State of New Jersey
Commission of Investigation

PENSION AND BENEFIT ABUSES

DECEMBER 1998

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Governor Christine Todd Whitman
The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation herewith formally submits, pursuant to N.J.S.A 52:9M, a report and recommendations based on its investigation into matters involving public pension and benefit abuses.

Respectfully,

Leslie Z. Celentano

M. Karen Thompson

W. Cary Edwards

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Executive Summary

The Commission examined certain aspects of public employee pension and benefit programs and found abuse, manipulation and excessive expenditures that cost New Jersey taxpayers substantial sums of money every year. Questionable practices were detected in every region of the state, among municipalities, school districts, community colleges and independent authorities. The abuses have been sustained over the years by a system lacking in adequate oversight and accountability and by a loophole-ridden statutory framework that licenses potentially inappropriate conduct by public officials.

The investigation revealed numerous instances in which public pensions have been improperly or unjustifiably inflated through a wide variety of strategems to boost the final salaries, job titles and terms of service upon which such pensions are based. Unreasonably large amounts of sick leave and vacation time are awarded to many public employees, who sometimes are solely responsible for keeping track of how much they use. At retirement, they are allowed to cash in unused leave for excessive lump-sum payments — frequently in amounts substantially greater than the equivalent of one full year's salary. In some cases, the benefit packages also contain an array of non-monetary perks, such as free toll-road passes routinely given to employees and retirees of the New Jersey Highway Authority, operator of the Garden State Parkway. Lucrative separation-

of-employment agreements, commonly called “buyouts” or “golden parachutes,” have been negotiated in the absence of explicit statutory authority as inducements for the resignation or early retirement of municipal, school and county college personnel. Moreover, a wide array of part-time government employees**,** including professionals and other independent contractors, collect fees in addition to regular salaries that qualify them for pensions and other benefits at taxpayer expense. In some instances, they serve as salaried employees of more than one governmental entity.

Much of what was unearthed during the course of this investigation revolves around arrangements crafted quietly, often in secret, between individuals or groups of employees and their supervisors. In many instances, these arrangements are implemented through negotiated labor contracts, early-retirement programs and even official ordinances. Throughout this process, however, the paying public often is left uninformed. Municipal officials and departing employees may enter into agreements whose long-term budgetary impact can exert considerable pressure upon property taxes, but rarely, if at all, are taxpayers even notified of the terms of those agreements. Local government retirees may be provided with exaggerated pensions, but rarely, if at all, is the public informed of the drain that such excessive payments make on New Jersey’s Public Employee Retirement System (PERS) and Police and Firemen’s Retirement System (PFRS) funds. Citizens also are largely uninformed regarding the standards and formulas used in calculating special pension and benefit awards. For example, while retiring state government employees are limited by law to what they can be paid for

accumulated unused sick leave, a lump sum no greater than $15,000, no such ceiling is required at the county and municipal levels, or among school districts, community colleges and independent state authorities.

During its investigation, the Commission examined the pension and benefit records and policies involving employees of 17 municipalities, six school districts, two counties, two community colleges and two independent authorities. Although this mix represents a relatively small sampling of the total number of governmental entities in New Jersey, the Commission took pains to inject balance and perspective by including entities of varying size from regions throughout the state. A chart detailing the findings relative to each governmental entity examined by the Commission appears in the Appendix to this report.

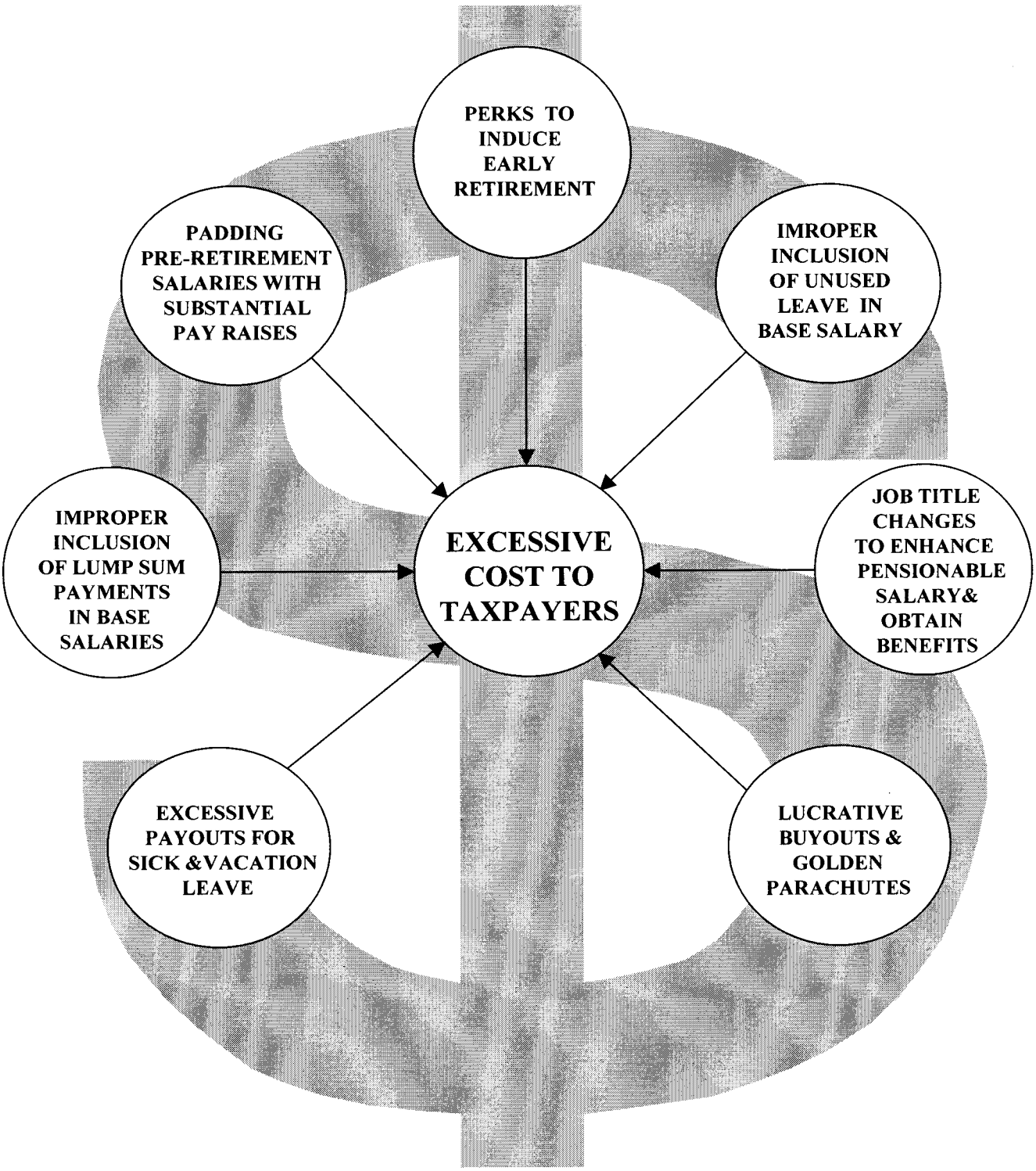
The Commission notes that government at all levels in recent years has been admonished to cut waste and fully utilize limited resources. That is the context in which the findings of this investigation, along with a series of recommendations for systemic reform, are presented.

The Commission emphasizes that although some of the scenarios described in this report involve manipulation and perhaps even fraud, others involve entirely legal conduct. In those instances, criticism is not directed at the individuals who took advantage of systems that beg to be manipulated, but rather at the systems themselves, or

at public officials who place short-term political expediency ahead of long-term fiscal integrity.

This report is not intended to evaluate the motive, rationale, or purported justification for any public entity's entering into a separation agreement described in this report. The Commission recognizes, of course, that governing bodies often believe that a generous buyout is preferable to expensive protracted litigation. That view, however, often fails to take into account the issue of whether individuals in high-ranking, policy-sensitive positions should enjoy the kind of tenure that makes their removal almost impossible. Even though there may be occasional cases in which buyouts are used as an understandable last-resort by frustrated public officials, tenure for public employees like chiefs of police and municipal clerks invites mischief, not only by individuals hoping to enhance their retirement packages by creating tension with elected officials, but also by elected officials themselves when they seek a cover for blatant favoritism.

PENSION AND BENEFIT ABUSES



PENSION AND BENEFIT MANIPULATION

Most public employees in New Jersey qualify for retirement benefits under one of the following pension plans, depending upon the nature of employment: the Public Employees Retirement System (PERS), which covers most municipal, county and state government workers; the Police and Firemen's Retirement System (PFRS), for law enforcement and fire safety personnel; and the Teachers Pension and Annuity Fund (TPAF), for public school teachers. Under each system, the amount paid to each retiree is governed by rules that take into account a number of factors, including primarily the length of employment service and the level of annual salary. Generally, the longer the term of service and the higher the salary, the greater the pension payout.[1]

The Commission found a pattern, particularly at the municipal level, in which questionable or patently improper steps have been taken to provide retiring employees with inflated and overly-generous pensions. In many cases, this has been achieved by padding pre-retirement salaries with substantial pay raises in the final year or two of service — occasionally even when employees were on paid leave and no longer active. In order to avoid scrutiny by state pension regulators, such raises typically have been calculated to fall just below a threshold amount — 15 percent of a given annual salary —

[1] The findings of this report primarily involve the PERS and PFRS systems. The typical PERS pension is calculated by dividing years of service by 60, then multiplying the product by the final average salary, which is the average of the three highest years' salaries. PFRS members, meanwhile, can begin to collect pension benefits as early as age 55. Those with 30 or more years of service receive a pension equal to 70 percent of their final year's salary, plus 1 percent for each year of service over 30; those with 25-29 years receive 65 percent, plus 1 percent for each year over 25; and those with up to 25 years receive an annual allowance equal to 2 percent of their final average salary for each year of service.

which, pursuant to regulations, will trigger a formal inquiry. Another standard ploy involves the improper inclusion in base salaries of lump-sum payments for accumulated unused sick leave and/or vacation time. In a related scheme, accumulated sick leave and vacation time have been used improperly to lengthen the pensionable terms of service for various employees. The manipulation takes other forms as well. In at least one instance, the Commission found evidence that an employee's job title was changed for no other reason than to boost the final salary and thereby sweeten her pension.

Often, these enhanced retirement packages take the form of written agreements negotiated with select employees either to reward them for their years of service or to induce them to accept early retirement. In some cases, municipal officials have persisted in carrying out such schemes even after having been admonished by the State Division of Pensions and Benefits that such practices contravene state law.

Following are representative examples of pension and benefit manipulation discovered by the Commission:

City of Englewood

Generous pay raises in the final 12 to 15 months before retirement substantially boosted the pensionable salaries of two ranking municipal employees, who also collected large payouts to cover accumulated unused sick leave and vacation time as well as an additional perk of long-term employment with the city — severance pay. In one instance, these retirement sweeteners were coupled with a special post-employment consulting

contract that cost local taxpayers an additional sum of more than $80,000 after the employee had left the payroll of this Bergen County community.

The most lucrative arrangement was reserved for an individual who doubled as city manager and clerk and retired in March 1994 on a pensionable salary of $107,106. Just 15 months earlier, this employee's salary had been $85,226. But under the terms of a pre-retirement contract that took effect in January 1993, he was put on track to receive incremental raises totaling nearly $22,000 — more than 20 percent overall — by the time he left municipal service to enter the pension system. The contract also paid him an additional $3,500 per year for using his own car on city business, plus 20 cents per mile reimbursement for travel beyond a 25-mile radius of the city limits. At retirement, two additional forms of compensation were awarded to this employee. He collected more than $79,000 for unused sick and vacation time and for severance considerations, payable over three years. (Under Englewood's personnel policy, unclassified employees — those outside any municipal collective bargaining agreement — who were hired prior to November 1, 1975, are entitled to one week of severance pay for every year of employment. At retirement, such employees are eligible to receive four additional bonus weeks of severance.) The payout at retirement in this case came on top of more than $45,000 worth of sick leave, vacation time and severance allowances that this employee, under another provision of the city's personnel policy, had already cashed in long before retirement. Moreover, on April 1, 1994 — the day after he retired — a new contract took effect in which the city agreed to retain him as a part-time consultant during an

administrative transition. Over the next 11 months, he was paid nearly $80,000, including more than $7,400 to cover the cost of a leased vehicle.

* * *

In another instance, Englewood's former fire chief collected nearly $30,000 in pay raises during his last three years of employment with the city, including a $21,000 increase during his last 12 months, bringing his final salary to $99,072 at retirement on December 1, 1995. The Division of Pensions and Benefits ultimately reduced this amount for pension purposes to $96,072 by excluding a $3,000 stipend that was not authorized by the city's salary ordinance. Still, the employee's pensionable salary remained substantially inflated because it impermissibly included holiday pay.

In addition, this employee at retirement collected a lump-sum cash award of nearly $95,000 for accumulated unused sick and vacation time and severance considerations. The sum included payment for 34 unused vacation days carried forward from previous years, an apparent violation of Englewood's personnel policies. Moreover, the Commission questions the accuracy and propriety of this cash award because it was based, in part, upon unverified sick leave records kept solely by the employee.

* * *

In other retirement agreements, Englewood officials paid off employee loans and related obligations at taxpayer expense.

In one case, an employee received two city checks totaling nearly $26,000 three weeks before he retired in March 1994. One check was used to pay off the balance of a loan the employee had taken through the state pension plan. Since he also had an unpaid

balance on a payment plan to purchase pensionable service credit for previous employment, the second check enabled him to catch up so that he would be eligible for retirement benefits covering his full term of service of nearly 30 years. Although these payments were not added to the employee's base salary for pension purposes, Englewood officials did treat the full amount as additional pay within the scope of the city's regular salary ordinance. At retirement, this employee separately collected a lump sum of more than $44,000 for accumulated unused sick and vacation leave and severance considerations. That was in addition to nearly $21,000 he had received earlier in his career by cashing in unused leave and severance while still employed.

In another instance, a retiring employee received more than $12,000 from the city to satisfy outstanding pension and credit union loans. Again, the city took the questionable position that the payments were additional salary that fell within the scope of the municipal salary ordinance. Separately, this employee was paid $20,000 at retirement for unused sick and vacation leave and severance. That payment was in addition to more than $44,500 he had received by cashing in leave and severance while still employed.

Wall Township

In the five years since he left office in 1993 at age 49, the former police chief of this Monmouth County community has received an annual Police and Firemen's Retirement System (PFRS) pension of more than $53,000. The Commission's review of documents and circumstances surrounding his departure revealed that the pension was

improperly inflated at taxpayer expense and that this was done under the terms of a deal in which he agreed to retire in exchange for avoiding possible criminal charges.

The precipitating event was an investigation in 1993 by the Monmouth County Prosecutor's Office into allegations of malfeasance in the aftermath of a drunken driving arrest involving a politically-connected local businessman. The Prosecutor announced at the time that evidence in the case had been destroyed and that a cover-up had been initiated, but he decided not to seek criminal charges on the condition that the businessman defendant plead guilty and that the police chief retire immediately. As a result, the chief was allowed to take advantage of a local ordinance authorizing the township to commit up to $15,000 in taxpayer funds to purchase additional pension credit for sworn police officers. In this instance, township officials agreed to contribute $14,500. At the time, the chief's accumulated pensionable service was 22 ½ years, a term which would have qualified him under PFRS for an annual pension equal to 45 percent of his final salary of $83,088, or $41,544. By purchasing an additional 30 months — using a combination of his own funds and the township's contribution — he was able to expand his service credit to 25 years, thus qualifying for a 65 percent pension worth more than $53,000 a year.

If the former chief were to continue to collect his current pension annually for 25 years, the cumulative cost of the inflated portion (more than $11,400 per year), along with cost-of-living adjustments and lost investment earnings to the pension system, would total almost $850,000.

Borough of Ship Bottom

When municipal officials quietly crafted a lucrative early-retirement package for the then-chief of police in 1992, they rationalized it among themselves on the grounds that his departure eventually would produce substantial budgetary savings for taxpayers in this Ocean County community. In fact, this secret pension deal, which more than doubled the former chief's pension, cost local taxpayers more than $131,500 and set the stage for similar special treatment accorded at least two other retiring Borough employees.

The centerpiece of the buyout involved expanding the former chief's pensionable term of public service. Although he had served in law enforcement for 32 years at the time of his official retirement in June 1993, his pension eligibility was limited to 15 years because, until 1978, he had elected to stay out of the state pension plan. For his projected retirement livelihood, this pension-credit gap presented a substantial problem. Under the law, 15 years' service would have limited the pension to less than one-third of his annual salary. On the other hand, 25 years or more of service would more than double his retirement income, bringing it to 65 percent of his final salary under the Police and Firemen's Retirement System (PFRS). Taking note of this, and as an inducement for the employee to retire, Borough officials agreed to pay him a lump sum sufficient to purchase nearly 12 years' worth of additional pension credits — more than enough to achieve the 65 percent threshold. As a result, in December 1992, he was awarded $120,000. The sum included slightly more than $75,000 to cover the calculated cost of the pension-credit purchase, plus some $44,000 to cover the employee's state and federal

income tax and Social Security obligations on the full amount. In January 1993, however, it was determined that the pension-credit purchase estimate had been miscalculated and that the employee owed an additional sum of nearly $6,900. The Borough agreed to pick up this additional cost, plus the appropriate tax and Social Security add-ons, with a second lump sum award of $11,500. Total cost to local taxpayers: $131,500.

This arrangement enabled the employee to retire on June 1, 1993 with an annual pension more than double what it would have been under normal circumstances. The purchase of additional service credit guaranteed him an annual PFRS pension of more than $37,500, or $3,129 per month, based upon a certified final salary of $56,116.62. Had the pension been calculated based solely upon his actual earned service credit of 15 years, the pension would have been less than $17,000 per year, or about $1,400 per month.

The retirement agreement further stipulated this employee would receive medical benefits at taxpayer expense for the rest of his life, including prescription, dental and vision coverage. The Borough possessed no legal authority to offer such benefits.

This deal also raises questions about whether Borough officials knowingly violated the terms of their own municipal salary ordinance. Ship Bottom Ordinance 90-2 set a maximum permissible salary of $90,000 for the position of police chief. The Wage and Earnings Statement issued for the former chief in 1992, which included the payment for additional pension credits, showed a salary of $178,708.60, an amount more than $88,000 greater than the top allowable range limit.

As noted earlier, this buyout was justified ostensibly on the theory it would effectuate considerable budgetary savings by leaving vacant a ranking position within the local police department. However, on May 25, 1993, just one week prior to the effective date of the employee's retirement, he was replaced. The Borough entered into an employment contract for the promotion of a new police chief at an annual salary of $50,013.04.

This retirement agreement was related to similar, though somewhat less lucrative, retirement agreements for two other employees. In one instance, another ranking police officer agreed in 1992 to retire with 25 years of service in exchange for converting sick, vacation, holiday and personal time into 13 months of terminal leave, which essentially enables an employee to remain on the public payroll until the effective date of retirement, even though he is no longer working. This amount included all of his annual sick leave even though the contract in force at the time allowed him to be compensated for only half of that time. The Borough also agreed to provide his family with full health coverage until the year 2006, again with no underlying ordinance authorizing such benefits. When the Borough's Superintendent of Water and Sewer heard of the deals being negotiated with police personnel, he sought similar treatment covering his retirement three years later. Under the terms of a separate retirement agreement, Borough officials provided both him and his wife with lifelong health benefits secondary to Medicare.

* * *

Minutes of closed executive sessions of the Borough governing body reflect an effort to craft a strategy aimed at concealing the terms of these retirement agreements

from the general public. Council members were advised by the Borough solicitor that in the event questions were raised, they should reply that "we must respect the privacy rights of individuals employed by the Borough of Ship Bottom." They were alternatively instructed to state that "individual contracts between a municipality and an employee are confidential according to law." The Council was further told that if a member of the public persisted in trying to obtain information about the retirement agreements, such an individual could seek judicial redress "and then it would be determined by the court."

Borough of Bradley Beach

Several top municipal officials in this Monmouth County community were given substantial pay raises in the final two years of employment, resulting in higher final salaries upon which their pensions were based. At the same time, accumulated sick and vacation time was used improperly to lengthen the pensionable terms of service.

Central to this type of scheme is the conversion of accrued sick and vacation time into terminal leave. The duration of such paid leave can be substantial. For example, one longtime Bradley Beach employee went out on terminal leave on January 2, 1991 and continued to collect regular paychecks for nearly two years until his retirement became effective on December 1, 1992. He did so by drawing on a mix of 324 unused sick days, 142 vacation days, a handful of personal days and 41 "bonus" days granted by the borough as a reward for using a minimum of sick time during his employment. This employee thus was able to expand his pensionable years of service by 23 months, to a total of 26 years and nine months. He also retired with a larger final salary upon which to

base his pension. That was possible because, during his nearly two years' of terminal leave, the borough granted him two separate 7 percent pay raises, boosting his salary from $63,779 at the end of 1990 to more than $73,000 at the time of actual retirement.

An examination of borough records revealed that similar arrangements involving substantial pay raises during extended terminal leave were crafted for other top Borough employees before retirement.

Village of South Orange

A select group of 11 police officers in this Essex County community were provided with inflated pensions as a result of retirement inducement agreements that called for the improper addition to base salaries of lump sums representing unused vacation time. At retirement, these individuals also were granted terminal leave in the form of substantial cash payouts — in at least one instance, in an amount even greater than called for in the retirement agreement.[2] Further, village officials crafted a special post-retirement health-benefits plan for which eligibility was restricted to these officers, along with three firefighters, and their families. In offering such retirement incentives, the village operated beyond the scope of its legal authority. Moreover, the exclusive nature of the health insurance package directly contravened state law. Rather than requiring the selected police officers to follow the usual course with accumulated vacation time, that is, either to use it up or cash it in at retirement, the negotiated

[2] The Village of South Orange defines terminal leave as severance pay.

retirement deals enabled them to add its full value to their base pay for pension purposes. This substantially impacted their retirement earnings because their salaries escalated in the months before leaving public employment. (In the Police and Firemen's Retirement System (PFRS), pension amounts are calculated based upon the final year's salary.) In one instance, the vacation conversion boosted an officer's final salary by more than $7,300 to nearly $85,000 in the months immediately prior to retirement, thus affording an annual pension some $6,300 higher than it should have been. This individual retired in June 1997 with an additional perk at taxpayer expense: a lump-sum check for more than $18,100, representing the value of 90 days worth of terminal leave. Under the terms of his retirement agreement, the terminal leave entitlement should have been capped at 30 days.

An additional incentive involved exclusive health-care benefits whereby township officials agreed to reimburse each of the 11 officers, along with three retiring firefighters, for enrolling in the State Health Benefits Program at a cost to local taxpayers of between $1,500 to $7,700 annually, depending on the level of coverage. In each instance, the township agreed to continue this benefit, or the cash value thereof, until the retirees, most of whom left the payroll in their early- to mid-50s, reached the age of 65. If a retiree were to die before that age, other family members covered through the plan would continue to receive coverage until that date. The township has no authority to offer such a reimbursement program, however, because it does not, as a governmental entity, participate in the State Health Benefits Program. Moreover, if it did participate in that

program, it would be required to offer the same benefits to all classes of township employees.

City of South Amboy

In 1996, the City Council provided four ranking municipal police officers in this Middlesex County community with retirement agreements that inflated their pensions through the conversion of accumulated sick leave into retroactive salary increases. When state pension regulators questioned the propriety of such arrangements, they were ignored by local officials.

Three of the retirement agreements called for unused sick days valued at $9,000 to be converted into a longevity benefit to be paid retroactively. In each instance, this provision, together with other factors such as routine longevity raises awarded under terms of the city's regular police contract, resulted in pensionable salaries that were some $20,000 higher than those to which the officers would normally have been entitled. On October 22, 1996, the Division of Pensions contacted city officials to request, among other items, a three-year salary history for the three officers, a detailed explanation of each $9,000 longevity payment and a sworn affidavit stating that the salaries reported were not in anticipation of retirement. When the Division received no response, it took action that resulted in a substantial lowering of the officers' final certified salaries and a fair and proper calculation of their pensions.

In the fourth instance, which has been referred to the Division by the Commission, $15,000 worth of accumulated sick time was converted and paid

retroactively, boosting the officer's base salary to more than $95,000. While the increase overall clearly would have amounted to a pay raise in excess of 15 percent during the final year of employment, and normally trigger Division of Pensions scrutiny, that trigger was circumvented because the payments were categorized as retroactive and spread out, on paper, over a period of three years.

Marlboro Township

An examination of municipal records in this Monmouth County community revealed a variety of costly, individually negotiated retirement agreements, including one in which the former police chief was awarded an excessive payout for unused sick leave at retirement that improperly inflated his salary for pension purposes. In another instance, a township employee's job title was altered and enhanced for no other reason than to boost her annual pension. The key element of the police chief's retirement agreement, which became effective July 1, 1995, involved a series of pay raises in which his salary was increased, incrementally and retroactively, by more than 15 percent over a three year period between 1993 and 1995. The raises were designed to compensate this employee for selling back to the township a portion of his accumulated unused sick leave. Memos obtained by the Commission leave little doubt as to the ultimate goal of this exercise. In one, the employee directed that one of the incremental raises take effect by a specified time "so that I would get credit with the pension board" for a certain salary level. The result of this scheme was a final pensionable salary of $97,212, an amount

nearly $12,000 higher than it should have been. Based upon the inflated salary base, this retiree is collecting an annual pension overpayment of more than $7,800.

The retirement package also contained a provision for lump-sum payments for accumulated sick leave at retirement whereby the township governing body agreed to pay the former chief $52,000 in two separate installments for that portion of unused sick leave not included in the negotiated pay-raise provisions. The Commission questions the accuracy and propriety of these payments because they were based upon unverified sick leave records kept solely by the employee.

Under the terms of a separate arrangement, the chief also became eligible at retirement for extended health insurance at local taxpayer expense based upon the adoption of a special ordinance tailored specifically for him and three other non-union retirees. The exclusive ordinance provided the four with full health benefits until age 65. In the event of death, each retiree's spouse would continue to receive the benefit until the date of the retiree's 65th birthday.

* * *

A subsequent retirement agreement negotiated by Marlboro officials illustrates the impact that a deliberate job-title change, in addition to a retroactive pay raise, can have on an employee's pensionable income.

The deal involved a clerk/typist who retired in July 1996 at a salary of more than $44,500, an amount nearly $14,000 higher than her annual pay of $30,600 just two years earlier. A two-step process produced that result. First, in August 1995, less than a year before retirement, the employee was given a provisional appointment to the position of

administrative secretary. This not only removed her from the ranks of unionized workers subject to the constraints of the township's collective bargaining agreement, but it also provided her with a new base salary of $38,288. Moreover, township records reflect that, on paper, the appointment actually was to be considered effective as of eight months earlier, on January 1, 1995. At the same time, the employee was granted a $5,000 raise, also retroactive to January 1, 1995. This ploy appears to have been undertaken to circumvent regulatory scrutiny of pay raises exceeding 15 percent in the final 12 months of employment. The employee herself stated as much in a letter to township officials during her negotiations, saying "the reason for having to work half a year into 1996 is so that a review by the Board of Trustees of PERS can be avoided, hopefully." It is also apparent that the job-title enhancement was part of a deliberate scheme to create a position for this employee for no other reason than to boost her pensionable salary and remove her from the constraints of the township's overall contract with unionized employees.

A review of state and municipal personnel records raises serious questions about whether Marlboro officials ever intended to create the administrative secretary's position for any substantive reason other than to enhance this employee's retirement package. On June 4, 1996, which was less than one month before she retired, Marlboro officials sent a letter to the state Department of Personnel stating that the job title of administrative secretary was being eliminated.

Voorhees Township

The former municipal clerk of this Camden County community retired in June 1996 with a substantially inflated pension based upon the terms of a privately negotiated retirement agreement that boosted her final pensionable salary by more than $19,000. In order to make the overall pay increase appear legitimate, township officials manipulated the employee's membership in the Voorhees Township Municipal Employees Association, a local collective bargaining unit.

The retirement agreement called for back-to-back raises of 28 percent in each of the final two years of the former clerk's employment. In 1995, her salary jumped from $41,664 to $53,332. In 1996, an additional raise of nearly $15,000 brought her final annual salary to $68,262. Since she remained employed for just the first six months of that year, her base pay was calculated to include half of that second annual raise, for a final pensionable salary of $60,796. In order to legitimize the awarding of these raises, however, a major obstacle had to be overcome: the terms of the township's contract with the Voorhees Municipal Employees Association. As a member of this bargaining unit, the clerk was bound by a contract that called for combined raises of no more than 6.5 percent each for 1995 and 1996. The retirement agreement thus was structured to include a specific provision that eliminated the position of municipal clerk from the Association's ranks. In a letter to the state Public Employment Relations Commission requesting the change, attorneys for both the township and the bargaining unit reasoned that "the title of Township Clerk rightfully belongs outside the unit as it is a position wherein confidential

matters of the management would by necessity preclude them [sic] from belonging to the unit."

Galloway Township

Privately negotiated retirement deals in this Atlantic County community enabled a pair of top local officials to collect inflated pensions based upon the improper conversion of accumulated sick leave into pay raises that boosted their final salaries just before leaving the township's employ. In each case, deliberate steps were taken to avoid an inquiry by state pension regulators.

In one instance, the former police chief was awarded a $10,000 raise in lieu of collecting payment for a portion of his unused sick leave at retirement on May 1, 1997. The net effect was a final base salary of nearly $78,000, resulting in an annual pension some $6,500 higher than it legitimately should have been. To minimize the prospect of regulatory scrutiny, the raise was calculated to fall just below the 15 percent threshold and made retroactive to 1996. In a memo prepared during negotiations over the package, the chief argued that the leave/raise trade-off would work to the benefit of both himself and the community. "In short," he stated, "I can realize a $10,000 salary increase in the last 12 months of my career for pension purposes and it will not cost the Township any additional money." The impact on the state-funded Police and Firemen's Retirement System (PFRS), however, is another matter. If this employee continues to collect his pension for 20 years, the cumulative cost of the inflated portion ($6,500 per year), along

with cost-of-living adjustments and lost investment earnings for the pension system, will total more than $300,000.

In the second case, the improper conversion of unused sick leave into base pay enabled the township's former tax collector not only to retire with an inflated pensionable salary but also to expand her pensionable term of service without actually working during her final year of employment. In December 1994, in exchange for agreeing not to cash in a portion of unused sick leave at retirement, the employee was awarded a 14.5 percent pay raise, barely one-half of a percentage point below the 15 percent threshold for regulatory scrutiny. The raise boosted her final salary by more than $4,800 to $38,136. At the same time, she was placed on terminal leave until her effective retirement in December 1995. This was in violation of township rules, which restricted the use of terminal leave to retiring police officers. It nonetheless allowed her to remain on the township payroll at the higher salary level for one additional year even though she no longer was actually working.

Howell Township

Under a municipal ordinance adopted explicitly on behalf of the former police chief of this Monmouth County community, his final pensionable salary was boosted by nearly $20,000, from $60,000 to $79,350, through the improper conversion of accumulated sick leave into base pay. The chief retired effective December 31, 1993.

Even after the Division of Pensions and Benefits determined that the terms of the ordinance were in violation of state law, nothing changed. Local officials adopted a

resolution manipulating the wording of the agreement, characterizing the entire sum as an extension of salary and deleting any reference to payment for sick leave. The Commission found nothing in the official record to indicate that the Division undertook a follow-up review to determine the legitimacy of the amended agreement.

City and School District of Vineland

Contracts negotiated with city and school district employees in this Cumberland County municipality contain specific provisions which, contrary to state law, allow prospective retirees to qualify for inflated pensions by converting unused sick leave into base salary.

Under provisions added to the school district pact in 1992, eligible employees can fold a total of up to $20,000 worth of accumulated sick leave into their base salaries for pension purposes in the final two years of employment. The conversion must occur beginning with the 23rd year of employment and is authorized only to the extent that it causes the total salary to increase, together with regular pay raises, by no more than 12 percent annually. According to district records, a total of 13 employees since 1992 have exercised this conversion option and retired. The value of sick leave added to the base salaries of these employees ranged from $4,493 to $19,183, with the average conversion approximately $10,900. Overall, nearly $167,000 in sick time has been converted and added to the pensionable base pay of retiring district employees through this program.

Supervisory employees of the City of Vineland may qualify for a similar provision as part of their contract effective beginning 1997. City officials told the

Commission that, as of September 1, 1998, one individual had taken advantage of the provision, converting $6,375 worth of accumulated sick leave into base salary before retirement. The Commission was informed that two other city employees currently are converting sick leave into base salary in anticipation of retirement, while an additional eight municipal supervisory personnel have expressed an interest in exercising the conversion option as soon as they achieve the threshold level of 23 years of service.

The city also has a contractual provision that allows police and fire personnel to convert, after 22 years of service, 85 percent of an employee's holiday pay into base salary. The terms of that provision recently were reviewed by the Division of Pensions' Police and Firemen's Pension Board and deemed to be impermissible under state pension regulations.

EXCESSIVE FRINGE BENEFITS

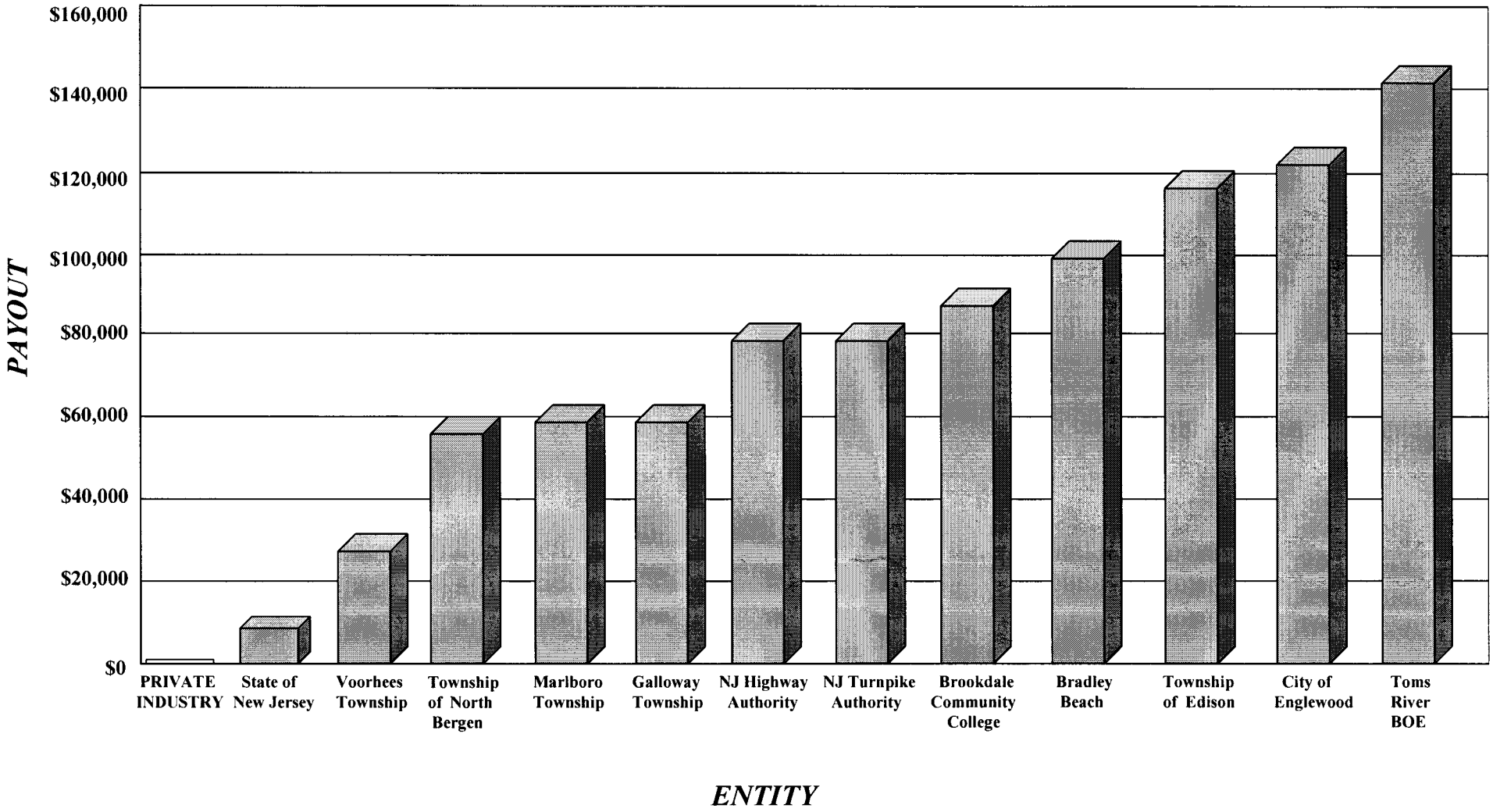
The Commission found that it is common at various levels of government in New Jersey to provide public employees, both before and after retirement, with certain fringe benefits at taxpayer expense that can only be characterized as unreasonably generous. Much of the excess, as indicated in the preceding section of this report, revolves around excessive allowances for sick leave and vacation time. Also, because there presently is no statutory mechanism that applies beyond state government to require moderation and consistency in this regard, the scope of benefits offered by other public entities is prone to wild and costly extremes.

A state employee, for example, is limited to 12 days of vacation per year through the 10th year of service, up to a maximum of 25 days after 20 years. The Commission found numerous instances in which non-state public employees received significantly greater levels of paid vacation time — in the case of one community's employees, as many as 58 days off per year.

Similarly, while state workers are limited to a maximum of 15 paid sick days annually, no such cap applies at the municipal, school district, county, community college or authority level. As for accumulated sick leave, no state employee can collect more than $15,000 for unused sick leave, regardless of how much has been accumulated during his or her career, and such lump-sum payments can be collected only at retirement.[3]

[3] The formula underlying the state's policy limits payment for accumulated sick leave to a lump sum representing one-half of the employee's unused sick days, calculated at the employee's current salary, up to a maximum of $15,000.

LARGEST PAYOUTS FOR INDIVIDUAL ACCUMULATED SICK LEAVE



Among most public entities other than state government, however, no such payment cap exists for accumulated sick leave, and many workers can collect the lump-sum payments prior to, and at, resignation.

Moreover, many public employees beyond the confines of state government are entitled to pay increases geared solely to their length of service — so-called "longevity" raises — and to various other financial perks, including severance pay upon resignation or retirement.

Following are representative examples of excessive employment benefits uncovered by the Commission:

New Jersey Highway Authority

Retiring employees of this entity, operator of the Garden State Parkway, are eligible to receive lucrative payments for unused sick leave and vacation time under the terms of the Authority's collective bargaining agreements. Between January 1994 and February 1997, the total payout to retirees for these purposes exceeded $3.1 million. The Commission examined the individual records of 37 Authority employees who retired during this period and found that they were paid a combined sum exceeding $1.71 million — $1.53 million for accumulated sick leave and $182,515 for unused vacation time. In one-third of those 37 cases, the value of individual lump-sum payments amounted to more than the equivalent of a full year's salary.

Under the terms of the Authority's collective bargaining agreements, employees are granted 15 sick days per year. At retirement, they are entitled to payment for a

maximum of 300 days of sick leave, or approximately 14 months' worth of working days, at their current rate of pay. (Administrative and managerial employees not covered by collective bargaining agreements are entitled to payment for 100 percent of accumulated unused sick leave at retirement.) Additionally, any employee who resigns or is laid off is entitled to receive 50 percent of the value of all accumulated sick leave after five years' service and 100 percent of the value after 10 years' service. Of the 37 Authority retirees whose files were reviewed, 35 cashed in on these contract provisions. Three people, each with more than 30 years' service, accumulated the maximum allowable number of sick days (300), resulting in the following payments, shown here in comparison to their final annual salaries:

SALARY	***SICK LEAVE PAYMENT***
$73,842.96	**$85,415.41**
$70,259.04	**$84,934.78**
$56,145.12	**$64,821.20**

Of the remaining 32 retirees, 11 received payments in excess of $50,000 each. The average for the entire group was $43,717. Examples include one individual who retired after 14 years and 11 months of service at a salary of $84,041 and received a lump-sum payment of $47,434 for accumulated sick leave. Another employee who retired after 13 years and eight months at a salary of $61,048 received a payment of $35,925.

The Commission also found that these payments are impacted in other ways. As a matter of policy, the Authority routinely credits employees with a full year's worth of

sick leave and vacation time after the first full month of the year. Seventeen of the 37 retirees whose records were examined scheduled their retirements to begin on February 1. This enabled them to take advantage of this policy even though they had worked only one month during that year.

Highway Authority employees and retirees also are entitled to receive, as a matter of policy, free toll passes each year for travel on the Garden State Parkway. The passes are issued based upon length of employment, according to the following schedule:

PARKWAY TOLL PASSES

One to 10 years……100 per year
10 to 15 years……...150 per year
15 years or more……..200 per year

Retirees continue to receive Parkway passes each year for the rest of their lives based upon the length of service prior to retirement. Terminated employees and those who resign forfeit eligibility for passes. Although the value of the passes ranges from $35 to $70 annually per employee, thousands of individuals currently benefit from this extraordinary perk.

Contractual provisions also entitle Highway Authority employees to participate in an unusual program that rewards them with compensatory time off, whether the time is actually earned or not.

Even though the Authority's unionized employees qualify for additional pay for overtime work at a rate of 1 ½ times the regular wage, they also begin each calendar year

with a "bank" of compensatory time in recognition of a number of potential eventualities, such as loss of break or lunch time, cleaning up or time spent relieving each other between shifts. This special time off may be used or cashed in, if the employee so chooses.

The schedule of such compensatory time is as follows:

- Toll collection supervisors with up to 14 years of service receive 10 days per year. Those with 15 or more years receive 11 days. In each instance, they may cash in the value of up to 10 days per year.
- Communications supervisors receive seven days per year.
- Toll collectors, maintenance and utility personnel with up to four years on the payroll receive three days; with between five and 10 years, four days; and with more than 10 years, five days. The employee has the option to cash in any or all of these days during the year.
- Crew supervisors and equipment trainers receive five days per year.
- Technical personnel receive one day per year.

New Jersey Turnpike Authority

By contract, employees of the Turnpike Authority are eligible to receive up to eight weeks of vacation per year, plus extra "personal days" off, depending upon length of employment. They are entitled to convert a portion of their annual sick and vacation leave into cash. They are rewarded with annual bonuses for receiving a favorable

performance evaluation. They qualify for automatic longevity raises of up to 7 percent per year, over and above regular contractual salary adjustments, simply for being employed for a certain period of time. Moreover, the surviving spouses and dependents of deceased retirees qualify for special extended health-care coverage at the Authority's expense.

Key benefits are as follows:

Vacation

- Employees hired prior to June 1980 are entitled annually to eight weeks (40 days) after 30 years. Those hired after that point qualify for a maximum of six weeks (30 days) after 30 years. Each year, all employees may cash in any unused vacation time over 15 days, or "bank" them to cash in at retirement at their current annual salary. A full annual vacation allowance is awarded in the year of retirement even if the employee retires on January 1.

Personal Leave

Beyond vacation, Turnpike Authority employees receive additional time off with no strings attached:

- Toll collectors receive six personal days per year. Combined with the maximum vacation allowance, a toll collector with more than 30 years of service would qualify for more than 9 ½ weeks (46 days) off. Most other employees receive five personal days each year.

Sick Leave

- All employees are granted 15 days per year. During the first five years of employment, however, all employees may elect to convert up to five days per year into cash. Starting with the sixth year, they may convert up to 10 days into cash.
- All employees below the management level are entitled at retirement to collect a lump sum for all accumulated unused sick leave payable at their current salary rate. Management employees are limited to a lump sum no greater than $15,000.

Extended Health Insurance

Surviving spouses and dependents of deceased retired Turnpike Authority employees are entitled to receive free health insurance coverage for certain periods of time based upon the following schedule:

- For survivors of retirees with less than 10 years of service, one full year of coverage or until spouse remarries.
- For those with 10 to 14 years of service, two full years of coverage or until spouse remarries.
- For those with 15 to 19 years of service, five full years of coverage or until spouse remarries.

- For those with 20 or more years of service, 10 full years of coverage or until spouse remarries.

Continuing eligibility for extended health benefits must be re-certified annually by the surviving spouse.

Performance Evaluation Bonus

All employees below the level of management are entitled each year to a lump-sum bonus payment of $350 for a favorable annual performance evaluation.

Longevity Pay Raises

Employees annually receive pay raises, beyond contractual salary adjustments, based solely upon length of employment, according to the following schedule:

- Employees with 10 to 14 years: 4 percent
- Employees with 15 to 29 years: 6 percent
- Employees with 30 or more years: 7 percent.

Brookdale Community College

During the summer of 1994, the administration of this Monmouth County-based community college embarked on a two-phase program to reduce staff by offering employee incentives for early retirement and/or resignation. During the first phase, from July 1, 1994 through June 30, 1995, employees who agreed to leave were paid for 50

percent of the value of their accumulated unused sick leave, up to a maximum equivalent of one full year's salary. During the second phase, from July 1, 1995 through June 30, 1997, those leaving the payroll received 100 percent of the value of unused sick leave, up to a maximum of one year's salary. The departing employees also were compensated for the balance of their unused vacation time, up to a maximum of 44 days.

Personnel records show that 81 individuals took advantage of this program and received more than $2.9 million in payments spread over a three-year period. The bulk of that payout, nearly $2.5 million, was for unused sick leave. Individual payments ranged from a low of $903 to a high of $118,838, while the average payment was $35,802. Twenty-four of the participants received amounts at least equal to one full year's salary. Thirty of the 81 each were paid at least $50,000, and 15 received $75,000 or more.

Although such incentive programs purportedly are designed to effect long-term budgetary savings, the Commission questions whether the terms of the offer in this instance were so lucrative as to defeat or seriously impede that goal. The Commission's concern is heightened by the fact that the state's entire system of publicly-subsidized higher education, including community colleges, has fallen under increasing fiscal pressure in recent years.

Edison Township

Contracts negotiated with 11 separate employee bargaining units have guaranteed that municipal workers in this Middlesex County community receive one of the most

lucrative public-employee benefit packages available in New Jersey. Although local officials have taken steps designed ostensibly to control such expenses in the short run, including a $4.1 million bonding plan adopted in 1995 to buy back accumulated sick leave in the police department, one effect of this borrowing has been to saddle taxpayers with yet additional costs far into the future.

Here is a summary of the provisions of key benefit programs offered, by category, to Edison employees:

Vacation

- Fire Department personnel receive a minimum of 16 days of paid vacation in the first year of employment, up to a maximum of 48 days (9 ½ weeks, or more than two months) after 21 years or more of service.
- Police are eligible for a minimum of 14 days in the first year, up to a maximum of 42 days after 21 years or more on the payroll.
- All other employees hired prior to January 1, 1994 receive up to 20 days after 11 years, plus one additional day for every subsequent year of service. For example, a typical employee with 25 years would receive 34 vacation days. Those hired after January 1, 1994, however, are limited to a maximum of 25 days overall.

At retirement, all township employees qualify for lump-sum payments as compensation for up to one year's worth of accumulated unused vacation time.

Personal Leave

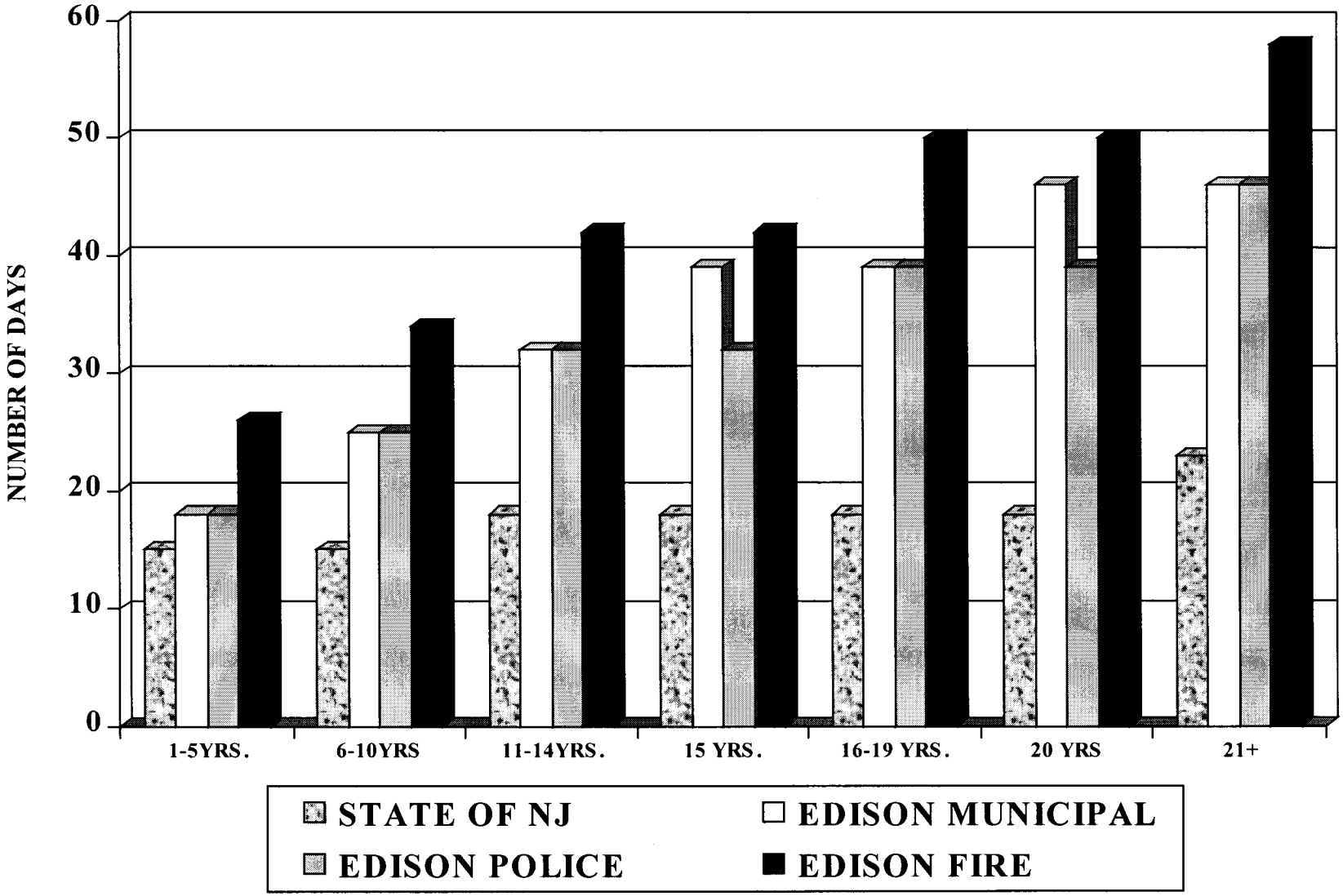
Beyond vacation, Edison employees receive additional increments of time off with no strings attached.

- Firefighters hired prior to December 31, 1992 are entitled to 10 personal days. If combined with the fire department's maximum vacation allotment of 48 days, an eligible firefighter would qualify for 58 days off per year, the equivalent of nearly three months. Those hired after December 31, 1992 are entitled to eight personal days.
- Police receive four personal days.
- Employees in all other bargaining units receive three personal days.

Sick Leave

- Firefighters are eligible for between 15 and 21 sick days per year, with the higher number going to those who work schedules involving intervals of 24-hour shifts. At retirement, all firefighters are compensated for 100 percent of accumulated sick leave based upon the following formula: They receive a lump-sum check worth up to a maximum of 243 days. Remaining days are then taken as terminal leave, meaning that firefighters can stop showing up for work even though they remain on the payroll until the effective date of retirement.
- Police personnel also are entitled to 15 sick days annually. At retirement, however, they receive a maximum of $20,000 for unused sick leave. This

EDISON TOWNSHIP - ACCUMULATED LEAVE COMPARED TO THE STATE OF NEW JERSEY



limit went into effect in 1995 after the township's governing body decided to pay $4.1 million to 166 police employees for all sick leave that had accumulated within the department to that time. Prior to that, police personnel, like firefighters, were entitled to compensation for 100 percent of unused sick leave at retirement. The collective buyout and subsequent cap were designed to limit the township's expenses in this regard. However, because it was financed through a long-term borrowing arrangement involving the sale of municipal bonds with interest, the buyout eventually will cost taxpayers far more than its face value.

- Other township employees receive 12 sick days per year and are paid at retirement for all accumulated unused sick leave.

Terminal Leave

- All township employees, at retirement, receive lump-sum payments for 20 days worth of salary — essentially a bonus — for which they performed no township functions.
- Fire and police personnel additionally are entitled to convert a portion of unused sick time into terminal leave prior to retirement. While on terminal leave, any contractual salary increases that take effect are applied to their base salaries for pension purposes, and they continue to accrue vacation and sick leave until the effective date of retirement.

- Any employee who is out sick for at least 20 days, and for whom the possibility of an extended absence exists, is placed on terminal leave for up to one full year. If the employee remains out at the end of that period, he is required to use up the balance of any remaining sick days and then is placed on disability.

Longevity

Pay raises are awarded annually to employees based solely on length of service. The amounts are mandated by contract and are in addition to regular salary increases.

- Police and fire personnel receive 2 ½ percent after five years and then an additional ½ percent increment annually until retirement. The amounts are included in base salaries for pension purposes.
- Other employees receive 2 percent after five years with cumulative maximums ranging between 7 and 9 ½ percent, depending upon the bargaining unit.

Health Coverage

All employees who retire with 25 years of service are entitled to full health-care coverage for life. The coverage is provided at the expense of local taxpayers since the township has chosen not to participate in the State Health Benefits Program.

During its investigation, the Commission found two instances of preferential treatment under the township's health benefits program. In each case, an exception to the

25-year rule was granted, allowing individuals holding the municipal title of "director" to retire with full health coverage at age 62 with just 15 years of service. The granting of such a modified health benefit is lawful only if it is offered to all classes of employees. Although the township governing body has since rescinded this provision, the two individuals in question continue to benefit from it.

Miscellaneous Compensation

- Police and fire personnel each receive an $800 annual clothing allowance.
- Firefighters each receive $300 a year in "hazardous duty" pay.
- In addition to receiving full tuition reimbursement while attending school, police and fire personnel also are paid by the township for earning higher education credits. Police officers are paid at a rate of $25 per credit up to a maximum of 128 credits, for a total potential payment of $3,200. Firefighters receive $15 per credit up to a maximum of 100 credits, for a total potential payment of $1,500.

Raritan Valley Community College

The former president of this Somerville-based community college left office on July 1, 1994 and moved to Venice, Florida. Under the terms of an agreement privately negotiated with the college's Board of Directors, however, the effective date of his retirement was delayed for one year, until June 30, 1995. During that period, he remained on the payroll as a "consultant" and continued to collect his final

presidential salary of more than $130,900. He also continued to receive full health and life insurance coverage at the college's expense, as well as a full year's worth of pension credit under the state's Public Employee Retirement System (PERS). The agreement also called for him to receive a lump-sum check totaling $91,363 for unused accumulated sick leave and vacation time.

The terms of the one-year consultancy were spelled out in a letter dated May 27, 1994: "You will be required to continue to perform all duties reasonably related to the scope of your employment as consultant to the President and the Board, and to attend such meetings as may be required from time to time. You will also devote your sole and full attention to the needs of Raritan Valley Community College, and will use your best efforts to promote the College in all ways possible." The reference to meeting attendance was later amended to include the phrase "mutually agreed upon." The agreement also included an explicit provision requiring reimbursement of all expenses related to the consulting duties.

According to the college, except during July 1994, the former president's services under the consulting contract were "neither needed nor sought." Following his departure in 1994, he "was no longer required to be present on campus," and his paychecks were deposited directly into a Florida bank account.

Toms River School District

Beginning in 1991, the Toms River Board of Education undertook a special "Sick Leave Reduction Incentive Plan" designed to entice veteran employees into early

retirement. The main inducement was a standing offer to pay each participant for the value of unused sick leave, calculated at *double* the rate of pay up to a maximum of 150 days. The plan was restricted to those aged 55 or older with 20 or more years of service in the district. Normally, retirement incentive programs remain in effect for a period no longer than a year or two. In Toms River, however, the offer of double pay for cashing in accumulated sick leave continued for six years, through June 30, 1997, with individual payouts spread out over three-, four- and five-year periods. The final cost to local taxpayers represented a substantial portion of the overall $8.5 million worth of accumulated sick leave paid to all district retirees between 1991 and 1997. Moreover, the Commission discovered instances in which the terms of the offer were unfairly manipulated to benefit select employees.

Of the approximately 255 district employees who retired between 1991 and 1997, 164 took advantage of the incentive plan. Individual payouts ranged from a high of more than $147,000 to a low of $962. The average payout per retiree was nearly $52,000. A total of 55 retirees received between $75,000 and $125,000, with approximately 76 collecting payouts in amounts that exceeded their final annual salaries. The double-pay aspect had an appreciable affect on the program's ultimate cost. For example, the recipient of the highest payout for 150 days of accrued sick time, $147,092.19, would under normal circumstances have received only half that amount, or $73,546.

Although the plan called for the payouts to be spread over a period of several years or more, at least one employee, an assistant superintendent, was granted a special exemption from this rule. Upon his retirement in July 1995, he received the full lump

sum, $140,177.69. In another instance, a district school supervisor was allowed to participate in the plan even though she had only 15 years of accumulated employment service in the district, five less than the program's rules specified. Upon retirement, she was awarded $74,207.72 to be paid out over five years.

North Bergen Township

A half dozen deputy fire chiefs in this Hudson County community were offered a confidential package that included payments totaling $480,000, plus pay raises, as an inducement for early retirement. The arrangement called for each of the six retirees to receive a lump-sum gift of $23,000, plus payment for accumulated unused sick time, in exchange for leaving the township's service no later than August 1, 1996. In addition, the agreement guaranteed pay increases of 6 percent, providing final pensionable salaries that ranged from more than $104,000 to more than $107,000. In order to keep the terms of the agreement beyond the reach of public scrutiny, it contained the following clause: "This agreement is deemed by the parties to be confidential. Accordingly, the terms shall not be disclosed to any third party, except as may be required by law or court order." Nevertheless, the terms of the agreement were disclosed to the media by the retirees.

BENEFITS FOR PART-TIME EMPLOYEES

The Public Employees Retirement System (PERS)**,** which mandates enrollment and contribution by full and part-time employees earning an annual salary of $1,500 or more,[4] credits every year of employment with the same value when calculating a pension benefit. Thus, for example, an individual may serve for many years in a part-time position at a modest salary, but use each of those years as a multiplier against a larger "final average salary" that can be achieved by serving three years in a higher-paying full-time position. As a result, depending on the disparity in one's salaries over a lifetime, the pension benefit at retirement may be grossly disproportionate to the contributions that have been made on the recipient's behalf and can constitute a drain on the assets of the pension fund.

Many of the beneficiaries of this generous formula are part-time elected or appointed officials, including the members of this Commission, who serve in positions that are distinct from their regular employment, and which positions often place restrictions on that employment. Others are professionals, such as engineers, architects, physicians and attorneys, who work on a part-time basis for municipalities, school districts, community colleges and other public entities, but who are subject to no other employment restrictions.

During its investigation, the Commission discovered that a significant percentage

[4] Only part-time elected officials have an option not to enroll.

of the public entities in its sample retain professionals who are, legally but anomalously, both employees and independent contractors. Like other part-time employees, these professionals receive salaries that qualify them for pension enrollment, as well as possibly other fringe benefits. Often, the salaries are relatively small, covering only basic services, such as attendance at monthly meetings or reviewing certain categories of documents.[5] At the same time, however, the professionals submit vouchers for work in excess of that required by their employment contracts. Most often, the vouchering is done through firms with which the professionals are associated, and the actual services are frequently performed by others in the firm. Typically, the voucher billings far exceed the salaries received by the individuals. [6]

Some individuals hold similar positions with a number of public entities simultaneously and are permitted by the pension law to add the several salaries together to achieve a total that may be the "final average salary" on which their pensions will be calculated. Salaries received from concurrent service as part-time elected or appointed officials can push the total even higher. This tacking, which the law permits, can result in huge public pensions for services that were actually performed in the course of private professional practice. And, even after "retiring" and while collecting a pension, an individual can continue to perform the same professional services for public entities on a

[5] The Commission did not attempt to determine whether all the work required under each employment contract was, in fact, performed by the individual receiving the salary.

[6] Part-time professionals may also be eligible for payments from escrow funds deposited by developers or other applicants for municipal approvals.

fee-only basis,[7] or simply designate another member of his or her firm to receive the salary.[8]

The practice of paying salaries to part-time professionals has become more common in recent years, as municipalities, school districts and other public entities try to keep public spending down. Instead of paying for all services on an hourly basis, they have found that they can save money by awarding a salary for specified basic services. Professionals are willing to accept what may be discounted compensation for these limited services, not only because the salaries entitle them to pension enrollment and perhaps other benefits like medical insurance, but also because the salaries open the door to billings for additional services.

The table on the following pages contains data pertaining to examples of the kinds of arrangements described above that were identified by the Commission.

[7] See *Hiering v. PERS*, 197 *N.J. Super*. 14, 19 (App. Div. 1984).
[8] Normally, a PERS pensioner must forfeit his benefits if he returns to a former position or earns more than $10,000 annually from any PERS-eligible position.

Part-Time Professional Service Providers
Salary and Billing Statement
1995-1997

PROFESSIONAL POSITION		SALARY			ADDITIONAL BILLINGS	
Physician School District	$	20,970.00	F/Y 97	$	20,340.00	C/Y 95-97
Physician School District	$	18,347.00	F/Y 97	$	109,104.36	C/Y 95-97
Engineer Municipality	$	16,632.98	C/Y 97	$	282,653.87	F/Y 96-98
Engineer Municipality	$	7,855.51	C/Y 97	$	83,561.00	F/Y 96-98
Engineer Municipality	$	7,855.51	C/Y 97	$	16,477.50	F/Y 96-98
Engineer Municipality	$	5,777.00	C/Y 97	$	731,989.31	C/Y 97
Engineer Municipality	$	5,400.00	C/Y 96	$	1,765,954.77	C/Y 95-96
Attorney Municipality	$	41,971.93	C/Y 97	$	214,935.85	F/Y 96-98
Attorney Municipality	$	8,510.06	C/Y 97	$	1,096.00	F/Y 96
Attorney Municipality	$	8,510.06	C/Y 97	$	8,392.75	F/Y 96-98
Attorney Municipality	$	22,500.00	C/Y 97	$	717,809.63	C/Y 95-97
Municipality	$	29,257.00	C/Y 97		N/A	
	$	51,757.00				

Part-Time Professional Service Providers
Salary and Billing Statement
1995-1997

PROFESSIONAL POSITION	SALARY			ADDITIONAL BILLINGS	
Attorney					
Municipality	$ 95,000.00	C/Y 97	$	651,000.00	C/Y95-97
Municipality	$ 12,000.00	C/Y 97		N/A	
Municipality	$ 10,000.00	C/Y 97		N/A	
Municipality	$ 15,600.00	C/Y 97		N/A	
School District	$ 12,000.00	C/Y 97		N/A	
	$ 144,600.00				
Attorney					
Municipality	$ 20,000.00	C/Y 97	$	14,100.33	C/Y95-97
Attorney					
Municipality	$ 60,000.00	C/Y 97	$	206,248.20	C/Y 95-97
Attorney					
Municipality	$ 41,192.64	C/Y 95	$	20,500.00	C/Y 95
Attorney					
Municipality	$ 10,000.00	C/Y 97	$	222,070.06	C/Y 97
Attorney					
Municipality	$ 7,692.40	C/Y 96	$	152,096.85	C/Y 96
Attorney					
Municipality	$ 2,692.32	C/Y 96	$	186,515.11	C/Y 95-96
Attorney					
Municipality	$ 22,465.00	C/Y 97	$	698,854.00	C/Y 95-97
Attorney					
Municipality	$ 18,684.00	C/Y 97	$	98,645.11	C/Y 95-97
Attorney					
Municipality	$ 32,639.00	C/Y 97	$	95,561.30	C/Y 95-97

Part Time Professional Service Providers
Salary and Billing Statement
1995-1997

PROFESSIONAL POSITION		SALARY			ADDITIONAL BILLINGS	
Attorney						
Municipality	$	2,224.02	C/Y 96	$	30,219.50	C/Y 95-96
Municipality	$	3,212.00	C/Y 97		N/A	
Utilities Authority	$	15,000.00	C/Y 97		N/A	
	$	18,212.00				
Attorney						
Municipality	$	2,224.02	C/Y 96	$	85,883.14	C/Y 95-97
Municipality	$	6,284.00	C/Y 97		N/A	
Attorney						
Municipality	$	36,225.00	C/Y 97	$	563,251.00	F/Y95-97
Attorney						
Municipality	$	34,000.00	C/Y 97		N/A	
School District	$	36,000.00	C/Y 97	$	236,038.09	F/Y95-97
	$	70,000.00				
Attorney						
Community College	$	19,500.00	C/Y 97	$	117,139.00	F/Y 95-97
Municipality	$	9,785.00	C/Y 97		N/A	
Municipality	$	13,031.00	C/Y 97		N/A	
School District	$	17,750.00	C/Y 97		N/A	
School District	$	8,000.00	C/Y 97		N/A	
School District	$	9,000.00	C/Y 97		N/A	
School District	$	22,250.00	C/Y 97		N/A	
	$	99,316.00				
Attorney						
Community College	$	14,750.00	C/Y 97	$	202,208.00	F/Y 95-97
Municipality	$	64,584.00	C/Y 97		N/A	
School District	$	10,002.00	C/Y 97		N/A	
Utilities Authority	$	24,996.00	C/Y 97		N/A	
	$	114,332.00				

Part Time Professional Service Providers
Salary and Billing Statement
1995-1997

PROFESSIONAL POSITION		SALARY			ADDITIONAL BILLINGS	
Attorney						
Municipality	$	46,169.53	C/Y 97	$	454,713.86	C/Y 95-97
Attorney						
School District	$	15,000.00	F/Y 97	$	68,387.36	C/Y 95-97
Attorney						
Municipality	$	1,046.10	C/Y 96	$	2,268.00	C/Y 96
Attorney						
Municipality	$	3,472.50	C/Y 97	$	119,282.31	C/Y 96-97
Attorney						
Municipality	$	3,799.68	C/Y 97	$	102,971.54	C/Y 95-97
Attorney						
Municipality	$	10,683.01	C/Y 97	$	12,540.00	F/Y 96-98
Municipality	$	23,485.00	C/Y 97		N/A	
	$	34,168.01				
Attorney						
Municipality	$	15,180.48	C/Y 97	$	18,090.00	C/Y 95-97
Attorneys						
A						
Municipality	$	259.74	C/Y 96		Billed by D	C/Y 95-96
B						
Municipality	$	163.54	C/Y 95		Billed by D	C/Y 95-97
C						
Municipality	$	269.36	C/Y 95		Billed by D	C/Y 95
D						
Municipality	$	3,744.21	C/Y 96	$	426,525.16	C/Y 95-97
Municipality	$	3,444.00	C/Y 97		N/A	

Part-Time Professional Service Providers
Salary and Billing Statement
1995-1997

PROFESSIONAL POSITION		SALARY			ADDITIONAL BILLINGS	
Attorneys						
A						
Municipality	$	2,230.68	C/Y 97		Billed by B	C/Y 97
B						
Municipality	$	7,257.52	C/Y 97	$	183,066.76	C/Y 96-97
Attorneys						
A						
Municipality	$	4,180.00	C/Y 97		Billed by B	C/Y 95-97
B						
Municipality	$	2,090.00	C/Y 97	$	203,091.97	C/Y 95-97

N/A - DENOTES THAT THE INFORMATION WAS NOT REQUESTED
C/Y - DENOTES CALENDAR YEAR
F/Y - DENOTES FISCAL YEAR ENDING JUNE 30TH

Referrals and Recommendations

The Commission refers the findings of its investigation to the state Division of Pensions and Benefits for whatever action is deemed appropriate. The Commission also urges every governmental entity in New Jersey to review this report in the hope that current widespread abuses will be curtailed and corrected, and future ones avoided.

Additionally, the Commission makes the following recommendations for systemic reforms related to key issues raised during this investigation:

1. Local Government Employment Practices

The magnitude of pension and benefit abuse detailed in this report, particularly at the municipal level, reveals a profound gap in New Jersey's framework for ensuring responsible and prudent local governance: The state lacks a comprehensive statute that explicitly addresses the employment practices of local and county governments. All too often, the broad discretion exercised to set the terms of employment, including salaries, pay raises, vacation, sick leave and retirement-related arrangements, for local public employees has produced an array of costly and sometimes inequitable benefit and pension packages. The Commission therefore urges the Legislature to conduct a comprehensive review of local government employment practices in order to establish reasonable standards that will protect both the livelihood of the local public-employee work force and the integrity of the public treasury.

2. Pension Information and Guidelines

In order to ensure that all public employers are thoroughly familiar with the rules governing participation in the various state pension plans, the Division of Pensions and Benefits should prepare a simple informational booklet outlining which types of pension arrangements are allowed and which are proscribed both by regulation and law. The booklet should be disseminated to the appropriate officials in every participating governmental entity in the state.

In addition, the documents now used by municipalities and other public entities to certify a retiring employee's final salary and years of service should be enhanced to include a checklist delineating common violations of the pension rules.

The Commission is aware that the Division currently is considering the distribution of a periodic newsletter detailing actual violations, as well as their attendant sanctions. Such a publication would be an excellent source of information for all governmental entities participating in the various state pension plans.

3. Resources for Better Pension Oversight

The depth and range of abuses of the pension rules has rendered the Division of Pensions and Benefits, as presently constituted, incapable of providing adequate oversight to detect and address violations. Accordingly, the Division should be provided with budgetary resources sufficient to establish an internal investigative unit capable of conducting random audits.

4. Penalties

Intentional violations of pension standards and rules should be made punishable by appropriate civil penalties. Additionally, pension certification forms should incorporate a signed statement attesting, under penalty of perjury, to the truthfulness of the information contained therein.

5. Pensions and Part-Time Employees

The Commission urges the Legislature to enact measures to prevent schemes by which "final average salaries" are deliberately inflated in order to boost public pensions. The Legislature also should scrutinize that aspect of the system which allows pension eligibility for persons who, on a part-time basis, provide to any public entity services in a profession in which they maintain a private practice, to ensure that the eligibility is in the public interest.

6. Public's Right to Know

All public employers should be required by law to reveal to the public the complete terms of any and all buyout, separation-of-employment, early retirement or related agreements negotiated with an individual employee or a group of employees. Further, the Open Public Meetings Act should be amended to require that the terms of such agreements are disclosed on the public record.

Additionally, all components of employee compensation in general should be presented accurately and made readily available for public inspection. This is

particularly crucial in the area of longevity raises, which are used by many municipalities to reward employees strictly for length of service. Such raises boost salaries in the same fashion as standard pay increases but often are treated separately and minimized in terms of their overall budgetary impact.

7. Early Retirement Liability

Any governmental entity which takes action to encourage an employee to retire earlier than predicted by state actuarial tables, thus creating an additional cost to the pension system, should be held liable for that cost, as determined by the Division of Pensions and Benefits.

8. Pension Calculation Limits

No compensation other than base pay should be used in determining the final pensionable salary of any public employee. All governmental entities should be provided with a complete list of the types of compensation that are disallowed for pension calculation purposes, and be required to certify that none have been included in totals submitted to the Division of Pensions and Benefits.

9. Compensation Limits

Because no public employee should receive any compensation except for work actually performed, the state should enact legislation prohibiting any form of severance pay or terminal leave.

10. Benefit Limits

Participation in any of the various state pension plans should be conditioned upon the acceptance by all governmental entities of the basic benefit standards and policies maintained for employees at the state level. Statutes to implement this recommendation should contain grandfathering language to recognize the enforceability of conflicting provisions in collective bargaining agreements and the validity of ordinances in effect at the time of enactment.

Sick Leave:

- Public employees at all levels should be limited to no more that 15 paid sick days per year. At retirement, payment for accumulated sick leave should be limited to a lump sum representing 50 percent of an employee's unused sick leave, calculated at the current salary, up to $15,000. Alternatively, if a governmental entity wishes to reimburse a retiring employee for any greater portion of accumulated sick leave, the payment should be calculated on a last-in, first-out basis, taking into account the salary in effect at the time each day of sick leave was accrued.
- As with state employees, no public employee at any other level of government should be permitted to "cash in" accumulated unused sick leave at any time prior to retirement, including in the event of resignation.

Vacation:

- Public employees at all levels should adhere to the state limit of a maximum of 25 paid vacation days per year after 20 years of continuous service. No more than one annual entitlement of vacation time should be carried forward from one year to the next. Upon retirement, no public employee should be entitled to a lump-sum payment greater than the value of one previous year's worth of accumulated vacation.

11. Budgeting and Accountability

All governmental entities, particularly at the municipal level, should be required to compute the total value of accumulated employee sick leave and vacation time and, within five years, to budget for that amount on an annual basis.

In order to ensure accountability, each municipality should establish a centralized record-keeping mechanism for tracking the accumulation and use of sick and vacation leave. No individual employee should be permitted to be the sole recorder of his or her own leave time.

* * *

The SCI's investigation was conducted by Chief Investigative Accountant Joseph A. Becht and Investigative Accountants Michael R. Czyzyk and Christine F. Klagholz

SUMMARY

PENSION AND BENEFIT ABUSE[1]

Entities	Padding Pre-Retirement Salaries	Excessive Vacation & Personal Days	Perks to Induce Early Retirement	Shift Unfunded Liability to Pension Fund[2]	Job Title Changes to Enhance Pensionable Salary & Obtain Benefits	Lucrative Buyouts & Golden Parachutes	Excessive Payouts for Sick & Vacation
AUTHORITIES							
NJ Highway Authority		30 & 7					X
NJ Turnpike Authority		40 & 6					X
COMMUNITY COLLEGES							
Brookdale			X				X
Raritan Valley			X			X	X
COUNTIES							
Burlington							
Morris							
MUNICIPALITIES							
Bradley Beach	X						
Dover Township		30 & 3					X
Edison		48 & 10				X	X
Englewood	X		X			X	X
Galloway	X			X			X
Howell	X		X	X			
Marlboro	X			X	X	X	X
North Bergen		35 & 5	X			X	X
Ship Bottom	X		X	X		X	
South Amboy	X	30 & 3	X	X			
South Belmar							
South Orange	X		X			X	
Surf City							
Vineland	X			X			

SUMMARY

PENSION AND BENEFIT ABUSE[1]

Entities	Padding Pre-Retirement Salaries	Excessive Vacation & Personal Days	Perks to Induce Early Retirement	Shift Unfunded Liability to Pension Fund[2]	Job Title Changes to Enhance Pensionable Salary & Obtain Benefits	Lucrative Buyouts & Golden Parachutes	Excessive Payouts for Sick & Vacation
Voorhees	X		X	X	X		
Wall		30 & 4	X	X		X	
Wildwood		30 & 2					
SCHOOL DISTRICTS							
East Windsor							
Howell							
Point Pleasant	X						
Toms River			X			X	X
Vineland	X			X			
Voorhees							

[1] The scope of the Commissions investigation was limited to the below listed entities.

[2] Underfunding of the employee's pension by the employer/employee based upon actuarial projections.

APPENDIX

N.J.S.A. 52:9M-12.2, effective June 28, 1996, provides that

> [w]henever a proposed State Commission of Investigation report is critical of a person's conduct, a copy of the relevant portions of the proposed report thereof shall be sent to that person prior to the release of the report. Upon receipt, the person criticized shall have 15 days to submit a written response of reasonable length which the Commission shall include in the report together with any relevant evidence submitted by that person.

The following materials are the responses submitted pursuant to that statute. In considering these responses, the reader should note that they are not in all cases under oath and, in some cases, may not even be a statement by the affected individual himself.

IRENE ASH
18 MacKenzie Terrace
Morganville, NJ 07751

James J. Morley,
Executive Director
New Jersey Commission of Investigation
P.O. Box 45
Trenton, NJ 08625-0045

Dear Mr. Morley:

I have received your personal and confidential letter dated September 25, 1998, regarding the proposed report of the New Jersey Commission of Investigation. Although there are sections of text deleted, I have reviewed those portions of the text which you have provided to me. I find that those portions of the text provided to me are factually inaccurate and inadequate in scope for the purposes of a report by the Commission on such an important matter. The factual basis for the above statement regarding inaccuracies and inadequacies are as follows:

Although the Commission may have found a pattern at the municipal level of providing retiring employees with inflated and overgenerous pensions, that statement does not apply to me. Although I did receive raises in the last years of the 22 ½ years in which I worked for the municipality, the raises were not purposefully given to pad my pre-retirement salary.

The Township of Marlboro took no steps to induce me to accept early retirement. I was first employed by the Township of Marlboro in January, 1974, and worked for the Township continuously until I retired on June 30, 1996. I had decided that I would retire. When I retired I was 63 ½. My retirement was long on my mind as I increased in age. My husband had already retired in 1990. He is six months older than I. I had made inquiry regarding my rights under my retirement benefits as far back as 1993.

When I first became employed in 1974, we were in the State health insurance plan which provided not only for health insurance benefits while we were employed, but also upon retirement. In the early 1980's, the municipality changed our health insurance benefits such that we were no longer in the State plan. That change caused the employees to be no longer eligible for health insurance upon retirement. This was one of the reasons why the workers in the municipality joined a Union. Since the inception of the Union, I have always been the negotiator for my bargaining unit (with the exception of one contract) and was the Shop Steward for the last several years of my employment.

One of the issues that we persistently pursued was the issue of health insurance upon retirement. Although I had worked hard to have health insurance during retirement for the members

of my labor union in general and for those who were hired before the insurance changed, I was not successful. It seemed unfair that for people hired prior to the change of insurance by the municipality that their eligibility for health insurance post-retirement should change. Despite my efforts, I was unsuccessful.

In any event, the Township passed Resolution 23-95 that provided certain post-retirement health benefits for certain Township employees. I was not one of them. I was not eligible under that Resolution since the health insurance provided to my husband through his former employer also was provided for me. That made me ineligible under Paragraph 4 of the Township's Resolution. Even if I had been eligible for post-retirement health benefits through the municipality, I retired at age 63 ½ and the retirement benefits for post-retirement employees only went to age 65. Thus, that portion of the report that relates or infers that I received post retirement health insurance benefits is not correct. The only possible benefit that I could have received is if my husband passed away after I retired and before I reached age 65. On my husband's death, I would have been ineligible for health insurance through my husband's former employer. Then I would be able to receive secondary coverage through the Township's insurance until I reached age 65. I am now age 65 ½ and will be 66 in December.

Upon retirement I received a separate check for six sick days and 36 ½ vacation days which was not in any way added to my base pay.

My quest for a title change has spanned a 20 year period. I had the entry level title of clerk/typist for 18 years. It was a source of aggravation to me for all of that time. Twice the title examinations for senior clerk typists were not posted and given out to others. I thereby was effectively denied an opportunity to even advance to senior clerk typist. Just before the last administration was leaving, the senior clerk typist job title was indeed posted and I encouraged other clerk typists to take the test with me. I came in second by a fraction of a point below number one. Despite the test, six other clerk typists who did not even apply for the test were awarded the position, one of whom was only there for nine months.

For several years I waged a campaign in order to correct that wrong that was done to me personally. I did so without compromising the leadership position I had for others in my bargaining unit. I always put the bargaining unit first and my personal problem second.

As the situation dragged on and on I became thoroughly disgusted until I finally, towards the end of my career with the municipality, obtained the attention of the administration. My job title should never have been such that I was within the Union's bargaining unit. I was a confidential employee. I was the secretary to the Chief of Police and thereby dealt with sensitive matters that could not be disclosed. Confidential employees could not be part of the bargaining unit. Although I did not want to leave the bargaining unit that I had long represented, I did want to receive the title for the job which I was doing.

Had I stayed in the bargaining unit (which I could not do so since I held a position of

confidentiality), the only possible title that would be available to me under the Union contract was an administrative clerk. Had I accepted that position, the salary range would have been a cut in pay.

In recognition of the problem that had festered for so many years, the municipality finally made the situation right by granting me the title of Provisional Administrative Secretary. It took me until 1991 to finally become certified as a senior clerk typist. That really did not describe my job in that I was truly an administrative secretary with confidential duties. Towards the end of my employment with the municipality I finally received what I should have received many years ago, the title of Administrative Secretary and the pay that went with it. It was due to my pride that I continued to insist that I receive that which I should have received many years ago, to wit the recognition that my job was indeed one of confidentiality, that thereby I should not be a member of the labor union, and that my position was more than that of a typist or senior clerk typist but rather was of an administrative secretary. I felt good about finally receiving the recognition that I fought so long for and was entitled to for all those many years.

The pay increases that I received in my last four years of employment are mischaracterized in the report. My Union struggled with the municipality for a new contract for the 1993 to 1995 time period. It was not until September of 1994 that we finally settled the terms and conditions of the contract. I finally received my increase for 1993 and 1994 in the end of that year (1994). It thereby makes it appear as though I received quite a raise in 1994 but that is just not so. That is simply when I received the money for having worked in 1993 and 1994 faithfully, but without a contract.

The year 1995 was the culmination of a long painful process in order to negotiate not only for the job title that I had long ago earned but also for pay commensurate with that title. It is interesting to note that once I retired, my replacement is now an administrative clerk as assisted by a senior clerk typist. It has taken a person and a half to do my work.

In any event, the $5,000.00 raise that I received was retroactive to January 1, 1995 because it took the officials of the municipality that long in 1995 in order to come to the conclusion as to the amount of the raise. It was not subterfuge making it backdated but rather it was simply the result of the delay in their finally making the decision. We did not get our raises for 1993 and 1994 until the end of 1994. This was nothing different. The $5,000.00 raise covered not only the whole of 1995 but also was for the first six months of 1996. I received no other increase for 1996. The $5,000.00 was for an 18 month period. The Township did not take any actions simply to enhance my retirement package. The actions they did take were begrudging and were the results of a many year campaign by me to right that which was wrong. Any affect on my retirement benefit was incidental and certainly very small.

Not having seen the remainder of the report I cannot comment on how the other instances in Marlboro Township would lead the investigators to come to the wrong conclusions with respect to my instance. Had they interviewed me, they would have found that I actively and persistently wanted my job title changed in order to do justice by me. Although I subrogated my personal gain in order to make sure that those that I represented in the labor union would be taken care of first, I

never lost sight of this stone that was in my shoe about my job title and my pay. It was my persistence to right that wrong before I retired that resulted in the title change and raise to which I had always been entitled rather than some pattern of questionable behavior on behalf of the municipality.

I would respectfully request that I be interviewed before the report is published so that the investigators can come to a conclusion, after having met me, with respect to the motives that were involved in this matter.

Very truly yours,

IRENE ASH

Shackleton, Hazeltine and Bishop

RICHARD J SHACKLETON (NJ & NY BAR)
COLIN R HAZELTINE
MALCOLM S ZLOTKIN (1972-1978)
JAMES E BISHOP
LAURA M BENSON
ROBERT E RUE (NJ & PA BAR)

OF COUNSEL
KENNETH L LEEDY, JR. (NJ & NY BAR)

COUNSELLORS AT LAW
22ND ST. AND LONG BEACH BLVD.
P. O BOX 410
SHIP BOTTOM, NEW JERSEY 08008
(609) 494-2136
GENERAL TELEFAX NO. (609) 494-0870
REAL ESTATE TELEFAX NO. (609) 494-0661

NORTH JERSEY OFFICE
ONE PASSAIC AVENUE
FAIRFIELD, N J 07004
(973) 882-4646
TELEFAX NO (973) 882-4620

NEW YORK OFFICE
641 LEXINGTON AVE, 19TH FL
NEW YORK, NY 10022
(800) 595-5520

PLEASE REPLY TO SHIP BOTTOM ☐
FAIRFIELD ☐
NEW YORK ☐
PLEASE REFER TO

October 2, 1998

Mr. James J. Morley, Executive Director
STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION
P.O. Box 045
Trenton, New Jersey 08625-0045

RECEIVED
98 OCT -5 AM 8:3

RE: Notice of Proposed Report, Correspondence William B. Beron

Dear Mr. Morley:

Yesterday afternoon, October 1, 1998, I spoke with you on the phone concerning the Commission of Investigation's pending report on Manipulation and Abuse of Public Pension and Benefit Programs. You will, I am sure, recall that our conversation was engendered as a result of your communication to George Powell, former superintendent of the Ship Bottom Water Department. Not surprisingly, former Captain William B. Beron of the Ship Bottom Police Department has now also been in to see me, having met me as I arrived at my office on Friday morning October 2, 1998 with your letter to him enclosing on page two your assessment of his retirement.

The statement contained concerning Captain Beron's receiving, "a lump-sum payment covering half of his accumulated unused sick leave." is demonstrably in error. Captain Beron never received any lump-sum payment for one-half of his unused sick leave or any other amount of unused sick leave. Your statement continues that the Borough agreed to provide his family with full health coverage until, "the year 2006," this is also incorrect.

In the first instance, Captain Beron in 26 years of employment with the Borough of Ship Bottom Police Department had never used any significant number of personal days nor sick days. As a result of Captain Beron's faithful performance of his duties for 26 years he had accumulated approximately 13 months of unused sick leave and unused personal days. The practice as negotiated by the PBA was that when Patrolman or Officers up to the Sergeant level retired they were to receive either (1) pay for unused personal days and sick leave or (2) be permitted to retire with an effective retirement date fixed so that they could use up their accumulated but unused personal days and sick days before their retirement became effective. The Ship Bottom

Superior Officers, i.e. the Chief and the Captain, had contracts which incorporated all of the benefits inuring to the lower echelons under the PBA Collective Bargaining Agreement. When Captain Beron retired, he retired effective December 22, 1992 and went on accumulated sick leave until January 31, 1994 at which time his accumulated sick leave time ran out and he then went on full retirement. He never got any lump-sum payment.

Captain Beron's retirement was memorialized in a, "Retirement Agreement Between the Borough of Ship Bottom and Captain William B. Beron" dated December 4, 1992. That same Agreement provided in paragraph 4 that the Borough of Ship Bottom would continue to provide full medical coverage for Captain Beron in the form provided by the Borough to its employees under certain specific terms and conditions. Nowhere in those terms and conditions did it state that the health coverage would terminate in the year 2006. In fact, the health care provision provided that the coverage would include Captain Beron's son until he reached the age of 23 years, on or about July of 1998. Thereafter, Captain Beron and his wife received health coverage benefits until the death of Captain Beron and if his wife survives she is entitled to purchase continuing benefits for herself in accordance with COBRA. The Agreement further provided that when Captain Beron reached the age of 65 both he and his wife would receive only secondary health coverage from the Borough with primary coverage being provided by medicare.

A copy of Captain Beron's Retirement Agreement is enclosed herewith for your ready reference.

It is truly unfortunate that no one from the Commission of Investigations ever discussed this matter with Captain Beron, had they done so the demonstrably erroneous or false statements contained in your report would not have appeared. It is important for you to understand how Captain Beron's retirement came about.

In or about 1992 the Borough of Ship Bottom's Police Committee, chaired by Councilman Anthony DeTroia approached Captain Beron to see if he would be willing to retire and save the Borough approximately $58,000.00 a year in salary payments. The approach was presumably made because Captain Beron had let it be known that with over 25 years of service he was eligible to receive a pension from the Police and Firemens Pension Fund, however, that he could not afford to retire and live on that until he attained the age of either 62 or 65 so as to be eligible for social security health benefits in the form of Medicare and Medicaid (Captain Beron will attain the age of 65 in the year 2006). Councilman DeTroia advised Captain Beron that a new contract negotiation was taking place with the PBA and that if the Municipality could save his salary it would make negotiations with the PBA much easier because they would be cutting departmental salaries by almost $60,000.00 which would enable them to cover the pay raises which were being negotiated by the PBA. Captain Beron made it clear that although he was

eligible to go on the Police and Firemens Pension he was just financially unable to do so becausehe required the medical insurance for himself and his family members until such time as primary insurance would be provided under social security and then he would need only excess coverage. As a result of negotiations between the Borough's Police Committee and Captain Beron the enclosed contract was negotiated and unanimously adopted by the Ship Bottom Borough Council. Saving the Borough in excess of $60,000.00 a year as a result of, when Captain Beron's retirement became fully effective, not having to pay his salary and not having to make contributions to Social Security, to Police and Firemens Pension Fund and other fringes normally paid to Police Officers save only that the Borough was obligated to provide the insurance coverage.

Payment of medical insurance coverage for retired employees was a precedent which had been set by other Long Beach Island Municipalities, initially by the Borough of Surf City in or about November of 1985. At the time that Captain Beron was being asked to retire he was aware that the PBA was negotiating a provision in the PBA Contract which would provide for the payment of health coverage upon retirement. It is most important to remember that Captain Beron could not have been forced to leave his Captain's position for some 13 years after the final effective date of retirement, not until he had attained the mandatory age of 65. During that 13 years the Borough could have anticipated that his salary would have increased as PBA Contract negotiations increased salaries for Patrolman and the financial drain on the Borough would have been significant. Captain Beron accommodated the Borough with an early retirement and received no more nor less than was commonly available to other police officers and like positions and other Municipal employees in like positions on Long Beach Island in other communities.

Even as it is unfair to Mr. Powell, it is unfair to Captain Beron to note him in the report which the Commission is preparing. It is particularly unfair to note him with such demonstrably inaccurate statements as are contained and we respectfully request that his retirement description as well as George Powell's retirement description be deleted from the Commissions report.

During my phone conversation with you last evening, I had suggested that if you cared to send an investigator down to our office we would be pleased to discuss all of the Ship Bottom retirement matters with him. At this time I will broaden the offer.

For some period of time our firm has had the privilege and pleasure of representing most of the towns on Long Beach Island and we would be pleased to discuss all of the towns and our representations thereof so that the Commission may be assured that nothing untoward has ever occurred in any of the towns which we represented during our period of representation.

I look forward to hearing from you.

Very truly yours,

RICHARD J. SHACKLETON

RJS/lld
cc: Captain William B. Beron

RETIREMENT AGREEMENT BETWEEN THE BOROUGH OF SHIP BOTTOM AND CAPTAIN WILLIAM B. BERON

THIS AGREEMENT made this 4th day of December, 1992 by and between the Borough of Ship Bottom (hereinafter "The Borough") and Captain William Beron (hereinafter "Captain Beron");

WHEREAS, Captain Beron has served the Borough in the capacity of a law enforcement officer for many years, many of which were in the capacity of Captain of Police; and

WHEREAS, Captain Beron is well under the mandatory retirement age of sixty-five as provided in N.J.S.A. 43:16A-1 et seq.; and

WHEREAS, Captain Beron wishes to and is willing and able to retire under the present Police and Fire Pension System effective in the Borough should the Borough provide the financial and other considerations as set forth herein below; and

WHEREAS, it is in the best interest of the Borough to provide for Captain Beron's retirement as set forth herein as such early retirement will serve to effectuate considerable and substantial savings to the Borough and further in a more stream-lined, cost-efficient and effective Police Department; and

WHEREAS, this contract is not therefore deemed to be in any way a precedent, this contract being entered into on a one time basis only for economic reasons beneficial to the Borough as set forth above;

IT IS NOW, THEREFORE, MUTUALLY AGREED, for the terms covenants and conditions set forth herein, and other good and valuable mutual considerations, as follows:

1. Effective January 1, 1993, Captain Beron shall receive as a total annual salary the sum of $58,643.65, which includes base, longevity and shift differential.

2. Captain Beron shall leave office and relinquish command on December 22, 1992 and shall go on accumulated sick leave until on or about January 31, 1994, at which time Captain Berone's sick leave time shall have run out and which time shall become Captain Beron's effective retirement date, whereupon he shall have no further claim against the Borough for salary, sick days, holiday time or the like.

3. On December 22, 1992 Captain Beron shall relinquish any and all public property, including equipment, motor vehicles and any other property, and turn over same to the Borough in good condition, normal wear and tear excepted and shall no longer use, control or possess any Borough property. An inventory list of all Borough-owned property possessed by Captain Beron will be submitted prior to December 22, 1992.

4. Captain Beron shall retire on or before January 31, 1994.

5. Upon Captain Beron's retirement, the Borough shall continue to provide full medical coverage for Captain Beron in the form provided by the Borough to its employees from time to time, under the following terms and conditions:

a. The Borough shall provide Captain Beron with what is known as "The Family Plan" upon his retirement and shall be equivalent to the coverage the Borough now provides.

b. The Borough shall provide medical coverage to Captain Beron's son until his son reaches the age of 23 years.

c. Should Captain Beron predecease his wife then his wife shall have the option to purchase medical coverage (COBRA) through the Borough for a period of 36 months thereafter.

d. Upon Captain Beron reaching the age of 65, he and his wife shall be provided medical coverage primarily by Medicare and only secondarily by the Borough.

Witness:

CAPTAIN WILLIAM ~~BARONE~~ BERON JR

PATRICIA C. JEFFREY, RMC
Municipal Clerk

Authorized signatory for
binding Borough

MOTION: MR. DE TROIA

SECOND: MR. GULD

DATED: DECEMBER 8th, 1992

ROLL CALL VOTE: CERAR, DE TROIA, FEASTER, GULD, OAKLEY, TAYLOR. ALL AYES.

CERTIFICATION

I, PATRICIA C. JEFFREY, Clerk of the Borough of Ship Bottom do hereby certify that the foregoing Retirement Agreement was duly adopted by Mayor and Council at a regular meeting held on Tuesday, December 8th, 1992.

PATRICIA C. JEFFREY, RMC
BOROUGH CLERK

Rudolph Cellini
1015 Kennedy Boulevard
North Bergen, New Jersey 07047

October 24, 1998

State of New Jersey
Commission of Investigation
PO BOX 045
Trenton, N. J. 08625-0045

Dear James J. Morley:

Enclosed is a written response to the Commission regarding Fringe Benefits. Please note the following,

1. A correction must be brought to the attention of the Commission, the county in reference is Hudson not Bergen County.

2. Regarding Privately Negotiated Confidential Package.

The Township of North Bergen offered a package to all six Deputy Chiefs as inducement for early retirement. To the best of my knowledge this package was not negotiable and was against the wants or wishes of the six Deputy Chiefs. If you did not accept the Townships offer we would have been demoted to Battalion Chiefs. Meetings between Township Administrator Joseph Auriemma and Officers Association President Captain Michael DiOreo did take place. No Deputy Chiefs were allowed to sit in at these meetings.

3. Regarding Retirement Package.

The package consisted of approximately $23,000 lump sum, plus a six percent pay raise for 1996. Please note a pay raise in 1996 probably would have been received retroactive January 1st, 1996 as negotiations between local Officers Association and the Township of North Bergen was ongoing at time of retirement.

4. Regarding Vacation Time.

The incentive package offered to us did not include any extra vacation time or compensation for 1996. Vacation time received and used was in accordance with Article VI of the North Bergen Fire Officer Associations contract agreement.

5. Regarding Sick Leave

The retirement incentive package offered to us did not include any extra sick time. Sick time in reference, was received and used in 1996 in accordance with Article XX of the North Bergen Fire Officers Associations contract agreement. It should be clearly understood, this compensation was not part of the incentive to retire as all Fire personnel is entitled to this benefit.

6. Regarding Public Notification.

The agreement and terms between the Township of North Bergen and the Deputy Chiefs was published in Hudson and Bergen county newspapers.

The information stated is to the best of my knowledge and recollection with regard to this matter. Please attach this response to the Commission report.

Sincerely,

Rudolph Cellini

Rudolph Cellini
Retired Deputy Chief

BRACH, EICHLER, ROSENBERG, SILVER, BERNSTEIN, HAMMER & GLADSTONE
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
101 EISENHOWER PARKWAY
ROSELAND, N.J. 07068-1067
(973) 228-5700
FAX (973) 228-7852
26 EAST 64TH STREET
NEW YORK, N. Y. 10021
(212) 935-9012
PLEASE RESPOND TO ROSELAND OFFICE

ALAN H. BERNSTEIN
WILLIAM L. BRACH
TODD C. BROWER
RICHARD J. DRIVER*
BURTON L. EICHLER*
JOHN D. FANBURG*
WILLIAM J. FRIEDMAN*
STUART M. GLADSTONE*
CHARLES X. GORMALLY*
JOSEPH M. GORRELL*
ALAN R. HAMMER**
BRUCE KLEINMAN**
BRIAN R. LENKER
STUART L. PACHMAN
ALAN S. PRALGEVER*
DAVID J. RITTER
PAUL F. ROSENBERG
MICHAEL I. SCHNECK
HARRIS R. SILVER
ALEXANDER J. TAFRO
OF COUNSEL*
LANCE A. POSNER*
GEORGE Y. SODOWICK
HENRY N. PORTNER*
ALLAN H. KLINGER
(1957-1997)
DOROTHY G. BLACK
(1978-1996)
ANN D. STEVENS
ALOIS V. HABJAN*
DAVID J. KLEIN*
DAVID S. BERNSTEIN
GEORGETTE J. SIEGEL
ROBERT C. MIGNELLA
RICHARD B. ROBINS
JOSEPH M. DAVIS
SUSAN Y. LEONARD
BRIAN KALVER*
JOHN P. INGLESINO
JILL DAITCH ROSENBERG*
TRACEY S. BAUER*
STUART J. POLKOWITZ*
VICKI SUE HULL**
JOHN P. WYCISKALA
MICHAEL S. ZICHERMAN*
SUSAN DROMSKY-REED
MATTHEW M. COLLINS*‡
CARL J. SORANNO
SIMONE HANDLER HUTCHINSON*
HELEN A. NAU*
JOHN A. SNYDER, II*
SHARON L. WEINER*
DEBRA K. BAMPTON*
KATHERINE M. WEINSTOCK*
KRISTINE BOGARDUS PURCELL
CHRISTOPHER A. ERD*
CRAIG H. FELDMAN*
ALLEN J. POPOWITZ*
JONATHAN E. LEVITT*
GARY S. LIPSHUTZ*
KAREN M. VIEIRA
PAUL E. DELLORUSSO
M. CHRISTINA ALMANZOR*
MARK E. MANIGAN*
DAMESH D. PATEL
ALSO ADMITTED TO PRACTICE IN
* NY ‡PA ‡DC ‡OTHER DISTRICTS
** CERTIFIED CIVIL TRIAL ATTORNEY
‡FL *ON LEAVE

October 21, 1998

VIA FACSIMILE TRANSMISSION 609/633-7366
James J. Morley, Executive Director
Commission of Investigation
P.O. Box 045
Trenton, New Jersey 08625-0045

Re: James Cuccienello/Township of South Orange

Dear Mr. Morley:

In response to your October 20, 1998 letter, and the letter to Mr. Cuccienello dated September 25, 1998, kindly be advised that we respectfully represent that Mr. Cuccienello has done nothing inappropriate or wrong with regard to the issue involving the Village of South Orange. Quite simply, Mr. Cuccienello struck a deal with the Village which was represented by Edward Matthews. Certain promises were made to Mr. Cuccienello and certain other police officers which the Village has failed and/or refused to honor. While that is unfortunate and may be the subject of another litigation, I want to make it clear that Mr. Cuccienello has engaged in no wrong doing to the best of his knowledge, information and belief and would like that represented to the Commission of Investigation. If anything, we believe that the Village did not negotiate with Mr. Cuccienello and his cohorts in good faith, if in fact they understood or reasonably comprehended that the agreements they negotiated would not be binding. Mr. Cuccienello is not a lawyer and could not possibly understand the significance of the contract except to understand the terms. Therefore, I think it would be inappropriate to hold him responsible in any way for any alleged impropriety concerning the negotiation of his early retirement from the police department and the Village of South Orange.

Should you have any further questions, please feel free to contact me. We hope and trust that the Commission of Investigation will take to heart the fact that Mr. Cuccienello was enticed into early retirement by the Village of South Orange, and has engaged in no wrong doing.

Very truly yours,

ALAN S. PRALGEVER

ASP/jmo
cc: James Cuccienello

DATA:TEMP\ASP\506668.1

October 1, 1998

Dear Mr. Morley,

I am in receipt of your letter outlining an investigation of public pension and benefit programs and would like to comment on some of the findings of the report and to add information which may help you to understand the conditions of my retirement.

Approximately six months prior to my retirement, I was notified by the Township of North Bergen that the rank of Deputy Chief in the Fire Department was being eliminated. I had no interest in retiring but was told that if I didn't retire I would be demoted to the rank of Battalion Chief and my salary would be cut by fifteen percent. By being forced to retire earlier than I had anticipated, after twenty-seven and one-half years, I received a total of sixty-seven and one-half percent of my last years salary as my final pension, as opposed to seventy percent if I would have been allowed to stay on for thirty or more years.

The final pay increase I received was five percent not six percent. Please keep in mind that at this time we were working under an old contract and the union was currently engaged in negotiations. After retirement, the union was awarded a pay increase which I would have received retroactively. Our final compensation was comparable to what other Hudson County Deputy Chiefs were getting at the time.

You are correct that I received an extra $23,000 lump sum pay out when I retired. This is the only extra compensation that I received when I retired.

Due to the fact that it wouldn't be prudent for me to take a demotion, loss of pay, and loss of pension dollars as the pension is based on your last years salary, I reluctantly took the retirement package. The package benefit I received upon my retirement was not negotiated but forced upon me. I have devoted my whole working career to the fire service and would have preferred to have kept my job instead of being politely forced to retire at the age of fifty. The other Deputy Chiefs and myself

consulted with an attorney and were told that we would be better off accepting the retirement package rather than fighting the town.

In retrospect, as I look at the Fire Department now, the total table of organization has been reduced much further. The four North Hudson towns are on the verge of consolidating services and I guess that our early retirement was part of the grand scheme of things to reduce manpower, close down some facilities and ultimately save taxpayers money.

Thank you for the opportunity to respond to this report and to add my comments.

Yours truly,
Guy DiVincent

October 04, 1998

TO: James Morely
Executive Director
Commission of Investigation

From: Raymond T Durski

RE: certified Mail #9121 778 705

Dear Sir:

This letter is in regard to your investigation of manipulation of public pension and benefits. I am writing a response to it, and enclosing the contract that the City had given me at the time.

Somewhere around February of 1996 the Mayor had proposed a buyout for a group of police officers in the City of South Amboy, New Jersey. In our contract it stated, that for unused sick time we could cash in at retirement two for one. I having accrued 168 days was entitled to the max sum of $20,000.00. With that in mind the City Business Administrator John Mason along with the Mayor John T Oleary had come up with a package using $9,000.00 of our monies from sick time, and including this into a longevity increment, over the last two years. This would increase our salary for our pension. We were told that this was legal and was checked out by the Mayor and Business Administrator. I would not have retired at this time if I knew that I would not receive this raise in my pension, or if I knew it was illegal.

After nearly a year and a half after I retired I was told in writing from the pension board that I would not receive my increase so stated by the City. And during this year and half going back and forth with the mayor after retirement he continued to state that everything would be worked out. I think I was duped into retiring by our Mayor and Business Administrator. And lost a considerable amount of money in my pension. Not counting the possibility of advancement.

Enclosed is a copy of the Retirement Agreement signed by the City officials and me. If there is anything else I could send you or answer any of your questions please feel free to call.

Very truly yours,

Raymond T Durski

RAYMOND T DURSKI

732-721-0368

Catherine M. Guderian
3 New Castle Court
Toms River, NJ 08753
1 October 1998

Mr. James J. Morley, Executive Director
Commission of Investigation
PO Box 045
Trenton, NJ 08625-0045

Dear Mr. Morley:

This letter is in direct response to your letter dated 25 September 1998, Re: Notice of Proposed Report concerning "manipulation and abuse of public pension and benefit programs".

I retired as a supervisor from the Toms River Regional School District on 30 June 1994 under the "Sick Leave Reduction Incentive" policy, described via the Board of Education policy as SECTION G CHAPTER M-3, a copy of which is enclosed. I fulfilled every requirement delineated in the policy plan as qualifying for the incentive, to wit: (1) Aged 55 or older; (2) Had 27 years accumulated employment service; (3) Desired retirement on or before 30 June 1994; (4) Actively employed in the School District during the immediate 12 months prior to retirement. Having met all the criteria, my request for retirement under the plan was approved by the Board of Education without question or favoritism whatsoever.

I am personally unaware of any impropriety; however, your reports use of my situation as an example illustrating the manipulation of documented board policy or to "benefit select employees" is totally false and misleading. I strongly object to the incorrect use of my situation as an example of an impropriety and hereby request that the pertinent paragraph be deleted from your final report.

Sincerely,

Catherine M. Guderian

SICK LEAVE REDUCTION INCENTIVE

There is a concern on the part of the Board of Education as to the use of sick leave, in that while the Board recognizes the statutory right for a teacher to use sick leave as prescribed by statute, there is also concern about the continuity of education to our students.

The Board encourages that whenever possible, notwithstanding the right of a staff member to use sick leave, that it not be used unless it is absolutely necessary.

In order to induce employees to judiciously use their sick leave, the Board affords the following incentive in connection with the use of sick leave to its employees.

1 [redacted] and achieved their 55th birthday, who shall retire from service as a public school employee by June 30, 1994, shall receive the following benefits in connection with unused accumulated sick days:

(a) Such employees, which shall include classroom teachers, specialist teachers, nurses, secretaries, attendance officers, ASAP counselors, psychologists hired after June 30, 1981, supplemental teachers, special education/basic skills paraprofessionals and members of the [redacted] shall receive twice the daily rate of compensation per day for as many days of accumulated unused [redacted] and such compensation shall commence at the time of retirement. EXAMPLE: If a staff member covered by this policy is receiving $150.00 per day at the time of his or her retirement, such staff member shall receive $300.00 per day for as many days as such employee has accumulated unused sick days. If the employee has accumulated 80 sick days, the compensation shall, therefore, be 80 days x $300.00, or $24,000.00, to be paid in five (5) equal annual installments until the payment has been fully made.

In order to be eligible for such sick leave reduction incentive, employees must have been actively employed* in the school district during the immediate 12 months prior to retirement and for purposes of making a determination as to the amount to be paid to such retiring employee, unused personal days shall be treated as sick days in making the calculation for all personal days accumulated since 1987-1988.

*Actively employed means entitled employees must have performed their assigned job description duties the 12 months immediately prior to eligibility for the Sick Leave Reduction Incentive.

2) Those employees as hereinabove defined who have not achieved their 55th birthday, but who have achieved twenty (20) years of service in the district, shall receive the following benefits in connection with unused accumulated sick days:

(a) Such employee, upon retirement, shall receive credit for one (1) day of sick leave pay for each unused sick day and shall be compensated at their daily rate of pay for each day at the time of retirement up to a maximum of 150 days.

(b) Under this paragraph, (Paragraph 2), compensation so determined shall be paid to the retiring employee in equal installments over a minimum of a 3-year period.

In order to be eligible for such sick leave reduction incentive, employees under this Paragraph 2 must have been actively employed in the school district during the immediate 12 months prior to retirement and for purposes of making a determination as to the amount to be paid to such retiring employee, unused personal days shal be treated as sick days in making the calculation for all personal days accumulated since 1987-1988.

3) The Board recognizes that if an employee who shall be entitled to receive the five (5) equal annual installments as contemplated under Section 1(a) above shall become deceased, said payments shall continue to be paid in accordance with the terms of the agreement, to the named beneficiary (beneficiaries), or in the event of no named beneficiary to the estate of the deceased employee.

4) The Board of Education in enacting this program recognizes that this policy has been the result of a negotiation with the Toms River Education Association and that the Toms River Education Association has agreed to relinquish any rights that it has under any previous policy dealing with these provisions and specifically Section 13, Article E of the negotiated agreement between the Toms River Board of Education and the Toms River Education Association.

5) The duration of this policy is to specifically coincide with the present negotiated agreement between the Toms River Board of Education and the Toms River Education Association, which commenced on July 1, 1991 and continues in effect until June 30, 1994.

6) Further, the Toms River Board of Education has recognized that the Toms River Education Association in its negotiations with the Toms River Board of Education has relinquished any rights to the $25,000.00 death benefit which the Toms River Board of Education holds on each employee.

7) The policy so enacted replaces and amends Section G, Chapter M-3, Schedule A, last revised on November 21, 1989.

ADOPTED: March 12, 1992
REVISED: May 27, 1992
REVISED:

New Jersey Commission of
Investigations

October 5,1998

Release # SP-09 035

To Whom it may concern,

I am in receipt of your notice and would like to respond.

The City of South Amboy,more specificallythe Mayor, called me in and advised me they were offering retirement packages to all of the Officers eligable.I did not have my twenty five years in the pension system and was advised that the City would purchase 27 months of my Military time to give me my time in the pension system.I was told that they researched everything with the pension system and every thing offered was acceptable with the system.

Every time I had trouble with the pension system the city would tell me they did whatever they needed to do and the pension system was the big hold up.I would call the pension system and ... they would advise me other problems existed.

I was not even thinking of retirement until they made me feel that I would be foolish to pass up this deal.

Any other questions you may have,please feel free to contact me.

Thank you,

William F. Housman
51 Barkalow St.
South Amboy,N.J. 08879

DAVID LEAHY
155 WILLARD CLARK CIRCLE
SPOTSWOOD NJ 08884-1038
TEL. (732) 251-3376

October 7, 1998

Mr. James J. Morley
State of New Jersey
Commission of Investigation
PO BOX 045
Trenton NJ 08625-0045

Dear Mr. Morely:

I have received your letter concerning the investigation and thank you for allowing me the opportunity to respond.

Sometime in November 1995 after returning from vacation I called the president of the North Bergen Fire Officers union to inquire as to how negotiations for the new contract were going since I was on the executive board and took part in the negotiations. He told me "get up here as soon as possible, I have to talk to you". When I met with him he told me " the Town wants you and the rest of the Deputy Chiefs gone, you must retire or be demoted to Battalion Chief". Needless to say I was shocked by this and felt that I was being fired or at the very least forced to retire. I was not retiring but was being retired. The Township's threat of demotion was not an idle threat as you can see by Exhibits "A" and "B".

We immediately began contacting attorneys to see if we would be able to fight the Township, stay on the job and remain as Deputy Chiefs. The attorneys that we contacted were an attorney in Trenton, an attorney in East Rutherford and the union's attorneys Locke and Corriea. I do not remember the names of the first two attorneys, but I can find out and I would like to reserve the right to identify them at a later date if needed. The first attorney I spoke to on the telephone. The second attorney met with us at his office and was paid for his services. The third attorney was the union's attorney, Manny Corriea. We were told by all three that we most likely had no chance of retaining our rank and salary and that we should take the Township's offer and retire.

The Township refused to talk to us face to face but allowed the president of the union and the Chief of the department to be used as a go between. They imposed time constraints on our replies, usually 24 to 48 hours. And they also made this an "all or none" proposition. We all had to agree to retire, there was no allowance for some staying and some leaving. There were a few of us who wanted to retire within a year or two anyway, but there were a few who were not ready to retire. When a few did show a reluctance to be

retired they then threatened us with 4 Deputy Chiefs being demoted to Battalion Chief and 2 Deputy Chiefs being demoted to Captain (see Exhibit "C"). The Deputy Chief's who had planned to retire in the near future would have had their pension benefits greatly reduced if they stayed and were then demoted to Battalion Chief or Captain.

There is a clause in there about confidentiality but we immediately stated that we would not keep it confidential because we felt we were being wronged by the Township and wanted everyone to know it. And everyone did know of it. Also an article appeared in the local newspaper giving the names and amount to be paid to the Deputy Chiefs.

The situation was brought up at a union meeting and the membership agreed to let the president of the union speak on our behalf, but the membership reserved the right to reject any agreement even if the Deputy Chiefs were satisfied with the agreement. The benefits that we did receive were gotten only because the Township did have a fear that we would stay and fight, causing a prolonged political and costly legal battle that they did not want. During the weeks that followed an agreement was worked out and I have enclosed that agreement and labeled it Exhibit "D".

There are many other facts that entered into this situation and I would like to inform you of a few of them. They are as follows:

- The contract prior to any of this occurring was negotiated by the Fire Officers. In this contract we agreed that the practice of accumulating vacation days would be halted and that all accumulated days that any Fire Officer had would have to be used by the end of 1995 or be lost. This was done because we felt it was an unfair burden on the Township to pay for these days upon retirement and our belief that vacation days were a hard fought union benefit and should be used during the year they are attained. Of course, the business administrator doing the negotiations must have had a master plan in his mind, knowing that once these days were wiped out he would be free to force us off the job without paying out large sums of money for unused vacation days.

- We agreed that any sick days taken the last 6 months before retirement would come right off the top of the unused sick days amount that would be paid for accumulated unused sick time. This was in an effort to halt the abuse of sick leave before retirement. I would like to state that the sick leave records of the 6 Deputy Chiefs are unparalleled. Speaking for myself I had over 400 days on the books using only approximately 8 sick days in 28 years.

- All of the Deputy Chiefs signed a wavier when they were promoted, giving up their first year salary increase. This was a practice started by the Township a few years ago in an effort to save money. Not signing this wavier would result in no promotion.

I do not want to defend the Township's position in all of this because we did not leave on good terms, however I would like to mention the following:

- During negotiations for the last contract mentioned, the union tried to get the Township to adopt the early retirement buy out program offered by the state if a municipality wanted to do so. The Township looked into it because they wanted to get rid of the higher paid employees and hire new people at a much lower rate of pay. After doing all the calculations they decided against it because they felt the cost was excessive and it would put an unfair burden on the taxpayers. I believe the Township even tried to get the state to allow the Township to bond the money needed for the program if they adopted it. This very costly plan is again being considered by the state according to an article I read in the newspapers a few weeks ago.

- I do have limited contact with members of the fire department and I am told that the Township has greatly reduced the fire department budget due to the elimination of the Deputy Chief rank and their goal of getting any fire fighter with 25 years or more to retire. They also have not hired any Fire Fighters for quite awhile.

- The Township of North Bergen has been instrumental in implementing a regionalization program with the surrounding communities to further save the taxpayers money.

I do believe that the professional business administrators that now have to be hired by the Municipalities are doing the job they were hired to do, that is, keeping costs low. In keeping costs associated with fire departments at a minimum however, these same business administrators may be causing a dangerous situation. They are closing fire houses and reducing forces that are causing delayed responses with insufficient manpower. The practice of forcing retirement upon Fire Fighters of every rank may also be causing problems with a lack of experienced personnel responding to fires.

In summary, after all is said and done, I am glad that I was forced to retire because a little more than a year after I was retired I was diagnosed with lung cancer, most likely caused by fire fighting, and had to have part of my lung removed; but never did I or any of the Deputy Chiefs think that we were taking unfair advantage of anyone, in fact we believed then, and still believe today that we were the ones that were done an injustice.

I again want to thank you for allowing me to respond and trust that your report will be a fair, accurate and unbiased examination of the facts, and by the way North Bergen is in Hudson County not Bergen County as stated in the confidential statement forwarded to me. I would hope that in the future when Fire Fighters are faced with the possibilities of demotions, layoffs and the closure of fire houses that a commission such as yours is available to look into these situations and perhaps prevent these problems and potential tragedies that down sizing may cause.

Very truly yours,

David Leahy

David Leahy

EXHIBIT A

Recd 4-26-96

Certified mail

APPENDIX D.

INDIVIDUAL NOTICE OF LAYOFF OR DEMOTION

TOWNSHIP OF NORTH BERGEN

Name of Jurisdiction

April 19, 1996

Date

TO: DAVID LEAHY
155 Willard Clerk Circle
Spotswood, N.J. 08884
(Name & Home Address of Employee)

FROM: Joseph Auriemma, Township Administrator
(Name & Title of Appointing Authority)

Pursuant to the provisions of N.J.S.A. 11A:8-1, this is to notify you that for reasons of (x) economy (x) efficiency ( ) other (specify) _____

you will be laid off from your permanent or probationary position of: Deputy Chief

Department of Public Safety Fire Department, effective at the close of the working day on _____. This notification provides you with the minimum 45-day layoff notice required by the above law and, unless otherwise extended by the Commissioner of Personnel, shall expire no later than 120 days from the date of issuance.

( ) Although you are being laid off in your permanent title, you:

( ) will ( ) will not be retained in your current provisional or temporary title of _____.

(X) have been appointed to the provisional or temporary position of Battalion Chief effective August 1, 1996

Since your position is subject to layoff, you may have the right to displace employees in other positions. A copy of this notice is being forwarded to the New Jersey Department of Personnel, which will be responsible for determining your seniority, lateral displacement, demotional, and/or special reemployment rights. The Department of Personnel will notify both you and the appointing authority of its determinations prior to the effective date of the layoff action.

The procedures to be followed in instituting any appeals will be outlined in the letter of notification of your layoff rights from the New Jersey Department of Personnel.

(Signature of Appointing Authrotiy or Authorized Agent)

EXHIBIT "B"

CHRISTINE TODD WHITMAN
GOVERNOR

STATE OF NEW JERSEY
DEPARTMENT OF PERSONNEL
DIVISION OF HUMAN RESOURCE MANAGEMENT
CN-313
Trenton, New Jersey 08625

LINDA M. ANSELMINI
COMMISSIONER

July 19, 1996

Mr. David Leahy
155 Willard Clark Circle
Sportswood, New Jersey 08884

Dear Mr. Leahy:

We have been advised by the North Bergen Department of Public Safety that you will retire effective July 31, 1996.

Accordingly, unless we hear from you to the contrary, your layoff from your permanent position of Deputy Fire Chief will not be processed.

Sincerely,

John J. McDonnell

John J. McDonnell, Manager
Division of Human Resource Management

cc: appointing authority

TOWNSHIP OF NORTH BERGEN

FIRE DEPARTMENT

HIERARCHY

PROPOSAL

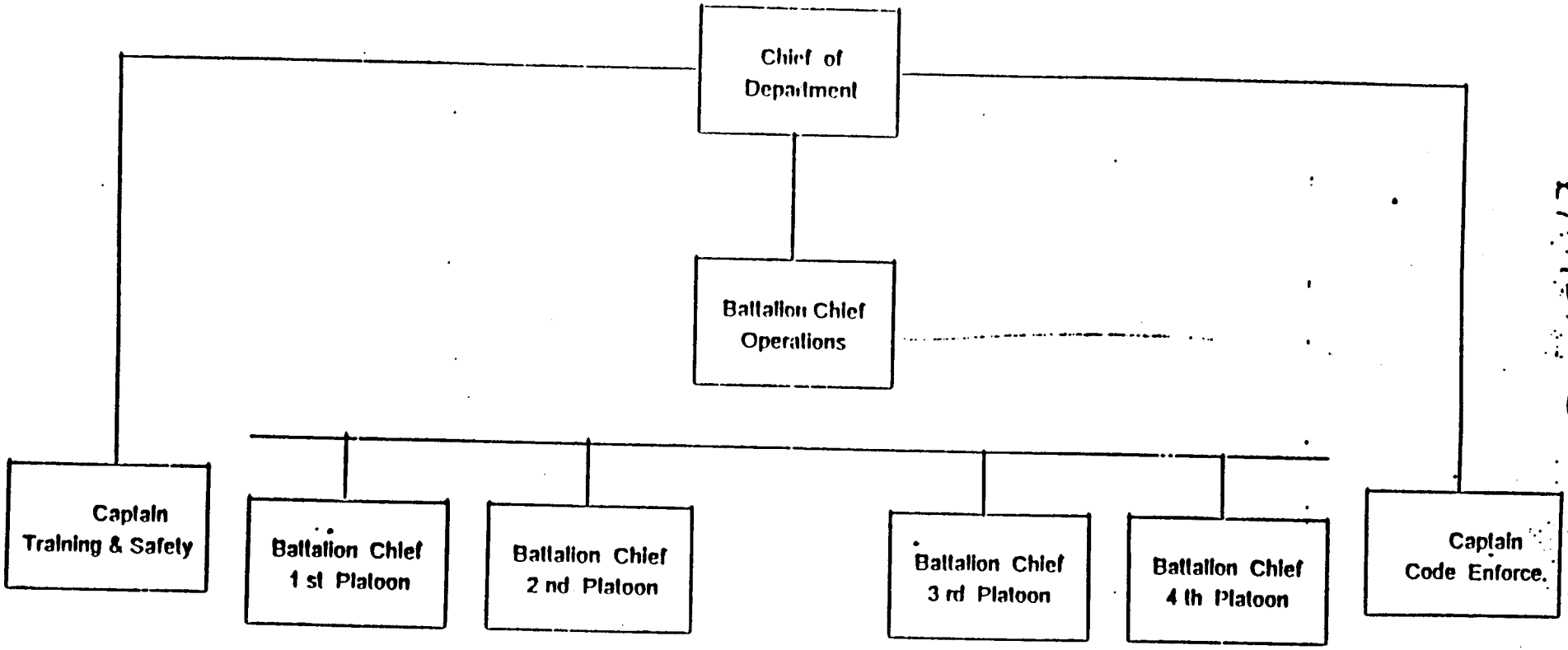


EXHIBIT C

EXHIBIT "D"

RUDERMAN & GLICKMAN, P.C.
COUNSELLORS AT LAW
PARK PROFESSIONAL BUILDING
96 PARK PLACE
NEWARK, NEW JERSEY 07102-4302

201-624-7755
FAX 201-624-6114

MARK S. RUDERMAN
(N.J., N.Y.)
STEVEN S. GLICKMAN
(N.J., PA., N.D.J.)

ELLEN M. HORN
(N.J., N.Y.)
LEONARD C. SCHIRO
(N.J.)
LAURA SIMONYAN
(N.J., N.Y.)

December 7, 1995

Via Fax 488 8051

Manuel A. Correia, Esq.
Loccke & Correia, P.A.
24 Salem Street
Hackensack, NJ 07601

Re: Township of North Bergen and
North Bergen Fire Officers Association

Dear Mr. Correia:

Pursuant to our telephone conversation, enclosed please find revised Settlement Agreement and General Release in the above matter incorporating the following changes agreed to:

1. In Paragraph No. 1(A), the date of "July 1" is changed to "August 1."

2. In Paragraph No. 1(C), the word "salary" is changed to "compensation."

3. In Paragraph No. 1(D), the words "with the" are deleted, and the phrase "final deadline for retirement" is deleted.

4. In Paragraph 1(F), the word "Association" is changed to "parties"; and the phrase "with the Township through December 31, 1997" is deleted and replaced with "commencing January 1, 1996."

5. In Paragraph 2, the phrase "As an inducement for the Deputy Chiefs and Association to enter into this Agreement" is deleted; the words "their employment" is deleted and replaced with "this Agreement and the terms hereof"; the word "relationship" is deleted; and the phrase "including but not limited to any matters dealing with their employment with the Township" is deleted.

If the enclosed Agreement meets with your approval, please arrange for Union signature as soon as possible.

Sincerely,

Mark S Ruderman

MARK S. RUDERMAN

MSR/sm
Encl.

cc: John M. DiPaolo, Fire Chief
Joseph R. Auriemma, Township Manager Via Fax 392 8551
Herbert Klitzner, Esq.

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE is made and executed on this _____ day of December, 1995, by and between the TOWNSHIP OF NORTH BERGEN (hereinafter referred to as the "Township"), RUDY CELLINI, GUY DIVINCENT, DAVE LEAHY, FRANK MILLER, MICHAEL RUSH and DENNIS SCHACK (hereinafter referred to as the "Deputy Chiefs"), and the NORTH BERGEN FIRE OFFICERS ASSOCIATION (hereinafter referred to as the "Association").

W I T N E S S E T H :

WHEREAS, the Township, Deputy Chiefs and Association deem it to be in their best interests to set forth in a formal written agreement their respective rights, duties and obligations; and

WHEREAS, the Township, Deputy Chiefs and Association have been afforded the opportunity to consider the terms of this Agreement with advice of counsel;

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable considerations:

1. TERMS:

   A. The six undersigned Deputy Chiefs will all retire (within the meaning of the police and fire retirement system), effective no later than August 1, 1996.

   B. The six undersigned Deputy Chiefs will not be demoted to the rank of Battalion Chief.

C. The six undersigned Deputy Chiefs will receive an $80,000 one-time terminal leave payment. This payment includes and shall be in lieu of the $12,000 referred to in Article XXVI and 57% of compensation referred to in Article XX of the 1993--1995 collective negotiations agreement between the Township and Association.

D. The six undersigned Deputy Chiefs will receive a six (6) percent salary increase retroactive to August 1, 1995 and concluding July 31, 1996.

E. All other terms of the collective negotiations agreement between the Township and Association shall remain enforceable.

F. The parties will not rely upon or reference the retroactive salary increases contained in this settlement agreement for any purpose during collective negotiations commencing January 1, 1996.

2. GENERAL RELEASE

The Deputy Chiefs and Association do hereby remise, release and forever discharge the Township and its officers and employees from any and all debts, obligations, suits, actions, causes of action, claims or demands, in law or in equity, which the Deputy Chiefs and Association now have or hereafter can,

shall or may have, for, upon, or by reason of the settlement of this matter, arising out of this Agreement and the terms hereof or negotiations with the Township.

3. CONFIDENTIALITY

This Agreement is deemed by the parties to be confidential. Accordingly, the terms shall not be disclosed to any third party, except as may be required by law or court order.

4. MODIFICATION

This Agreement may be modified or amended only by a written instrument duly signed by each of the parties hereto or their respective successors or assigns.

5. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements and understandings between the parties hereto; it contains the full understanding of the parties with respect to the subject matter hereof; and there are no representations, warranties, agreements or undertakings other than those expressly contained herein.

6. CONTROLLING LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of New Jersey.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

ATTEST:

By: _____

TOWNSHIP OF NORTH BERGEN

_____

JOSEPH AURIEMMA, Adm. -
Township of North Bergen

ATTEST:

By: _____

NORTH BERGEN FIRE OFFICERS ASSOCIATION

_____

MICHAEL DE ORIO, President -
North Bergen Fire Officers Association

WITNESS:

By: _____

_____

RUDY CELLINI

WITNESS:

By: _____

_____

GUY DIVINCENT

WITNESS:

By: _____

_____

DAVE LEAHY

WITNESS:

By: _____

_____

FRANK MILLER

WITNESS:

By: _____

_____

MICHAEL RUSH

WITNESS:

By: _____

_____

DENNIS SCHACK

October 1, 1998

2 Hutson Court
Sayreville, N.J. 08840

Certified Mail

State of New Jersey
Commission of Investigation
P.O. Box 045
Trenton, New Jersey 08625-0045

Attention: James J. Morley
Executive Director

RE: Notice of Proposed Report
Pension and Benefit Manipulation

Dear Mr. Morley:

Please consider this letter as a response to your September 25, 1998 letter in reference to the above captioned matter.

The comments regarding the City of South Amboy as noted on page (2) of the Report, insofar as it pertains to my retirement, are inaccurate and I must take serious exception to the obvious erroneous conclusion reflected in the Report.

Kindly note the history of this matter as I view it. As the former Chief of Police, City of South Amboy, I was not a party to the P.B.A. or the Superior Officers' Contract with the City. Since I was the Chief of Police I had to represent my own interests in connection with my salary, benefits, and conditions of employment. From the time I had become Chief of Police in March 1988, I had always contracted with the City on the basis of multiple year contracts. Usually I had obtained contracts for three year periods and it was customary to negotiate after the current contract term had expired.

My last contract with the City terminated in 1994 so that I then attempted to initiate a new contract term. Unfortunately, I suffered a massive heart attack on August 25, 1995 and I could not return to work until mid February 1996. After I returned to work I recommenced negotiations regarding my employment.

Ultimately the City passed a Resolution, 168-96, copy enclosed, which approved my retirement agreement. The enclosed agreement details the terms and conditions of my employment as of September 17, 1996. This agreement was not designed to circumvent the Pension plan but did reflect our agreement for the new Contract term, 1995, 1996, and 1997.

The salary increases as well as the longevity increments reflect the salary adjustments that I was entitled to as the Chief of Police. With 25 years of faithful service to the City, the longevity payments were consistent with the usual policy of providing for recognized years of service while part and parcel of my negotiated pay increases that I had earned through police service.

Because of the serious nature of my heart condition I used my 137 accumulated sick days up to the time of my retirement on July 31, 1997. If I had not become ill in the summer of 1995, I would have secured a Contract at that time. This would have provided me with increases for 1995, 1996 and 1997. I did not attempt to circumvent the Division of Pension scrutiny by failing to finalize my Contract negotiation during my convalescence. I was really in no physical condition to do so. Payment for accumulated sick time for 58 sick days was made on July 1, 1998 with a final payment of $2500.00 due on July 1, 1999. These payments are obviously post pension receipts and clearly are not part of my pension computation.

The sick days which I had used and those for which I will be paid were benefits that I had earned. It should also be noted that I sustained a second heart seizure on December 28, 1997, which required hospitalization of several weeks and serious heart surgery. Any compensation that I received was not given "primarily in anticipation" of my retirement, but represented benefits that were negotiated through an arms length employment contract.

These negotiations and the contract terms were public and approved by the City Administration. I trust that my explanation will provide you with a satisfactory response. On a personal note, it is quite disheartening to have received this letter and the negative connotations contained in the Report. Perhaps my comments will shed a different light on your investigation and the resulting conclusion.

Respectfully,

Leo McCabe

Leo McCabe

CITY OF SOUTH AMBOY
COUNTY OF MIDDLESEX

RESOLUTION #168-96

WHEREAS, Leo McCabe has, for 25 years, served the people of the City of South Amboy as a member of its Police Department; and

WHEREAS, Leo McCabe presently holds the rank of Chief of Police in the City of South Amboy; and

WHEREAS, as of July 1, 1997, Leo McCabe will have accumulated approximately 195 sick days, be entitled to 12 weeks of vacation, and have approximately 200 hours of compensatory time; and

WHEREAS, Leo McCabe has, over his career, served the City of South Amboy and its citizens, as a member of the South Amboy Police Department, with distinction and professionalism; and

WHEREAS, Leo McCabe has notified the City of his intention to retire from employment as of July 31, 1997;

WHEREAS, the Mayor, the City Council, and Leo McCabe have all agreed to the terms and conditions of Chief McCabe's retirement;

NOW, THEREFORE, BE, AND IT IS, HEREBY RESOLVED by the Council of the City of South Amboy, County of Middlesex, State of New Jersey, as follows:

1. The retirement agreement between Leo McCabe and the City of South Amboy is, hereby, approved.

2. The Mayor and Municipal Clerk are hereby authorized and directed to execute the retirement agreement with Leo McCabe.

JAMES C. REICK
Council President

I certify the foregoing to be a true copy of a resolution adopted by the South Amboy City Council at a meeting held on September 10, 1996.

KATHLEEN VIGLANTE
Municipal Clerk

MOTION BY:
HENRY , SAMUELSON ✓, STILLWAGON , THOMAS , REICK
SECONDED BY:
HENRY , SAMUELSON , STILLWAGON ✓, THOMAS , REICK

VOTE:

HENRY	YES ✓	NO	ABSTAIN	ABSENT
SAMUELSON	YES ✓	NO	ABSTAIN	ABSENT
STILLWAGON	YES ✓	NO	ABSTAIN	ABSENT
THOMAS	YES ✓	NO	ABSTAIN	ABSENT
REICK	YES ✓	NO	ABSTAIN	ABSENT

RETIREMENT AGREEMENT

This Agreement is made on Sept 17, 1996, between the City of South Amboy, a municipal corporation, with its principal place of business at 140 North Broadway, South Amboy, New Jersey, 08879-1647, hereinafter referred to as the "Employer", and Leo McCabe, a Chief with the South Amboy Police Department, residing at 2 Hutson Court, Sayreville, New Jersey, 08872, hereinafter referred to as the "Employee".

RECITALS

The parties recite and declare:

A. The Employee, Leo McCabe, has for twenty-five (25) years, served the people of the City of South Amboy as a member of the South Amboy Police department, rising to the rank of Chief.

B. The Employee, as of July 1, 1997, will have approximately 195 sick days and is entitled to 12 weeks of vacation and approximately 200 hours of compensatory time.

C. Both the Employer and the Employee deem the terms and conditions of this Agreement to be mutually beneficial to one another.

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties, the employer and Employee agree as follows:

1. The Employee shall retire from employment with the Employer as of July 31, 1997.

2. Based upon the Employee's Twenty Five (25) years of service, the Employer shall increase the Employee's longevity benefit by $15,000.00 as follows:

a. Increasing the Employee's base salary by $4,000.00 for the period July 1, 1995 to December 31, 1995 to $71,183.00, plus longevity increments of $7,118.30 plus fourteen holidays (amounting to $4,216.24), this being the employee's recognized pensionable salary (i.e. $82,517.54) and,

b. Increasing the employee's base Salary by $5,000.00 for the period January 1, 1996 to June 30, 1996, to $76,183.00, plus longevity increments of $7,618.30 plus fourteen holidays (amounting to $4,512.34) this being the employee's recognized pensionable salary (i.e. $88,313.64); and

c. Increasing the employee's base salary by $6,000.00 for the period July 1, 1996 to July 31, 1997 to $82,183.00, plus longevity increments of $8,218.30 plus fourteen holidays (amounting to $4,867.80) this being the employees recognized pensionable salary (i.e. $95,269.10)

3. The employee will go on paid leave for the period January 16, 1997 to July 31, 1997, utilizing 137 accumulated sick days and three (3) personal days.

4. The Employee will receive a one for one pay for first 58 accumulated sick days up to the maximum $20,000.00 ; however, the total amount due will be less the $15,000.00 longevity increase granted by the Employer above. Payment will occur on or about July 1, 1998 and July 1, 1999 in the sum of $2,500.00 on each date.

5. The Employee's accrued vacation time and comp time shall be paid as follows:

(a) Vacation: $10,430.40 on or about July 1, 1998; $10,430.40 on or about July 1, 1999.

(b) Comp Time: $4,346.00 on or about July 1, 1998; $4,346.00 on or about July 1999.

6. The Employee, by entering into this Retirement Agreement, does not waive any rights or benefits provided to retired employees. The employer and the Employee shall cooperate with each other and execute any required documents to facilitate and comply with the terms and conditions of this Agreement.

7. The employee will receive Health Benefits and Life Insurance for Retired Employees pursuant to the South Amboy Superior Officer's Association Collective Bargaining Agreement.

8. The terms and conditions of this Agreement shall be governed by the laws of the State of New Jersey.

9. A modification or waiver of this Agreement, or any covenant, condition or provision of it, shall not be valid unless in writing and executed by the party to be charged.

10. All agreements and covenants in this Agreement are severable, and in the event any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as if the invalid agreements or covenants were not contained.

11. This written Agreement embodies the whole agreement between the parties. There are no other inducements, promises, terms conditions or obligations made or entered into by either the Employer or the Employee, other than those contained in this Agreement.

Shackleton, Hazeltine and Bishop

RICHARD J SHACKLETON (NJ & NY BAR)
COLIN R HAZELTINE
MALCOLM S ZLOTKIN (1972-1979)
JAMES E BISHOP
LAURA M BENSON
ROBERT E RUE (NJ & PA BAR)

OF COUNSEL
KENNETH L LEDBY, JR (NJ & NY BAR)

COUNSELLORS AT LAW
22ND ST. AND LONG BEACH BLVD.
P. O. BOX 410
SHIP BOTTOM, NEW JERSEY 08008
(609) 494-2136
GENERAL TELEFAX NO. (609) 494-0870
REAL ESTATE TELEFAX NO. (609) 494-0661

NORTH JERSEY OFFICE
ONE PASSAIC AVENUE
FAIRFIELD, N. J. 07004
(973) 882-4646
TELEFAX NO (973) 882-4620

NEW YORK OFFICE
641 LEXINGTON AVE. 18TH FL
NEW YORK, NY 10022
(800) 595-5520

October 14, 1998

PLEASE REPLY TO SHIP BOTTOM ☐
FAIRFIELD ☐
NEW YORK ☐

PLEASE REFER TO

VIA FAX 609-633-7366 &
REGULAR MAIL

James J. Morley, Executive Director
State of New Jersey
Commission of Investigation
P. O. Box 045
Trenton, NJ 08625-0045

RECEIVED
98 OCT 19 AM 10:46
STATE COMMISSION OF INVESTIGATION

RE: Pension and Benefit Investigation
Herbert Miller

Dear Mr. Morley:

As you know, this office represents former Borough of Ship Bottom Police Chief Miller with regard to the above as well as former Water Department Superintendent Powell and former Police Captain Beron. This office has already met with S.C.I. Chief Accountant Joseph A. Becht and Investigative Accountant Michael R. Czyzyk with regard to Powell and Beron, Miller consulted with us after that meeting and presented us with your proposed report pertaining to him, with which we also take issue, as set forth herein.

First, it is entirely inappropriate to couch Chief Miller's retirement contract in the context of manipulating and abusing pension and benefit programs. There was no wrong doing, let alone an intentional "secret...scheme" to affect Division of Pension actuarial accounting or otherwise adversely affect the systems. It is our understanding that the purpose of this report is to determine whether a recommendation for remedial legislation should be presented by the S.C.I. . Whether wide spread use of unused sick leave and other types of retirement provisions found in collective bargaining contracts and otherwise over the years has become unduly burdensome to the pension system is, not of course, for us to say. That is not our business. It is the legitimate concern of our client, however, that he not be falsely painted in a shadowy light, both legally and factually.

The S.C.I. itself finds a pattern of padding pre-retirement salaries. Whether salary increases below the given threshold constitute "padding" is for your determination but that type of fact scenario is not

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

ATTEST:

KATHLEEN VIGILANTE
MUNICIPAL CLERK

CITY OF SOUTH AMBOY

JOHN T. O'LEARY
MAYOR

WITNESSITH:

LEO MC CABE

applicable regarding Herbert Miller. The other "ploys or related schemes" referred to by the proposed report based on accumulated unused sick leave and/or vacation time is not applicable here. Such "ploys or schemes" are probably applicable to public sector collective bargaining contracts throughout the State for years and years, often as the result of a binding ruling by a PERC appointed arbitrator. To the extent that the *Fairlawn Ed. Ass'n.* case is still good law given its serious deterioration by subsequent judicial announcements, (see for example the *Univ. of Med. case at 233 N.J. Super 333 (App. Div. 1988)*),at least two state agencies, the Public Employee Relations Commission and the Division of Pensions, did not seem to accept that such provisions were contrary to law.

We do not know whether there have been instances of retirement package implementation by municipalities after having been "admonished" by the Division of Pensions. We do know, however, that not only did the Division of Pensions not admonish against the Miller retirement contract, but was actively involved in working out the details – the amount necessary to buy back his early - years (a common practice throughout the State in any event) and also dictating the form of the checks originating from the Borough to accomplish same.

Second, respectfully, the proposed factual description of Miller's contract is totally inaccurate. We do not understand the reference to a quiet "secret" deal unless as a politically tainted statement issued to your investigators, the truth of which was thoroughly explored and completely rejected by a Supreme Court supervised board. The Governing Body at the time of the Miller contract asked a legal opinion as to publication of the contract versus Miller privacy rights; the contract was ultimately adopted by Resolution at a public meeting, as are all municipal contracts, including collective bargaining contracts.

This contract did not "set the stage" for Beron or Powell. Beron discussed his retirement well before Miller, and the Powell retirement was completely unconnected, as far as we know.

It is unclear whether Chief Miller consciously "elected" to stay out of the State pension in his early years, it is our understanding that it may have been a misunderstanding rather than a decision. In any event, the Borough provided the funds to Miller (as directed by the Division of Pensions) to effectuate the "purchase" of his early years, a usual practice throughout the State, it was never a salary payment. Miller could have done this himself if he had the funds, or Miller could borrow the funds for it. He could have continued to work to build up the accumulation in his pension. The Governing Body at that time made a policy decision that it would be cheaper if Chief Miller retired, that it was part of his reward and payment for services rendered, and would also effectuate a younger possibly more active Chief, all legitimate prerogatives of the employer/borough.

It is our understanding that the additional payment in January of 1993 was because of municipal budget constraints, there was not enough in the municipal budget to accommodate the contract at the end of 1992.

We simply cannot agree that the Borough "possessed no legal authority" to effectuate the Miller contract. There is no prohibition in *Title 40A*. PERC and the Division of Pensions have accepted such retirement provisions for years. The *Fairlawn Ed. Ass'n* case prohibits additional compensation for services not rendered, not the case here. The Miller contract was directly related to services rendered, It did not have the effect of encouraging a substantial group of employees to retire early or of being widely copied.

The municipal salary ordinance in effect at the time has no bearing here. This was not, as noted above, a salary payment it was a retirement contract unanimously adopted by Resolution.

The proposed report utilizes the term "ostensibly" in describing the justification for Miller's contract as effectuating considerable budgetary savings. The proposed report repeatedly states figures pertaining to the Miller Contract but makes no mention of effort to show that these figures are more or less than the expense to the Borough of keeping Miller on for an additional many years with incremental salary increases, having the benefit of the mandatory five percent (5%) spread for Chiefs by statute and all of the other continuing accruing benefits, longevity raises, additional accumulated sick leave, and so on. Our clients disagree with the noted annual salary of the new police chief as comparable to the rate at retirement of Chief Miller and ignores the other factors set forth above and making a decision to replace Chief Miller with the younger chief.

As noted in our earlier correspondence pertaining to Powell and Beron, we can only believe that the source of the "facts" set forth in the proposed report simply constitutes continuing local political machinations against a widely respected public servant.

We assert no opinion here, pro or con, as to whether accumulated sick time should be outlawed or capped (as now, apparently, it is for State employees), whether the fifteen percent (15%) Division of Pensions trigger should be lowered, whether the Legislature should take such decisions out of the hands of local public employers whether situations elsewhere have occurred which were in fact manipulative or abusive, and so on. Again, however, it is not only unnecessary but unfair and outright false to paint Miller's individual situation as manipulative or abusive. We welcome an additional meeting with you or your investigators and this office and Mr. Miller and we, respectfully, trust you will reconsider the present proposed language in your report, language which, since inaccurate, could be considered as manipulative and abusive itself.

Thank you for your consideration of the within. Because of time constraints, we respectfully reserve the right to further respond. Kindly contact us hopefully to schedule a meeting, and in any event, before you finalize your intentions pertaining to the proposed report.

Very truly yours,

JAMES E. BISHOP

JEB:ph
cc: Herbert Miller

c:\jeb\laverie.ltr

Shackleton, Hazeltine and Bishop

RICHARD J SHACKLETON (NJ & NY BAR)
COLIN R HAZELTINE
MALCOLM S ZLOTKIN (1972-1978)
JAMES E BISHOP
LAURA M BENSON
ROBERT E RUE (NJ & PA BAR)

OF COUNSEL
KENNETH L LEIBY, JR. (NJ & NY BAR)

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641 LEXINGTON AVE, 19TH FL
NEW YORK, NY 10022
(800) 595-5520

PLEASE REPLY TO: SHIP BOTTOM ☐
FAIRFIELD ☐
NEW YORK ☐
PLEASE REFER TO

October 1, 1998

Mr. James J. Morley, Executive Director
STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION
P.O. Box 045
Trenton, New Jersey 08625-0045

RE: George Powell

Dear Mr. Morley:

George Powell of 239 West 27th Street, Ship Bottom, New Jersey is a client whom I have the privilege and pleasure of representing. Mr. Powell has brought to me your letter of September 25, 1998 and asked me to respond thereto.

During the period when the Agreement was negotiated between Mr. Powell and the Borough of Ship Bottom for health benefits to be paid after his retirement, this office had the pleasure and the privilege of representing the Borough of Ship Bottom. Certain salient facts set forth in your report are in error, from whence they originated we don't know, but we surely can opine.

In the first instance the Agreement for Mr. Powell and his wife to maintain at Borough expense and not at the expense of the State Division of Pensions and Benefits was agreed to and reduced to writing some three to four years prior to Mr. Powell's retirement. In the second instance it is critical note that the coverage provided is secondary insurance only, since both Mr. Powell and his wife are covered by medicare and medicaid and that the benefit received is not an uncustomary benefit in private industry.

Since your report deals with improperly inflating salaries immediately prior to or at retirement in order to provide higher pension benefits, you should have addressed the issue of Mr. Powell's salary increases for the three or four year period prior to his retirement. All of his salary increases were in line with his prior years' salaries increases and his salary increments increased between 3% and 5% per year which was absolutely in line with the increases granted to other municipal employees. The Agreement to provide health insurance had absolutely no

impact whatsoever on his salary and therefore absolutely no impact whatsoever on the New Jersey Pension Program.

The Ship Bottom situation is absolutely neither more nor less than political grandstanding by two councilmen who were elected to office in or about 1993. Within two years of their election they, to gain political favor with an uninformed electorate, brought disciplinary charges against our law firm, against me, against my partner James E. Bishop and against a former employee attorney. These charges were found absolutely groundless by New Jersey Central Ethics Committee and upon appeal were found groundless once again. The complaints were filled with innuendos and absolutely false statements and centered around the retirement package of the former Police Chief, whose retirement I am sure is discussed in the text deletion immediately following the mention of the Borough of Ship Bottom on page two of your enclosure. Not content with making reference of alleged ethical violations concerning our firm, these same two publicity seeking councilmen demanded that the Ocean County Prosecutor's Office investigate the retirement package and that the State Attorney General's Office investigate the retirement package, alleging criminal conduct. The investigatory agencies concluded that there was no impropriety.

I do find it interesting that the investigation detailed in your letter to Mr. Powell and in the report from which you enclosed two pages, was conducted concerning the Borough of Ship Bottom without any interviews by any investigatory staff being conducted with the staff of our office who were attorneys during at least a portion of the relevant time period.

Mr. Powell believes that it is completely improper for him to be mentioned in any manor in this report and suggests that any reference concerning his and his wife's health insurance package be deleted since it is obviously untrue as presented. If you or anyone from your staff would care to sit down and discuss this matter with Mr. Powell and with me, we would be pleased to set up a convenient appointment in my office for anyone from your staff to come down and learn the true facts.

Very truly yours,

RICHARD J. SHACKLETON

RJS/lld
cc: Mr. & Mrs. George Powell

GARY PRICCACIANTE
313 Indian Run Trail
Hardy, Va 24101
(540)721-6656
PFRS# 43318

October 2, 1998

State of New Jersey
Commission of Investigation
P.O. Box 045
Trenton, NJ 08625-0045
Attn: James J. Morley

PERSONAL AND CONFIDENTIAL

Dear Mr Morley,

I was dismayed to receive your letter concerning an investigation into the manipulation and abuse of public pension and benefit programs.

I was more particularly dismayed to read that the Commission found NOTHING in the official record to indicate that the Division of Pensions undertook a follow-up review to determine the legitimacy of the amended agreement.

Although back in 1991 my pay increase was challenged by the "Board of Trustees, Police and Firemen's Retirement System" the enclosed copy of a letter from Janice F. Nelson, Secretary for the Police and Firemen's Retirement System found that the investigated salary increase was a legitimate pension contribution.

I will note for the record that my salary increase was due to a disparity between the Chief of Police and the Howell Twp. SOA (Superior Officers Association) and not due to sick time, as noted in a letter sent to Robert Morley, Department of the Treasury, Division of Pensions, CN 295, Trenton, NJ 08625-0295, dated August 5th, 1991, from Allen S. Kaplan, who was the Howell Township attorney at said time.

I hope I have answered any questions you have pertaining to my personal pension.

If you have questions, please, feel free to contact me.

Yours truly,

GARY PRICCACIANTE

enc.

Oct 2, 1998

State of N.J
Commission of Investigation

In answer to your letter 9/25/98 Postmarked 9/28/98. You claim I was shown Preferential Treatment which I say is not true. I worked 15 yrs for the Town with not one day taken off. I lost all my Vacation & Personal Days, Sick Time I was paid for. While a Director I turned down Pay Raises Because I felt the little guy should get more pay. While Director I served as Acting Mayor and Acting Busines Administrator for 5 months and I did not get any Extra Pay for doing both Jobs. Edison has four Unions and They Never Asked For it To Be in their Contract That is why it was not offered To Everyone. A new Salary Ordinance 677-92 was Passed in 92 729-93 in 1993 and in 1997 ordinance 795.97 Repealed 729.93 and it said it shall not affect The benefits received by any Person

who has retired prior To This effectivedate
of This Ordinance. My Benefits was Passed
by an Ordinance. A couple of years ago
Wood Bridge gave Benefits on a Hand shake.
The Town wanted To Take Away The Benefits But
The Court ruled against Wood Bridge.

We Recently This Year had one
officer keep His Benefits Even Though He had
To Resign Another with a Boot 10 yr Service
was convicted But when The Township Tried To
cut off The Benefits The Court ruled He
was entitled To Them I was 71 when I
retired. My wife had Her Breasts removed
because of Cancer 4 3 months ago she
had To have More Cancer Surgery on her
Face Nose If it wasn't for The Cancer
She had Has at 76 I would still Be
Working as I loved my Job Solving Problems
& Helping People & Keeping Budgets Down
Thank You
H. E Ruppert

I wrote This is a hurry I could add much more
To This

October 7, 1998
306 E Charles Drive
Galloway, N. J. 08201-4002

State of New Jersey
Commission of Investigation
P. O. Box 045
Trenton, N. J. 08625-0045

RE: Notice of Proposed Report
Certified Mail # P121 778 748

Att: James J Morley, Executive Director

Dear Mr. Morley:

In response to your letter dated September 25, 1998 and received and signed for on October 5, 1998, I would like to advise that there was no IMPROPER CONVERSION OF ACCUMULATED SICK LEAVE into a pay raise that boosted my final year's salary as stated on page 2 under the heading Galloway Township.

Said accumulated leave was USED by me during the period of January 1, 1995 through December 31, 1995 enabling me to be placed on terminal leave.

The proposal to go on terminal leave prior to my retirement was proffered to me by the Township's Chief Financial Officer and approved by the Township Manager. The "AGREEMENT" was prepared by the Township Solicitor, and signed by the necessary parties, indicating approval.

Very truly yours,

Leona M. Tolnowicz

Leona M Tolnowicz, CTC Ret,
Galloway Township
Atlantic County

Joseph Walker
23 North Main Street
Marlboro, NJ 07746
(732) 462-3959

October 12, 1998

James J. Morley, Executive Director
COMMISSION OF INVESTIGATION
P.O. Box 045
Trenton, New Jersey 08625-0045

RE: Notice of Proposed Report

Dear Mr. Morley:

I am writing in response to your letter of September 25, 1998 which was sent to me pursuant to *N.J.S.A. 52:9m-12.2* which requires that before a proposed State Commission of Investigation report is released that a copy of the relevant portions of the proposed report be sent to any person who is criticized therein. I note that the Commission has done no more than what it is absolutely required to do under law in terms of this. Although attacking me by stating that my pension is inflated, and therefore, for the arguable purpose of reducing an interest I hold pursuant to law, you did not even consult me regarding the unsubstantiated, inaccurate and misleading statements in this report. This is at the very least a violation of fundamental fairness and due process rules by a public agency.

Before addressing specific comments in the report, I would like to note that all payments made to me upon my retirement and all calculations of my salary for pension purposes were done through negotiation with the Township and could not have been done unilaterally by myself. All were done under public scrutiny. My Release and Separation Agreement was approved by the Marlboro Township Council and was a matter of public record. Further, the calculation of my salary for pension purposes was known to and approved by the agency in which dwells the responsibility for policing these laws, that being the Board of Trustees of the Police and Firemen's Retirement System (hereinafter "PFRS"). It is ironic, to say the least, that this Commission feels it may identify "ploys", "schemes" and "manipulation" when the Board was aware of all the facts and clearly did not consider them such.

The following addresses the comments in your report as they pertain to me as they appear:

1. First, there is criticism of payment for accumulated unused sick time and it being included in salary. It is stated that this "incrementally and retroactively, increased salary by more than

15% over a three year period between 1993 and 1995." However, there is no law or regulation which forbids an increase in salary of more than 15% over a three year period. In fact, during the time period involved, 15% over three years would be considered quite low for pay increases for public employees. The applicable regulation, *N.J.A.C. 17:4-4.1(e)* states that investigation shall occur where there is an increase in compensation of more than 15% over that of the previous year, not over three years. A review of my separation agreement as well as all material sent to the PFRS Board and in possession of the Township reveals that I did not receive more than a fifteen percent raise in any one year and, in fact, in my last year, received only a 5.3% total increase in base salary.

2. The report then states, "the raises were designed to compensate this employee for selling back to the Township a portion of his accumulated unused sick leave." Such selling back is entirely proper and legal pursuant to *City of Camden vs. Dicks, 135 N.J. Super 559, 562 (Law Div. 1975)* and *Maywood Education Assoc, Inc. vs. Maywood Bd of Education, 131 N.J. Super 551, 555 (Chan Div. 1974)*. In fact, this is nothing more than payment for days for which I was entitled as paid leave but never took off in the over 30 years of employment I had with the Township. Further, there is nothing in *N.J.A.C. 17:4-4.1* which would prevent including such as part of salary. Such payments are not precluded by *Fairlawn Education Assoc vs. Fairlawn Bd of Education, 79 NJ 574, 581 (1979)* as they are not retirement incentives. *Fairlawn* dealt with a system whereby employees were encouraged to retire by a certain age, regardless of quality and length of service, whereas, as is shown by the Agreement adopted by the Marlboro Township Council as well as the Resolution accompanying the Agreement, raises for myself were based entirely on quality and length of service.

3. Criticism is also made of a statement in a memo to the effect that the raise should be made retroactive "so that I would get credit with the Pension Board." This statement was made pursuant to negotiation over my contract. I find it difficult to believe that taking a position at negotiation to maximize a benefit would be considered improper as it is the goal of every employee and every employee organization negotiating employment contracts to do so and I would hazard it would also be the goal of the employees of the Commission of Investigation as well as the Commissioners of Investigation in negotiating over their terms and conditions of employment. The Township was free to accept this or not. Therefore, the salary for pension purposes was perfectly legal and

was done in above board negotiations. In fact, the statement shows how forthright and above board I was during this negotiation process.

4. Next, the Commission report mentions that I received $52,000.00 in two separate installments for the portion of unused sick leave not included in the negotiated pay raise provision. Again, it is perfectly permissible and proper to reward an employee for not using sick leave during the term of the employment by paying for such at the end of his employment.

5. The report then states, "The Commission questions the accuracy and propriety of these payments because they were based upon unverified sick leave records kept solely by the employee." This statement is a total falsehood. I never during my more than 30 years of employment by the Township kept my own sick leave records. This comment is attributed to no one but rather is left anonymous in the report. The statement is at best a misunderstanding and at worst a deliberate lie.

6. It is stated next in the report that, "Under the terms of a separate arrangement, the Chief also became eligible at retirement for extended health insurance at local tax payer expense based upon the adoption of a special Ordinance tailored specifically for him and three other non-union retirees." *N.J.S.A. 40A:10-24* permits the Township to adopt an Ordinance for retiree health benefits and set its own criteria. Therefore, it is perfectly legal and proper to receive these benefits as it was in the Township's discretion to grant them. It was the Township that set the criteria and used its judgment as to who would receive retiree health benefits and if I fell into that category because of my long years of service with the Township, I fail to see how or why I should be criticized for such. The Commission seems to feel that no consideration and no benefits should be given to an employee who has served the Township for over 30 years despite the fact that it is perfectly permissible for the Township to give such consideration in its own discretion. I question whether it is really in the interest of the public that a message be sent to public employees, which the Commission seems to be intent on sending, that long years of dedication will not be rewarded through legal and permissible means because of fear of unsubstantiated statements and misleading information in a report critical of the employee prepared at tax payer expense.

Thank you for your attention to this matter.

Very truly yours,

Joseph Walker

JOSEPH WALKER