

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

IN THE MATTER OF THE IMPASSE

Between

BOROUGH OF STANHOPE

- and -

P.B.A. Local # 138

**COMPULSORY INTEREST ARBITRATION AWARD
LAWRENCE I. HAMMER, ARBITRATOR
PERC # IA 96/102**

Under date of May 23, 1996, the undersigned was designated by the Public Employment Relations Commission of the State of New Jersey to serve as the Interest Arbitrator in an effort to resolve the continuing impasse involving the above indicated parties.

Said appointment was made by the Public Employment Relations Commission after giving recognition to the designated order of preference, if any, expressed by the parties.

The petition filed by the parties seeking resolution by means of the revised Statute calling for interest arbitration pre-dated the effective date of the new and revises Statute.

APPEARANCES

FOR THE BOROUGH

David A. Wallace, Esq.
John Arntz

Counsel
Boro Administrator

FOR THE P.B.A.

Morris & Hantman, Esqs.
(by) Allan Hantman, Esq.

Counsel

Hearings under the subject impasse took place on July 2nd and August 1st, 1996 at the Borough of Stanhope Municipal Building, 77 Main Street in Stanhope. At these sessions both sides were afforded a full opportunity to present testimony, offer evidence and to advance arguments in support of their respective positions, as well as to cross-examine each other.

The parties instead of utilizing the services of a Court Reporter, used a tape recorder.

Pursuant to the ground rules agreed upon at the inception of the formal hearings on July 2, 1996, the parties were able to revise the "Last Offer - Best Offer" (hereinafter referred to as the "LOBO") at the conclusion of the matter and before establishing a briefing schedule.

The LOBO's of each party herein will be set forth elsewhere in this document.

The briefing schedule established at the end of "closing statements" called for the brief of the Borough being submitted on or before September 7, 1996, with the reply thereto of the P.B.A. being submitted by October 7, 1996. The parties thereafter agreed to extensions through September 14 and October 14 respectively.

The Award was initially scheduled for submission to the parties by November 19, 1996.

The brief of the Borough was received, timely postmarked, on September 16th.

On October 14, 1996, Counsel for the Borough sought an opportunity to submit an additional exhibit in support of his position. Counsel for the P.B.A. voiced strenuous objections thereto.

Under date of October 21, 1996, I responded to the Borough Counsel's request to submit an additional exhibit, (with a copy of said response being mailed to the P.B.A. attorney) as follows:

"Your letter of October 11th received.

As I have not as yet commenced my deliberations in this matter, I will allow you to introduce into evidence the document included with your letter.

I will also allow the P.B.A. until October 29th to respond and/or comment thereon, or to submit anything they may deem to be germane, especially in view of the fact that I have not as yet received their reply brief which was due back on October 14th."

The P.B.A., under date of October 23, 1996, advised that they had on October 16 posted their reply via overnight mail. As same, as of that date had not been received by me, the P.B.A. transmitted additional copies which were received on November 1, 1996 at which time the hearings were declared to be closed.

An Award of some 23 pages was submitted to the parties on November 17, 1996, with the Arbitrator basing same and considering the criteria and cautions espoused under the Reform Act.

Under date of January 10, 1996, Governor Whitman signed into law the Police and Fire Public Interest Arbitration Reform Act. Said revised act took effect immediately and governed all then pending negotiations except those involving formal arbitration proceedings in which the arbitrator had heard testimony prior to January 10, 1996.

If testimony had not been taken on or before January 10, 1996, conventional arbitration was to be the terminal procedure absent an agreed upon alternative, and all provisions of the new legislation were to apply.

The parties, throughout mediation and during the hearing continued to persist in LOBO considerations only without concern or consideration to anything in between.

The revised Statute [P.L. 1995, c.425] mandated that the arbitrator decide the dispute based upon a reasonable determination of the issues, giving due weight "to those factors listed below that are judged relevant for the specific dispute, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor."

The specific factors that were to be considered in the making of an award, paraphrased are:-

1. The interests and welfare of the public.
2. Comparison of the wages, salaries, hours and conditions of employment of the Borough of Stanhope Police Department

with the wages, hours and conditions of employment within other Police Departments and with other employees performing the same or similar services, as well as with other employees generally.

- (A) In private employment in general
 - (B) In public employment in general
 - (C) In public employment in the same or similar comparable jurisdictions.
 - (D) In comparable private employment.
3. The overall view of compensation received by members of the Department, including direct wages or salaries, vacations, holidays, personal leave, insurance, pensions, clothing, allowance and all other benefits capable of an economic assessment.
 4. Stipulation of the parties.
 5. The lawful authority of the employer¹
 6. The financial impact on both the Municipality and its residents and taxpayers.
 7. The Cost of Living for the area as published by the B.L.S.
 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.

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The undersigned, inadvertently prepared and submitted the Award using the Last Offer of the Municipality versus the Last Offer of the P.B.A. as the terminal step, rather than using the conventional means mandated by the revised Statute.

Upon their receipt of the November 17, 1996 Award, P.B.A. Local # 138 filed a Notice of Appeal, alleging that the Arbitrator erred in utilizing a Last Offer-Best Offer terminal procedure rather than using the conventional terminal step

¹ The revised Statute, under this section specifically states that "among the items the arbitrator 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.)."

mandated by P.L. 1995, c. 425, requesting that the matter be remanded to the Arbitrator with a direction that same be reconsidered under the reform Statute.

Under date of February 27, 1997, the Public Employment Relations Commission upheld the P.B.A.'s Appeal and vacated the Award, remanding same back to the undersigned, directing "reconsideration in accordance with P.L. 1995, c. 425.

Upon receipt of the remand from the Commission, the undersigned contacted Counsel to each of the parties and suggested that they endeavor to amicably resolve the matter along the compromise suggestions contained in the original vacated Award, or in the alternative, that I meet with the parties and endeavor to mediate a settlement.

On March 10, 1997, the P.B.A.'s Counsel wrote to his adversary, stating:-

"I did not respond to the invitation implied in your letter brief in the above captioned matter since I did not believe it was in my client's best interest to return to the table when Mr. Hammer's arbitration award was still viable.

Now that it has been vacated with instruction to be constituted in accordance with the new statute, if you believe this matter can be resolved without the necessity of a new award, please contact me so that we can set some time to discuss some possible resolution."

Counsel to the Borough, under date of March 18, 1997 responded by writing me (and sending a copy thereof to the Attorney for the P.B.A.), stating in part:-

"....Although the Commission recognized that your award clearly suggested how you would rule under the new statute, the Commission held that its appellate authority does not include fashioning your award for you, and thus it has been remanded to you for the issuance of a corrected award exercising conventional arbitration under the new statute.

Counsel for the PBA, Allen Hantman, Esq., has recently written to me seeking to discuss possible resolution. The Borough's concern, however, is that returning to the table at this time may only spell even more prolonged, and thus more costly, proceeding, especially since the outcome of the remand proceedings is rather obvious. Accordingly, with all due respect to Mr. Hantman and the PBA, the Borough suggests that the most expeditious and inexpensive way to finalize this matter is for you to issue a corrected award under

the new statute. The record is complete, so further evidentiary submissions are inappropriate."

The undersigned, on March 25, 1997 responded thereto, (copying same to the P.B.A. Attorney) as follows:-

"This will acknowledged my receipt of your letter dated March 18, 1997.

Your letter indicates that the belief of the Borough is that the "outcome of the remand is rather obvious" in that I had previously indicated in my original award that a conventional award could retain the Borough's offer in terms of total cost while redoing the guide so that those within the guide would receive increment only, thereby permitting those at maximum to receive larger increases. For that reason, you indicate there exists no reason for you (and your client) to meet with Allen Hantman and his client.

There also existed that possibility at a recommendation could have used slightly different overall settlement percentages.

There is nothing in my original award that indicates how the moneys above increment be spread. Thus, even if I were to follow the suggestion I originally made there is no guarantee to you or Mr. Hantman as to how the distribution would be made.

It may very well be advantageous to both sides to explore a possible amicable resolution, rather than to assume that a conventional award would be capable of only a single outcome."

Counsel to the Borough of Stanhope, under date of April 17, 1997 responded as follows (with a copy submitted to the P.B.A. Attorney):-

"Thank you for your letter dated March 25, 1997 responding to my letter dated March 18, 1997. I have reviewed your most recent comments and suggestions with my clients, and I can assure you that serious consideration has been given to the alternatives.

Ultimately, my clients have concluded that the uncertainties associated with your issuing a corrected award, are a more acceptable choice than the more prolonged and more costly alternative of further face to face dealings between the parties, especially since there have already been prolonged and costly proceedings leading to the development of a complete record, and

also because there is no certainty that face to face discussions would obviate the need for a corrected award in any event. Accordingly with the utmost respect for your suggestions, my clients have not altered their approach from that set forth in my March 18, 1997 letter and request the issuance of a corrected award."

While the undersigned could very easily have mandated a face-to-face meeting, an examination of, and re-review of the file and all exhibits presented, convinced me that a sufficient record existed for me to comply with the direction of the Commission, and reconsider and issue an Award "in accordance with P.L. 1995, c. 425."

It should be noted, that much of the language, comments, and explanation that will follow is identical to that which appeared in the original Award. This, solely because such Award had in its preparation considered the criteria and cautions espoused under the revised Statute.

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BACKGROUND

The Borough of Stanhope, an area covering some 2.21 square miles (of which some 15% is considered as a water area) has, based upon 1994 census figures an estimated population of 3,620 persons, with a per capita income of \$19,803.00. Less than 75 persons residing within the Borough can be classified as being at the poverty level.

The Borough of Stanhope Police Department consists of six persons plus a chief (who is not in the Local # 138 bargaining unit).

The most recently expired Collective Bargaining Agreement between the parties herein covered calendar years 1994 and 1995, expiring on December 31, 1995.

The LOBO as submitted by the P.B.A.

1. Salary equal to 5% across-the-board with diminished rates for Steps 1A and 1B as set forth below: -

1996	1997	1998
1A \$25,000.00	1A \$26,250.00	1A \$27,562.00
1B \$26,000.00	1B \$27,300.00	1B \$28,665.00
2 \$38,325.00	2 \$40,241.00	2 \$42,253.00
3 \$40,425.00	3 \$42,446.00	3 \$44,568.00
4 \$42,525.00	4 \$44,651.00	4 \$46,883.00
5 \$44,625.00	5 \$46,856.00	5 \$49,198.00
6 \$47,250.00	6 \$49,612.00	6 \$52,092.00
Sgt. \$49,350.00	Sgt. \$51,817.00	Sgt. \$54,407.00

2. Increase the clothing allowance in the amount of \$75.00 for each year of the Contract.
3. Stipend for Detectives and Sergeant: Increase \$100.00 for each year of the Contract.
4. Bullet proof vests shall be added to initial uniform issue.
5. Outside employment rate to increase to \$35.00 per hour.
6. Binding arbitration shall become the terminal step in the existing Grievance Procedure.²
7. Overtime shall be paid after forty (40) hours of paid time in each week. Paid time shall include sick, holiday and vacation time as has been the prior practice between the parties up until January 1, 1996.

THE LOBO as submitted by the Boro

1. Salaries³

Step	1996	1997
1A	\$25,000.00	\$26,500.00
1B	\$26,000.00	\$27,560.00
2	\$37,230.00	\$37,975.00
3	\$39,270.00	\$40,055.00
4	\$41,310.00	\$42,136.00
5	\$43,350.00	\$44,217.00
6	\$45,900.00	\$46,818.00
Sgt.	\$47,940.00	\$48,899.00

2. Bullet Proof Vest

² The question of Binding arbitration was presented by the PBA as an economic item. While questioning the "economic" status of the item, the Borough raised no serious object to such inclusion.

³ The salary figures or schedules tied into the offer of the Borough computes out to 4.9% for 1996 and 4.6% for 1997. The position of the Borough did not include an offer for 1998.

Amend Section XII, paragraph to include one (1) bullet proof vest to list of initial issue upon hiring.

3. Special Detail Rate

Amend Section XX to increase special detail hourly rate from \$30.00 to \$35.00.

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In order to fully comprehend the Borough's offer so far as Bullet Proof Vests and Special Detail Rates, it is necessary to set forth the specific contractual clauses referred to in their offer. Specifically: -

"SECTION XII - Basic Uniform Issue/Clothing Allowance.

a. Upon hiring, each officer shall be issued the following basic uniform:

- 3 - long sleeve shirts
- 3- short sleeve shirts
- 3- pairs of pants
- 2- ties
 - 1- pair oxford shoes
 - 1- pair boots
 - 1- raincoat and hat protector
 - 1- winter coat
 - 1- light weight jacket
- 1- hat
 - 2- garrison belt

SECTION XX - Special Details

All officers working special details, e.g. sporting events, strike details, traffic control for private contractors, etc., shall do so only when assigned to same by the Chief of Police, and shall be compensated for same at the rate of \$30.00 per hour worked. The Borough shall establish a policy that any organization requiring

such assistance shall make its request therefor to the Chief and pay according to the established scale."

GENERAL ECONOMIC COMMENTS

While the Statute controlling Compulsory Interest Arbitrations sets forth some eight guidelines for the neutral arbitrator to examine, consider and weigh, the one heretofore usually given the greatest weight involved wage comparability.

This emphasis has been over the past two years or so, subjected to judicial criticism. Criticism that far too much weight was being given to comparability, while not enough consideration, in fact far too little weight was being given to the ability of a Municipality and its citizens to pay the sums awarded through the Compulsory Interest Arbitration process.

Until most recently patterns would develop. Each Award would grant increases financially similar to those awarded in earlier cases or similar to those instances where no Award was involved, but where the parties were able to amicably resolve their differences and agree upon wage increases.

In the past if a Municipality, offering an economic package much below that representing earlier settlements, defended its offering upon the financial restraints of its budget and the ability of its taxpayers to bear a bigger burden, it rarely was successful.

For years when such argument was made by the employing Municipality, it may well have been a case of the governing body crying "wolf" needlessly. The 1980's evidenced an economic boom. Most governing bodies, in the form of either local surpluses or in the form of ever increasing State Aid, were able to fund the settlement awarded.

With the real estate markets hitting all time highs, with unemployment hitting new lows, the overall economic environment was such that the statutory criteria concerning the ability to pay became less and less crucial.

During the past couple of years a vast economic change has developed. Unemployment, especially in New Jersey has increased. Wage increases, where there are increases, have come down. The spiraling real estate market has all but collapsed. Real Estate, an item representing a good portion of one's wealth, simply cannot be sold at anything near expectations. Employee benefits are being cut back by hard pressed employers. In short, the economic climate of the 90's is vastly different from that which prevailed during the 80's.

The ability of a Municipality to find a way to pay wage increases can no longer be accepted as a "given".

The budgetary problems of the State has cut into and diminished the flow of State Aid. No longer can such aid be anticipated, so as to offset financial plights of local governments.

Thus, far more weight to the ability to pay criteria, and the effect thereof on the taxpayers must be given.

Does the Borough of Stanhope have the financial ability to fund a settlement much in excess of what it has offered? Do the other Statutory criteria, cumulatively, while considering the ability to pay, warrant recommending a proposal which in itself may be somewhat above what earlier settlements have produced?

It is most interesting to note that the Borough in its presentation made absolutely no claim of an inability to pay. Thus, the conclusion must be that it does have the financial ability to meet the demands of the P.B.A. without same creating any hardship or undue burden upon the citizenry, the taxpaying residents of the Borough.

Some demographics were indicated earlier herein. In discussing the apparent abilities, or even lack thereof, of the people of Stanhope, it should be noted that 2,378 or about two-thirds of its 3,620 population is in the 18-64 years of age bracket; that the median household income, in 1989, the last year for which figures are available, was \$47,937.00 and the median family income was \$51,440.00; the median value of a single family home in the Borough was \$144,100.00; the General Tax Rate in 1994 stood at \$3.24/\$100.00 A.V., up 34 cents per \$100.00 A.V. from 1992.

Enough on demographics. It is much more important to get down to a discussion on the proposals themselves, the positions and arguments pro and con offered, and then considering same while weighing each against the Statutory mandated criteria.

1. WAGES

The positions (demands vs. offers) of the parties have been set forth above.

When comparing the salary schedule proposed by the Borough and that sought by the P.B.A., it is necessary to have a reference point, namely the 1995 scale, the rate that will ultimately be replaced by either the Borough's offer or the P.B.A. demand.

In 1995, the salary scale was as set forth below. The number of unit members being compensated at any step is set forth in brackets:

Step 1A	\$31,000	
Step 1B	\$34,000	(2)
Step 2	\$36,500	
Step 3	\$38,500	
Step 4	\$40,500	(1)
Step 5	\$42,500	
Step 6	\$45,000	(2)
Sgt.	\$47,000	(1)

Are the parties really only 1/10 of 1% apart on payroll for 1996 and another 4/10 of 1% apart for 1997? The Arbitrator thinks not. They are much, much further apart than such minuscule sums, as we will see by what follows herein.

The unit payroll in 1995 under the salary guide above, amounted to \$245,500.00.

The costs in 1996, under the Borough's offer, would go up by \$12,050.00 or 4.9%, and by another \$11,913.00 or 4.6% in 1997..

The unit payroll in 1996, under the demand of the P.B.A. would increase by \$19,625.00. Such sum, the P.B.A. contended, represented a 5% increase.

The difference between a \$19,625.00 increase and one of \$12,050.00, namely \$7,575.00 cannot possibly amount to the 1/10 of 1% indicated by comparing each sides presentation.

The \$19,625.00 increase for 1996, as proposed by the P.B.A., mathematically comes out to an increase of 8% less \$15.00.

The P.B.A. proposal for 1997, which would raise the unit payroll, still computed on six members, increases the payroll by \$20,420.00. If the 5% contention of the P.B.A. was accurate, the increase over their 8% for 1996 would be only \$13,256.00. The \$20,420.00 increase indicates a 1997 increase equal to slightly less (\$6.00) than 7.7%.

Another way of comparing the cost difference in positions is by examining the difference in the two year totals. Under the position of the Borough, the 1995 unit payroll of \$245,500.00 would increase to \$257,550.00 in 1996 and then to \$269,463.00 in 1997. A two year increase of \$23,963.00, as opposed to a

P.B.A. increase to \$265,125.00 in 1996 and then to \$285,545.00 in 1997, a total hike in payroll of \$40,045.00.

The explanation as to how "figures lie" is rather simple and easy to find.

Of the six members in the department, only three were at the top of the guide, the two at step 6 and the sergeant. The other three were still advancing through the salary schedule and automatically receive an increment, a raise without even negotiating a new contract and a new wage scale. All three would receive these increments over and above the 5% "across-the-board" increase sought by the P.B.A.. These incremental sums represent an added expense to the unit payroll and must be counted as a part of the total package cost and cannot be ignored under the criteria of the Statute. All moneys received in one year over the preceding year must be considered a part of the demand or package.

The increases proposed by the P.B.A. would give two officers 1996 wage increases of \$4,3325.00 or just a shade under 13%. It would also give another officer an increase of \$4,125.00 or just over 10%. There is no way that one can justify such raises in today's economic climate.

By the same token, the offer of the Borough, which would give its two most senior offers increases of only \$900.00 or 2%, and its only Sergeant an increase of \$940.00 or 2%. There is no way that such a raise, when compared to what would be received by those going through the guide, can be justified either.

While wage comparisons are no longer given the weight they had been afforded in years past, they still represent an important element.

Stanhope is a border town. Its southernmost boundary is also the border of affluent Morris County. Thus, the P.B.A. for purposes of comparison sought to compare with both Sussex and Morris Counties.

As the newly revised Statute, lists in order of consideration, (1) private employment, (2) public employment, (3) public employment in the same or similar jurisdictions, and (4) comparable private employment, we will look first at private employment.

The median income in Sussex County as a whole was only \$309.00 above that of Stanhope. One may as well call them even.

The projected benchmark salary proposed by the P.B.A. for 1996, \$47,250.00 is less than \$700.00 below the Stanhope median family income, but well above the group below the median.

Often time, Arbitrators look to a pattern as to how a governing body has settled with its other employees. The P.B.A. is the only organized bargaining unit in the Borough, except for teachers. While the Borough's teachers are paid basically by the same taxpayers, no 1995-98 agreement thereon had been reached as of the conclusion of hearing in this matter. The Community's offer, at that time, was a retroactive freeze for 1995/96 and 3.5% annually, including increments, for 1996/98.

As it turned out, after the conclusion of the hearings herein, settlement was reached by and between the Stanhope Board of Education and the Stanhope Education Association. Said settlement did not exceed the District's position referred to above. The settlement froze all teacher wages for 1995/96 and called for 3-1/2% annual increases in each of the two following school years. Translated from percentages to dollars, the average teacher raise will compute to \$1,660.00 for 1996/97 and \$1,717.00 for 1997/98, figures well below those facing the Stanhope Police Department.

It should be noted, that the teacher wage freeze followed a similar action taken last year for all other employees of the school district, administrators, secretaries, aides, and custodians.

The P.B.A. in its post-hearing brief argued that the only reason for such data to be considered herein was to "indicate that one of the School Boards affecting Stanhope has attempted to address the school problem, thereby relieving the Municipality from its misguided attempt to compensation for school taxes. The only question that is to be answered regarding the Municipality's ability to pay is not whether or not it can raise taxes to pay the salary increase, but how much of a reduction in the Municipal tax rate can the Municipality still give and pay a fair wage?"

As the revised Statute very clearly states that consideration must be given to other public employment in the same jurisdiction, there is no reason or justification to ignore the fact establishing how the same taxpayer treated another employee group.

Data was presented by the P.B.A. as to benchmarks in both Morris and Sussex Counties for 1995 and beyond for those departments that have settled for 1996 or 1997. Specifically:- Sparta \$50,208, Byram \$49,005, Vernon Township \$48,628, Hopatcong \$47,891, Newton \$45,897, Franklin Boro \$44,819, and Hamburg \$41,390. The 1995 benchmark in Stanhope was \$45,000, a figure above only Franklin Boro and Hamburg.

It should be noted that the total cost of the LOBO presented by the P.B.A. included sought after expenditure increases for 1996 and 1997 in both clothing allowances and detective stipends. While individually these two items are

minuscule, they never-the-less increase the P.B.A. package to 8.3% for 1996 and to 7.95% for 1997.

At this point it must be repeated and noted that the Borough of Stanhope never contended that it did not have the ability to pay the police what it sought, nor did it endeavor to compare the wages of its police with wages paid elsewhere to the police.

Of equal interest, while there have been many, many settlements between municipalities and their police departments, neither side bothered to present data as to how their respective positions compared to actual settlements negotiated in other municipality - police contracts.

Data was presented that compared the police benchmark with other salaries of employees of the Borough of Stanhope. The police benchmark of \$45,000 exceeded all Borough wages except for that received by the Borough Administrator, the Police Chief, the Superintendent of Public Works, and Department's own sergeants.

The only comparison data presented was to show the overall trend in settlements negotiated by the Communications Workers of America, AFSCME for hospital workers and school districts, the States of New Jersey, New York and New Hampshire, the private sector, and sundry similar non-police settlements.

With the data presented, it would appear that the offer of the Borough, as well as the demands of the P.B.A., no matter which was ultimately to be selected herein, the result would be a larger increase than is generally prevailing elsewhere.

2. CLOTHING ALLOWANCES

Under section 12 of the most recently expired agreement, all members of the department received \$1,075.00 annually to be used towards replacing and cleaning police uniforms.

The P.B.A. proposal sought a \$75.00 per year increase herein. With six unit members only involved, this represents, only, as indicated earlier a "minuscule" \$450.00 annually.

How does the current \$1,075 which the Borough sought to have continue, or the \$1,075 plus \$75 annually sought, compare with what other police personnel receive? If data was presented thereon, comparisons could be ascertained.

3. DETECTIVE AND SERGEANT STIPENDS

The P.B.A. sought a \$100 annual increase in these stipends, sums paid over and above the basic wages, which currently amount to \$1,600 for sergeants and \$1,200 for detectives.

Again, the total sum involved on point is "minuscule". Again, no data against which to compare.

4. BULLET PROOF VESTS

As the LOBO's of both parties were identical on point, there is no need to discuss this further.

5. SPECIAL DETAIL OR OUTSIDE EMPLOYMENT RATES

Here too, as the positions of both sides are identical, namely to increase the current \$30 per hour to \$35 per hour, there is no need for further comment herein.

6. OVERTIME

The P.B.A. proposed that overtime be paid after 40 hours worked in any week and that paid or work time include sick pay, holiday pay and vacations as had been the practice until the expiration of the 1994/95 contract.

The Borough indicated that it intended to abide by the provisions of the Federal Fair Labor Standards Act which requires payment at time and one-half rates for all hours worked in excess of 40 hours in a work week.

29 U.S.C. Sec. 207 (a) (1) in defining hours worked does not include absences for reason of sick leave, vacations and/or holidays.

That the Borough had been computing overtime so as to include all such hours through the expiration of the last contract, resulted from the settlement of a P.B.A. filed ULP which stated in part: -

1. Effective July 1, 1995, the Borough of Stanhope shall hold in abeyance its Overtime Policy dated December 19, 1994 until January 1, 1996.
2. The P.B.A. shall have an opportunity to submit a contract proposal regarding the calculation of paid leave days as compensable time worked during the parties currently ongoing collective negotiations;

3. Unless agreed otherwise by the parties, the Borough shall have the right to unilaterally reinstitute its Overtime Policy of December 19, 1994, effective January 1, 1996. However, any such reinstitution is subject to change through collective negotiation or impasse procedures.

In its brief, the P.B.A. did not, aside from indicating a desire that what had been the practice continue, indicate what actual sums of money would be involved (i.e. lost by the police, saved by the Borough) in a change in formula. Thus the undersigned Arbitrator has no means of even remotely calculating or placing a value on the proposal.

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ECONOMIC DISCUSSION

We could, at this point reiterate most of the comments set forth under "General Economic Comments" above, as well as the data set forth under the aforestated demographics. Once, however, should be sufficient.

One cannot overlook the fact that it is most common and most appropriate to give a considerable amount of weight to settlements already negotiated with other employees of the same Municipality. Sound labor practices, practices that tend to create harmony amongst the work force, dictate that treatment amongst all employees should be more or less equal.

Aside from teachers, the police appear to be the Stanhope "trailblazer", there being no prior settlements.

The existence of settlements made with other Municipal employees, however, is not the true concern before us. The real question, in light of everything, and carefully considering the Statutory criteria set forth in P.L. 1995, c. 425 is what is both a reasonable, deserving, warranted, and affordable settlement.

As indicated earlier, the Statute establishes eight points, criteria or guidelines for consideration by the neutral arbitrator in considering the LOBO's presented. The undersigned Arbitrator has examined the data presented by both the Borough of Stanhope and the Stanhope P.B.A. Local # 138, and has taken into consideration each of the items set forth by the Legislature in P.L. 1995, c. 425.

Some comments relating to each of the criteria is worthy of note.

1. INTEREST AND WELFARE OF THE PUBLIC

The interest and welfare of the public demands a high caliber of police protection which must be considered along with the needs of those making up the police department.

While members of the department evidence their interest and support for the community it serves by putting forth its best efforts to protect the citizenry, the Borough and its taxpayers have only a single way of exhibiting its support to and appreciation of its police, namely, by granting each and everyone of them an equitable and reasonable salary increase.

A very simplistic view of this "interest and welfare of the public" criteria of the Statute might well be that the public is always best served by the governmental body spending less. This is not, and should not be inferred by the Statute or the intentions expressed by the Legislature.

The public is best served by a professional and well functioning police department. Productive and well motivated employees best serve the public and their interests, not employees who work for the cheapest rate possible. This, notwithstanding that too many contracts involving safety are awarded to the lowest bidder.

A public employer best serves the public interest and public welfare by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services. While a Municipality, the Borough herein, may have difficulty balancing these competing interests with budgetary financial restraints, it should not sacrifice fairness to its employees.

By the same token, a Municipality, any Municipality, should not reduce essential governmental services merely to satisfy the economic demands of its employees.

It should be noted once again, that the Borough of Stanhope, at no point during these proceedings, indicated an inability to pay or that increases beyond its offer would create an undue hardship upon its citizens.

There can be absolutely no doubt but that the Borough of Stanhope's police department has been serving the citizenry of the Borough in a most commendable manner.

The P.B.A. argued that too many of its members are required to work multiple jobs and/or that their households require multiple incomes and thus create a stress level that could likely affect productivity and performance.

That households today, probably the vast majority of households, be they police families or not, require multiple wage earners, is common. No matter what the salary earned is, most families are made up of multiple wage earners. The police are not unique in this respect.

2. COMPARISON OF WAGES AND OVERALL COMPENSATION AND CONDITIONS OF EMPLOYMENT

This portion of the Statute requires that the Interest Arbitrator consider a comparison of the wages, salaries, hours, and conditions of employees involved herein with the wages, salaries, hours and conditions of employment of other persons performing the same or similar services in public employment in comparable jurisdictions, in comparable private employment ⁴, and in public and private employment in general.

The benchmark salary in Stanhope has been discussed earlier under the "wage" presentation. The limited amount of data presented thereon prevents a detailed comparison being made. All that is certain is that the 1995 \$45,000 figure in Stanhope is exceeded by five departments, and itself exceeds two.

The 1995 starting wage was \$31,000. It is interesting to note that both parties have proposed a drastic reduction to \$25,000 in 1996 and \$26,500 in 1997. This, while not affecting present negotiations, will certainly have a gigantic impact in future negotiations when the automatic increase or increment between step 1B and step 2 would be \$10,415 under the Borough's proposal herein, or an even larger \$12,941 under the LOBO of the P.B.A. As increment is considered as an added cost, same would have to come out of the overall negotiated wage increase, which could seriously jeopardize the raises to be received by the veteran officer, just as it (increments) will this year.

But as the parties are both so desirous, and both obviously aware of potential repercussions, it is not something for the Arbitrator to concern himself with.

When all of the department's men are lumped together, the average wage in the department computes out to \$41,083. This is a wage that is highly comparable with average private and public sector wages in non-police fields.

Starting wages in many fields are far below the starting police wage in Stanhope.

Settlements in private industry are not any greater than those in the public sector, if even as high.

⁴ There are no real private sector Police Departments, unless one wants to consider private security firms or Private Investigators. In any event, no data thereon was offered.

"Give backs" are most common in private industry, just as there are many instances of wage reductions;, especially when saving one's job is at stake.

With the rate of unemployment, something that has escalated over the past few years, and is just about stabilizing at present, many persons in both public and private sectors are happy to have a job. Wage increases are secondary. As will be pointed out under criteria # 8, hereafter discussed, job security is not a question or concern within the Borough of Stanhope's police department.

Police salaries in the Borough are amongst the highest salaries earned by Borough employees.

C.W.A. and State workers recently concluded a contract calling for wage increases 10.8% plus \$1,500 over three years; northern New Jersey hospital workers agreed to 6-9% increases over four years; average increases to state workers nationwide averaged 3.5%; teachers, again nationwide went up by 2.7%; wage freezes were not uncommon.

It is most difficult, if not totally unrealistic, to expect increases averaging out for the unit at around 8%, at least not in this day and age. Increases much closer to 5% are more in the line of reality.

3. COMPENSATION AND FRINGES

A contract does not involve compensation alone. A contract covers many other benefits as well, including vacations, personal days, holidays, sick leave, overtime, clothing and/or maintenance allowances, insurance, etc., etc.

While it would be beneficial to be able to compare each and every municipality police department contract with the various contractual components, this is not possible, based upon the very limited data offered.

The members of the Stanhope Police Department, aside from wages enjoy (1) longevity stipends, which can, depending upon one's years of employment, add between 3% and 5% of base wages to one's earnings, (2) a clothing maintenance allowance of \$1,075 annually, (3) thirteen paid holidays, (4) vacations of from 6 to 24 days annually, depending upon length of service, (5) bereavement leave of 3 days, (6) payment for unused sick leave on retirement, (7) insurance including hospital, medical, for the individual and family and a full family dental and optical plan, and (8) tuition reimbursement for college courses in the police field.

Depending upon how one views the "overtime" provision, there is no proposal to reduce any current contractual benefit, something most unusual in this age of "give backs".

4 STIPULATIONS

So far as stipulations of the parties are concerned, there are three which must be considered herein.

The first relates to "overtime" the pertinent parts of which have been set forth earlier herein.

The second, also related to the "overtime" question stated:- "That the dispute regarding overtime was not taken to the terminal step of the grievance procedure. There were discussions and written communications between the P.B.A., the Chief, the Borough Administrator prior to the P.B.A. electing to take the dispute to PERC by filing a ULP charge".

The third stipulation indicated that the parties had agreed that all terms and conditions of the existing contract, except as proposed for modification by their respective positions would continue in the successor contract.

5. THE BOROUGH'S AUTHORITY TO GOVERN, RAISE TAXES, PASS ORDINANCES AND TO ENTER INTO CONTRACTS

The Borough's lawful authority so far as the budget is concerned, was and is restricted by the New Jersey CAP Law. The neutral Interest Arbitrator is statutorily and constitutionally required to consider CAP restraints imposed upon the governing body.

The CAP Law has been in existence for some fifteen or sixteen years in one form or another. Said law is aimed at limiting local governmental costs and at the same time limiting the tax burdens on the home owner.

The New Jersey Local Government CAP Law [N.J.S.A. 40A: 4-45.1 et seq.] restrains the lawful authority of the employer by limiting overall budget increases. By limiting such budget increases, the ability of the Borough to grant unlimited wage increases to its employees is restricted.

The 1990 amendments to the CAP Law was intended to slow down the rate of increase in local property taxes. These amendments eliminated certain heavy expenditures from heretofore exceptions when computing the possible tax increase.

While the CAP Law does not impose a line item by line item limitation, it places a limit on the overall budget to the extent that it is subject to the CAP Law. Because salary expenditures fall within the CAP, the Legislature in a not so round about way has attempted to limit the maximum amount the Borough or any municipality may increase taxes for the purpose of covering salary expenditures.

Costs incurred to fund a possible adverse interest arbitration award must be taken into account by the municipality in determining whether overall budgetary appropriations exceed the ceiling imposed by the CAP.

So far as the budget was concerned, the Borough budgeted for police increments only, and 3% for those units that have contracts absent an increment pattern.

The budget decreased for 1996. Notwithstanding, same was rejected by the populace. If the budget had not been decreased, it still would have been within the CAP and there would have been enough to cover the difference between economic proposals.

One cannot lose sight of the fact that the Borough currently receives a \$30,000 annual Safe Street Grant so as to pay for an extra, the 6th, police officer. There is no guarantee, however, that this grant will continue for 1997 or beyond. If same were not continued, it would require a 2% tax increase to retain the sixth officer. ⁵

With the uncertainty of state aid, and all aspects thereof continuing, both parties must be aware and consider the repercussions if the Safe Street Grant was eliminated, as the difference would fall upon the taxpayers to make up.

Again, it must be remembered, that the Borough never contended it could not, or did not, have the ability to meet the P.B.A. demand.

6. THE FINANCIAL IMPACT ON THE MUNICIPALITY AND THE TAXPAYERS

There is little that could be stated under this criteria that has not been stated under criteria # 5 above, or elsewhere in the overall discussions of the demands and positions of the parties.

⁵ In spite of this "open" question, the parties refusal to again sit down and negotiate, can only lead to the conclusion that continuation of the Safe Street Grant is of no real concern.

7. THE COST OF LIVING

The Cost of Living Index or the Consumer Price Index has for many years been used in order to justify rather large wage increases.

The effect of changes in the Cost of Living on one's purchasing power is of prime importance to any worker. Will the increase keep pace with the increase in the Cost of Living so that he can continue to maintain the same standard of living?

Accordingly, the Statute mandates that the Arbitrator, when rendering his award, consider the costs of living.

There are actually two C.P.I.'s issued. One covers "All Urban Consumers". This is the C.P.I.-U. The other covers "Urban Wage Earners & Clerical Workers". This is the C.P.I.-W.

While rising a bit lately, the national average cost of living increases as evidenced by the C.P.I.-U. for New York - Northeast New Jersey from June, 1995 to June, 1996, the period ending when these proceedings began, showed a 2.8% rise. The subsequent rise to date, does not indicate that the C.P.I. points to an inflationary period appearing on the horizon, in spite of the Government's raising interest rates.

In computing the C.P.I., one cannot overlook the fact that it includes medical expenses, expenses which the P.B.A. does not pay, as premiums for medical insurance are fully paid by the Borough.

Even though no data was presented as to what percentage police raises were over the past decade, it is almost certain that their raises exceeded the 3.75% C.P.I. average increase between 1987 and 1996.

It should be noted that the offer of the Borough is fully two full points above the increases in the Consumer Price Index. Thus, even under the Borough's offer, the increase will again represent real gain to the members of the Borough of Stanhope Police Department.

8. THE CONTINUITY & STABILITY OF EMPLOYMENT

There is absolutely no question but that the continued employment of members of the Borough's Police Department is secure and will continue. One could, in fact, almost state that such continuation is guaranteed, else there would be no reason for the Borough proposing a lower starting salary, nor the P.B.A. joining in such proposal.

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NON- ECONOMIC PROPOSALS

As indicated earlier herein, there were no specific "non-economic" proposals.

X X X X X

The only item not discussed herein, was the economic demand of the P.B.A. concerning "binding arbitration" as being the final step in the grievance procedure instead of the current "advisory" step.

Precisely why this was classified as an economic matter, I do not know. But, inasmuch as the parties themselves categorized it as such, it is not up to the Arbitrator to place it in another or different category.

The arguments advanced by the P.B.A. for binding arbitration can best be set forth by quoting directly from its brief which stated:-

"Even in the cases reported in the New Jersey Court, which require exhaustion of administrative remedies before access to the court is allowed, the doctrine of futility is accepted. Non-binding arbitration is like kissing your sister. This is a six-member department. Before any issue rises to the level of written grievances, it has been discussed, informal positions have been taken, and discussions with the governing body take place, all in the hope of equitably and reasonably resolving the issue in the most advantageous manner. It is only after the positions harden that the municipality has taken an unalterable step that the grievance procedure is formally invoked. To have a grievance procedure without a mandatory terminal process in a department this small is useless. That is why binding arbitration is necessary to resolve those grievance items. There should be no requirement that time, effort and money be expended uselessly before a working mechanism can be put into place. The fact that the unfair labor practice vehicle was resorted to to resolve the purely contractual issue of overtime should be clear enough notice that binding arbitration is overdue in Stanhope."

Other than wanting to maintain the status quo, the Borough offered no justification for having the final step in the grievance procedure, arbitration being advisory only.

It is the rare case when a governing body will accept the opinion of an outsider that they violated their agreement with their employees, unless forced to. If the governing body was the least bit so inclined, they could have avoided the arbitration itself and rendered a different determination and thus avoid the time and expenses involved.

Somehow, the final word on whether an employer, or a governing body, violated its own Collective Bargaining Agreement, should not be left to the governing body, any more than it should be left to the employee or grievant. Neither can be truly neutral to decide the issue. Only a totally disinterested party, one who has nothing to lose or gain by his decision, can truly be neutral or non-partisan.

X X X X X

THE THIRD YEAR QUESTION

The most recently expired Collective Bargaining Agreement lapsed on December 31, 1995. As 1996 is already history, and 1997 is nearly half way there as well, a third year is really warranted.

The P.B.A. set forth a detailed salary guide for 1998 based upon it being awarded the 1996 and 1997 increases it had proposed. The Borough refused to discuss the possibilities of extending the contract through 1998, even though an agreement ending on December 31, 1997 would require the parties to return to the negotiating table almost before the ink was dry on the 1996/97 agreement. The Borough offered no real, concrete rationale for its unwillingness to consider a third year.

There is absolutely no way that that Arbitrator, in fairness and in consideration of the taxpaying people of the Borough, can fail to award a third year herein.

Without having any position from the Borough as to what it would deem to be a fair, a reasonable, a warranted, or a justified 1998 increase, while comparing same to the P.B.A. demand for 5% (plus increments), the Arbitrator can only look to what is happening elsewhere, keeping in mind the criteria of P.L. 1995, c. 425 and the fact that no claim of lack of ability to pay was made.

An increase in all 1997 wages equal to the Consumer Price Index computed from November 1996 through November 1997, as promulgated by the B.L.S. for the Greater New York - New Jersey area, plus 1%, but in no event less than 4% nor greater than 5% shall be granted for 1998.

Those officers going through the guide steps, shall receive raises equal to the foregoing formula or increment, whichever is greater.

NOW THEREFORE, as the duly selected Arbitrator, having heard all of the testimony offered, and having considered all of the documents and evidence offered, and after evaluating the positions and arguments of the parties, and after having carefully considered and given due weight to each of the statutory criteria set forth above in P.L. 1995, c. 425, I make the following -

AWARD

1. That the two police officers who in 1995 were compensated under step 1B and who earned \$34,000.00, advance to step 2 in 1996 and be compensated at the annual rate of \$36,500.00

2. That the sole police officer, who in 1995 was compensated at \$40,500.00 under step 4, advance to step 5 in 1996 and be compensated at the annual rate of \$42,500.00.

3. That the two police officers who in 1995 were compensated on step 6 at \$45,000.00 move for 1996 to a newly created step 7 and be compensated at the annual rate of \$47,000.00.

4. That for 1997 all persons shall move one step on the guide, except those who were on step 7 in 1996, who shall remain at Step 7.

5. That the following salary guides shall be implemented for 1996 and 1997:

1996	STEPS	1997
\$25,000	1A	\$26,250.
\$26,250	1B	\$27,300
\$36,500	2	\$36,500
\$38,500	3	\$39,000
\$40,500	4	\$41,500
\$42,500	5	\$44,000
\$45,000	6	\$46,500

\$47,000	7	\$49,500
\$49,000	Sergeant	\$51,250

6. That effective January 1, 1998, wages, for those Officers who were at the top or maximum step in 1995, shall have their annual wages increased by the November 1996 - November 1997 C.P.I. increase [Greater New York - New Jersey area] plus 1%, but in no event less than 4% nor more than 5%.⁶

7. Those Officers who were not at the maximum step of the guide in 1997, shall receive for 1998 the greater of the formula set forth in Award # 6 above, or increment.⁷

8. That there shall be no clothing allowance increase retroactive for 1996.

9. That effective with 1997, the clothing allowance shall be increased by \$25.00 per officer annually.⁸

10. That Detective and Sergeant stipends shall remain throughout the contract at the same rate as paid in 1995.

11. That bullet proof vests be added to an officer's initial uniform issue, at the Borough's expense.

12. That effective with the first day of June, 1997, the outside employment rate be increased to \$35.00 per hour.

13. That the terminal step in the Grievance Procedure be changed to Binding Arbitration for all grievances that may hereafter arise.

⁶ Assuming a 3% C.P.I. increase, the two P.O.s who were at maximum in 1995 earning \$45,000 would have their 1997 salary of \$49,500 increased by 4% (the assumed 3% plus 1%) and in 1998 receive \$51,480.

⁷ Again, assuming a 3% C.P.I. increase, the two officers who were compensated in 1995 at Step 1B and earned \$34,000 would have their 1997 wages of \$39,000 increased in 1998 by the increment (the difference between step 3 and 4 - \$2,500) to \$41,500, that being greater than the \$40,560 generated by the formula.

⁸ This will represent a \$150.00 total cost in 1997 and a like increase in 1998. Total cost to the Borough, \$450.00.

14. That payment for overtime shall be compensated by whatever formula is mandated by Federal Statutes.

XXXXXX

TOTAL ECONOMIC CHANGE

In 1995 the wages for the Department based upon the Officers being on the step as indicated on page 12 totaled \$245,500.00.

Based upon the increases awarded above, the unit payroll would increase to \$258,500.00 for 1996 and to \$274,750.00 in 1997.

Percentagewise, the award herein increases the unit payroll by 5.29% including increments or 2.44% without increments in 1996, and by 6.29% including increments or 2.81% exclusive of increments in 1997.

It should be noted that police settlements generally do not include the cost representing one's movement through the guide, the increment.

The \$450.00 total clothing allowance increase is too miniscule to affect the overall percentages.

Not taken into consideration when considering the total net economic changes involved, was the cost of adding bulletproof vests to the officers' initial clothing issue. Does the cost of such protection really matter?

It should be noted that the awarded increases totaled for 1996 only 39/100 of 1% above what the Borough had offered, and just 1.69% over its 1997 offer. While the total 1996 and 1997 increases represent a total of 2.08% over the Borough's offer, it is well below the annual 5% plus increments sought by the P.B.A.. One cannot ignore the fact that the Borough never contended it could not, or did not have the ability to meet the far greater P.B.A. demand.

Dated: Jamesburg, N.J.
June 6, 1997

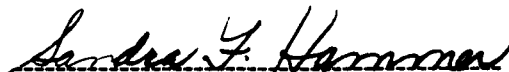

LAWRENCE I. HAMMER

State of New Jersey)

ss:-

County of Middlesex)

On the 6th day of June, 1997, before me came LAWRENCE I. HAMMER, to me known to me to be the person who executed the foregoing Arbitration Award and he duly acknowledged to me that he executed the same.

A handwritten signature in cursive script, appearing to read "Sandra F. Hammer", written over a horizontal dashed line.

SANDRA F. HAMMER
NOTARY PUBLIC OF NEW JERSEY
Commission Expires July 30, 2001

