Ratable growth, while long anticipated, has not actually occurred. Surpluses have declined over the recent years as more surplus has been drawn down to the next budget years in an effort to offset higher tax increases. State aid has been substantially reduced over the past several years. The City's residents represent a diverse socio-economic mix with high poverty and disability levels that impact upon the City's ability to tax its residents' for revenues that would be required to fund the raises proposed by the Unions, especially in light of state aid reductions and declining surplus balances.

In addition to determining what the wage increases shall be, there are additional issues that relate to the distribution of the increases due to the unique circumstances surrounding the past development of multiple salary guides. The City once absorbed housing authority police and created Schedule D. Schedule D has been shown to be a major factor in causing turnover. The City has argued that the parties should be permitted to develop their own salary guides through negotiations and that this matter should not be addressed by the arbitrator. However, the parties have had ample opportunity to do this during their negotiations. They were unsuccessful not only on the amount of salary increases but also on salary structures. This issue is now properly part of these

proceedings and I am obligated to evaluate whether there should be changes made in the salary schedules.

The statute requires that I render an award that represents a reasonable determination after giving due weight to the statutory criteria deemed relevant for the resolution of the dispute. An adoption of the City's salary proposal based predominantly upon its financial position would not be reasonable because it would further the disparities in salaries between its police officers and those employed in both other urban jurisdictions and in the municipalities that surround the City of Paterson. The continuity and stability of employment for the City's police officers would continue to be adversely affected given the undisputed evidence that reflects extremely high turnover, especially among those with less seniority. The interests and welfare of the public are not furthered by such high turnover in a high crime rate environment in addition to having to shoulder the expenditures associated with the constant hiring, training and departure of new police officers. Notably absent from the City's proposal is any effort to revise Schedule D. This schedule now houses a majority of the City's police officers and will eventually house them all. The maximum, set in 1998 by the mutual agreement of the parties, has been frozen thereafter. That maximum is now over 10% below that in Jersey City, Newark, Elizabeth and Camden (in 2003) and more than 20% below that (in 2003) of West Paterson, Clifton, Hackensack and Passaic. I recognize that Schedule D is the result of an agreement between the

City and the PBA's prior negotiations team. Nonetheless, there is justification for revisions in Schedule D.

On the other hand, an adoption of the Unions' salary proposal based predominantly upon addressing unfavorable comparisons and the problems linked to Schedule D would also not be reasonable. The expenditures that would be required to fund the proposed higher than average wage increases for those on Schedules A, B and C, the achievement of parity between police officers on salary Schedules A, B and C with those on Schedule D, and the halving of the number of steps on Schedule D would be so substantial as to cause adverse financial impact upon the governing body, its residents and taxpayers and would also have grave implications on the City's ability to comply with its statutory spending limitations.

The criteria emphasized by the parties; spending limitations, financial impact on the City, law enforcement comparability and continuity and stability of employment are relevant and entitled to more substantial weight than the others. The interests and welfare of the public is an overriding factor and is furthered by a careful balancing of the aforementioned criteria. Consideration must also be given to the cost of living, the overall benefits police officers currently receive and comparisons to non-law enforcement employees and private employees although, on this record, these factors warrant less weight.

As stated above, an award must be fashioned that represents a reasonable determination of the disputed issues. This can best be achieved by awarding salary increases less than that proposed by the Union but more than that proposed by the City. The distribution of the salary increases should allow for a reduction in the number of steps on salary Schedule D mainly for the purpose of improving salary minimums. It is also appropriate to begin a shift that moves the salary maximum set forth in Schedule D closer to the salary maximum set forth in Schedules A, B and C in an attempt to ease the existing disparity between the schedules. If Schedule D contained a salary maximum that was near, at, or above the levels established by the comparable jurisdictions, there would be less justification for easing the disparity between the salary schedules. But this is clearly not the case. These objectives must be achieved within the City's statutory spending limitations and without adverse financial impact on the City and its taxpayers.

I start first with contract duration. A five (5) year, rather than a four (4) year contract would better serve the interests of the parties and the public. The prior agreement expired on July 31, 2003. The parties did not proceed to arbitration hearing until April 2005. At this point, a four year agreement would have only one remaining year by the time the award is implemented. Stability and economy require a greater period of time until contract expiration. In addition, a five year term will provide more time to address the issues that arise relating to Schedule D.

In summary fashion, I award the following. The salary portion of this Award as it relates to Schedule D will reduce the number of steps from 13 to 11 and provide 4.75% increases in each of 5 years at each step on Schedule D. For those officers on Schedules A, B and C, there will be 3.75% increases in each of 5 years at each step. For superior officers there will be 3.75% increases in each of 5 years in order to maintain the existing differentials between superiors and subordinates. The Sergeant's guide at Schedule B will be eliminated to avoid the potential that newly promoted Sergeants receive substantially less salary than the police officers they supervise. Due to financial considerations, the effective dates of these increases shall be on January 1 of the next calendar year rather than, as now, August 1 of the year that the contract years commence.

The costs of this approach can be projected but cannot be precise due to retirements, the high rate of turnover, promotions and the overall change in staffing levels over the five year period. Costs have been calculated based upon an October 2005 roster that reflects 182 employees on Schedule D, 165 employees on Schedules A, B and C and 97 superior officers.

Due to the deferral formula I have adopted, there is a cost difference between annual rate increases and their actual payouts. When the costs of the increases for both units are calculated together based upon the number of employees in all classifications, the annual rate increase is 3.99%. The

movement of the effective date of each increase from August 1 to January 1 of the succeeding year causes the annual payout (based upon contract year August 1 through July 31) for each increase to be seven-twelfths (7/12ths) of what the cost of each increase would be had that increase become effective on August 1. Thus, the 3.99% annual rate increase for 2003-04 nets out at 2.32%. However, the amount of rate increase that is not paid out annually (five-twelfths (5/12ths)) will roll over into the next year as if it had been paid out because the gross payroll figure for the succeeding year will then reflect the full amount of each percentage salary increase. The deferral will yield a reduction in annual cost that will help to offset the cost of the rate increases and salary compressions that I deem necessary to prevent further erosion in comparables and to stem the rapid turnover by providing more equitable salary schedules.

There will no longer be a need for a continuation of the three salary schedules A, B and C in the Agreement for police officers who are now at the higher salary maximum of \$66,065. All are now at this single rate regardless of whether they are on Schedule A, B or C. For these police officers, the Agreement will reflect a single rate of salary maximum on a Schedule A that will be adjusted as follows:

Schedule A
3.75%

Grades	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
1	\$69,165	\$71,759	\$74,450	\$77,241	\$80,138

I have based cost projections on the October 2005 roster showing 165 police officers at the salary maximum set forth in Schedules A, B and C of \$66,665. The projected cost of an annual increase of 3.75% effective January 1, 2004 would be \$412,490 for contract year August 1, 2003 through July 31, 2004. The actual cost due to the delay in the effective date from August 1, 2003 to January 1, 2004 is \$240,196 with the payout deferral of \$171,804 being rolled over into the next year. The projected cost of an annual increase of 3.75% effective January 1, 2005 would be \$427,958 for contract year August 1, 2004 through July 31, 2005. The actual cost due to the delay in the effective date from August 1, 2004 to January 1, 2005 is \$249,499 with the payout deferral of \$178,458 being rolled over into the next year. The projected cost of an annual increase of 3.75% effective January 1, 2006 would be \$444,006 for contract year August 1, 2005 through July 31, 2006. The actual cost due to the delay in the effective date from August 1, 2005 to January 1, 2006 is \$258,855 with the payout deferral of \$185,150 being rolled over into the next year. The projected cost of an annual increase of 3.75% effective January 1, 2007 would be \$460,657 for contract year August 1, 2006 through July 31, 2007. The actual cost due to the delay in the effective date from August 1, 2006 to January 1, 2007 is \$268,563 with the payout deferral of \$192,093 being rolled over into the next year. The projected cost of an annual increase of 3.75% effective January 1, 2008 would be \$477,931 for contract year August 1, 2007 through July 31, 2008. The actual cost due to the delay in the effective date from August 1, 2007

to January 1, 2008 is \$278,633 with the payout deferral of \$199,297 being rolled over into the next year.

Police officers who are on Schedule D last received a pay increase on August 1, 1998 except for step movement through the 13 step salary guide. The salary maximum of \$60,755 remained frozen from November 1, 1998 through the expiration of the Agreement on July 31, 2002. Schedule D provides for a salary minimum of \$20,125. The minimums and maximums are low in comparison with all of the relevant labor agreements in evidence. These facts support Detective Olimpio's testimony that low salaries are the cause of turnover. The October 2005 roster shows 45 police officers at minimum salary. This is consistent with Olimpio's testimony that there was a 40% turnover in the first three years of the Agreement. Schedule D now provides for four (4) six-month steps prior to step 9, a step that commences after the second year of employment. The salary minimum can be increased by eliminating the first six-month step at Grade 13 and the second six-month step at Grade 12. Instead, the new 11th step will be a six (6) month academy step followed by an eighteen (18) month step at step 10. This will cause an increase in the first six-month step from \$20,125 in the Agreement that expired on July 31, 2003 to \$25,200 on January 1, 2004. Due to the substantial costs that come from salary compression, I award no further revisions in the salary guide from step 9 (the after two years step) through salary maximum at step 1, although the number of steps remain high. This can be addressed during negotiations for the next agreement. Each step of the revised salary guide shall be adjusted by 4.75%. These increases will reduce the salary

disparity between Salary Schedules D and Schedules A, B and C by 1% annually. By the end of the five-year agreement, the difference at Salary Maximum between these schedules will be reduced from \$5,910 to \$3,516, although the maximum on Schedule D still remains beneath all relevant comparables. The Unions argue for an elimination of the differences between Schedule D and Schedules A, B and C at maximum. While this may be a desirable goal from the Unions point of view, parity between schedules cannot be accomplished during this contract term. The inevitable consequence for doing so would be increases so substantial that they would be unaffordable except if parity were to be achieved at the expense of increases to Schedules A, B and C. Such a result would exacerbate the unfavorable comparables that currently exist. Schedule D, as awarded, would appear as follows:

Schedule D
4.75%

Grades		Base	Grades		1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
1	10 th Year	60,755	1	10 th Year	63,641	66,664	69,830	73,147	76,622
2	9 th Year	55,334	2	9 th Year	57,962	60,716	63,600	66,621	69,785
3	8 th Year	50,406	3	8 th Year	52,800	55,308	57,935	60,687	63,570
4	7 th Year	45,926	4	7 th Year	48,107	50,393	52,786	55,294	57,920
5	6 th Year	41,853	5	6 th Year	43,841	45,923	48,105	50,390	52,783
6	5 th Year	38,151	6	5 th Year	39,963	41,861	43,850	45,933	48,115
7	4 th Year	34,785	7	4 th Year	36,437	38,168	39,981	41,880	43,869
8	3 rd Year	31,725	8	3 rd Year	33,232	34,810	36,464	38,196	40,010
9	2 nd Year	28,943	9	2 nd Year	30,318	31,758	33,266	34,847	36,502
10	1 ½ Year	26,414	10	6 to 24 mon.s	27,669	28,983	30,360	31,802	33,312
11	3 rd 6 mon.s	24,115	Academy	1 st 6 mon.s	25,260	26,460	27,717	29,034	30,413
12	2 nd 6 mon.s	22,025							
13	1 st 6 mon.s	20,125							

I have based cost projections on the October 2005 roster showing 182 police officers on various steps of Schedule D at a payroll of \$5,876,720 at salary Schedule D. The salary maximum is \$60,755. The projected cost of an annual increase of 4.75% effective January 1, 2004 would be \$279,144 for contract year August 1, 2003 through July 31, 2004. The actual cost due to the delay in the effective date from August 1, 2003 to January 1, 2004 is \$162,740 with the payout deferral of \$116,403 being rolled over into the next year. The projected cost of an annual increase of 4.75% effective January 1, 2005 would be \$292,404 for contract year August 1, 2004 through July 31, 2005. The actual cost due to the delay in the effective date from August 1, 2004 to January 1, 2005 is \$170,471 with the payout deferral of \$121,932 being rolled over into the next year. The projected cost of an annual increase of 4.75% effective January 1, 2006 would be \$306,293 for contract year August 1, 2005 through July 31, 2006. The actual cost due to the delay in the effective date from August 1, 2005 to January 1, 2006 is \$178,569 with the payout deferral of \$127,724 being rolled over into the next year. The projected cost of an annual increase of 4.75% effective January 1, 2007 would be \$320,842 for contract year August 1, 2006 through July 31, 2007. The actual cost due to the delay in the effective date from August 1, 2006 to January 1, 2007 is \$187,051 with the payout deferral of \$133,791 being rolled over into the next year. The projected cost of an annual increase of 4.75% effective January 1, 2008 would be \$336,082 for contract year August 1, 2007 through July 31, 2008. The actual cost due to the delay in the effective date from August 1, 2007 to January 1, 2008 is \$195,936 with the

payout deferral of \$140,146 being rolled over into the next year as I stated with respect to Schedules A, B and C.

I next turn to the ranks of superior officers. Schedule A includes the ranks of Sergeant, Lieutenant, Captain and Deputy Chief. Superior officers who are on Schedule A have two-step guides. The first step is titled: "0-1year". The second step is titled: "1 year +." The two steps on Schedule A for each rank shall be adjusted by 3.75% in each of the five contract years, with the same effective dates of January 1, 2004, January 1, 2005, January 1, 2006, January 1, 2007 and January 1, 2008.

That schedule shall read as follows:

Schedule A - SOA

Sergeant

0-1 Year	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	73,963	76,737	79,614	82,600	85,697

1 Year+	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	82,322	85,409	88,612	91,935	95,383

Lieutenant

0-1 Year	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	86,697	89,948	93,321	96,821	100,452

1 Year+	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	91,075	94,491	98,034	101,710	105,525

Captain

0-1 Year	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	96,464	100,082	103,835	107,728	111,768

1 Year+	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	101,848	105,667	109,630	113,741	118,006

Deputy Chief

0-1 Year	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	106,760	110,764	114,918	119,227	123,689

1 Year+	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	111,674	115,862	120,207	124,714	129,391

I have calculated costs for the SOA unit based upon a payroll of \$8,004,216 as of October 2005 that shows 64 Sergeants, 26 Lieutenants, 5 Captains and 2 Deputy Chiefs. Using the same formula that was applied for police officers on Schedules A, B and C, the projected cost of an annual increase of 3.75% effective January 1, 2004 would be \$300,158 for contract year August 1, 2003 through July 31, 2004. The actual cost due to the delay in the effective date from August 1, 2003 to January 1, 2004 is \$174,992 with the payout deferral of \$125,166 being rolled over into the next year. The projected cost of an annual

increase of 3.75% effective January 1, 2005 would be \$311,414 for contract year August 1, 2004 through July 31, 2005. The actual cost due to the delay in the effective date from August 1, 2004 to January 1, 2005 is \$181,554 with the payout deferral of \$129,860 being rolled over into the next year. The projected cost of an annual increase of 3.75% effective January 1, 2006 would be \$323,092 for contract year August 1, 2005 through July 31, 2006. The actual cost due to the delay in the effective date from August 1, 2005 to January 1, 2006 is \$188,363 with the payout deferral of \$134,729 being rolled over into the next year. The projected cost of an annual increase of 3.75% effective January 1, 2007 would be \$335,208 for contract year August 1, 2006 through July 31, 2007. The actual cost due to the delay in the effective date from August 1, 2006 to January 1, 2007 is \$195,426 with the payout deferral of \$139,782 being rolled over into the next year. The projected cost of an annual increase of 3.75% effective January 1, 2008 would be \$347,778 for contract year August 1, 2007 through July 31, 2008. The actual cost due to the delay in the effective date from August 1, 2007 to January 1, 2008 is \$202,755 with the payout deferral of \$145,023 being rolled over into the next year.

The SOA Agreement also contains a separate schedule for the rank of Sergeant noted as Schedule B. Schedule B has effective dates beginning August 1, 1998. Notwithstanding the effective date, the October 2005 roster shows no one on Schedule B. Schedule B contains an intricate four-step salary schedule keyed to several steps on Schedule D for police officers. Schedule D

culminates in the same salary maximum for Sergeant that appears in Schedule A. Step 3 is the equivalent to the "0-1 year" step in Schedule A and Step 4 is the equivalent to the maximum which is identified as the "1 Year+" step. The salaries at Step 1 and Step 2 are in lesser amounts and are tied to 5 steps contained in Schedule D of the PBA contract all of which call for lower salaries than the police officer maximums in Schedules A, B, C and D. No evidence appears, nor is there justification, for salary steps at the Sergeant rank that would yield substantially less salary amounts than what a subordinate police officer would earn at salary maximum. Rather than maintain this anomaly, I conclude that Schedule B should be eliminated especially in light of the fact that no Sergeant has been placed on Schedule B. No costs accrue from the elimination of Schedule B. In the future, all police officers who are promoted to Sergeant will receive a salary greater than the police officer maximum. In the event that a Sergeant has been promoted to Schedule B since October of 2005, he or she shall be placed on Schedule A effective upon the date of the award.

Overall, the across-the-board increases on the salary schedules reflect increases for police officers that are above the City's proposal by the following amounts: \$185,327 for 2003-04, \$198,865 for 2004-05, \$168,397 for 2005-06, \$180,684 for 2006-07 and \$193,672 for 2007-08 and less than the PBA's proposal by the following amounts: \$329,967 for 2003-04, \$352,995 for 2004-05, \$387,458 for 2005-06, \$424,525 for 2006-07, and \$464,371 for 2007-08. For the SOA, the across-the-board increases on the salary schedules reflect increases

for superior officers that are above the City's proposal by the following amounts: \$60,032 for 2003-04, \$64,084 for 2004-05, \$68,342 for 2005-06, \$61,183 for 2006-07 and \$65,533 for 2007-08 and less than the SOA's proposal by the following amounts: \$180,093 for 2003-04, \$197,654 for 2004-05, \$216,520 for 2005-06, \$236,781 for 2006-07 and \$258,930 for 2007-08.¹

There are additional costs to the City in addition to the across-the-board increases that have been awarded. These costs do not dictate a lesser across-the-board percentage than has been awarded but are facts that have been considered when assessing the financial impact of the terms of the overall Award on the governing body, its residents and taxpayers. Because of the large number of police officers on Schedule D, virtually all of them are subject to step movement through Schedule D. Unlike Schedules A, B and C, where 165 of 165 police officers are all at salary maximum, no police officers were at salary maximum on Schedule D in 2003. Thus, all officers on Schedule D will move annually from one step of the guide to the other during this contract term. While the exact costs cannot be determined due to high turnover on Schedule D, annual staffing changes and anniversary date step movement, the cost of step movement approximates \$500,000 annually over the course of the five year Agreement. An additional cost impact is caused by the elimination of two steps

¹ Again, precise calculations must give way to reasonable projections because of changes in staffing levels due to turnover, promotions and retirements over the course of the five years. The cost projections in this paragraph do not include reductions in actual payout due to the five month deferral in the effective date of each increase, the costs of annual step movement and the compression of steps at the low end of Schedule D. The costs attributed to the City and the Unions for 2007-08 are projected based upon assumed proposals of 3% and 6% respectively for

from the bottom steps of Schedule D. This will increase the first six-month salary minimums from \$20,125 to \$25,260 and the second six-month step from \$22,025 to \$27,667 during the first year of the Agreement. Because the City hired forty-five (45) officers in 2005, there will be additional costs for their advancement from the old salary minimum.

The amounts awarded above the City's proposal can be spent without adverse financial impact and within the City's lawful spending authority as reflected in the results of operations and fund balances. Zambrano's testimony also reflects that the City has projected 3.5% increases in its payroll costs. Although the City has been drawing down on its surplus (\$11,000,000 in 2001 to \$1,000,000 in 2005) the funds necessary to finance the award are available within the City's budget especially in light of the annual deferrals of payments due to the January 1 effective dates of the increases.

The comparability "gap" as argued by the Unions will not be filled by the terms of the award but will be eased somewhat by the higher increases that have been awarded to steps on Schedule D. The advancement of the salary minimum coupled with the salary increases on Schedule D are aimed at reducing the large turnover of police officers. Given the disparity between the salaries on Schedule D and other law enforcement departments, the comparability data in law enforcement units and the need for greater continuity and stability of employment

these years. All increases are retroactive to their effective dates. Those eligible for retroactivity are those presently employed, those who have retired on ordinary or disability pension.

far outweigh the data concerning non-law enforcement employees and private sector employees. In any event, the award at a projected 3.99% increase for both units combined is well within the wage settlements presented by the City for New Jersey as a whole that indicate a range of 3.63% to 4.24% for interest arbitration awards and 3.71% to 4.19% for voluntary settlements.

The cost of living data in evidence reflects increases of 3.2%. This figure is less than the overall increases awarded but the CPI is not a controlling factor given the overall record of this proceeding. This includes the fact that the salary levels on Schedule D were not adjusted between 1998 and 2003 thus evidencing zero adjustments to the steps on that salary schedule for more than half of the City's police officers while the CPI was advancing over those years. Similarly, private sector wages have risen in each of the years while the steps on Schedule D were frozen.

Accordingly, and based upon all of the above, I respectfully enter the following award as a reasonable determination of the issues in dispute after giving due regard for the statutory criteria.

AWARD

1. All proposals by the City and the Unions not awarded herein are denied and dismissed. All provisions of the existing agreements shall be carried forward except for those modified by the terms of this Award.
2. Duration – All Units

There shall be a five-year agreement effective August 1, 2003 through July 31, 2008.
3. Section 1.1 – Recognition

Delete “Police Division, Department of Public Safety” and replace with “Police Department.”
4. Section 6 – Grievance Procedure

6.2.2. Delete “announce the appeal of a” and replace with “submit the” in the last sentence.

6.2.3. Correct “ad” to “and.”
5. Section 12.1 – Table of Organization

Change the title “Table of Organization” to “Maintenance of Eligible List.”
6. Section 29 – Security Shield Excusal

Delete the language concerning the assignment of police officers while on duty to sell window shield decals to local businesses.
7. Section 5.3.9.1 – Police Officer’s Rights – Files

Delete the first sentence and replace it with the following: “Records of Internal Affairs investigations shall be maintained in accordance with the records retention and disposition schedule for local police departments issued by the New Jersey Division of Archives and Records Management and in accordance with the Internal Affairs Policies and Procedures established by the New Jersey Attorney General’s Office.”

8. Section 5.11.1 – Police Officer’s Rights – Suspension Policy

Section 5.11.1 shall be deleted and replaced with the following:
“No employee shall be ordered to submit to a polygraph or other form of lie detector test unless the employee voluntarily requests to take such examination. However, employees who are the subjects of Internal Affairs investigations, may be compelled to submit to various forms of physical tests (e.g., breath sample, blood sample, requiring employees to speak, voice recordings, participation in a line up, handwriting samples, hair and saliva samples, urine specimens, videotaping and field sobriety tests) all in accordance with the Internal Affairs Policies and Procedures issued by the Attorney General of the State of New Jersey, revised in 2000 and as may be amended from time to time and adopted by the Department.”

9. Section 7.1.4 – Work Schedules and Conditions – Swap Rule

At the end of the first sentence add “with the approval of the Chief of Police.”

10. Sections 17 – Sick and Injured Leave

Sections 17.1 and 17.2 shall be deleted.

Add the following language:

17.___. An employee who is absent on sick leave for three (3) or more consecutive tours of duty may be required to submit acceptable medical proof substantiating the illness and fitness for duty. Before returning to work from a sick leave of five (5) consecutive tours of duty or more, an employee must provide a physician’s statement verifying that the employee may safely return to work.

17.___. An employee who has been absent on sick leave for an accumulation of ten (10) tours of duty in one (1) calendar year consisting of periods less than three (3) tours of duty, may be required to submit acceptable medical proof for any additional sick leave in that year unless such illness is of a chronic or recurring nature requiring absences of one (1) tour of duty or less in which case only (1) medical certificate shall be necessary for a period of six (6) months.

17.___. Notwithstanding the above, the City may require proof of illness from an employee who is on sick leave whenever such

requirement appears warranted under the circumstances. Failure to follow sick leave notification and verification procedures may result in a denial of sick leave for that specific absence. Proven abuse of sick leave may be cause for disciplinary action.

17.____. The Chief of Police may require an employee who has been absent because of personal illness or injury, as a condition of the employee's return to duty, to be examined, at the City's expense, by a physician designated by the City. The examination shall establish whether the employee is capable of performing the employee's normal duties and that the employee's return will not jeopardize the health and safety of the employee or other employees or citizens. In the event that such examination results in the unnecessary delay of an officer's return to work from the date the officer sought to return the officer shall have his time restored.

17.____. An employee using paid sick leave shall not engage in any other work or employment during the employee's period of sick leave.

17.____. The Chief of Police may require proof of illness, accident, disability, injury, disease or death of an employee's immediate family member when the employee's use of paid sick leave is due to the serious illness or death of an immediate family member.

11. Section 14.1 – Terminal Leave

Delete Section 14.1 and replace with:

"After twenty-five (25) years of service as an employee of the City the employee shall, upon retirement, be entitled to receive a lump sum payment equal to seven hundred twenty (720) work hours based on the employee's regular hourly rate of pay."

12. New Section – Off Duty Employment

A. The City retains its lawful authority to regulate off-duty police related employment of City of Paterson police officers.

B. Requests for off-duty assignments covered by the City's off-duty police related employment ordinance are strictly voluntary. No police officer shall be ordered to perform off-duty police related services that are covered by the ordinance. However, once a police officer's request for an off-duty assignment is approved by the Chief of Police and a contract is entered into with the applicant, the police officer shall be subject to an order of the Chief of Police

to perform the off-duty assignment in order that the City may fulfill its contractual obligation under the contract.

C. The Chief of Police may, in his discretion, deny requests for off-duty assignments in consideration of the changing business necessities of the Police Department.

D. Off-duty police related employment will be assigned on a rotating seniority basis.

E. Employees so assigned shall be compensated at a rate of pay equal to the greater of one and a half times the employee's regular rate of pay or a flat rate to be determined through negotiations.

F. The City retains the right to impose an administrative fee to recoup the costs of administering the off duty employment program. Fees will be established by ordinance. The City will provide, upon request of the Unions, an annual breakdown of administrative costs associated with the off duty employment program.

13. Section 11.1 – Temporary Assignments

Modify to read:

11.1 When an employee is assigned to perform the duties of a higher rank for fourteen (14) consecutive working days or more, the employee so assigned shall be paid the rate of the first step of the higher rank for the entire period in which the employee has performed the duties of the higher rank.

14. New Section – Fully Bargained Provision

Add new Section to read:

A. This Agreement represents and incorporates the complete and final understanding and settlement by the parties. During the term of this Agreement, neither party will be required to negotiate with respect to terms and conditions of employment unless they mutually agree to do so or are required to do so by the New Jersey Employee/Employer Relations Act. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing only executed by both parties.

15. Salary

1. Schedules A, B & C

Schedules A, B and C shall be combined into a single Schedule A and have reference solely to a maximum step. The new Schedule A shall be adjusted by the following percentages and shall be retroactive to their effective dates:

Schedule A 3.75%

Grades	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
1	69,165	71,759	74,450	77,241	80,138

2. Schedule D

The first six-month step at Grade 13 and the second six-month step at Grade 12 shall be eliminated. The 11th step will be a six (6) month academy step followed by an eighteen (18) month step at step 10. Each step of the revised Schedule D shall be adjusted by the following percentages and shall be retroactive to their effective dates:

Schedule D 4.75%

Grades		Base	Grades		1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
1	10 th Year	60,755	1	10 th Year	63,641	66,664	69,830	73,147	76,622
2	9 th Year	55,334	2	9 th Year	57,962	60,716	63,600	66,621	69,785
3	8 th Year	50,406	3	8 th Year	52,800	55,308	57,935	60,687	63,570
4	7 th Year	45,926	4	7 th Year	48,107	50,393	52,786	55,294	57,920
5	6 th Year	41,853	5	6 th Year	43,841	45,923	48,105	50,390	52,783
6	5 th Year	38,151	6	5 th Year	39,963	41,861	43,850	45,933	48,115
7	4 th Year	34,785	7	4 th Year	36,437	38,168	39,981	41,880	43,869
8	3 rd Year	31,725	8	3 rd Year	33,232	34,810	36,464	38,196	40,010
9	2 nd Year	28,943	9	2 nd Year	30,318	31,758	33,266	34,847	36,502
10	1 ½ Year	26,414	10	6 to 24 mon.s	27,669	28,983	30,360	31,802	33,312
11	3 rd 6 mon.s	24,115	Academy	1 st 6 mon.s	25,260	26,460	27,717	29,034	30,413
12	2 nd 6 mon.s	22,025							
13	1 st 6 mon.s	20,125							

3. The two steps on Schedule A for each rank shall be adjusted by 3.75% in each of the five contract years, with the same effective dates of January 1, 2004, January 1, 2005, January 1, 2006, January 1, 2007 and January 1, 2008. That schedule shall read as follows:

Schedule A - SOA

Sergeant

0-1 Year	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	73,963	76,737	79,614	82,600	85,697

1 Year+	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	82,322	85,409	88,612	91,935	95,383

Lieutenant

0-1 Year	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	86,697	89,948	93,321	96,821	100,452

1 Year+	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	91,075	94,491	98,034	101,710	105,525

Captain

0-1 Year	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	96,464	100,082	103,835	107,728	111,768

1 Year+	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	101,848	105,667	109,630	113,741	118,006

Deputy Chief

0-1 Year	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	106,760	110,764	114,918	119,227	123,689


1 Year+	3.75%	3.75%	3.75%	3.75%	3.75%
Date	1/1/04	1/1/05	1/1/06	1/1/07	1/1/08
	111,674	115,862	120,207	124,714	129,391

4. Schedule B – Sergeants:


Schedule B – Sergeants shall be eliminated effective with the date of the Award. Any Sergeant whose salary has been set by Schedule B and is below the level of a police officer shall be placed on Schedule A.

Dated: May 25, 2006
Sea Girt, New Jersey

State of New Jersey }
County of Monmouth }ss:


James W. Mastriani

On this 25th day of May, 2006, 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 the foregoing instrument and he acknowledged to me that he executed same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/13/2008