

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

BOROUGH OF BOGOTA

"Public Employer,"

-and-

BOGOTA PBA LOCAL 86

"Union."

**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket Nos. IA-97-8 and IA-98-59

**Before
James W. Mastriani, Arbitrator**

Appearances:

For the Employer:

David F. Corrigan, Esq.
Murray, Murray & Corrigan

For the Union:

Richard Loccke, Esq.
Loccke & Correia, P.A.

I was appointed arbitrator by the New Jersey Public Employment Relations Commission on September 21, 1998 in accordance with P.L. 1995, c. 425, in this matter involving the Borough of Bogota ("Borough" or "Bogota") and PBA, Local 86 (the "PBA").

Prior to my appointment, the parties engaged in interest arbitration proceedings before Arbitrator Stanley L. Aiges. After mediation efforts and a formal arbitration hearing, Arbitrator Aiges issued an award on September 10, 1997 covering the period from January 1, 1996 through December 31, 1997. The Borough appealed that award to the Public Employment Relations Commission (PERC). On January 30, 1998, the award was remanded to the arbitrator for reconsideration. After another arbitration hearing, the Arbitrator issued another opinion and award on April 29, 1998. The Borough again appealed to PERC, and on August 28, 1998, the Commission vacated the award and remanded it to a different arbitrator. That proceeding was consolidated with the parties' petition for interest arbitration for the term of January 1, 1998 through December 31, 2000. Thereafter, I was appointed by mutual request of the parties.

I held pre-arbitration mediation on January 8, 1999. Because the impasse was not resolved, a formal interest arbitration hearing was held on February 9, 1999 at which the parties stated their positions, examined witnesses, and introduced evidence. At the February 9, 1999 hearing, the parties agreed to

incorporate the record before Arbitrator Aiges into the record in this proceeding. Post-hearing briefs were submitted on March 10, 1999.¹ The mandatory terminal procedure of conventional arbitration was used to decide all issues in dispute. Under this procedure, the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

FINAL OFFERS OF THE PARTIES

Before beginning the formal hearing, the Borough and the PBA submitted the following final offers:

PBA LOCAL 86

1. **Duration**--January 1, 1996 to December 31, 2000.
2. **Wages**-- Across the board salary increases as follows:
 - 4.5% effective January 1, 1996
 - 4.5% effective January 1, 1997
 - 5% effective January 1, 1998
 - 5% effective January 1, 1999
 - 5% effective January 1, 2000

¹ Both parties make repeated reference to the awards issued by Arbitrator Aiges. To the extent that such comments are integral to their position in the current proceeding, they are included herein.

BOROUGH OF BOGOTA

1. Duration--January 1, 1996 to December 31, 2001.
2. Wages-- Across the board salary increases as follows:

Effective January 1, 1996 3% across the board
Effective January 1, 1997 3% across the board

Effective January 1, 1998 3% across the board
Effective January 1, 1999 3% across the board
Effective January 1, 2000 3% across the board
3. Salary Guide -- The Borough proposes to create a nine-step salary guide between minimum and maximum with identical annual step increases for all employees hired after the issuance of this award. The Borough proposes no salary guide increase for new-hires.
4. Longevity -- The Borough proposes that for all employees hired after this award, longevity payments shall begin after the employee reaches maximum pay. The Borough proposes that such employees shall be paid at a rate of 1% for each 5 years of completed service after the maximum step is reached up to a maximum of 5%.
5. Sick Leave -- The Borough proposes that new hires shall receive 15 sick days per year commencing July 1, 1999. Sick leave shall be cumulative.

6. Work Schedule-- The Borough proposes to replace Section B of Article

L1 with the following:

Detectives shall have the same work schedule as all other employees except when, in the event of an emergency, the Chief deems it appropriate to assign them to steady shifts.

7. Terminal Leave -- The Borough proposes to eliminate terminal leave for new hires.

The Borough and the PBA have offered testimony and considerable documentary evidence in support of their final offers. In addition to the record in the earlier proceedings, testimony, statements of position, and 59 Township and 20 PBA exhibits were received in evidence. 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. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

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

(2) Comparison of the wages, salaries, 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.

BACKGROUND

Bogota is a suburban, predominantly residential community in Bergen County with approximately 7824 residents. Since 1994, the Police Department has increased its activities within the Borough. The total number of calls received by the Department increased from 14,031 in 1994 to 20,061 in 1998. The PBA represents all sworn officers except the Chief and the Captain. There are presently 17 officers included in the bargaining unit.

POSITIONS OF THE PARTIES

The PBA

The PBA asserts that the interest and welfare of the public are best served by "properly compensated, career oriented and motivated Police Department." According to the PBA, Bogota's Police Officers have responded to an increasing number of calls for police services and meet the needs of the citizens and taxpayers with a high level of proficiency. For example, the PBA cites the number of total calls in 1995 through 1997. In 1995, total calls were 14,391. In 1996 total calls increased to 14,589 and in 1997, they increased to 14,606. In 1998 there were 20,061 calls according to the PBA. The PBA calculates that these numbers represent an almost 40% increase in calls during the course of this dispute. As additional evidence of the Police Department's productivity, the PBA notes that the size of the force shrunk during 1994 and 1995 and has remained constant during this period. The PBA also cites the triple murder that was solved promptly as a result of attentive police work. According to the PBA, the accomplishments of the police officers demonstrates that the PBA's position is a fair response to the increased productivity and attentive police work.

Turning to comparability, at the outset the PBA stresses that the loss of the effective use of salary increases during the years of this dispute should be considered when evaluating comparability.

Focusing on top step pay rates for police in 1995, the PBA points to the comparability data from 51 municipalities. According to the PBA, this data, which was unrebutted by other comparability data from the Borough, shows that Bogota's 1995 top step salary was at the bottom. In other words, the Borough's 1995 top step salary of \$54,707 was \$4,743 below the average top step salary of \$59,450 as calculated by the PBA. The PBA also calculates that an 8.7% increase would be needed to bring Bogota up to average in 1995. The PBA stresses that it would taken even more to bring Bogota up to average when 1996 salaries are added.

Additionally, the PBA focuses on recent Bergen County settlements. Specifically, the PBA points to settlements covering the period from 1998 through 2000 in the immediate area of Bogota. Turning first to Teaneck, a municipality bordering Bogota, the PBA highlights settlements with the Teaneck PBA and SOA for 4% increases in 1998, 1999 and 2000, as well as other economic and non-economic improvements. Looking to Ridgefield, a nearby municipality, the PBA point to a settlement including increases of 3.75% in 1998, 4.25% in 1999 and 4.9% in 2000. Additionally, the PBA notes that Ridgefield Police with EMT certification receive \$600 per year under the settlement and Ridgefield's maximum longevity is 15% compared with 8% in Bogota.

Leonia is another municipality bordering Bogota cited by the PBA. There, an interest arbitrator awarded increases of 4% in 1997, 4% in 1998 and 4.25% in 1999. Looking to another interest arbitration award covering a nearby municipality, the PBA cites the award covering the Borough of Fort Lee and the PBA. There the interest arbitrator awarded 4% in each year for 1996 through 1998, as well as an additional holiday. The PBA also points out that Fort Lee also provides a 15% maximum longevity payment as well as other benefits not included in the Bogota agreement.

Edgewater's recent settlement with its police for a 4% increase in each year for 1997, 1998, and 1999 is also compared to Bogota by the PBA. In that Bergen County municipality, the PBA also points to a \$2,000 increase in the Detective differential, and increases in the annual stipend for EMT certification to \$3,300 in 1997, \$3,600 in 1998 and \$3,900 in 1999, as well as a longevity benefit better than that provided in Bogota.

Looking to the interest arbitration award covering Police in the neighboring Borough of Little Ferry, the PBA points out that the arbitrator awarded increases of 4% in each year for 1998, 1999 and 2000. The PBA also cites the interest arbitration award covering the Lodi Police in southern Bergen County. That award provided 4% increases in each year for 1996, 1997, 1998, and 1999. Examining the interest arbitration award covering Police in Garfield, also in the southern portion of the County, the PBA point to increase of 3.75% for 1997 and

1998 and 4% for 1999, as well as the addition of a significant holiday benefit providing for the pensioning of all holidays. Finally, the PBA cites the voluntary settlement covering the Norwood police. That settlement provides a 5% increase in 1998.

Based upon these settlements, the PBA calculates the average increase for 1998 to be 4.05%, the average increase for 1999 to be 4.0625% and the average increase for 2000 to be 4.18%. Previously, the PBA had calculated average wage increases for 1996 and 1997 based upon 33 other Bergen County municipalities. Based upon that comparison, the PBA calculated that the average increase in those communities was 4.95% in 1996 and 4.428% in 1997. Noting that these figures do not include other non-wage economic benefits, the PBA asserts that these increases favor its proposal.

The PBA maintains that the average increases it calculated would only maintain the comparable position of Bogota Police, but would not improve their position by bringing their salaries up to the average level.

Looking to longevity benefits, the PBA points out that the maximum benefit of 8% in Bogota is below the average of 9.695% in the communities it deems comparable. Similarly, the PBA notes that the vacation benefit of a maximum of 25 days per year is below the average of 26.40 days provided by the municipalities that it considers comparable. Turning to holiday benefits, the PBA

calculates that the 13 holidays provided by the Borough is slightly below the average number of 13.3 holidays provided by the municipalities that it deems comparable. Additionally, noting that Bogota Police do not enjoy an educational incentive, the PBA points to several Bergen County municipalities that provide such incentives.

Turning to Police settlements outside of Bergen County, the PBA asserts that those settlements support its proposal. Evaluating settlements for 1996 through 1999 in Ringwood, Wayne, the Hudson County Sheriff's Office, South Amboy, the Mercer County Prosecutor's Office (PBA and SOA), the Asbury Park SOA, Bordentown, Dover, North Caldwell, Far Hills, and West Caldwell, the PBA calculates the following average annual increases:

1996	4.467%
1997	4.386%
1998	4.364%
1999	4.442%

With respect to the Borough's focus on private sector comparisons, the PBA argues that private sector comparisons should receive no greater emphasis in Bogota than they do in other Bergen County communities:

All of the contracts and award which have been placed in evidence by the Association were negotiated or awarded in the

same environment and with the same statutory criteria applicable as are here now applicable in Bogota. There is no factor presented which makes Bogota different than any other town in the area. Whatever those factors may be in [the] private sector then those operative facts are available and were available for argument and arbitrator consideration in all the other awards in evidence. There has been no showing to indicate why private sector comparison should weigh more heavily in Bogota than they did in all the other settlements and awards in evidence.

Responding to the Borough's emphasis on private sector comparisons, the PBA contends that the best comparisons are made within the public sector, and specifically with police in other jurisdictions. Citing the interest arbitration award by Arbitrator Carl Kurtzman in Borough of River Edge, the PBA argues that the unique statutory obligation and treatment of police justifies higher compensation and that private sector comparisons should not be controlling in this case. Specifically, the PBA asserts that no private sector job compares to that of a police officer. According to the PBA, a New Jersey police officer must be prepared to act and may be armed at all times while within the State. Additionally, the PBA points out that police operate "under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours." The PBA also notes that after age 35, police pensions are not portable and police officers are not free to transfer their skills to policing in other states. The PBA cites several state and federal laws that control the relationship of police officers to their employers. These laws include:

1. Fair Labor Standards Act, 29 U.S.C. § 201 et. seq. (different standards applied to private sector employees and to police.)

2. New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a et. seq. (does not apply to police).
3. N.J.S.A. 40A:14-118 (specific statutory provisions creating and regulating police departments including powers and duties, specifics for assignment of subordinate personnel and delegation of authority.)
4. N.J.S.A. 40A:14-122 (specific qualifications for police officer employment, as well as provisions for dismissal based upon absence without cause, statutorily controlled promotional exams, residency requirements.)
5. N.J.S.A. 40A:14-123.1a (sets hiring criteria and order of preference.)
6. N.J.S.A. 40A:14-127.1 (minimum and maximum age restrictions for initial hire and rehire as a police officer)
7. N.J.S.A. 40A:14-127.3 (acceptance into Police Retirement System as a condition of employment)
8. N.J.S.A. 40A:14-131 (statutorily created minimum police salary that is below current minimum wage).
9. N.J.S.A. 40A:14-133 (Police work week shall not exceed six days "except in cases of emergency.")
10. N.J.S.A. 40A:14-134 (extra duty work paid not in excess of time and one-half.)
11. Maximum age of employment for a police officer is age 65.
12. N.J.S.A. 40A:14-147 - 151 (unique hearing and complaint procedure for departmental charges).
13. N.J.S.A. 40A:14-152.1 (power of arrest).

Additionally, the PBA points out that police are specifically exempted from State fire arms laws, and are trained and retrained in police academies. The PBA points out that failure to maintain required training and retraining can lead to

loss of certification as a police officer. The PBA maintains that, few if any, of the requirements and regulations covering police officers apply to private sector employees and that private sector employees enjoy many benefits not provided to police. Specifically, the PBA notes that private sector employees are not restricted by a residency requirement. Therefore, a private sector employee may travel across the country in search of alternate employment while a police officer is restricted by certification to working within the State.

Citing the interest arbitration award by Arbitrator William Weinberg in the Village of Ridgewood, the PBA maintains that local comparisons are more relevant to police wages. Accordingly, the PBA contends that private employment is "an overly generalized category" without the specialized skills and standards required of police. As such, police wages "should be considered on a higher wage plane than private employment generally," according to the PBA.

Looking to internal comparisons, the PBA points out that the Borough's blue-collar workers settled for 3.7% in each year for 1999 and 2000. In contrast, the PBA argues that the Borough has supported its wage proposal with substantial credible evidence.

Noting that the only stipulation of the parties is to a five-year agreement, the PBA turns to the lawful authority of the employer. Asserting that the previous awards and PERC determinations disposed of the issue of the lawful authority of

the employer for 1996 and 1997, the PBA points out that the Borough has not offered evidence with respect to the issue for the remaining years. In contrast, the PBA points to the testimony of Vincent Foti, a municipal finance expert. Foti testified that the Borough had the flexibility within the parameters of the CAP Law to fund the PBA's proposal for 1998. Specifically, the PBA points to Foti's testimony that the Borough had a cap limit of 5% for 1998, but elected to use a 2.5% index rate and waived the additional flexibility that totaled \$102,396. Nonetheless, Foti interpreted the Borough's 1998 budget to show that the Borough had Total Allowable Appropriations of \$4,578,667 and actually appropriated \$4,208,858. Accordingly, the PBA points out that \$369,809 was available, but not appropriated and was carried forward in a Cap Bank, along with the unused flexibility of \$102,396. Thus, the PBA calculates that the Borough's Cap Bank going forward from FY 1998 was \$472,205. The PBA also points out that the Cap Bank for 1996 was \$193,877 and the Cap Bank for 1997 was \$186,524.

Looking to the financial impact upon the residents and taxpayers, the PBA maintains that any impact will be "imperceptibly small." First, the PBA asserts that the Borough has spent more in litigation with the PBA in this case than it would cost to fund the Association's proposal. Next, the PBA focuses on the 1.5% difference between its proposal and the Borough's in the first two years and the 2% difference in each of the remaining three years. In order to calculate the financial impact, the PBA calculates that total payroll, based upon 1995 salaries,

for two Lieutenants, two Sergeants and 12 Patrolmen (at top step) is \$954,862, and one percent of that is \$9,548. The PBA asserts that its assumption that all Patrolmen are at top step may cause its calculation of the cost of one percent to be a slight over-estimate of costs.

Using \$9,548 as one percent, the PBA calculates that the parties are \$14,322 apart for each of the first two years and \$19,096 apart for each of the remaining three years. Since other costs, such as longevity, are based upon base rate, the PBA asserts that the additional costs for these items are miniscule. For example, the PBA estimate that the cost of one percent of longevity is 1/100th of a percent or \$95.48.

Pointing to the testimony and analysis of its municipal finance expert, Vincent Foti, the PBA maintains that financial analysis shows that the results of operations are up significantly from 1997 to 1998 (over \$133,500). The PBA also points out that budget revenues increased by \$73,753 in 1997, and that there are significant unexpected balances of appropriation reserves, a flat tax history for the past five years, significant increases in the tax levy, and consistently high return in the reserve for uncollected taxes (\$315,000 in 1998). Additionally, the PBA points to the consistently high tax collection rate, which Foti testified was above the state average. Pointing to the Borough's borrowing power, solely as an indication of fiscal strength, the PBA also asserts that the Borough's credit rating and cash balances are high. The PBA also points out that Bogota is below

average among the towns in Bergen County with respect to debt service per capita.

Turning to the tax levy per capita, the PBA points out that the Borough ranks 60th out of the 70 municipalities in Bergen County, demonstrating that Bogota taxpayers pay a significantly lower tax levy than their counterparts throughout Bergen County.

The PBA calculates the ratio between the value of a percentage point increase (\$9,548) and the total municipal tax levy of \$12,116,553 in 1998. According to the PBA, this ratio is .0007%. The PBA then multiplies that rate by a hypothetical \$3000 tax bill and shows the impact on the hypothetical taxpayer's bill to be \$2.10. Further, the PBA calculates that the impact on its hypothetical taxpayer of the difference between its proposal and the Borough's over the five years at issue is \$18.90.

Additionally, the PBA estimates the cost savings to the Borough that will result from PERC's ruling on the use of civilian dispatchers will save between \$40,000 and \$70,000 per year. The PBA also points out that municipal finance expert Vincent Foti testified unequivocally that the Borough had the ability to pay the cost of the PBA's proposal.

Turning to the cost of living criterion, the PBA recognizes that cost of living increases have been low, but notes that cost of living data is regional. The PBA argues that cost of living implications are part of the interplay between all of the statutory criteria and should not be controlling. The PBA points out that during periods of double-digit inflation, employees did not receive increases equal to the cost of inflation, and should not now be limited to lower increases based solely on the cost of living data. Acknowledging that the cost of living criterion does not support its position, the PBA points out that Borough Police are paid wages below average for surrounding municipalities subject to the same cost of living considerations.

Finally, addressing the continuity and stability of employment, the PBA raises private sector concepts of "area standards" and "prevailing rates." According to the PBA use of both of these concepts supports its final offer. Additionally, the PBA points to the ruling permitting the Borough to use civilian dispatchers in positions traditionally staffed by sworn police personnel. Discussing the impacts of this determination on this case, the PBA points to the money saved by using civilian dispatchers. The PBA maintains that the money saved is more than adequate to fund the full cost of the PBA's proposal. The PBA contends that the ruling has diminished the career path of a Police Officer because there is now less need for police and less opportunity for promotion. The PBA argues that staffing dispatcher positions with civilians will harm the

continuity and stability of employment for police and will expose the residents of Bogota to lesser services and increased risk by having non-police dispatchers.

The Borough of Bogota

Turning first to the comparability criteria, the Borough asserts that it has shown that under its proposal, its Police Officers will be better paid than the average for police patrol salaries in the State. The Borough calculates that with a 3% increase in 1996, the maximum patrolman's salary will be \$56,348 annually, or \$27.09 per hour. The Borough compares this to \$25.52, the 1996 median hourly wage for police in New Jersey.

In support of its comparability argument, the Borough details several comparable awards and agreements providing wage and benefit improvements inferior to those previously awarded in this case. The Borough also points out that several contracts include "givebacks" in exchange for wage increases comparable to those sought by the PBA.

The Borough cites wage increases awarded to police officers by Arbitrator Daniel Brent in West New York. There, police officers received increases of 0%, 3.75%, 3.75%, 3.75% and 3.5% beginning in 1996. The Borough points out that in issuing this award, Arbitrator Brent considered evidence of average wage increases in interest arbitration awards of 4.56% in 1995 and 4.57% in 1996.

Arbitrator Brent also noted that the Town of West New York had entered voluntary settlements with all of its other bargaining units for wage increases of 4.5%. Looking to later contracts in West New York, the Borough points out that the Police Superiors settled for no increase in 1997 followed by 3% on July 1, 1998, 1.5% on January 1, 1999, 2% on January 1, 2000, and 2% at 11:59 p.m. on June 30, 2000 in exchange for a reduced vacation schedule and reduction of catastrophic sick leave from an 18 month lifetime entitlement to 12 months.

Pointing to other agreements submitted by the PBA, the Borough highlights givebacks not present in Bogota. For example, the Borough points to the South Amboy agreement which included a reduced starting salary with a split first year for new hires and increases of 4% in 1996, 1997, and 1998 and 2% for the period from January 1, 1999 through June 30, 1999. Next, the Borough points to the Asbury Park Superiors agreement. That agreement includes an increased health insurance deductible from \$100 to \$200 for single coverage and from \$200 to \$400 for family coverage as well as an increase in the co-pay for office visits from \$2 to \$10 and an increase in the prescription co-payment from \$2.50 to \$5. In turn, that agreement provides three 4.5% wage increases. The Borough points out that in contrast, its police officers have "excessive benefits" including unlimited sick leave and, by the prior award, were not required to make sacrifices for 4.5% increases.

Next, the Borough cites the givebacks included in the Mercer County Prosecutor's Office/SOA agreement. That agreement includes an increase in the prescription co-payment from \$5 to \$6, an increase in the medical co-payment to \$5 for a single person and \$10 for family coverage in exchange for split wage increases totaling as much as 5% in one year. Likewise the Mercer County SOA agreement included similar increases in prescription plan and medical co-payments. Bogota also cites tradeoffs between 4.5% increases and a medical insurance premium co-payment in the Dover agreement. Next, the Borough points to agreements between Fairlawn and the PBA and SOA. Those agreements included three 4.5% increases, a new lower starting salary for new hires and an extension of the salary guide from five to seven steps. In Demarest, the parties agreed to a reduced starting salary and wage increases of 4.25%, 4% and 4%. The Borough notes that the Englewood agreement also includes reductions in the starting salary. In contrast, the Borough points out that its officers have not suffered from either a reduced starting salary or added steps to the salary scale.

Continuing its review of settlements that included "givebacks" in exchange for wage increases, the Borough notes that the Wallington PBA received increases of 2% and 3% in one year. In turn, the Borough notes that the Wallington PBA also accepted an additional step added to the salary guide as well as a new step between the 6-month Academy step and the 6-18 months step. Again turning to the contracts submitted by the PBA, the Borough

suggests that these agreements demonstrate that the bargaining process is reciprocal and that "wage increases should not be awarded in a vacuum or in lock-step." The Borough also asserts that these agreements demonstrate that annual increases of 4.5% are not supported.

Reviewing the agreements it submitted, the Borough points out that municipalities entering into police settlements for 4% or more did so by achieving "givebacks." In Ramsey, the Borough points out that increases of 17.5% over four years, including 4.75% in one year and 4% in another were exchanged for a reduced sick leave entitlement, and an eight day increase in the work schedule.

Pointing to public sector employees generally, the Borough asserts that wage increases in excess of 4% are less prevalent than suggested by the PBA. Specifically, the Borough cites the agreement between CWA and the State of New Jersey that included a two year wage freeze and provided a total base wage increase of \$2625 over four years. The State and CWA agreement also included changes to the health benefits plan and required certain employees to make contributions to remain in the traditional plan. AFSCME and IFPTE agreed to similar terms in their settlements covering State workers.

The Borough also cites the agreement between FMBA, Local 22 and Harrison. That agreement included a terminal leave cap, reduced longevity for new hires and wage increases of 4% effective January 1, 1996, 3% effective

January 1, 1997, 1% effective July 1, 1997, 3% effective January 1, 1998 and 1% effective July 1, 1998. Each of these wage increases were payable in the following year. The Borough points to the Atlantic City firefighters' settlement that included a two year wage freeze followed by increases of 4% and 5% respectively as well as a reduced vacation schedule for new hires. In an agreement that included a prescription co-payment, the Borough notes that the IBT settlement with Atlantic City included wage freezes in 1995 and 1996 followed by subsequent increases of \$1600, \$1100 and \$1400.

Looking at other public sector settlements Bogota cites the award of Arbitrator Tener in North Bergen providing 3.5% wage increases in 1996, 1997 and 1998 as well as a reduced starting salary and a new six-step salary guide. The Borough also cites the agreement between the United States Postal Service and the National Mail Handlers Union which provided increases of 6.75% over two years, including cost of living adjustments.

Pointing to the Allendale interest arbitration award that resulted in increases of 15.5% over four years and a \$100 reduction in the clothing allowance, the Borough asserts that 4% increases are not "de rigeur" in Bergen County. In that vein, the Borough also cites an article in the Bergen County Record calling increases in police salaries within the County a "domino effect."

The Borough emphasizes that the public sector evidence shows that increasing the number of steps on the salary scale should be awarded given that PBA members currently reach maximum in three and one half years. In support of its argument, the Borough cites settlements with additional steps in salary guides in Norwood (2 additional steps), Edgewater (6 step guide), Teaneck (new 6th step), and Ridgefield, (6 step guide), Lodi (arbitration award increasing number of steps from 3 to 5). The Borough stresses that no other agreement on the record in this case has a salary scale where Police Officers reach maximum salary in three and one half years.

Looking to the private sector, the Borough argues that overall compensation and benefits received by its police compare favorably with that of private sector employees. Specifically, the Borough asserts that private sector wage shows that 4.5% increases are not justified and that its proposals "very closely approximate prevailing private sector wage increases." The Borough points out that private sector employees generally receive benefits inferior to those provided to its Police and are subject to layoffs, shortened job tenure and escalating health care costs.

While focusing on private sector settlements, the Borough argues that wage increases built into the salary scale between the steps should be considered when awarding a wage increase.² Specifically, the Borough

² The Borough takes issue with Arbitrator Aiges' ruling that costs incurred in salary progression can not be charged against the overall cost of package.

highlights the 18% spread between steps, noting that with 4.5% wage increases, salaries for Police not at maximum increase over 20%. The Borough argues that this supports its proposal to increase the number of steps on the salary guide with equal increments between steps.

Discussing the private sector data submitted in the earlier proceeding, the Borough points out that private sector wages increase 2.9% in 1997 and contract settlements increased between 3% and 3.5% during that same period. Citing the New Jersey Department of Labor report of wage increases between 1995 and 1996, the Borough points out that twelve counties had increases of less than 4%, while the remaining nine counties had average increases in above 4%. On average, that report showed a State-wide average increase of 4.3% in the private sector and 4% overall. The Borough stresses that figures for Bergen County between 1995 and 1996 were between 3% and 4%.

In this proceeding, the Borough stresses that comparative data on private sector compensation shows that its Police are better compensated than most private sector workers. Based upon a 3% increase in 1996, the Borough calculates that the maximum patrolman's salary would be \$56,348, or \$27.09 per hour. The Borough asserts that this salary compares favorably with the mean hourly wage for New Jersey Police Patrol Officers in 1996, as reflected in the 1996 Occupational Employment Statistics Wage Survey, of \$25.52. The Borough asserts that the hourly wage of Bogota's police officers in 1996, based

upon a 3% increase, would compare well with managerial categories including, among others, accountants and auditors, post-secondary art, drama and music teachers, computer scientists, economists and financial analysts. Further, the Borough notes that its police salaries compare with those earned by geologists, education administrators and financial managers, among others. Turning to the Sergeant, the Borough notes that in 1996 he would earn \$60,004 or \$28.84 per hour, a sum that exceeds the salaries for geologists, construction managers, medicine and health services managers, among others. With a 3% increase in 1996, Bogota's Lieutenants would earn \$63,659 or \$30.60 per hour. The Borough points out that such a salary is comparable to education administrators and in excess of that paid to personnel, training and labor relations managers as well as post-secondary business teachers.

A mean hourly salary of \$27.09 exceeds that of all sales and precision craft and repair occupations according to the Borough. Additionally, the Borough points out that operating engineers earned \$26.16 in 1996. Focusing on the ten highest paying occupations in New Jersey in 1996, the Borough notes that at 10th, architects earned \$31.76 per hour, or \$1.16 more than the Bogota lieutenant, and the lieutenant's base salary does not include longevity, overtime or clothing allowance.

Looking to the present, the Borough calculates that in 1999 its top step patrolmen would earn \$61,573 under its proposal or \$65,865 under the PBA's

proposal. The Borough compares that range to the \$69,943 earned by the average human resources director and \$62,832 earned by the average human resources manager.

The Borough proceeds to compare salaries for general administrative positions, engineers, and health care workers to that of its police officers. Among others, these comparisons show that a chief systems analyst earns an average of \$57,700, a program manager earns an average of \$73,894, a civil engineer earns an average of \$50,706, a chemical engineer earns an average of \$60,654, and a chemical engineering supervisor earns an average of \$80,311. Among the health care salaries cited by the Borough, a pharmacist earns an average of \$49,765, a registered nurse earns an average of \$43,986, a physical therapist earns an average of \$51,607 in 1999.

Additionally, the Borough submitted articles documenting layoffs in the private sector in 1998. Those include 1200 Revlon workers laid off, 2000 workers laid off by Texaco, 975 jobs eliminated by Conoco, 2,750 workers laid off from Halliburton's Energy Services Group and two layoffs at Boeing totaling 48,000 workers. The Borough pointed out that many private sector workers, including 16.8% of private sector workers, do not enjoy health insurance benefits, with the number of uninsured people increasing to 43.4 million in 1997.

According to the Borough, its Police enjoy benefits superior to those provided to private sector workers. Citing a 1997 Bureau of Labor Statistics survey, the Borough points out that its Police receive 30 sick days after one year and 90 days after three years, compared with the average of 11 days after one year of service and 21 after 25 years of service. The Borough also asserts that its vacation allotment exceeds the average and that three quarters of private sector employees are required to contribute to their health insurance coverage. The Borough stresses that its police do not have to make such contributions and the Borough is not asking them to do so in this proceeding. Additionally, the Borough points out that other of its employees have switched to a lower cost PPO plan, but Police Officers are not being asked to switch.

The Borough maintains that private sector unions have settled for wage increases closer to the Borough's proposals than to the PBA's proposals. In support of this contention, the Borough points to a settlement between Federal Express and its pilots that calls for increases totaling 17.5% over five years. The Borough also cites BNA data showing the median first year increase in all contracts settled in the first two weeks of 1999 was 2.8%, down from 3% in 1998. Finally, the Borough maintains that although its Police are insulated from the risks of the private sector and it proposes raises that are similar to or in excess of those granted in the private sector for the relevant period, and without a diminution in health benefits.

Continuing its argument that the statutory criteria support its proposal, the Borough points out that the cost of living is at "historically low and stable levels," the Borough asserts that the financial impact and interest and welfare of the public criteria support its proposal.³ Specifically, evidence of high taxes, declining surplus, and an oppressive bond issue requiring added debt demonstrate the need for its proposal according to the Borough. Acknowledging that the lawful authority of the employer does not affect either proposal, the Borough asserts that the PBA's final offer would adversely impact the interest and welfare of the public. The Borough stresses that there is no evidence that current wage and benefit levels are insufficient to maintain quality police services for the public. At the same time, the Borough maintains that the public benefits from efforts to improve public services and lower taxes. Bogota cites its increasing tax rate during the years in question. The tax rate has increased steadily from 3.44 in 1996, to 3.47 in 1997, 3.52 in 1998 and 3.54 in 1999. Citing the State proclamation awarded by the Governor for its cost-savings efforts, the Borough points to its initiatives to establish a Joint Planning/Zoning Board and to outsource public assistance and environmental services. The Borough also regionalized its 911 services with the Borough of Ridgefield and reduced the financial burden of purchasing telecommunications equipment. According to the

³ Reviewing Arbitrator Aiges' awards, the Borough asserts that "PERC twice ruled that 4.5% wage increases are not supported by the record." In Borough of Bogota, P.E.R.C. No. 98-104 (1998), PERC remanded the matter and directed the arbitrator to "consider the Borough's evidence on private-sector wage increases in conjunction with the parties' other evidence. In Borough of Bogota, P.E.R.C. No. 99-20 (1998), PERC vacated the award stating that it was "not satisfied that [the arbitrator] fully considered" certain evidence including New Jersey Department of Labor reports on wage increases. In so finding, PERC specifically stated that it did "not hold that the arbitrator was compelled to award different salary increases."

Borough, these initiatives have resulted in the reduction of full-time positions and resulting cost-savings.

The continuity and stability of employment is supported by the lack of evidence that the Borough has trouble attracting and retaining police officers. The Borough also contends that the existence of CAP reserves does not equate to available funds. Rather, the Borough asserts that it would have to raise its already high taxes to fund 4.5% increases sought by the PBA. Specifically, the Borough notes that it has the highest tax rate in Bergen County and the third highest tax rate on an equalized basis. The Borough also points out that additional cost savings were achieved when some employees agreed to change their health insurance from a traditional plan to a PPO plan and that the Mayor and Council waived their salaries for two years. Additionally, in 1996, non-contractual Borough employees did not receive pay raises.

The Borough also emphasizes a series of articles in the Bergen Record stating that Bergen County police officers are the highest paid in the nation. According to the borough, the articles discussed trends toward consolidation into regionalized departments and questioned whether Bogota needed its own police department. The Borough also pointed to the popularity of close police contact with the community that results from home rule, but noted the price in the form of the some of the highest property taxes in the nation. The Borough stressed the high police salaries detailed in another Bergen Record article on September 21,

1998. That article detailed police salaries above \$100,000 in Paramus and compared those salaries with those of police chiefs in Philadelphia, St. Louis, Baltimore and Houston. That article also discussed the “domino effect” resulting from the comparability criteria in the 1977 Interest Arbitration Act and quoted local leaders as suggesting that the trend has “gone too far.”

For these reasons, the Borough contends that the interest and welfare of the public criterion and the financial impact criterion should be viewed in such a way as to permit the Borough to contain or lessen its tax burden while preserving and creating local programs and services. Following this reasoning, the Borough urges consideration of evidence of salaries beyond Bergen County. Citing Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), the Borough asserts that the financial impact criterion is not the equivalent of the municipalities ability to pay.

Bogota rejects the PBA’s argument that the Borough can afford its wage demands, and absent and CAP law restriction, police should receive wage increases as high as necessary to maintain comparability. Responding to testimony of Vincent Foti that funds in the Borough’s CAP bank and lawful tax increases could fund the PBA’s proposal, the Borough asserts that there is no justification to provide Police with increases in excess of those provided to other Borough employees. Pointing out that New Jersey residents pay an average of \$190 to fund police, in contrast to the national average of \$113.

According to the Borough, the articles in the Bergen Record and the evidence of private sector wages demonstrate that comparison with other police officers in Bergen County is a less relevant criterion here. Additionally, the Borough argues that the salary of Bogota Police relative to the salary of other Bergen County Police is "far less compelling" than the interest and welfare of the public in this case. Specifically, the Borough maintains that the "oppressive tax burden" has drawn media attention and prompted criticism from local leaders. According to the Borough, the media attention and criticism from local leaders demonstrate the particular importance of the interest and welfare of the public in this case. Because Bogota is already paying police salaries above the State average, the Borough asserts that local comparability should not be dispositive. The Borough points out that the cost-savings measures discussed earlier effected other of its employees, but the Borough is not seeking a change in health insurance or asking Police to forego wage increases or salary payments. Nor will their positions be jeopardized if Bogota continues to seek regional services.

The Borough asserts that the PBA's position is inconsistent with the interest and welfare of the public because the Borough has worked to reduce the municipal portion of the budget to reduce spending and stabilize property values, rather than to fund raises for one bargaining unit.

The Borough contends that it's the continuity and stability of employment criteria favors its proposal because there have been no layoffs and no officers have sought police from other employers. According to the Borough the emoluments of employment are "substantial and competitive" and its Police have no need to seek employment elsewhere. Additionally, Police enjoy extraordinary continuity and stability of employment compared with other workers. The Borough cites the decrease in average job tenure for workers from 3.8 years in 1996 to 3.6 years in 1998. According to the Borough, most job loss in 1998 and 1999 resulted from layoffs and downsizing. Again citing layoffs at Texaco, Conoco, Halliburton, Boeing and Revlon, the Borough cites an ABC News report that 1998 was the worst year for layoffs in a decade as a result of the Asian financial crisis and falling oil prices. The Borough emphasizes that the record shows that the continuity and stability of employment is ideal.

Turning to the cost of living, the Borough asserts that the "historically low and stable" increases in the cost of living favor its proposal. Specifically, the Borough notes that the CPI-U was 2.8% in 1996, 1.7% in 1997 and 1.6% in 1998. Pointing out that the total increase in the cost of living from 1996 through 1998 was 6.6%, the Borough notes that the increases proposed by the PBA for that period total 14%, or more than double the cost of living. Additionally, the Borough stresses that PBA members are insulated from increases in the cost of medical care, one component of the CPI that has increased more significantly. The Borough also cites the new formula that will reduce figures for the CPI

beginning in January of 1999. According to the Borough, the new formula will reduce increases in the CPI by approximately .2% per year, resulting in lower cost of living increases. Accordingly, the Borough contends that the cost of living factor favors the Borough's proposals, particularly in light of skyrocketing property taxes, a \$10.5 million school bond issue and the third highest tax rate in Bergen County.

The Borough seeks to reduce the sick leave allotment to 15 days per year for new hires. Currently, Police Officers are entitled to thirty days of sick leave after one year, and ninety days of sick leave after three years of employment. After five years of employment, Police are entitled to unlimited sick leave. The Borough argues that this is excessive, particularly compared to Edgewater where Police are entitled to 15 days of sick leave per year and Ridgefield where Police officers are entitled to 10 days of sick leave per year. Additionally, relying on a survey of employee benefits at medium and large employers, the Borough notes that average sick leave in 1997 was 11 days after one year and 21 days after 25 years of service. Accordingly, the Borough argues that the comparative data demonstrates that its sick leave entitlement is excessive.

The Borough also seeks to change the longevity provision for new hires to become effective only after maximum salary is reached. Currently, Police receive 1% longevity for each three years of service up to a maximum of 8%. The Borough asserts that it is counterintuitive to reward length of service before

an officer reaches maximum salary. The Borough views this as an unnecessary expense and seeks to change the longevity provision for new hires. In support of its proposal, the Borough cites the Hasbrouck Heights contract where Police begin receiving longevity after five years and they have a five-step guide.

The Borough proposes to eliminate terminal leave for new hires. Currently, employees receive three month's pay upon retirement. According to the Borough, Police also receive unused vacation days as a lump sum. The Borough proposes that sick leave will be cumulative and payable upon retirement. The Borough asserts that this is in the interest and welfare of the public because it will help the Borough to control its finances and reduce taxes.

Finally, the Borough seeks to place the Detectives on the same shifts as other employees. Currently, Detectives work days and tend to work overtime during the evenings. Scheduling Detectives on the same shifts as Patrolmen, including evening shifts would reduce overtime, thus reducing costs. The Borough maintains that this is a logical extension of PERC's February 26, 1999 determination that it could use civilian dispatchers without negotiations, Borough of Bogota, P.E.R.C. No. 99-77 (1999).

DISCUSSION

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

Initially, I note that several issues remain in dispute. One principle which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the bargaining process is that a party seeking such change bears the burden of showing the need for such modification. I apply that principle to the analysis of each issue.

I first turn to the various proposals made by the Borough. I conclude that the Borough has met its burden with respect to the ability of the Chief of Police to revise the work schedule for Detectives. The current provision set forth in Article LI Section B serves as a bar to any change in the absence of an emergency. When coupled with Section A, which states that Detectives shall not have their pre-assigned work schedule changed to avoid overtime, the ability of the Chief to deploy a Detective for public safety purposes is unduly limited. The Borough's

rationale for this change is to reduce overtime as a result of its need to provide this specialized function. I do not find merit, however, in the Borough's proposal as phrased which would compel Detectives to work the same work schedule as all other employees. I am persuaded that the necessary flexibility as required by the Chief of Police can be met by allowing the Chief to change a Detective's work schedule not only when an emergency is declared, but also after a decision of the Chief to change the work schedule after satisfying a reasonable period of notice. A reasonable period shall be defined as not less than fourteen (14) days. The Detectives' work schedule with respect to the number of hours worked and the specifications for overtime set forth in Sections (A) and (B) shall remain unaffected. Given the potential for alterations of the Detectives' work schedule I conclude that an increase in the existing detective increment of \$500 annually is warranted. I award a change in that increment to \$1,250.

The Borough also seeks to implement new terms and conditions of employment for Police hired after this award. Those changes include limiting new hires to fifteen (15) days of sick leave, eliminating terminal leave, delaying payment of longevity until an employee reaches the top step of the salary guide and implementing a new nine step salary guide for new hires. Some changes for new hires are appropriate and are included as discussed below.

The Borough's proposal to lengthen the time it takes for new hires to reach maximum salary has merit. The current salary scale permits employees to

reach maximum after 42 months, or 3½ years. The present salary guide, by providing a top step salary after only 3½ years, produces a compression between the new hire rate and maximum which is not warranted given the increases in salary to patrol maximum provided in this Award. A new salary schedule for new hires shall be established which extends the amount of time from date of hire to the reaching of patrolman maximum, but not to the extent sought by the Borough. I award a new salary schedule for police officers hired after the date of this Award which provides for a hiring rate and five additional steps which commence after one (1) year of service and concludes after five (5) years of service. The salary maximum after five years of service shall equate to the same salary for the existing patrolmen maximum as modified by the terms of this Award.

The Borough also seeks retain the present starting salary of \$29,324.01 throughout the five-year agreement. Although a retention in starting salary is appropriate, a five year freeze could serve to limit the pool of applicants for any new positions, as well as to unnecessarily elongate the salary scale. Balancing the cost savings that result from limiting starting salaries with the need to maintain a competitive starting salary, I award a preservation of the starting salary until the last year of the contract, but award an increase in the starting salary in accordance with the increase awarded to the salary schedule effective January 1, 2000.

The next issue concerns the Borough's proposal to reduce the maximum longevity payments for new employees from eight (8%) percent to a maximum of five (5%) percent. The Borough also proposes that longevity payments begin after a new employee reaches maximum pay as opposed to after three (3) years of completed service as presently required. Longevity payments are meant as additional compensation to entice senior employees to remain on the police force and to pay for years of service. Employees in the midst of working their way up the salary guide are receiving step increases and have not demonstrated a need for the commencement of longevity payments until after they have reached the top step of the salary guide. Because I have awarded a new salary schedule for new hires with six steps, it is reasonable and appropriate to adopt a modified longevity schedule which is compatible with the new salary schedule. The present longevity schedule requires the payment of one (1%) percent for each three (3) years of completed up to a maximum of eight (8%) percent. The objectives set forth above can be met by qualifying new employees for longevity on the existing scale by making them eligible for longevity initially at two (2%) percent after six (6) years of completed service and one (1%) percent for each additional three (3) years of service up to a maximum of eight (8%) percent. Under this new schedule longevity payments need not accrue until such time as an employee has reached the top of the salary guide. This result is consistent with what is currently provided for existing employees who reached the top of the salary guide in less time. This result also places new employees on the identical track of the existing longevity schedule after they receive their initial longevity

payment. Given the fact that the existing longevity maximum payment of eight (8%) percent is modest compared to that provided within the County, I find no basis to provide a reduced maximum payment for new employees. Accordingly, Article XIX of the parties' agreement is amended to provide:

B. Longevity shall be paid at the rate of one (1%) percent for each three (3) years of completed service up to a maximum of eight (8%) percent. For all employees hired on or after December 8, 1999, longevity payments shall commence after completion of six (6) years of service at a rate of two (2%) percent and thereafter at the rate of one (1%) additional percent for each three (3) years of completed service up to a maximum of eight (8%) percent.

With respect to the remaining Borough proposals, I do not award the Borough's proposal to eliminate terminal leave for new hires. This proposal covers only new hires not yet employed by the Borough and the effects of this proposal would not be felt for at least another 25 years. Given the fact that this new Agreement will expire in slightly more than one year from this date, proposals to revise this provision should be deferred and may be raised by either party during their negotiations for the next agreement.

I now turn to the Borough's proposal to Article XXV - Sick Leave. I sustain the Borough's proposal in part and deny it in part. Section C which provides that sick leave be non-cumulative and unlimited after five full years of service shall be consistent for existing and new employees. The Borough has established, however, that the sick leave benefit of thirty (30), sixty (60) and ninety (90) working days after the first, second and third year of employment, respectively,

for employees hired after January 1, 1979, should be modified for employees hired after the date of this Award. I note that new employees will continue to be protected from work-incurred injuries by Article XXVI. Given this protection, a reduction of the existing schedule of sick days for new employees should be set at one-half of the amount of working days currently provided after the first, second and third year of employment. This will entitle new employees to fifteen (15), thirty (30) and forty-five (45) working days, respectively.

I now turn to the issue of salary increases. Both parties seek to distinguish between the first two-year term and the latter three-year term at issue. However, both parties agree that the award should cover a contract with a five-year duration. In keeping with the parties' agreement, I view this award as covering a single five-year contract term. Thus cost consideration focuses on the salary increases and the cost of the wage package as a whole, rather than on the increase or cost in any of the five years covered by the package. The Borough has proposed a 15% increase over the five years, averaging 3.0% per year, while the PBA proposes increases totaling 24.0% or an average of 4.8% per year. Based upon the arguments and evidence submitted, and after applying the statutory criteria, I have determined that wage increases shall be 4.25% effective January 1, 1996, 4.25% effective January 1, 1997; 3.7% effective January 1, 1998, 3.8% effective January 1, 1999, and 3.9% effective January 1, 2000, for a total increase of 19.90% over the five year period, and an average annual increase of 3.98%. This award results in a net economic change of \$212,205, or

an average cost of \$42,441 per year. The difference between the PBA's proposal and the Award is \$2,387 in 1996, \$2,488 in 1997, \$8,301 in 1998, \$11,990 in 1999 and \$12,286 in 2000. These figures are exclusive of, pre-existing step increases and roll up costs, and assume no retirements, hiring or promotions. These figures also exclude any feature cost savings for new hires which will serve as future cost offsets. The analysis that leads me to this award is as follows.

The Borough's and the PBA's proposals are within the lawful authority of the employer. The Borough acknowledges that its lawful authority is not an issue in this case. At issue is the financial impact of this award upon the Borough, its residents and its taxpayers. Emphasizing that the Borough has the ability to pay the cost of its proposal with minimal impact upon individual taxpayers, the PBA points to the Borough's surplus and flat tax rate over the past five years. On the other hand, the Borough is concerned that it has the third highest equalized tax rate in the County and is actively working to reign in spending. The Borough ranks 38th out of 70 Bergen County municipalities in debt service per capita and 60th in the tax levy per capita.

Overall, the Borough is financially healthy and is working to maintain its economic health. These efforts have been recognized and rewarded by a State proclamation from the Governor's office. This award balances the Borough's efforts to maintain its financial posture while providing its Police Officers with fair

and equitable salary increases that will help to insure the continued continuity and stability of employment within the Borough. Compared to the Cap bank of \$193,877 for 1996, \$186,524 for 1997 and \$472,205 for 1998, this award has an average cost of \$42,411 per year and the financial data reflects no appreciable adverse impact on the tax levy. Moreover, the award contains future savings resulting from a new salary scale, the delayed implementation of longevity payments and a new sick leave schedule for new hires.

This award is also consistent with the interests and welfare of the public and will not have adverse financial impact on the governing unit, its residents and taxpayers. As the Borough has pointed out, its residents and taxpayers support local policing and are opposed to any proposal, such as regionalization, that might jeopardize its local police force. The Borough's residents and taxpayers wish to maintain a high quality, effective local police department. The record reflects that productivity has substantially increased in the form of a significantly higher number of requests for police services from the public. The Borough's residents and taxpayers have also been willing to bear the increased costs of funding local police services and the record reflects that they will be able to continue to do so without adverse financial impact. This award provides reasonable wage increases for existing employees to insure the continuity and stability of employment within the Police Department as well as longer term cost offsets for future employees.

Turning to the cost of living, both parties acknowledge that their proposals exceed increases in the CPI. Increases in the CPI-U were 2.8% in 1996, 1.7% in 1997 and 1.6% in 1998. To the extent that it is relevant, the CPI data, by itself, tends to support the Borough's position. However, when considering the cost of living criteria, I also consider the report of wage changes compiled by the New Jersey Department of Labor published in September 1997 by PERC. That data shows that total wage increases in New Jersey for both the public and private sectors increased by 4% from 1995 to 1996. During that same period, total private sector wages state-wide increased 4.3% and the increase in Bergen County was 3.6%. The data reflects that wages in all sectors have been adjusted beyond the cost of living. In this instance, the cost of living data is not controlling but weighs against awarding increases at the level proposed by the PBA.

Each party argues extensively from evidence submitted on comparability data, including law enforcement settlements and awards, non-police settlements within the Borough, other public sector settlements generally, and private sector comparisons. Each of these comparisons is relevant and shall be analyzed accordingly.

The contracts submitted by the PBA result in average salaries in each year of the five-year agreement in excess of 4%. While some of those individual agreements result in average salary increases over 4% for the entire agreement,

many of those individual agreements provide increases averaging 4% or below. For example, the interest arbitration award in Garfield averaged 3.83% over three years for 1998 through 1999. Other examples include the interest arbitration award in Little Ferry averaging 4% for 1998 through 2000 and the settlement in Lodi averaging 4% for 1996 through 1999. These settlements weigh in favor of wage increases above that offered by the Borough.

Although the PBA argues that Bogota's salaries and benefits are less than average for police within Bergen County, extraordinary increases beyond that which maintain the relative position of Borough Police are not justified at this time. There is no evidence that Borough Police are leaving Bogota for other police departments and employment has remained relatively stable. Additionally, certain benefit levels received by Borough Police may be lower than benefit levels received elsewhere in Bergen County. However, other benefit levels, such as unlimited sick leave after five years, exceed the level provided in other Bergen County municipalities.

The police settlements and awards cited by the Borough are generally from New Jersey counties and municipalities outside of Bergen County. These settlements and awards, such as West New York, Asbury Park and South Amboy are, as acknowledged by the Borough, below average settlements within Bergen County. The Borough's chief justifications for urging a lower than average settlement are its desire to limit the burden of its taxpayers and its belief that

police in Bergen County are already compensated generously and limited increases are necessary to reign in police compensation. As discussed below, I believe that this award balances the interests of taxpayers in limiting their tax burden with the interests of residents and taxpayers in maintaining a competent and effective local police force. The Borough's concerns about the level of police salaries in Bergen County generally are less relevant than what the record has established for these police officers who do not earn salaries near the highest levels within the county which have been cited by the Borough. This award, which is near the average settlement within the County, simply maintains the relative position of police salaries, and the Borough's police officers, as stated are not now paid near the top dollar within Bergen County. This award will not result in a change in their relative positions, and neither party has submitted evidence which would establish a basis for changing their relative position.

The Borough also points to settlements providing average or above average wage settlements and highlights the "givebacks" included in those agreements and awards. For example, the Borough cites the Wallington PBA agreement which includes new steps on the salary guide in exchange for increases totaling 5% in one year (split 2% and 3%). Likewise, this award provides some improvements to the salary guide for new hires that will extend the guide to six steps over five years, a delay in the implementation of longevity for new hires, a reduction in sick leave benefits for new hires, a 3.9% increase in

the starting salary over a five-year period, and flexibility in the deployment of detectives.

Looking to other settlements within the Borough, its blue-collar unit has settled for 3.7% increases for 1999 and 2000, and this award, providing 3.8% and 3.9% in each of those years respectively, is comparable. Elsewhere in the public sector, the Borough relies upon settlements between Atlantic City and its firefighters and Atlantic City and the IBT. These settlements included wage freezes in 1995 and 1996 followed by increases of 4% and 5% for the firefighters and \$1600, \$1100 and \$1400 for the IBT. The Borough also highlights a settlement between the U.S. Postal Service and the National Mail Handlers Union providing increases of 6.75% over two years. These settlements, though illustrative of public sector settlements generally, are geographically remote from Bogota and are of limited relevance when considered together with each of the other statutory criteria.

The Borough would place great emphasis on private sector wages and provides extensive detail of police salaries as compared to other occupations including accountants, geologists, and college professors. These comparisons show that Bogota police are well compensated and earn salaries comparable to many occupations requiring significantly more post-secondary education. These comparisons are relevant but are difficult to weigh because of the different qualifications, duties, and responsibilities required of a police officer. Police

officers have the power and responsibility of arrest, and are legally authorized to carry weapons as a job responsibility. Police are responsible for public safety and that responsibility carries with it the personal dangers inherent in upholding the public safety.

When comparing the private sector to police, a more useful comparison is the increase in private sector wages in New Jersey as detailed in the report compiled by the New Jersey Department of Labor, circulated by PERC pursuant to statute and cited by both parties. That data shows that total private sector wages statewide increased 4.3% and the increase in Bergen County was 3.6% from 1995 to 1996. I note that the data comparing 1995 from 1994 also reflects a 3.6% increase in Bergen County and a statewide average of 3.4%. This data was centrally in issue during the two appeals. In essence, PERC determined that the 4.5% wage increases which had been awarded had not been sufficiently justified in light of this data. Because the proceeding entails an examination beyond the two-year time period, it is appropriate to review the data published in 1998 reflecting changes in 1997 from 1996. This data reflects a 5.0% increase in Bergen County and a 4.7% increase statewide. The above data, when considered and weighed on the whole, does favor an easing in the first two years previously awarded, although the wage increases awarded herein remain somewhat above the private sector data for 1995 and 1996. However, when these years are coupled with the data for 1997 private sector averages are produced for both Bergen County and statewide (12.2% and 12.4%, respectively)

which are consistent with the average increase awarded herein for the 1996, 1997, 1998 (12.2%), and the average of this data (4.07% for Bergen County and 4.1% statewide) establishes a level slightly above the 3.98% average increase awarded over the life of the five-year agreement.

I have also examined the parties' positions with respect to the meaning of the previously-issued interest arbitration awards, which were vacated and remanded along with those decisions, the PERC decisions and the parties' extensive briefs to the previous arbitrator and to PERC. Because these events have been fully documented, I will not summarize them here. Simply put, the Borough has stated that there was insufficient justification for "4.5% wage increases with no givebacks." The PBA states that "the evidence weighed heavily in favor of an award of the PBA position in the past before Arbitrator Aiges as it does now." The parties have stipulated the inclusion of all prior evidence and relevant documentation which existed in that proceeding. It is significant that my evaluation of the evidence covers a five-year period as opposed to the two years, 1996 and 1997, which were in dispute in the prior proceeding. I recognize that this award differs somewhat from the prior award during the 1996 and 1997 period of time. That difference stems from my evaluation of the record over a five-year period as opposed to a two-year period which has caused me to place slightly greater weight on the private sector data and slightly less weight on the data concerning law enforcement comparability during those two years. The five-year period also justifies a renewed

examination on the issue of terms and conditions of employment for new hires. In sum, I conclude that the terms of the entire award reflect a reasonable determination of the issues after consideration of all of the relevant statutory criteria.

Accordingly, and based upon all of the above, I respectfully enter the following Award as a reasonable determination of the issues.

AWARD

There shall be a five-year agreement effective January 1, 1996 through December 31, 2000. All proposals by the Borough and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which are modified by the terms of this Award.

Salary

The existing salary schedule in the Agreement which affects all employees hired prior to December 8, 1999 shall be adjusted according to the following terms. The increases shall apply to each step of that salary schedule and shall be retroactive.

Effective January 1, 1996	4.25%
Effective January 1, 1997	4.25%
Effective January 1, 1998	3.7%
Effective January 1, 1999	3.8%
Effective January 1, 2000	3.9%

Effective December 8, 1999, the following salary guide shall apply to all newly hired employees:

Patrolmen	November 1, 1999	January 1, 2000
Hiring Rate	\$29,324.01	\$30,203.73
After 1 year	\$36,263.13	\$37,677.39
After 2 years	\$43,202.25	\$44,887.14
After 3 years	\$50,141.37	\$52,096.88
After 4 years	\$57,080.49	\$59,306.29
After 5 years	\$63,999.64	\$66,495.63

Longevity

Article XIX shall be modified as follows:

B. Longevity shall be paid at the rate of one (1%) percent for each three (3) years of completed service up to a maximum of eight (8%) percent. For all employees hired on or after December 8, 1999, longevity payments shall commence after completion of six (6) years of service at a rate of two (2%) percent and thereafter at the rate of one (1%) additional percent for each three (3) years of completed service up to a maximum of eight (8%) percent.

Article LI - Detective Personnel

This provision shall be modified as follows:

Section A. The Detective increment shall be increased to \$1,250 annually effective January 1, 2000.

Section B. The Chief of Police may change the work schedule for Detectives upon the declaration of an emergency or after a determination is made by the Chief to change the work schedule after providing not less than fourteen (14) written notice. The specifications for overtime set forth in Sections (A) and (B) shall remain unaffected.

Article XXV - Sick Leave

Article XXV - Sick Leave Section B shall be modified as follows:

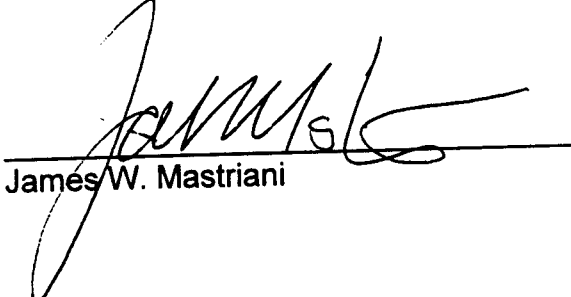
ADD: Any member of the Police Department hired after December 8, 1999 shall have the following sick leave benefits:

1 st year	15 working days
2 nd year	30 working days
3 rd year	45 working days

Retention of Jurisdiction

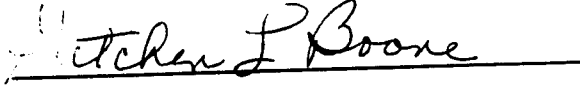
This arbitrator shall retain jurisdiction over any disputes relating to the implementation of this Award until such time that the new Agreement is formally executed.

Dated: December 8, 1999
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 8th day of December, 1999, 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
Commission Expires 8/13/2003

