
In the matter of Compulsory Interest Arbitration
concerning the negotiations impasse

between

DECISION AND AWARD

Borough of Butler, New Jersey

of

and

Frank A. Mason, Arbitrator

Police Benevolent Association, Local 198

Re: PERC Docket IA-98-97

APPEARANCES

FOR THE BOROUGH

Frederic M. Knapp, Esq., Special Labor Counsel
Courter Kobert Laufer & Cohen

Gene Dunworth, Borough Administrator

Stephen Gallagher, Chief Financial Officer

Dennis Passenti, Chief of Police

Joseph Heywang & William Bock, Councilmen

FOR THE PBA

Fred M. Klatsky, Esq., Labor Counsel, Klatsky & Klatsky

Ciro Chiments, PBA President

Edward M. Card, Jay Dean & Andy Soules,
Contract Representatives

Ray Doody, Financial Expert

INTRODUCTION AND PROCEDURAL BACKGROUND

On April 28, 1998 Mr. Klatsky, Esq, filed a petition to initiate compulsory interest arbitration, with the Public Employment Relations Commission [PERC], concerning an impasse in negotiations between the Borough of Butler and PBA Local 198 which involved a unit of patrolmen and sergeants employed by the Borough. PERC filed the request on May 1, 1998. The Borough entered its response on May 27, 1998. On June 22, 1998 the PERC appointed Frank A. Mason as the arbitrator of this matter in accord

with the expressed wishes of the parties. The arbitration procedure selected was conventional arbitration under the auspices of the PERC.

Attempts to establish an early hearing date were rejected as the Employer had, on May 28, 1998, initiated a scope petition which could affect a substantive clause of the then current Agreement and the parties were persuaded that moving forward without resolution of that issue would be unlikely of success. The matter involved a provision which established certain percent of salary payments for employees retiring within a limited number of years of service. The Commission concluded that such a provision was not mandatorily negotiable and therefore beyond the scope of issues which may be submitted to interest arbitration and issued its ruling to that effect on March 26, 1999. Thereafter the parties joined with the arbitrator to mediate the disputed elements of the impasse beginning in May of 1999. Although limited progress was achieved there were key elements remaining unresolved after a further meeting in June and the parties opted to reconsider their positions. In October I was notified that there was need to proceed to formal hearing and a meeting was set for November at which procedural issues, prior elements of agreement and remaining areas of dispute were reviewed. Formal hearings were scheduled for December 16, 1999 and January 6, 2000.

At the formal hearings each party had full opportunity to present its case. All of the proceedings were recorded and transcripts made available to the parties. Sworn witnesses were called, examined and cross examined and many exhibits were introduced into evidence. The PBA presented, as part of its final offer, an alternate demand to the retirement incentive plan which had been included in the previous Agreement but which the PERC had determined, as a result of the scope petition filed by the Borough, to be not mandatorily negotiable. This newer proposal had been considered by the parties earlier but had not resulted in any accord and was now labeled by the Borough to also contravene the underlying legal foundation relied upon by PERC in its prior determination as to mandatory negotiability. The hearing proceeded with this matter in limbo. At the hearing in January the Borough announced it had again filed a scope petition on this demand. Intensive discussions followed because there was apprehension that the PERC would again take up to a year to reach a determination of this petition and the lack of resolution was seen by the PBA as placing it in a difficult position as to the final offer it wanted to have on the table.

In an effort to overcome this problem I asked the PERC to expedite its determination and the parties came to a reluctant agreement that either might be placed at disadvantage by an unexpected determination by PERC and that the fairest way to proceed would be to have the scope decision in hand, so it could be factored in, before the arbitrator considered writing an award. It was understood that the terms of the final offers could reflect consideration the PERC decision. This element was put to rest by the cooperative accommodation of the PERC in expediting a determination which concluded this alternate proposal was not mandatorily negotiable. Post hearing briefs were delayed but the record was closed on June 1, 2000.

In the Borough's post hearing brief it is represented that the Borough opposed the alternate offer of the PBA and asserted that the statutory limitation as to submission of final offers precluded the arbitrator from considering any change of proposal absent the acquiescence of the Borough. It is my determination that the Borough did consent to the option to make a change where, in the transcript page 218, lines 6 & 7, after my observation as to the parties' being able to review their final offers after a determination of the disputed matter by the PERC, the attorney for the Borough indicated, "I think that's the fairest way to do it. I think that's the most reasonable way". He further confirmed my understanding in lines 21 through 25 when he added, "And it would seem to me that would be the more reasonable approach to this, so that we have final resolution of this issue. And I gather we know at this point what the PBA's position would be in the event that that's determined", referring to the anticipated determination by PERC that the second retirement incentive proposal of the PBA would be declared not negotiable. For this reason I allowed the PBA to modify its final offer after the receipt of the PERC decision. This understanding was further confirmed by the Borough Attorney's statement on record at p. 216, line 15, "As this is a significant economic issue, the Arbitrator can't render a final decision until that issue is resolved." In addition, on p. 8, line 3 of the January 6, 2000 transcript, Mr. Knapp made the following statement, "And the Boroughs position is that we're not seeking to stay the proceedings. Our position is that the proceedings can continue, except that we're asking that the commission render a decision on this particular proposal before a final determination is made on the entire matter, if possible."

POSITIONS OF THE PARTIES

The parties have agreed that the duration of the Agreement would be four years, January 1, 1998 through December 31, 2001.

FINAL OFFER OF THE BOROUGH

ECONOMIC ISSUES

1. WAGES - ARTICLE XIV, APPENDIX A

Wages to be increased by 4% on January 1, 1998 and January 1, 1999 and 3.5% on January 1, 2000 and January 1, 2001. Remove words in prior Agreement, "and raises".

2. HOLIDAYS - ARTICLE VIII, Section 1

Effective as of January 1, 2000 elimination of one "floating holiday".

Holidays to be worked at straight time for twelve hour shift employees.

Remove Section 6 of prior Agreement. [Option to take another day off or compensatory time at 1.5 rate.]

3. INSURANCE - ARTICLE XVIII

Effective January 1, 2000 increase co-pay for prescription drugs from \$3/\$6 to \$6/\$12.

Effective January 1, 2000 increase health benefit deductible from \$200/\$400 to \$250/\$500

3. UNIFORM ALLOWANCE - ARTICLE XVI

Effective January 1, 2000 employees will no longer receive the \$1200 cash allowance for uniform maintenance and instead will receive payment based on vouchers for expenditures upon approval of the Borough. The maximum annual reimbursement to be capped at \$1000. Borough to assume responsibility for provision of bullet proof vests every 3 to 5 years by taking advantage of any grant program available for vests.

4. TRAINING - ARTICLE XVII, Section 4

The Borough will pay \$1000 per officer with up to \$500 of that amount transferable to another officer and \$1000 additional to officers involved in any accredited advanced education programs which enhance the value of the officer to the Borough. [Limits employee options under prior Agreement terms.]

5. RETIREMENT BENEFIT - ARTICLE XXV

Eliminate entire Article. [This is provision PERC deemed not mandatorily negotiable].

NON-ECONOMIC ISSUES

1. RULES AND REGULATIONS - ARTICLE III

Eliminate Section 6 which relates to leaves of absence and replace with a reference to State and Federal Family and Medical Leave Acts.

2. VACATIONS - ARTICLE IX

Impose condition that vacation of two consecutive weeks at a time cannot be taken without approval of the Chief or his designee.

3. HOURS OF WORK - DETECTIVE BUREAU- ARTICLE XXIII

Detective's hours to be determined by the Chief of Police.

FINAL OFFER OF THE PBA

ECONOMIC ISSUES

1. WAGES - ARTICLE XIV, APPENDIX A.

Adjust all salary guide pay rates upward by 4.75% on January 1st of 1998, 1999 and 2000 and by 7.25% on January 1st, 2001. Increase base rate of Sergeants by \$1000 before application of above percent changes on January 1st, 1998.

2. LONGEVITY - ARTICLE XI

Provide longevity structure incorporating 2% for employees entering their twelfth year, 3% for those entering their fifteenth year and 4% for those entering their twentieth year.

3. SICK LEAVE - ARTICLE X, SECTION 6

Adjust the maximum payout for unused sick leave from \$10,000 to \$15,000 effective January 1, 1999.

4. All retroactive salary increases, benefits, increase in sick days payout shall be made to all employees who were on the payroll as of January 1, 1998

5. INSURANCE - ARTICLE XVIII

Eliminate all deductible health benefit expenses.

6. VACATIONS - ARTICLE IX

Adjust vacation allowance as follows: For employees with 11 to 15 years service one extra day from 15 to 16 per year: For employees with 16 to 20 years service two extra days from 15 to 17 per year: For employees with 21 or more years service two extra days from 20 to 22 per year.

NON-ECONOMIC PROPOSALS

1. GRIEVANCE PROCEDURE - ARTICLE XV

Modify definition of grievance to include appeal of minor disciplinary action, suspensions of five days or less.

Extend time limits for movement of grievance to higher step to 14 calendar days and to arbitration to 30 calendar days.

PROFILE OF THE BOROUGH

The Borough of Butler in Morris County is a small community of only just over two square miles. Most of it is devoted to residential properties with the very large majority consisting of one family dwellings. The population is about 7700 and the per capita income was estimated to be \$18806 in the 1999 National Resource Directories, Inc.

description. Butler was incorporated in 1901 and has evolved into a largely residential community especially after its singular manufacturing industry closed down many years ago. There is almost no land left for development at this time. The expansion of the community accelerated after World War II and much of the housing dates back to the 1940-1960 period with the median year built being estimated as 1956. This will be altered by completion and occupancy of a development which will provide an additional 238 housing units, but that is seen as the last such enlargement of the community as additional land is not available.

Heywang, the Council President and chairman of the finance committee testified as to the environment of the Borough indicating he was a life long resident and that the community was essentially a blue collar town when the mills were running. The philosophy of the Council is to maintain a no tax increase budgetary plan which has been the objective for many years. Toward that end he noted the use of outside contractors for some road and other work and the savings from such programs including the cost of street sweeping. There is a continuing effort to avoid indebtedness and a plan in place which will free the Borough from same within three years.

One of the noteworthy distinctions of the Borough is the ownership of an electric utility company. A portion of the income of the utility is brought into the Borough budget and typically is used for capital expenditures such as fire trucks, road maintenance and construction and the like. The amount of the monies so provided amounts to about \$450,000 to \$500,000 in a typical year and averaged \$490,000 from 1994 through 1998. A second distinction is the unusual success of the Borough in achieving its objective of no tax increases. In 1994 the municipal tax rate jumped from \$0.9711 to \$1.157 per hundred of valuation. Since that time and through the 1998 budget that rate has not risen at all. The total tax and municipal service costs to the average home in Butler have remained virtually constant between the year 1994 through 1998 varying from \$5490 in '94 to \$5488 in '98. During that same 5 year period the amount of revenue to be raised annually by taxes has increased less than 1%. The 1999 budget, which included provision for carefully estimated costs related to this procedure, was cast in the same manner with virtually no adjustment to tax rates.

DISCUSSION

The general focus of this impasse is on the overall financial package, salary and benefits, which will be implemented for the four year term of a new Agreement. There are non-economic issues as well but they are in a distant second level of importance to either of the parties. The most obvious difference and that which could be most costly is the gap between the salary adjustments offered by the Borough and the demands of the PBA. Each party created a complex basis for comparing the circumstances of the police in Butler with many of the surrounding communities. They did not jointly adopt a group as to which governmental employers of police should be used in those comparisons but both chose a substantial number, generally cities, townships and boroughs, all within a reasonably close geographical relationship to Butler, most within Morris County. In

attempting to find a commonality of the two propositions I ran into some difficulty as there was need to look at what was already settled, for which the data was quite readily available, as well as looking to future years which would be of concern in this matter, for which the data was less abundant. Curiously the simple approach of discarding examples which were not on the list of both parties still provided a substantial data base, and even more curiously, when all data placed in evidence was considered the results did not differ markedly from a statistical prospective. By this I mean that the average rates of increases in salary found in the information provided by the Borough did not vary greatly from that provided by the PBA and neither were substantially different from the data derived from using only the common elements provided by both parties or from all data supplied.

In reviewing these data banks it was apparent that the salaries paid to patrolmen at Butler are quite close to, but generally below, the average of salaries paid in either list submitted by the parties, although the comparisons provided by the Borough tend to understate the total income of employees in other agencies because longevity payments are not included, while Butler employees do not have a similar longevity component. These can average just over 2% for employees with 11 years service in 1998, at which point the Butler employee at top step would fall behind the average of employees who also received longevity. In lists of 31 municipalities provided by PBA and 24 by the Borough for 1999, of which 22 were common, within that group the Butler pay fell behind the average pay including longevity by \$647 annually. The addition of years of service materially increases this differential as the rate of longevity payments increase with service in most municipalities which pay them and averaged over 4% for employees with 20 years service in 1998. This has the effect of escalating the total salary package for senior personnel in 1999 by an additional \$1200 leaving the Butler patrolman, whose salary topped out at the ten year point, behind the average by about \$1850.

On that list, after salary increases as proposed by Butler raising the tenth step rate to \$59892, patrolmen would place 11th of the 22 but when the focus is moved to the pay rate of 20 year patrolmen the Butler patrolman would drop substantially in the group. In 1997 Butler patrolman with 10 years service earned \$55374 which compared more favorably with a group of 25 neighboring communities where the average salary with longevity was \$55394, just \$20 more than Butler. The conclusion appears to be that the Butler salary plan if adopted as proposed will produce the effect of patrolmen, particularly those at the top of the salary scale, gradually being less well paid when contrasted with a group of communities nearby. Because the Borough's proposed increase for years 2000 and 2001 are 3.5% as opposed to 4% the salary structure increases will not offset those in surrounding communities, where the average increase is likely to be higher at least in one year, in the way the 4% did in 1998 and 1999 because in those years it slightly exceeded the average increases granted.. Thus the combination of base salary and longevity will continue to widen the gap between senior personnel at Butler who receive salary only.

The proposal of the PBA would shade the salary plan into above average territory. For 1998 and 1999 the Borough proposed increases of 4% and the PBA seeks 4.75%. Data for the overall average rates of increase either for those communities listed by these parties

or for statewide comparison suggest the average 1998 level of increase to be about 3.8% with a list provided by the Borough showing 3.68%. For 1999 the Borough list shows an average increase of 3.31% while the PERC data indicate about 3.68% for all cases handled. The number of listed resolutions of salaries for 2000 and 2001 are substantially reduced on the Borough's exhibit but show 3.59% for 2000 and 3.77% for 2001.

None of the salary increases proposed by either party are in sharp conflict with the increases being paid in surrounding communities except the demand for a 7.25% increase by PBA for 2001. Some contracts have been resolved at less than either proposal and some have been resolved at higher rates but the range is generally under 5% for 1998 through 2001 and 3.5% to 4% or less is the predominant range in all of the data supplied to me.

THE POSITIONS AS TO ECONOMIC ISSUES

The total of the Borough's offer is 15 percentage points over the four years of the Agreement term. In contrast the Borough shows evidence, in the group of municipalities they selected for comparison, of a total percentage gain of just 14.35 points on average. In the first two years of the term the Borough offer is higher than was granted by the group and in the last two years it is only slightly below the average increase. Thus as to comparability with public sector police employment the Borough claims its offer should be endorsed by the arbitrator.

In further support of this argument the Borough advances the thesis that it has established a negotiations pattern reflecting the 4%, 4%, 3.5% and 3.5% salary adjustment program and that the arbitrator should respect this both as a matter of principle and because it is a more than fair offer. It also provides considerably greater salary money than would be required to maintain income position when cost of living increases, past and forecast, are brought into focus. The Borough states its plan is to reasonably reward its employees while maintaining the fiscal controls required to avoid tax increases. The proposal involves placing a greater priority on employee wages than on other spending because the overall budget is being kept virtually unchanged. This means that the portion of revenues used to support the salary program is growing at a substantially faster rate than expenditures for other municipal services. Of course the wage and benefit costs for other employees of the Borough also have increased at a faster rate than the other budgetary elements for services. Some of this has been made possible by devising cost cutting methods, including elimination of jobs, to produce offsetting savings. In addition the proportion of the Borough's budget devoted to police functions has increased over the past few years in order to provide the costs related to employment and other expenditures in the department. All of which, the Borough suggests, serve to underscore the rationale for the arbitrator to adopt the Borough proposal.

Testimony of Councilman Bock was informative as to the policy being followed by the Borough in making its financial offer to the PBA and to the Blue Collar unit. He indicated that initially the objective of management had been to predicate the amount of wage

increases on changes in the cost of living change rate but the committee conducting the negotiations felt this would be unfair. The result was an accord within management as to the formula settled upon in the Blue Collar unit Agreement; the 15% program over four years coupled with some give backs and the improvement in health care to provide paid coverage for survivors of an employee who had 25 or more years service with the Borough. The firm intent was, having established this formula, to utilize it with regard to the remaining negotiations with employees of the Borough. However, the improvement in health care to cover survivors of employees was not proposed in the final offer with the PBA. Conversely the base salary figures and the give backs were strictly adhered to.

In testimony related to the Agreement reached with the Blue Collar unit there was some discussion as to the nature of the give back issues which were included. The three items, one floating holiday, enlargement of the health insurance deductible and doubling the copay for prescription drugs, which are also sought in this dispute with the PBA, came into focus. William Bock, a member of the Borough's negotiating committee, appearing for the Borough and on direct examination by its attorney, summarized the position of the Borough as to seeking these concessions. In part, addressing the health care issue, he stated, "...we were providing better than average opportunities to the people in town with regard to health care and that from what I have seen in a private sector dealing with a lot of other companies also, that these were very generous copay and deductible numbers and that's why we adjusted them to what we thought as a Council was more of an industry or local standard." When asked to address the determination to reclaim one of the floating holidays he said, "We just looked at again as a total package standpoint with regard to the percentages that were being offered, additional money being put forth for training, that giving back a holiday to bring it more into line with what we thought a reasonable number - we being the Council thought was a reasonable number of holidays to be given - putting that in context with sick time, vacation time, holidays, the whole - encompassing the whole gamut of days eligible to be not working was appropriate". He continued, "I think we calculated if somebody used their sick days, plus vacation time, plus holidays and all that, somebody could actually be out 40 work days - essentially 40 work days. And we saw that to be excessive and saw that as a concession item based on all the other items that were being offered." He also noted as part of his explanation concerning concession demands, "We were looking for uniformity throughout the ranks. We instituted here with the office people, we asked the Blue Collar for it and we've asked the police for the same deal."

His testimony supports the assertion of counsel who has pressed hard the concept of an established pattern of settlements by the Employer as mandating very substantial consideration of that pattern by the arbitrator in consideration of the award to be made. However, it became apparent during other portions of the hearing that the pattern isn't being implemented in all of its terms. The give back elements and the wage increases suggested are the same. Other things are quite different. The negotiated grant of a substantial new health benefit, in the form of free health insurance for survivors was not proposed in these negotiations. The assertion that the pattern of changes was also implemented with regard to non-represented employees is also questionable. With

reference to the above free health insurance, when the Chief of Police was asked if it had been extended to him he indicated that he did not know for certain, that his employment conditions were usually parallel to the police contract but that the Borough picks and chooses between blue collar and police provisions. Although the blue collar contract has been in effect since May of 1999 there had been no advisement to the Chief or other non-unit supervisory police personnel that they had been granted that coverage as of January, 2000. The attorney for the Borough suggested entitlement would not be a function of the blue collar agreement and that such entitlement had not been afforded.

In addition there are other material differences found in examination of the two units' terms and conditions of employment. Blue collar unit employees enjoy paid meals when on overtime assignments, a longevity plan which provides up to 8% at its maximum, shorter numbers of work hours during a year and overtime payment for holidays worked represents some examples. When evaluating the argument, that the Borough has adopted a pattern of settlement which must be conformed with, this information raises some mitigating considerations as does the fact that the Borough has only one unit of employees, other than police, with which to negotiate such a "pattern"; that its claimed extension to all other non-unit employees is apparently not entirely demonstrable and that significant elements of the terms and conditions enjoyed by the blue collar unit employees have not been proposed for the police unit. No substantive comparative economic data was incorporated in this hearing which might suggest a reason for such imbalance.

It should be noted however, that the police unit had a longevity plan in their Agreement before 1995 but that it had been negotiated away in exchange for cash added to base salary; \$1500 for employees on step five, \$1500 for employees on the next, ten year, step and \$3000 for those serving as sergeants whose base pay in 1994 had approximated that of the ten year patrolman. The value of the cash moved into base is, for most employees, of substantially greater dollar value than the longevity plan payout had been in the early years of service and has the added advantage of improving the pensionable income. For those earning about \$50000 it was a good substitute but for those who would have had 8% longevity at 20 years of service the balance would probably rest on the 8%, worth close to \$4000 in cash in 1995, except possibly for the value placed on the expansion effect on future pension income. At any rate the agreement was struck on those terms and apparently both parties were satisfied.

In these negotiations the PBA is asking for a new longevity plan applicable to employees at the 12 year of service level and beyond. In part they argue that the blue collar workers did not give up their longevity plan and still have a maximum of 8% in the new agreement. The amount asked for is relatively less than that, maximum 4%, reflecting the fact that the money negotiated into base for 1995 is understood to be an offset to higher levels of longevity rates. The Borough argues that the deal struck in 1995 was understood to be an end to longevity on a fair and agreed upon basis notwithstanding the adverse impact on some persons in the unit.

It is obvious that the inclusion of the longevity in 1995 propelled the maximum salary rates to a more favorable level for comparison with other communities than would have been achieved using only a reasonable across the board percentage and it was a more economically efficient way to accomplish this than applying a sufficiently higher percentage rate to all steps in the structure. This is because those added monies were substantially more valuable than the longevity payments for most persons at maximum pay and this resulted in Butler's patrolmen at the ten years of service level being paid about the average for the surrounding communities including their longevity pay with the same service in 1997. But this was the top pay for patrolmen and other communities were adding to longevity for greater length of service so that their top pay for patrolmen was somewhat higher. My analysis of the information supplied suggests that the longer service employees, those with 15 or more years with Butler, begin to fall below average by close to \$2000 in comparison with other communities' pay rates after inclusion of their pay improvements and the Borough's offer of 4% in 1998 and 1999. There is no doubt that this was the result of installing a plan which both parties supported. There is no evidence to suggest that the Borough enticed the PBA into this plan on the basis of a commitment to eliminate longevity in the blue collar unit. However, this does not change the fact that the employees with the greatest service have not fared as well as those with less. It is practically impossible to factually describe the impact as it will vary with the years of service, the time at which one retires and the length of time that one enjoys the relatively higher pension payments which flow from the conversion.

An additional observation as to the comparability issue has to do with the fact that most of the police employed in surrounding communities arrive at the maximum rate of pay, excluding consideration of longevity additions, at a significantly earlier point in their years of service than the ten year point at Butler. Many do so as early as six years and some are less and a few wait longer. Among a group of 32 communities nearby, used by PBA to illustrate this point, only one requires ten years to reach maximum pay rate and the average of that group is just under six years. As a general proposition the relationship to the average, or near average, position of Butler's top pay to the other communities reflects a comparison to situations where other employees have reached maximum pay in about four years less time. This translates to those making it to top pay earlier receiving that higher rate for some years before the Butler person also gets to the top. The difference, between reaching the maximum of the pay scale in ten years as contrasted to six years was, in 1997, \$1695 which increases annually and which, in a four year period, adds up to a lesser total pay in excess of \$6500 when compared to the total income of a patrolman who reached maximum pay at six years in a hypothetical average community.

Another contentious situation involves the claim of the PBA that it had negotiated for the retirement incentive for the 1995-1997 Agreement and that the fruits of that negotiation were removed by virtue of the movement of the Borough to challenge the legality of that provision successfully at PERC. The PBA suggests that provision was worth about 2.5% in salary. This is why they have proposed a salary increase for 2001 of 7.25% as opposed to the 4.75% they had otherwise advanced.

Testimony confirmed that both parties entered the agreement to provide the retirement incentive with expectation of it being paid. Now the Borough is comfortable with elimination of that plan but very reluctant to provide any comparably valued benefit to replace it. The only one advanced by the PBA was a variation of the original which met the same fate at PERC so now the PBA demands an additional 2.5% of salary, claiming that the alternative pay plan for the year in which this was negotiated would have been 5% but was settled at 2.5% plus the retirement incentive. Testimony by two negotiations team members, Sgt. Dean for the PBA and Councilman Bock for the Borough indicated that part of the reason for the lesser percent increase in the first year had to do with some joint concerns having to do with personnel turnover. No agreement existed on the concept of a 15% total increase for the three years. In fact the discussion appears to suggest that the Borough had a 12.5% total package in mind and that the back loading, a 2.5%, 5% and 5% package versus an alternative package of, for example, 4.5%, 4%, and 4%, had to do with that personnel turnover objective shared with the PBA. Dean's recollection of the situation is that the PBA took less in the first year because of the retirement incentive portion of the package and said it would have been 5% except for the agreement to accept a combination of 2.5% and the retirement incentive. This hardly explains or proves the value of the now removed retirement incentive program.

In order to accept the testimony of both one must conclude that the 2.5% in year one was agreeable because it accomplished the dual objectives, the personnel issue and the retirement incentive, but that this resulted in a back loaded agreement, not necessarily a 15% deal reduced to 12.5% [with 2.5% attributable to the retirement incentive], but one in which 5% in years two and three made up for the lower raise in year one, to total the 12.5% intended by the Borough. The real sacrifice of the PBA was seen as a loss attributable to the variation in the compounding of the two packages. Although there would have been a significant cash flow difference as well, the net impact on the rate of pay in the third year would have been nominal, certainly less than \$15. The cash flow difference or total income between the 2.5%, 5% and 5% package and the hypothetical 4.5%, 4% and 4% package would have amounted to nearly \$1700. It is conceivable that the Borough did this arithmetic when it agreed to the inclusion of the retirement incentive and concluded that was a reasonable trade off. However this is speculative on my part as no one testified as to those considerations.

It is not an easy task to place a particular value on that provision and it is not a lawfully permitted issue in interest arbitration although the lost value might arguably be a matter for my consideration. In that respect I find it difficult to establish a value because there is no way to determine how many people would have ever collected the benefit. The PBA asserts that during the period from January 1, 1998 until the present there would have been a payout of some \$70,000 but there is no reliable way to determine its future annual value in the way that an increase in base salary can be measured. However, after examining the roster, I do confidently conclude that it would not be equivalent to as much as a base salary increase of 2.5% during the foreseeable future.

The other, and equally compelling, side of that issue is the fact that the parties share responsibility for creating their agreements as well as the potential for a peril such as the decision by the PERC, a risk that is part of the process. As such there isn't any legal entitlement to remedy for the party which sees itself as injured. The specific language of ARTICLE XIX, Savings Clause, reflects the potential for elimination of any element of the Agreement but does not suggest any remedial procedure. For all these reasons I feel any consideration of the loss of the retirement incentive must be factored in on a very conservative basis.

The PBA has demanded a \$1000 increase in sergeants pay and supports it with statistical detail demonstrating that the pay of sergeants in Butler in 1997 was much less competitive in contrast to surrounding communities than was the salary of patrolman at top pay. In addition they asserted and offered supporting evidence demonstrating that the sergeants pay rate was, with either of the salary programs proposed for the four years of the Agreement, going to become less comparable when contrasted with compensation in other communities. In a comparison with 23 local communities for the year 1998, after including the Borough's offer of 4%, the salary of a sergeant in Butler was \$4712 less than the average salary with longevity in the group and was greater than only 2 of the 23 comparables. In 1999 with a somewhat smaller group, 18 communities, the difference would remain at nearly the same level, \$4634 and, in 2000, with a much shorter list of only 11 of those same communities for which data were available at the time of hearing the difference would grow to \$5764. None of these comparison figures include the greater effect of longevity beyond the 11 years of service. To include same would increase the gap by more than 2% of base salary on average. Thus a sergeant's salary in Butler, most of whom have long service, would trail the average of longer service sergeants in the group of nearby communities by an additional \$1300+ or about \$6000 using the average in 1999 where the number of the comparable group is statistically highly reliable. Any comparison might be less so with the relatively fewer communities reported to date for 2000. The negative distinction between the treatment of sergeants and patrolmen becomes clear when analysis of the salary proposal revealed the difference at maximum between Butler and a similar group of communities showed patrolmen trailing other communities by dramatically less in dollars or percent than the illustration above for sergeants. It is obvious that the level of compensation for sergeants is much less competitive than is that afforded patrolmen. In part this reflects the fact that the longer service personnel who would have been entitled to 8% longevity before it was converted into base salary at \$3000 did not fare as well as shorter service persons for whom the conversion was clearly more advantageous.

The arguments and evidence offered in support of the parties' positions relating to holidays and vacation allowances were less compelling. The Borough's position to reduce the holidays by one day essentially reflected the collective view on the Borough Council that there was more available paid time off than seemed necessary and that with the quality of their overall economic offer some offsetting give backs looked appropriate. Likewise the underlying rationale for imposition of the increased employee costs for health benefits and prescription drugs seemed to focus more on the perception that such would be a way to

bring the plan more in line with other employers than on any hard financial data which suggested cost changes which could not be borne. In fact the testimony confirmed that the health benefit costs associated with the police department had actually fallen recently. However, where those requests were coupled with the proposal to provide free health insurance to survivors of employees who had worked for the Borough for 25 or more years, as was the case in the blue collar unit negotiations, no great resistance to those give backs would have seemed justified. That molifier is not present in these negotiations.

Borough's rejection of PBA request for improvement in vacation allowance was predicated on more substantial economic considerations than were offered in support of its demand to reduce one holiday but also included a stated concern about more than what was judged to be enough time off. The police work 12 hour days and when the vacation allowance is measured in actual numbers of hours off or the percent of duty time off the current allowance compares very favorably to other Borough employees. The PBA presented an analysis of the number of days which an employee would earn in a 25 year career. In contrast to 32 other communities where the average was 464 days off, Butler police would receive only 370. Some of this is probably attributable to the 8 hour shift compared to the 12 hour shift but the PBA did not support its allegation with detailed contractual data. However, in the Borough's exhibit which included 34 local communities, most of which were on the PBA list a different method of comparison was presented; the number of vacation hours in a year. In that comparison the average was 222.14 hours and Butler's was 240. What was not mentioned was the fact that this level for Butler only came about after the first 20 years of service. Although there was little if any substantiating documentation as to underlying data for this calculation it appears that the comparison is valid. In the Borough's exhibit of 35 examples used for comparison only 7 granted more than 240 vacation hours and 20 granted less. Included in that data there are 16 examples which involve working 12 hour shifts and the average vacation for that group is 232.5 hours of vacation at the 20 year service level.

In the blue collar unit of Butler the employees receive 9.62% of their annual work schedule as time off for vacation at 20 years service. The police personnel at similar level of service receive 10.95% for theirs. During a period of 25 years service the police receive 25% more vacation time than the blue collar employees while working a schedule of only 5.3% more hours. The conclusion drawn is that there is little in the data supplied to warrant a further enhancement of the vacation plan for police. While their allotment is not greatly superior to other communities they certainly enjoy an above average vacation program.

A further leave related demand is the PBA's press for the improvement of the sick leave payout at retirement, now set at \$10,000 maximum in both the old police Agreement and in the new blue collar contract, to \$15,000. The PBA presented a comparison chart which included 33 nearby communities. There are several which do not provide any payout plan but of the 29 which do only three pay less than Butler, ranging from \$4000 to \$8000, and the remaining 25 allow greater payout ranging from \$11597 to over \$60,000. The PBA calculated that the average maximum payout of the entire 33 was \$21083. There was no

submission of detail as to the methodology used in making the calculations presented or the contractual provisions which provided certain dollar limitations. However, based on my impression of the general reliability of the PBA data and the fact that the Borough did not refute the figures presented I am inclined to presume them to be accurate. Of the 33 programs depicted, 22 paid a maximum of \$15000 or more. As the retirement incentive program has been dissolved a modification of the sick leave payout could be a substitute plan and the prevalence of this benefit among local communities suggests it be considered. A further incentive to that consideration is the fact that the state legislature and the Governor have supported such in concept and in legislation including the establishment of that program for state employees.

The Borough resisted this demand noting in particular the inconsistency it would pose with the blue collar unit provision which pays a maximum of \$10000 on the basis of 60% of sick leave days remaining at retirement used in the calculation and goes beyond this to underscore that the police Agreement allows 80% of unused days to be utilized in determining the pay out. While the Borough asserts that the PBA has provided no evidence to justify its demand it made no comments on the data submitted by PBA as to prevailing practice in surrounding communities. In some respects the Borough's position is fundamentally predicated on its assertion that the package offered is generous in contrast to other communities, the average of wage increases, limited change in the consumer price index, its pattern of settlements, the fact that the salary and benefit improvements offered are substantially in excess of the cap law limitations and that this latter circumstance in of itself causes disproportionately higher increases in employment costs as contrasted to costs of other services to the public.

In like manner the PBA has resisted the demand of Borough as to the reduction of the clothing allowance from \$1200 to \$1000 with the imposition of a voucher system to take the place of automatic payment. A part of the proposal of Borough is to possibly provide the body armor element, currently a responsibility of employees, if the Borough should receive grant monies to cover such expenses. The \$1200 payment has been unchanged and in effect since at least 1992. It includes responsibility for uniform maintenance as well as purchase of required items. Undoubtedly a case can be made that this amount is now less adequate than it was eight years ago but the PBA did not request an increase. The idea of reducing the payment and introducing a voucher system was not supported with any evidence of abuse by employees or indication that the amount provided was in excess of what could be considered appropriate or reasonable. It appears that the Borough has relied on its potential receipt of grant monies to justify the reduction. In its proposal there was an indication the armor might be replaced at three to five year intervals. The employee would be expected to take a reduction of at least \$200 per year to possibly shift this part of the uniform responsibility to the Borough, perhaps \$600 to \$1000, without any assurance that the Borough would actually deliver on the armor replacement. The continuation of the original \$1200 allowance, which has worked for at least eight years without complications, seems to be more than justified. Should the Borough be lucky enough to receive grant monies to provide the armor I see no reason why provision of

same should be considered an exorbitance given the fact that no adjustment to the allowance to provide for increased costs will have been made from 1992 through 2001.

There was a proposal by the Borough to adjust the training program by imposition of a \$500 limit on the portion of an annual \$1000 allotment for training in the current Agreement which now provides the entire amount may be waived to another employee. In addition the Borough's proposal appears to establish an additional \$1000 to be used in any accredited advanced education program for approved studies which enhance the value of the officer to the Borough. The specification of this amount seemingly would replace and limits the current provision which allows the submission for approval of costs beyond the first \$1000 set forth therein. The declaration of Borough's attorney that there are only two give back issues in the overall contract proposal, a holiday and health insurance items, and his assertion of this as a beneficial part of the Borough's economic proposal suggest it be construed as a further benefit even with certain limitations but I am hard pressed to identify the advantages posed to the employees.

There was little discussion as to this matter and no data as to its economic value or cost by either party and no comparative information was provided as to programs in other communities. Furthermore no testimony was offered as to the use of the program or its fulfillment of any performance improvement objectives. My decision is to allow the restriction to \$500 of the amount available to be waived to another employee but to otherwise continue the language of the 1995-1997 Agreement. If there was a real intent to expand the \$1000 for tuition etc. to \$2000 as the use of the term 'additional', in post hearing brief of Employer when describing the offer, might imply, I'm sure the Borough will not find resistance on the part of the PBA. I do not read the proposal in that fashion and see it as intended to set controls on the program in the old Agreement which are not unreasonable but not improvements from the employee perspective.

THE POSITIONS AS TO NON-ECONOMIC ISSUES

The PBA has proposed changes to the Grievance Procedure, Article XV, which would alter the definition of a grievance to include minor disciplinary actions; to adjust the appeal times and to include right of appeal of minor disciplinary incidents to binding arbitration. It supports the request for inclusion of minor discipline in the procedures on its concern for a greater assurance of impartiality in such decisions and on the fact that the State has seen fit to provide this avenue of determination to be used by amendment of the Employer Employee Relations Act. Therein is a declaration which represents the public policy of the State and which incorporates in detail the right and obligation of the parties involved to negotiate grievance procedures which may include minor disciplinary appeals and which may provide for binding arbitration of disputes. In its post hearing brief the Borough suggests that the PBA has not demonstrated a need for such proceedings to become part of their grievance procedure. The fact that this matter was proposed and negotiated to the point of impasse appears to have been overlooked. The Borough also suggests that such proceedings may be expensive and because the PBA failed to provide evidence, satisfactory to the Borough, to warrant the extension of the proceedings to arbitration it

should be denied. It appears to me that if the PBA were satisfied with administrative determinations of such disputes it would hardly opt to pursue them to arbitration because of the attendant costs. This is a unit of less than twenty persons and such costs to them could be substantial. Yet the leadership has seen fit to pursue the matter just as did the PBA on a state level when it pressed for legislative change as to this issue. The only point of resistance raised by the Borough is the potential cost. But the entire system of civil justice involves certain costs and it has not been restricted because of that consequence. Even a relatively minor disciplinary black mark on an employee's record may have far reaching consequences. To assure that such are determined to be appropriate by an impartial arbitrator can be of considerable value to both parties. I note that the Borough negotiated a similar provision into the blue collar contract!

In addition the PBA seeks to extend the time limits for submission of a grievance and for appeals. While this will add to the overall time required for processing there is little lost to the Borough by allowing reasonable time limits, providing they do not become excessive. In a small unit such as this there may very well be occasions where the current limit of 3 days at certain steps means making a decision to move forward without full consideration or failure to provide the attention deserved by a grievant. On balance the PBA's concerns appear to warrant consideration and possibly relief.

The Borough introduced several non economic demands. One has to do with the elimination of a part of Article III having to do with application for and limits on leaves of absence. The Borough suggests replacing the negotiated language with a reference to the State and Federal laws concerning family and medical leaves. No special reasons were offered for this and my determination is that the Agreement need not replicate the provisions of law which are recognized by both parties as controlling their behavior. In addition the current language of the Agreement makes certain provisions which are applicable to circumstances beyond those covered by the referenced statutes. I see no reason to eliminate those negotiated elements or to redundantly incorporate the statutory provisions referred to. No complaint was made as to abuse of the current provisions.

The Borough also advanced a proposal as to the need for approval for taking vacations of two consecutive weeks. This is also a redundancy as the terms of the Agreement clearly set forth the authority of the Chief of Police to make such decisions as to any request to utilize vacation time.

The final issue before me has to do with the control of the hours to be worked by detectives. The current Agreement provides that the detective is to determine the hours worked based on need for investigative purposes and the Borough's request is to have that control placed in the hands of the Chief. I was not made aware of any situation where a detective claimed that the Chief could not direct his work schedule but in order to preclude such a problem and because I am convinced the term of the current Agreement is unenforceable it shall be changed to reflect the managerial right and obligation to control such decisions, if for no other reason, to avoid any future conflict or misunderstandings on this matter.

ADDITIONAL CONTRACTUAL ITEMS

There were a number of issues which were resolved during or after the hearing process and most of those were incorporated in and set forth in detail in part XIX on pages 73 through 76 of the post hearing brief of PBA's attorney. All of these items as set forth conform to my recollection of the proceedings and are to be considered as stipulated terms of the new Agreement.

In addition there was agreement on a dispute concerning amendment of the Agreement as it defines the circumstances surrounding payment for overtime. That resolution is also to be considered as part of the stipulation of agreement of the parties.

EVALUATION OF STATUTORY CRITERIA

The essence of this impasse is the financial terms to be implemented. Other elements are of importance but the economic impact is far and away the issue of greatest concern to both parties. In its proposals the Borough has advanced across the board salary increases in each year which are, in percentage terms, at least as generous on average as have been negotiated in surrounding communities. Butler has long occupied a near average position compared with those communities as to the pay rates it provides to its employees. Within the ranks of police personnel there has been almost no turnover due to departures for better paying positions elsewhere. In these negotiations the Borough has striven to achieve a settlement which mirrors the terms it has committed to in another negotiations unit and with its non-represented employees.

Butler is a small community of modest means both as to personal income and real estate values. The property taxes of residents are supplemented by surplus from the utility operated by the Borough. There is very little undeveloped taxable property in the Borough. The elected officials have diligently pursued a policy of resistance to tax increases and have accomplished that objective for a number of years.

The PBA is seeking substantially greater improvements in salary and benefits and is highly resistant to the give back proposals of the Borough some of which it has achieved in its other negotiations with the blue collar unit. The PBA is especially displeased with the failure of a retirement incentive program which was negotiated in the last contract but has now been declared unlawful. It feels that the value of that plan should be replaced. In addition the conversion of its longevity plan into base salary has, in retrospect, proven to have had a less than positive impact on long service employees. This is made more obvious by the fact that the blue collar unit retained their longevity plan. The PBA is also resistant to the demand for give backs because the Borough has not offered what is seen as the trade off for them granted in the negotiations with the blue collar unit.

THE INTERESTS AND WELFARE OF THE PUBLIC

Generally the first consideration here would be an evaluation of the impact of an award on the limitations imposed by the "Cap Law". However, the Borough has stipulated that an award within the framework of the demands at the table will not violate those limitations.

The public interest is best served when the relationship between the Borough and the police is characterized by mutual respect and appreciation for fair treatment. This is an objective which I feel must be carefully considered in the crafting of an award. I do not anticipate making a grant which would impose an unwarranted financial burden on the Borough and I expect to make an award which will be recognized as a fair resolution to this impasse. This will satisfy the required consideration of this important criterion.

COMPARISON OF SALARIES BOTH PUBLIC AND PRIVATE

Much has been said in the discussion above which indicates the focus of the parties on comparability, particularly with other police situations in surrounding communities. Both have indicated the lack of actual comparability of police work to other employment but they have indicated a sensitivity to the general adjustments of pay rates in both public and private sectors. The record contains important information as to the changes in private sector employment but neither party has used much of that data in supporting its position. The Borough has proposed a pay rate increase program which I have indicated above to be highly competitive with the group of comparable employers in the surrounding area. The wage increases proposed by PBA are substantially beyond what is happening in that area and in the state as well. In part this is due to the PBA's position of trying to regain the perceived losses described above. My award will largely embrace the program offered by the Borough with some significant modification which I find to be appropriate. The costs of my modifications will not be excessive but are warranted, largely because of considerations of comparability and internal equity as described. This criterion has received great emphasis by the parties. I see it as a fundamental concern to both and I join with them and recognize it as deserving very substantial consideration. Because of the unique nature of police work their terms and conditions of employment are evaluated by employers and the police employees themselves primarily on the basis of comparability to other work place circumstances generally in the near area. This phenomenon is widely relied upon in the resolution of police negotiations.

CONSIDERATION OF OVERALL COMPENSATION

This criterion is largely subsumed in the comparison above as the elements of overall compensation are perceived as a package, the greatest part of which is salary. In that respect the overall compensation and its elemental parts is of significant import and I regard this criterion as such when considering an award.

STIPULATIONS AND LAWFUL AUTHORITY OF THE PARTIES

There are stipulations of the parties as to inclusions of settled elements of the Agreement which are referenced above. It is not anticipated that these are likely of any disagreement as both attorneys have acknowledged their clients' agreements.

The Borough has stipulated on the record that the Cap Law limitations are not a factor in this proceeding.

The parties also entered a stipulation as to pay rates for off duty work performed for private contractors but under the auspices of the Borough.

There being no additional element of special concern or any conflict as to lawful authority I do not place great emphasis on this criterion although the stipulations above were of considerable value in the culmination of the process.

THE COST OF LIVING

The cost of living has been a limited factor in the sense that the proposals as to wage increases were frequently described in relative terms. However the cost of living changes, past or anticipated, are at a level which did not seriously affect these proceedings. The parties have demonstrated an acknowledgment of cost of living changes but neither have predicated their position on such. This may reflect the fact that COL changes have been at historically low levels. The probability is that the only change will be on the upward side in the near future. At this hearing the Borough specifically indicated that the use of cost of living as determinative of its position on wage increases would be unfair. There is no reference to cost of living in any element of the Agreement. I do not place any substantial weight on this criterion.

THE CONTINUITY AND STABILITY OF EMPLOYMENT

The specific circumstances encountered in this matter suggest that there has been historically little if any evidence of instability of employment within this unit. However, the economic circumstances which surround the Borough are such as to suggest not taking this for granted. There is a need for well trained personnel and there is a very tight labor market which combine to suggest that the terms and conditions of employment settled upon should be carefully tuned to the maintenance of a competitive position or risk the loss of personnel who could opportunistically move to greener pastures. I see this criterion as a second level of importance but one which should be given consideration and interwoven with the determination of key elements such as wages, benefits and other meaningful terms of their Agreement to preserve the degree of continuity of employment which the Borough has come to expect.

THE FINANCIAL IMPACT ON THE GOVERNING BODY

In most ways my award will confirm the Employer's level of commitment in its proposals. Where there are differences which impact on cost I believe those differences will be

recognized as having only a moderate impact on the overall cost of the settled Agreement. I intend to show those costs as they relate to the total and will have provided reasons which I believe persuasive as to their being fully justified both as to cost and as to the support and continuity of the Borough's policy of fairness and competitiveness in setting its wage and benefits plan. I do not believe this award will upset the financial stability of the Borough in any serious way. Although the Borough's attorney stated that Butler taxpayers are subjected to two tax increases each year and went on to assert the Borough is facing a declining tax base the record in this proceeding does not support those conclusions. The taxes paid on an average home have been absolutely stable for the past several years as indicated above and there will be a substantial new ratable which includes over 200 residences coming on line in the near future. Further, there is no reason to believe that the values of properties in Butler are about to decline as it enjoys an enviably attractive location and conveniences and is fully settled with a remarkably low level of vacant properties. Thus I conclude the fiscal health of the Borough is being well looked after. The testimony of its financial managers was cautiously upbeat with suggestions for continuation of a healthy balance sheet projected into the future. This, coming on the heels of a successful no tax increase record for the past five years, is a very positive economic picture, one which should please the taxpaying residential population.

This could be a very important criterion and would become of increasing importance in direct relationship to the level of costs imposed on the Borough. In my consideration of that I have endeavored to craft an award which will do little harm to the finances of the Borough but provide a fair resolution to this impasse.

ADDITIONAL CONCLUSIONS

The basic salary improvement offered by the Borough is fundamentally sound. It provides increases which are above average for two years and slightly below average for two years but in total amount to .65% more than the comparative base of communities. In addition it is supported by the fact that Butler salaries will remain reasonably close to average with this pay plan. The further argument of the Borough that it is a package which has been set as a pattern is somewhat less convincing but an alteration without compelling reason could have a negative impact on the relationship of Butler with its other employees.

The very much higher increases demanded by PBA are not supported by any of the economic data which ordinarily impel favorable judgments. The COL remains moderate; the work is not dramatically changed; there is no turnover due to unhappy personnel; and the comparative data cited above do not suggest approval.

However, there are important dimensions of this picture which do suggest adjustment. As outlined above these are the relatively low salary levels of sergeants which are falling even further behind as other communities make changes during the new contract period and the failure of the salary-only program to maintain the relative rates of pay when compared with employees receiving salary and longevity payments. This departure from near average becomes apparent only for longer service employees but should not be left

without correction. This is especially true when it is recognized that such employees have attained the maximum pay at ten years service and were, therefore, less well compensated than others who were at maximum at an average of six years. The Borough is strongly opposed to reinstating a partial longevity program which could help make up the gradual decline of pay contrasted to those receiving longevity. In addition I was reminded that the PBA took it upon themselves to negotiate the longevity plan away. The Borough has defended its compensation plan as reasonable and fair and has illustrated this by relating it to the average paid in surrounding communities. This policy objective, of looking at the average pay rates in the surrounding communities as a target for Butler, is not at issue as the Borough has satisfactorily demonstrated sufficient reason to justify that level of compensation. However, when the compensation of relatively senior personnel is measured against that of comparably seasoned personnel in the same group of communities the pay provided by Butler begins to fall short of the policy standard and results in those employees being less well rewarded, relative to the job market, than are younger less experienced people. This may be because of the conversion of the longevity plan back in 1995 but the result remains an indefensible practice which I believe can be remedied without undo costs.

I conclude the \$1000 increase for sergeants should be granted in order to help close the comparison gap which exists and is widening. When this consideration is coupled with the previously detailed problem of senior personnel salaries gradually drifting significantly behind what others are paid in surrounding communities I believe a new step with a modest increment in the salary structure should be imposed. Such a move would make the pay plan for senior personnel as competitive as is the rate paid at less senior levels without the rebirth of a longevity plan. This is an addition, which will have only a relatively small impact on the increased costs of this contract, but is a provision which will bolster the morale of senior people because it demonstrates recognition of a fully justified change.

The adjustments in deductible coverage for the health benefits plan and for the increase in the co-payment for prescription drugs demanded by the Borough were not offset with the improvements as to survivors granted to others. However, these changes are reflective of the much increased costs borne by the Borough for such benefits and of the general trend to offset such by increased sharing of those costs. The specific added costs are very much in keeping with current trends. Notwithstanding the fact that the specific costs of such benefits may not be rising within the limited police employee group the overall program for the Employer is programmed to cover its entire employee population. From an administration viewpoint the goal of a uniform plan is of some value and allows all employees to share a form of insurance which all need. The actual utility of such is not as predictable as some benefits such as paid vacations. Like many other forms of insurance there may be little or no value unless the individual insured is in need of the protection provided; but no one can forecast the moment of such need. Because of these considerations I find the Borough proposal to be sound. Although it means some added costs to the police employees not offset by the specific improvements provided to others so will some of the elements of this overall award provide gains not granted elsewhere.

There was no substantial compelling argument by Borough as to the requests for reduction of the uniform allowance or the elimination of a holiday negotiated at some time in the past. That the blue collar unit was willing to forego one holiday probably reflected the inclusion of the survivor plan as part of their settlement. As stated above differences between the contracts of these two units exist in many areas. This one doesn't convince me that it is inherently wrong, merely a part of the negotiations process.

Finally, as to economic matters I will grant the PBA position to modify the sick leave buy back plan. It should assist as an offset to the retirement incentive plan which was removed from the Agreement and will be a benefit not inconsistent with public policy and other reasons as noted above.

AWARD

A. The Agreement shall be for the period January 1, 1998 through December 31, 2001. Salary increases shall be effective on January 1st of each year; 4% in 1998 and 4% in 1999; 3.5% in 2000 and 3.5% in 2001.

B. Before the application of the salary increase in 1998 the pay rate for sergeants shall be increased by \$1000.

C. After the salary increase is implemented for year 2000 there shall be an additional step created in the ranges for patrolmen and one for sergeants who have completed fifteen years of service effective on the employee's anniversary date as adjusted if necessary for breaks in service. The increment added as the new step shall be \$1550 and it will be a permanent part of the base salary schedule.

D. The sick leave payout plan shall be modified to provide a maximum of \$15000 based on the rate of 50% of unused sick leave at retirement effective on January 1, 2000..

E. The health benefits plan deductible payments shall be adjusted from \$200/\$400 to \$250/\$500 effective on January 1, 2000. The co-pay for prescription drugs shall be adjusted from \$3/\$6 to \$6/\$12 effective at the earliest future date when the system can be converted to reflect this change.

F. The \$1000 provided to each employee for training shall, as to the maximum which may be waived to the use of another employee, be reduced to \$500. All other terms of the past Agreement pertaining to training shall be continued. Should the Borough agree that it meant to advance the amount available for training, as discussed above, that change shall be included as well.

G. Uniform allowance shall remain as in the prior agreement except that should the Borough succeed in securing grant assistance to purchase body armor it will then assume the responsibility for providing that part of the uniform to the extent available within the grant monies.

- H. Holiday and Vacation provisions of the prior Agreement shall be unchanged.
- I. The terms of the Grievance Procedure shall be modified to include minor disciplinary action of five days or less in the definition of a grievance. This is intended to include appeals of such actions to binding arbitration as otherwise provided in the article.

The time limits for appeals of decisions concerning grievances shall be increased to ten calendar days at each step except that the time for an appeal to binding arbitration shall be extended to thirty days and require written notice to the Employer of the intention to seek arbitration within that time limit. Failure to provide the notice eliminates that option.
- J. Request for the elimination of the words "and raises" in Article XIV is awarded.
- K. Request for the change to have the Chief of Police determine the hours of work of detectives, as explained above, is also awarded.
- L. Request for the clarification that holidays shall be worked at twelve hours at straight time for employees on twelve hour shifts is also awarded.
- M. All adjustments included above shall be considered retroactive in effect to the dates of implementation as specified for all persons then employed except those things which are of administrative nature. All elements of the prior Agreement not inconsistent with this award are to be continued with appropriate adjustments as to time references and the like. All stipulated items as outlined above are to be considered as part of this award.

SUMMARY

The elements of this award are intended to provide a fair and just determination of the elements which were at impasse and to be consistent with the applicable statutory criteria. My conviction is that the unanticipated costs of the award implementation will not affect the cap law limitations and all of those costs collectively paid out over the four year term of the Agreement will not exceed the surplus in the police salary and benefit account as testified to by Borough representatives. In most ways the award confirms the Borough's relative position as compared to its neighboring communities while establishing certain improvements which I believe were entirely warranted.


Frank A. Mason

On this date before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who executed the foregoing opinion and award and he acknowledged to me that he executed the same.

State of New Jersey
County of Mercer
09 July 2000
