

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

CITY OF JERSEY CITY

“City” or “Public Employer,”

- and -

**JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION**

“POBA or Union.”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2017-012

**Before
James W. Mastriani
Interest Arbitrator**

Appearances:

For the City:

Arthur R. Thibault, Esq.
Apruzzese, McDermott, Mastro & Murphy

For the POBA:

Stephen Hunter, Esq.
Detzky, Hunter & DeFillippo

This Award arises out of an impasse between the Jersey City Police Officers Benevolent Association [the “POBA” or “Union”] and the City of Jersey City [the “Employer” or “City”]. The collective negotiations agreement expired on December 31, 2016. In accordance with N.J.S.A. 34:13A-16(e)(1) I was randomly selected by the New Jersey Public Employment Relations Commission [“PERC”] on July 6, 2017 to serve as interest arbitrator. Prior to the invocation of interest arbitration, the parties engaged in mediation before a PERC appointed mediator on May 18 and June 13, 2017 but did not reach an agreement. With the consent of the parties, I also conducted mediation sessions with the parties on August 3, August 7 and September 5, 2017. The extensive use of mediation over the last several months can most likely be attributed to the parties’ knowledge that they had a greater opportunity and flexibility to reach agreement on contract terms through voluntary settlement in contrast with the mandates of the interest arbitration statute. Despite the efforts of the parties, they were unable to reach a voluntary agreement either through direct negotiations or through mediation.

The legal requirements for this case are those set forth in N.J.S.A. 34:13A-16 through N.J.S.A. 34:13A-16.9 as amended on June 24, 2014 by P.L. 2014, c. 11. The amended provisions took effect immediately and were retroactive to April 2, 2014. The statute requires the use of conventional arbitration and, unlike the flexibility that the parties are provided to construct voluntary settlements, strict limits are set by statute on the amount of base salary

increases that can be awarded and on the awarding of new non-base salary economic items.

I requested and received final offers from each party on August 31, 2017. Formal interest arbitration hearings were held on September 6 and 11, 2017. At hearing, substantial documentary evidence was submitted into the record on all aspects of the statutory criteria, as well as on salary cap calculations. Through discussion between the parties' financial experts, they stipulated that the City's base salary calculation is \$61,786,921. This satisfies the requirement in N.J.S.A. 34:13A-16.7(b) that a baseline be established for the aggregate amount expended by the Public Employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiations agreement that is subject to arbitration. The 2% cap on base salary increases are calculated off of the gross base salary payments made to unit employees during the year of contract expiration. The parties also agreed on calculations as to the amounts of base salary up to 2% that can be increased in the years upon which the base salary calculation is applied although they acknowledge that the distribution of those amounts are within the discretion of the arbitrator.

Formal stipulations were received from the parties reflecting their agreement on many issues. The stipulations are incorporated into the terms of the Award pursuant to N.J.S.A. 34:13A-16(g)(4). It is noted that the subject matter of stipulations are generally exempt from the restrictions mandated on the

arbitrator if he were required to issue an award on the issue if it were the subject of a dispute. Testimony was received from Director of Public Safety James Shea, Business Administrator Robert J. Kakoleski, Financial Expert Raphael J. Caprio, PhD., President of POBA Carmine Disbrow, Vice President of POBA Vinny Disbrow and Officer and former Vice President of the POBA Ray Kraszewiski. Post-hearing briefs were filed on September 25, 2017 and the record was closed. Pursuant to P.L. 2014, c. 11, the arbitrator has 90 days from appointment, or by October 4, 2017, in which to render an award .This has resulted in a compressed time period for award issuance.

In accordance with the statute, each party submitted a last and final offer on August 31, 2017. These offers are set forth as follows:

FINAL OFFERS OF THE PARTIES¹

The POBA

1. **Duration of Contract**

The contract shall be a two year contract covering the time period between January 1, 2017 through December 31, 2018.

2. **Article 33 (Salaries)**

1. Effective **January 1, 2017** there shall be no salary increase applied to any of the steps of the three salary schedules, including (1) the schedule for Police Officers hired before January 1, 2013, (2) the salary schedule for Police Officers hired after January 1, 2013, and (3) the salary schedule for Detectives. Those Police Officers and Detectives who are not at the top step of their respective salary

¹ The final offers of the parties include language that appears in their Stipulations of Agreement. That language will not be the subject of analysis except for it appearing in the stipulations section of the decision.

schedules shall not receive an additional salary increase applied to the applicable salary step that they were on as of January 1, 2017.

2. Officers not at the top step shall move to the next step of the salary schedule, effective January 1, 2017

All Officers during the 2017 contract year shall receive their longevity payments, as increased during the 2017 calendar year, in accordance with their respective anniversary dates.

3. Effective January 1, 2017 there shall be no salary step movement or longevity increases paid during the 2018 calendar year. However, the approximately **\$327,584** available for use in 2018, in consideration of the Interest Arbitration salary cap shall be divided equally among all top step Officers; i.e. approximately a 0.65% increase for all Officers and Detectives at the top step.

3. **Article 2 (Maintenance of Standards)**

Effective January 1, 2017, any Officer who has perfect attendance during any calendar year shall receive two days pay to be paid by January 31st the following year. (Eliminate practice of adding additional compensatory days on terminal leave during the last five years of employment for perfect attendance).

4. **Article 18 (Overtime)**

The POBA proposes the following new overtime language to be included within Article 18:

1. Effective no later than January 1, 2018, at the option of the Officer, the Officer shall either receive cash overtime at time and one-half rates, or shall be provided with a single use vacation day, at a time and one-half rate, wherein said Officer selecting this alternative cannot use said single use vacation days during the summer months, as defined by past practices within the Department, or during designated holiday breaks to be determined by the City and the POBA.
2. Said single use vacation days must be used within a 12 month period from the date when said single use vacation days are accrued by the affected Officer.

5. **Article 5 (Retirement)**

Add to Article: Except for Police Officers who had 20 years in the pension system as of June 28, 2011 and those who subsequently achieved 20 years of service in PFRS as of December 31, 2012, Police Officers who retire on or after 1/1/17 and are eligible for City-provided health insurance benefits shall contribute 1.5% of their yearly pension or the rates established by the tables in Ch. 78, whichever is greater. The City shall agree to comply with any new Legislation enacted after the signing of a new successor contract covering the period between 1/1/17 through 12/31/20 that is passed regarding Chapter 78 health insurance premium contributions from current and retired POBA unit members. (In the alternative, the parties shall agree to the language in the Firefighters' contract addressing this issue).

6. **Article 10 (Work Day and Work Week)**

Add new section: The normal work week for the Line schedule shall be an eight (8) Section Schedule consisting of five (5) days on duty followed by three (3) days off, in which each daily tour shall be 8.5 hours in length. The current starting times shall be 0700, 1500 and 2300 hours. However, the City reserves the right to alter the starting times if its operational needs require the same.

Officers cannot work more than 17 hours in a 24 hour period, except in cases of emergencies.

7. **Article 13 (Insurance and Benefits)**

Except as modified by the POBA in its "Article 13" proposals, all health insurance benefits in effect during the 2013-2016 Collective Negotiations Agreement shall continue during the 2017-2020 Agreement with the exception of the POBA's agreement to change from the existing 90th percentile "reasonable and customary" standard, in instances involving out-of-network usage, to a 70th percentile rate.

8. **New Article (Retiree Exemption from any health insurance premium contribution)**

All Officers who were covered by the Collective Negotiations Agreement between the POBA and the City of Jersey City that was in effect as of June 28, 2011, and who subsequently acquired twenty (20) years of service in PFRS during the term of that existing Collective Negotiations Agreement that expired as of December 31, 2012, shall be exempt from paying for retiree health insurance benefits.

9. **Article 24 (Grievance Procedure)**

An additional contract article should be added that would enable the Jersey City POBA to waive all intermediate steps concerning contractual grievances and proceed directly to arbitration upon the agreement of the City.

10. **New Article (Health Insurance Premium Contribution Rates)**

1. Effective January 1, 2018 all current employees shall contribute 7.5% of their base salaries, not to exceed \$7,500, as their share of the City's health insurance premium obligations.
2. For those Officers who are required, upon their retirement, to contribute regarding their retiree health insurance benefits, those Officers (who are not exempt from any health insurance premium contributions) shall be responsible for retiree health insurance premium contributions amounting to 2.5% of the annual pension benefits they receive. (For example, if a former Officer's annual retirement allowance is \$60,000 per year that Officer's retiree health insurance premium contribution shall be \$1,500).

11. **Article 14 (Tuition Reimbursement)**

The POBA tuition reimbursement cap shall, be increased from \$80,000 to \$120,000 effective the 2017 calendar year.

12. **Article 13 (Insurance, Health and Welfare)**

1. Paragraph C shall be modified to increase the maximum reimbursement for optical related expenses from \$125 per year to \$250 per year.
2. Paragraph C - Dental Benefit Cap shall be increased from \$2,000 to \$2,500 per year.

13. **New Article**

The City shall provide health care benefits and prescription benefits to the surviving dependents of Police Officers who have twenty-five (25) years or more of service credit in the Police and Firemen's Retirement System and who pass away prior to retirement.

14. **Article 11 (Vacations)**

For all Officers hired after January 1, 2013 these Officers shall be entitled to the same vacation allowances provided to Officers hired on or after February 17, 2003 (**Three tiers reduced to two tiers**).

15. **Article 15 (Exchange of Days Off)**

a. Paragraphs B, C and D shall be replaced with the following language:

1. Requests for tour exchanges shall be granted only upon confirmation that minimum manpower exists for that tour if granted; i.e. the exchange work date for Police Officers shall be determined by the Shift Commander, not by the Officer requesting the time off.
2. All requests for a tour exchange shall be made in writing and submitted to the Officer's Shift Commander at least 72 hours prior to the tour to be exchanged unless the Shift Commander specifically agrees to waive the 72 hour requirement.
3. No tour exchanges shall be approved on designated holidays.
4. Any Officer who reports off sick on the scheduled make up day regarding said tour exchange shall still be required to make up the exchange day off.
5. Upon refusal by Officer on second request to work make up for the exchange day off owed, the Officer will have a comp day deducted from their accumulated time.

16. **Article 42 (Discharge and Discipline)**

- a. *Change* "Director of Police" to "Director of Public Safety" throughout Article.
- b. *Modify paragraph B* to state: "A Police Officer may request an Association representative be present at any meeting at which the Officer will be disciplined or called to a meeting that would result in discipline."

- c. *Modify* paragraph G to state that Formal hearings will be conducted when the penalty sought in the charges preferred against the Police Officer is major discipline.
- d. *Modify* paragraph H to state that Informal hearings will be conducted when the penalty sought in the charges preferred against the Police Officer is minor discipline, consistent with how major and minor discipline are defined by the Civil Service Commission.
- e. *Modify* paragraph I to state that the written reprimand must be served on the Officer within 14 days of the Director receiving notice of the occurrence.

The City

1. **Article 43 - Duration of Agreement**

- a. January 1, 2017 through December 31, 2020
- b. *Add to Article:* "In the event that the City and the Union have not agreed upon by January 1, 2021 to terms and conditions of employment for police officers covered by this Agreement for a successor Agreement, then the terms and conditions of this Agreement will remain in full force and effect, except for salary guide movement, until a new Agreement is ratified by both parties."

2. **Article 33 - Salaries and Longevity**

a. **Salaries:**

January 1, 2017 - 0.6% increase at top only. Step movement for officers in guide and longevity movement for those eligible.

January 1, 2018 - 0% increase at top, and no step movement for those officers in guide.

January 1, 2019 - 0% increase at top. Step movement only for those officers in guide.

Amend step schedule to add 5 steps for all officers in guide. (See Attachment A)

January 1, 2020 - 1.6% at top step only. No step movement for those officers in guide.

b. **Longevity:**

(1) Effective January 1, 2018, freeze longevity at 2017 rates for current officers eligible for and being paid longevity and convert to a flat dollar amount. (See Attachment B)

(2) For officers

(a) hired on or after January 1, 2017; and

(b) those current officers not yet eligible for longevity, longevity will be paid as part of base pay in accordance with the following schedule:

First day of 10th year	\$1,000.00
First day of 15th year	\$2,000.00
First day of 20th year	\$3,000.00
First day of 25th year	\$4,000.00

c. *Add to paragraph B as follows:* “Effective for persons hired as police officers on or after January 1, 2017, for the purpose of determining eligibility, longevity is defined as the number of years of actual work performed for the City of Jersey City as a police officer and is not dependent upon seniority date.”

d. *Eliminate* the second paragraph of paragraph 11.

e. Add to paragraph that all employees must have direct deposit.

3. **Article 17 - Compensatory Time**

a. *Change paragraph 3 to read:* “No compensatory time off will be granted during emergencies. Additionally, once the Department reaches minimum manning, no further compensatory time off will be granted.”

b. *Eliminate* paragraph 6 and state that the City shall maintain all compensatory time electronically.

4. **Article 13 - Insurance and Benefits**

a. *Change paragraph A to read.* “All employees will be provided health insurance under the Direct Access Blue Cross/Blue Shield Plan, or one of the HMO plans offered by the City. Employees shall

contribute to their health insurance provided for herein in accordance with Chapter 2, P.L. 2010, as modified by Chapter 78, P.L. 2011. The City reserves the right to change carriers so long as equal to or better benefits are provided.”

- b. *Eliminate paragraph B and replace with following:* “Police officers will be provided with a defense consistent with N.J.S.A. 40A:14-155. The City will pay any civil judgment against the police officer for compensatory damages only so long as the acts committed by the police officer upon which the action is based were within the scope of his/her employment and do not constitute actual fraud, malice, willful misconduct or an intentional wrong.”
- c. *Add* language setting the Emergency Room co-pay to \$100; increase doctor visit co-pay to \$20; change out-of-network deductible to \$250 for individual and \$500 for parent/child, husband/wife and family. Change out of network reimbursement charges to 70% fair health.
- d. In paragraph D, create a 3-tier prescription co-pay system with co-pays effective January 1, 2017 as follows: Genetic - \$5; Preferred Brand - \$25; and Non-Preferred Brand - \$35. The three-tier program shall include the National Preferred Formulary, Quantity Management, and Mandatory Generic. Prescription coverage does not include compound medication unless, upon appeal exercised by the police officer, it is determined that the compound prescription is medically necessary and there is no other alternative prescription. Human growth hormone (HGH) or similar drugs to enhance normal functions, such as antiaging, the improvement of athletic performance, or memory enhancing are excluded from coverage, unless upon appeal exercised by the police officer, it is determined to be medically necessary and no alternative prescription is available.

[Co-pays for prescriptions over \$1,000 is unchanged]

Mail order shall be \$10, \$50 and \$70 for a 90-day supply prescription.

- e. *Eliminate* paragraph H. as duplicative of Article 12.A. and B.

5 **Article 10 - Work Day and Work Week**

- a. *Eliminate* the last sentence of paragraph A.4.

- b. *Add* new paragraph that states that “The department may make temporary reassignments based on seniority for up to 30 calendar days.”
- c. *Add* new paragraph that provides that the City has the right to assign or modify a probationary police officer's schedule, hours of work, assignment and district at any time during the one-year working test period.

6. **Article 11 – Vacation**

- a. *Add* to Article that employees who take qualifying FMLA/NJFLA leave will be required to use available vacation time concurrent with FMLA/NJFLA leave.
- b. *Eliminate* paragraphs D.2., D.4., D.5., and D.6.
- c. *Eliminate* grant of compensatory day in paragraph D.3.
- d. *Add* language that no summer vacations will be granted once minimum manning, i.e. number of cars on the road, has been reached.
- e. *Add* language that vacations will be selected by districts and in order of seniority. Summer vacation must be submitted by February 1.
- f. *Eliminate* paragraph E. All vacation will be tracked electronically.

7. **Article 12 - Injury and Sick Leave**

- a. *Add* as new Section: “Police officers who have been on sick leave for up to one (1) year, must return to work for six (6) months in order to receive the benefit of one-year leave benefit of Section B. Officers who do not return to work for at least six (6) months will have all sick time, from whatever off-duty injury or illness, counted toward the one (1) year limitation herein and, if granted additional sick time for any reason beyond one (1) year, such sick leave shall be without pay.”
- b. *Add* as new Section: “Police officers who have been on injury leave for up to one (1) year, must return to work for two (2) months in order to receive the benefit of one-year leave benefit of Section A. Officers who do not return to work for at least two (2) months will have all injury leave time, excepting the officer who suffers a different and unrelated on-duty injury before the two (2) month

period has been reached, counted toward the one (1) year limitation herein and if granted additional injury leave beyond one (1) year, such leave shall be without pay other than any compensation available under worker's compensation.”

- c. *Add as new Section:* All use of injury or sick leave pursuant to this Article shall be in accordance with procedures established by General Orders of the Department. Vacation time shall run concurrent with sick time consistent with the current department policy and practice. Any member on sick leave for more than 60 days shall not accrue 2 comp days; after 120 sick days, the member shall not accrue 4 comp days; at 180 sick days, the member shall not accrue 6 comp days, and after 181 sick days, the member shall not accrue 8 comp days. An officer will not forfeit more comp days that he has accrued in one year. As used herein, sick leave includes leave for off-duty injuries. On-duty injuries shall be exempt from this Section, and will be defined in the General Order.
- d. *Change paragraph D to 3 months.*
- e. *Change paragraph to read:* “Any police officer that has a perfect attendance record during any calendar year (1/1 - 12/31) shall receive pay equivalent to two days' pay, which shall be paid in January of the next year. As used herein, perfect attendance means no missed days on sick or injury leave.”
- f. *Add to Article:* “Employees out on sick or injury leave that qualifies under the FMLA will have FMLA time run concurrent with their sick leave.”

8. **Article 15 - Exchange of Days Off**

- a. *Add to paragraph A:* In order to swap shifts, officers must have the same qualifications.
- b. Eliminate paragraphs B, C, and D.

9. **Article 2 - Maintenance and Modification of Work Rules**

- a. *Eliminate paragraph A and replace with following:* “The parties agree to a limited past practice clause, to wit: Past practice may be used by either party for the purpose of interpreting the language of this contract. Past practice shall not be used for the establishment of a term and condition of employment not based upon contractual language.”

- b. *Eliminate* the practice of providing compensatory days for members who go for a yearly physical. Officers who request a medical test day shall go on their own time.
- c. *Eliminate* practice of adding additional compensatory days on terminal leave during last 5 years of employment for perfect attendance.
- d. *Eliminate* practice of receiving compensatory time for missed meal breaks.

10. **Article 5 - Retirement**

- a. *Clarify* paragraph to state that retirement, as used throughout the contract, shall mean retirement from the Police and Firemen's Retirement System ("PFRS").
- b. *Clarify* paragraph to state that hospitalization insurance will be provided to those who retire from PFRS in accordance with the provisions of this collective negotiations agreement.
- c. *Add to Article:* Except for police officers who had 20 years in the pension system as of June 28, 2011, police officers who retire on or after 1/1/17 and are eligible for City-provided health insurance benefits shall contribute 1.5% of their yearly pension or the rates established by the tables in Ch. 78, whichever is greater."

11. **Article 20 - Terminal Leave**

- a. *Clarify* paragraph A that retirement as used herein means retirement from PFRS.
- b. *Clarify* paragraph B to eliminate reference to retirement and state that any officer who dies while employed by the City, his/her estate will receive the compensation listed in the paragraph.

12. **Article 41 - Fully Bargained Agreement**

- a. *Change* title of Article to "Fully Bargained Agreement."
- b. *Replace Article with the following:* "This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect

to any such matter whether or not covered by this Agreement and whether or not within knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.”

STIPULATIONS

As previously indicated, the parties entered stipulations of agreement at hearing concerning many issues that were subject to negotiations. A document incorporating these stipulations was transmitted to all parties and included in the parties’ presentations. The stipulated issues are as follows:

1. Article 2 - Maintenance of Standards

- a. *Eliminate* paragraph A.
- b. *Eliminate* the practice of providing compensatory days for members who go for a yearly physical, effective 1/1/18. Officers who request a medical test day shall go on their own time.
- c. *Add* that, effective 1/1/17, any officer who has perfect attendance during any calendar year shall receive two day’s pay to be paid by January 31 of the following year. *Eliminate* practice of adding additional compensatory days on terminal leave during last 5 years of employment for perfect attendance. As used herein, perfect attendance means no missed days on sick or injury leave.
- d. *Add* that the City will be implementing a Social Media Policy, which will be provided to the Union for review and discussion over those items contained therein which may be negotiable with the City, outside the scope of these negotiations.

2. Article 5 – Retirement

- a. *Clarify* paragraph to state that retirement, as used throughout the contract, shall mean retirement from

the Police and Firemen's Retirement System ("PFRS").

- b. *Clarify* paragraph to state that hospitalization insurance will be provided to those who retire from PFRS in accordance with the provisions of this collective negotiations agreement.

3. **Article 18 - Overtime**

- a. *Add* federal court to paragraph D conditioned on the officer being there to testify as part of his duties as a Jersey City police officer and not as a defendant.

4. **Article 20 - Terminal Leave**

- a. *Clarify* paragraph A that retirement as used herein means retirement from PFRS.
- b. *Clarify* paragraph B to eliminate reference to retirement and state that any officer who dies while employed by the City, his/her estate will receive the compensation listed in the paragraph.

5. **Article 21 - Bereavement Leave**

- a. *Add* "Step Parents, Step Children, Step Sisters and/or Step Brothers" to paragraph B.

6. **Article 24 - Grievance Procedure**

- a. *Rewrite*: Step Four: If the grievance is not settled through Steps One, Two or Three, only the City or the Union may refer the matter to the Public Employment Relations Commission within ten (10) days after the determination by the Director. An arbitrator will be selected pursuant to the rules of the Public Employment Relations Commission.
- b. The parties can agree to waive all steps of the grievance procedure concerning contractual grievances, permitting the POBA to file for arbitration.

7. **Article 36 - Miscellaneous**

- a. *Eliminate* paragraph C as duplicative of Article 41.
- b. *Add* to paragraph J that the Police Department I.D. must be approved by the Director of Public Safety.

8. **Article 41 - Fully Bargained Agreement**

- a. *Change* title of Article.
- b. *Replace Article with the following:* “This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter whether or not covered by this Agreement, and whether or not within knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.”

9. **Article 42 - Discharge and Discipline**

- a. *Change* “Director of Police” to “Director of Public Safety” throughout Article.
- b. *Modify paragraph B to state:* “A police officer may request an Association representative be present at any meeting at which the officer will be disciplined or called to a meeting that would result in discipline.”
- c. *Modify* paragraph G to state that Formal hearings will be conducted when the penalty sought in the charges preferred against the police officer is major discipline.
- d. *Modify* paragraph H to state that Informal hearings will be conducted when the penalty sought in the charges preferred against the police officer is minor discipline, consistent with how major and minor discipline are defined by the Civil Service Commission.
- e. *Modify* paragraph I to state that the written reprimand must be served on the officer within 14 days of the Director receiving notice of the occurrence.

After the parties submitted their post-hearing briefs on September 25, 2017, the POBA advised the arbitrator by letter dated September 28, 2017 of a concern over the inclusion of Stipulation 1, Article 2 – Maintenance of Standards,

subsection (b) in the document reflecting the parties' stipulations. The POBA asserted the following:

Please be advised that after again reviewing the Stipulations of the Parties in the above referenced matter, my client, the Jersey City POBA, informed me that the following language was mistakenly agreed to by the POBA as part of the Stipulations:

Article 2 (Maintenance of Standards)

- b. Eliminate the practice of providing compensatory days for members who go for a yearly physical, effective 1/1/18. Officers who request a medical test day shall go on their own time.

I have spoken with City Attorney Art Thibault about this issue and informed him that I would send this email to you.

The City offered the following written response to the statement of the POBA:

We are in receipt of the POBA's correspondence of today's date suggesting that language of Article 2.b was mistakenly agreed and stipulated to by the POBA at interest arbitration. The City objects to the POBA's attempt to withdraw its stipulation. First, all members of the POBA negotiating team were present for the stipulations and offered no objection to the stipulation. Second, and most important, allowing the POBA to back away from the stipulated language after the record has been closed and briefs submitted prejudices the City since the City has lost the opportunity to argue for its inclusion.

Thus, the City submits that the Arbitrator must reject the POBA's attempt to withdraw its agreement to Article 2.b. on compensatory days for physicals.

BACKGROUND

The parties to this proceeding are the City of Jersey City [the “City”] and the Jersey City Police Officers Benevolent Association [the “POBA”]. The City has a population of approximately 265,000 residents. It is the second largest city in the State of New Jersey and, according to City testimony, is expected to become New Jersey’s largest city after the next census is performed. The police department employs approximately 200 superior officers represented by the Jersey City Police Superior Officers Association [the “PSOA”] and approximately 685 rank and file officers represented by the POBA. This proceeding is limited to the POBA.

I was also appointed to serve as interest arbitrator for an impasse involving the City and the PSOA. However, prior to a scheduled date of mediation between the City and the PSOA on August 3, 2017, the City and the PSOA reached a voluntary agreement on terms of a new contract with an expiration date of December 31, 2020. The City also previously reached a voluntary settlement with the rank and file firefighters unit represented by Jersey City Firefighters, Local 1066 that also has an expiration date of December 31, 2020. In addition to the rank and file firefighter unit, the City also achieved a voluntary settlement with the Jersey City Fire Superior Officers Association. That agreement also has an expiration date of December 31, 2020. In this proceeding, the City proposes to keep the same length of contract duration it achieved with its three other public safety units. The POBA disagrees and has

proposed a contract duration of two years with an expiration date of December 31, 2018. Although the POBA's final offer on salaries is limited to two years, in its post-hearing brief it provides a proposal for a third year in the event that a three year duration is awarded and also for a fourth year in the event that a four year duration is awarded.

The City and the POBA have presented substantial evidence as to the City's demographics and its socioeconomic profile. That data reflects, among other things, that the City has experienced resident growth between 6% and 7% from 2010 and that this growth is continuing. The City has witnessed job expansion due to growth in small businesses and professional occupations. New high rise office space has accommodated the growth in employment. The City's credit rating has improved under the current administration and its tax rates have substantially increased. It is commonly understood that the City has undergone a renaissance. This has allowed the City to maintain a municipal tax rate without increase. All socio-economic indicators for the past few years show favorable trends. The City's expenses are substantial and have been accommodated through financial expansion and effective fiscal management. Yet, despite this period of expansion and growth, the City remains economically diverse with almost 20% of its residents living below the poverty level and with an unemployment rate that is more than double the State average.

Additional evidence was presented on the police department, crime rates, law enforcement activity, and the increasing role the department plays in community policing. The City has a goal of increasing the number of police officers due to the increases in population, employment, business activity and tourism. This increase is said to provide more visible police presence in the community as a deterrent to crime. The number of police officers has already increased and the City anticipates that the department will have more than 950 officers in the near future. The current administration has promoted diversity, including LBGT training and minority hiring. Over 70% of the 250 officers that the City has hired since 2013 have been minorities. Crime statistics have been relatively stable, although the timing of crime occurrence has been less predictable. UCR data shows reductions in homicides, sexual assaults and auto thefts but increases in burglaries and non-fatal shootings. According to Public Safety Director James Shea, the department has emphasized crime prevention and greater police presence in the community. The headcount of officers in specific neighborhoods has also increased. The City employs 3.7 police officers per thousand residents, well below the New Jersey average of 5.7. During the history of the department, a total of 39 police officers have been killed in the line of duty and many more injured. The record reflects that the City's police officers have been productive and effective in crime prevention while being sensitive to being in the web of oversight as they perform dangerous duties.

There are many economic and non-economic issues that are in dispute. This is largely due to the existence of issues that had great potential for resolution during direct negotiations but absent settlement are now subjects for arbitration. Each will be addressed individually. The Award to be rendered must be consistent with the requirements of the statute. N.J.S.A. 34:13A-16(g)(5) and (9) require adherence to law. One requirement is that any base salary increase must not exceed more than 2% per contract year or the average of that amount in the aggregate for all contract years. The statute now allows for the 2% cap to be compounded over the contract duration. The parties generally agree on the calculation components of this requirement, although they disagree on the distribution of those amounts. The parties also agree that any slight difference in their calculations is *di minimus*. The Award must also be in compliance with the appropriations and tax levy limitations in P.L. 1976, c. 68 (C. 40A:4-45, et. seq.) and Section 10 of P.L. 2007, c. 62 (C. 40A:4-45:45). Another requirement of the statute is that the arbitrator is precluded from awarding a non-salary economic issue that was not included in the prior collective negotiations agreement.

Certain statutory issues have been raised in this proceeding. The City has challenged the legality of nine of the POBA's proposals alleging that they constitute new non-salary economic issues that were not previously included in the prior collective negotiations agreement pursuant to N.J.S.A. 34:13A-16.7(b) and thus cannot be awarded. The City also alleges that the POBA, by submitting a proposal on work schedules, did not comply with PERC regulations regarding

the obligation to list all interest arbitration items in either a petition or a response.

The City submits the following arguments in support of these contentions:

The following POBA proposals are all new non-salary economic benefits: overtime, workday and workweek, vacation, retiree contribution, retiree exemption, new health contribution rate, tuition reimbursement, optical and dental reimbursement, and survivorship benefits. N.J.S.A. 34:13A-16.7(b) provides, in pertinent part, "An award of an arbitrator shall not include base salary items and non-salary economic items which were not included in the prior collective negotiations agreement." For the purposes of that section, "Non-salary economic issues" means any economic issue that is not included in the definition of base salary." N.J.S.A. 34:13A-16.7(a). In its Final Offer, the POBA has proposed the following non-salary economic issues:

Proposal #4. **Article 18 (Overtime)** - The POBA proposes the following new overtime language to be included within Article 18:

1. Effective no later than January 1, 2018, at the option of the Officer, the Officer shall either receive cash overtime at time and one-half rates, or shall be provided with a single use vacation day, at a time and one-half rate, wherein said Officer selecting this alternative cannot use said single use vacation days during the summer months, as defined by past practices within the Department, or during designated holiday breaks to be determined by the City and the POBA.
2. Said single use vacation days must be used within a 12 month period from the date when said single use vacation days are accrued by the affected Officer.

Proposal #5. **Article 5 (Retirement)**

Add to Article: Except for Police Officers who had 20 years in the pension system as of June 28, 2011 and those who subsequently achieved 20 years of service in PFRS as of December 31, 2012, Police Officers who retire on or after 1/1/17 and are eligible for City-provided health insurance benefits shall contribute 1.5% of their yearly pension or the rates established by the tables in Ch. 78, whichever is greater. The City shall agree to comply with any new Legislation enacted after the signing of a new successor contract covering the period between 1/1/17 through 12/31/20 that is passed regarding Chapter 78 health insurance premium contributions from current and retired POBA unit members. (In the

alternative, the parties shall agree to the language in the Firefighters' contract addressing this issue).

Proposal #6. **Article 10 (Work Day and Work Week)** - Add new section:

The normal work week for the Line schedule shall be an eight (8) Section Schedule consisting of five (5) days on duty followed by three (3) days off, in which each daily tour shall be 8.5 hours in length. The current starting times shall be 0700, 1500 and 2300 hours. However, the City reserves the right to alter the starting times if its operational needs require the same.

Officers cannot work more than 17 hours in a 24 hours period, except in cases of emergencies.

Proposal #8. **New Article (Retiree Exemption from any health insurance premium contribution)**

All Officers who were covered by the Collective Negotiations Agreement between the POBA and the City of Jersey City that was in effect as of June 28, 2011, and who subsequently acquired twenty (20) years of service in PFRS during the term of that existing Collective Negotiations Agreement that expired as of December 31, 2012, shall be exempt from paying for retiree health insurance benefits.

Proposal #10. **New Article (Health Insurance Premium Contribution Rates)**

1. Effective January 1, 2018 all current employees shall contribute 7.5% of their base salaries, not to exceed \$7,500, as their share of the City's health insurance premium obligations.
2. For those Officers who are required, upon their retirement, to contribute regarding their retiree health insurance benefits, those Officers (who are not exempt from any health insurance premium contributions) shall be responsible for retiree health insurance premium contributions amounting to 2.5% of the annual pension benefits they receive. (For example, if a former Officer's annual retirement allowance is \$60,000 per year that Officer's retiree health insurance premium contribution shall be \$1,500).

Proposal #11. **Article 14 (Tuition Reimbursement)**

The POBA tuition reimbursement cap shall be increased from \$80,000 to \$120,000 effective the 2017 calendar year.

Proposal #12. **Article 13 (Insurance, Health and Welfare)**

1. Paragraph G shall be modified to increase the maximum reimbursement for optical related expenses from \$125 per year to \$250 per year.
2. Paragraph C – Dental Benefit Cap shall be increased from \$2,000 to \$2,500 per year.

Proposal #13. **New Article**

The City shall provide health care benefits and prescription benefits to the surviving dependents of Police Officers who have twenty-five (25) years or more of service credit in the Police and Firemen's Retirement System and who pass away prior to retirement.

Proposal #14. **Article 11 (Vacations)**

For all Officers hired after January 1, 2013 these Officers shall be entitled to the same vacation allowances provided to Officers hired on or after February 17, 2003. **(Three tiers reduced to two tiers).**

In support of its position to exclude the above POBA proposals from arbitral review, the City submits legal argument:

These proposals include a connection to some form of compensation or economic expense to the City, and cannot be awarded. For instance, proposals concerning changes in compensatory time are necessarily economic issues. In Borough of Manasquan, P.E.R.C. No. 82-128, 8 NJPER 403 (¶13185 1982), Chairman Mastriani rejected the PBA's argument that a proposal that all overtime be paid at one and one-half times the regular rate or the employee could elect to take the one and one-half off comp time was non-economic. The Commission in Manasquan stated that, "Even assuming the accuracy of the PBA's contention that its proposal would not involve any increased economic benefit to its members, this fact does not change the essential character of the proposal which is undoubtedly an economic issue." Id. Chairman Mastriani noted that a comp time proposal "involves 'hours in relation to earnings,' and thus squarely meets the statutory definition of what constitutes an economic issue." Id., citing N.J.S.A.

34:13A-16(f)(2). The Manasquan holding has been consistently cited favorably by the Commission in future cases. County of Morris (Sheriff's Office), P.E.R.C. No. 98-34, 23 NJPER 545, 546 (¶28270 1997) (holding that "[e]conomic items, as defined by N.J.S.A. 34:13A-16(f)(2), have a direct relation to employee income, but need not result in an economic change to the employer or the employee"); Township of Morris, P.E.R.C. No. 98-35, 23 NJPER 546 (¶28271 1997) (to the same effect).

In Township of Byram, P.E.R.C. No. 2013-72, 39 NJPER 477, 478 (¶151 2013), the Commission held that Arbitrator Susan Wood Osborn was not permitted under § 16.7(b) to award a third method of payment for accumulated sick leave to the two methods which were included in the prior collective negotiations agreement. The arbitrator had reasoned in her award that the proposal was not a new economic item because "[t]he contract already provide[d] for payment of unused sick leave . . ." Id. The Commission disagreed and vacated that "aspect of the award" because "the additional option awarded by the arbitrator is not simply a different method of receiving the benefits already earned under previous contracts," but could result in veteran officers receiving new payments – which makes it a new economic issue preempted by N.J.S.A. 34:13A-16.7.

Since the Commission decided Byram, Arbitrator Susan Wood Osborn issued several other awards following the PERC's dictate that no new economic issues shall be awarded, even if they emanate from an extension of a benefit provided in the prior contract. In County of Hudson, I.A. No. 2014-004, Arbitrator Osborn determined that she was prohibited by §16.7(b) from considering the union's proposal to modify the language in the clothing allowance article to reflect that the cost of uniform changes would be borne by the County because "[t]his would be a new economic benefit." Id. at p. 109. Similarly, in Borough of Riverdale, I.A. No. 2013-017, the arbitrator determined that the PBA's proposal to add another economic benefit to the Legal Defense Fund section of the existing CNA – wherein the employer would pay \$160 per member per year, in addition to the cost of legal fees already in the contract – was a "new economic item, which [she was] prohibited from awarding under N.J.S.A. 34:13A-16. Id. at 56-57.

In County of Monmouth (PBA Local 256 and Superiors), I.A. No. 2014-084 and -085, Arbitrator Osborn found preempted a number of union proposals that were tied to benefits in the prior contract. For instance, the arbitrator stated that part of the union's proposed "Notice of Work Hours Change" may not legally be included in the provision because "the proposed 'penalty' of an overtime payment" was a new economic benefit. Id. at 116-120. Likewise, Arbitrator Osborn found the union's proposal for on-call pay could not legally be awarded because "[t]here

can be no doubt that compensation for being on call” would result in compensatory time, converted to cash payment. Id. at 120-123.

The City offers the following arguments on each individual proposal that it contests as being a new non-base salary economic item:

1. POBA Overtime Proposal (Proposal #4)

Here, the POBA’s overtime proposal is a new non-salary economic benefit not included in the prior agreement. If a POBA member elects to receive a single use vacation day in lieu of overtime, the single use vacation day can later be cashed out using a vacation buy out. Thus, it creates an economic benefit. In fact, during cross-examination, Carmine Disbrow admitted that the POBA’s overtime proposal would result in a benefit that was not previously provided for in the collective bargaining agreement. While the POBA may be heard to argue that the requirement that it be used within 12 months, such an argument is hallow. Overtime is earned time subject to the FLSA. Earned time cannot be lost simply be an employee could not use it in a certain period of time. Neither employees nor their union can waive FLSA rights. Thus, time earned as single use days can be accumulated like compensatory time and will require the City to pay it out at a higher rate in the future than was earned.

Further, even if not banked until retirement, the use it within 12 months of earning it portion of the proposal means that officers in guide, or receiving a cost of living increase, at the beginning of each year, will automatically receive an economic benefit more valuable than when earned because the value of their work day will have increased. Because the POBA’s overtime proposal is a new non-salary economic issue, the Arbitrator is statutorily prohibited from awarding it under N.J.S.A. 34:13A-16.7(b).

2. Vacation Tier Compression Proposal (Proposal #14)

Exhibit C-124 also shows the financial impact of the POBA’s proposed vacation compression from three tiers to two tiers of vacation. Under the POBA’s proposal, POBA members would receive twenty-six (26) more vacation days after 25 years. Thus, under the POBA’s proposal, members hired after January 1, 2013 would have the opportunity to cash out twenty-six (26) more vacation days. Under Byram, the ability to buy-back twenty-six (26) additional vacation days is a new payment. Thus, it is a new economic issue.

On cross-examination, Carmine Disbrow admitted that the POBA did not cost out its vacation proposal. However, Carmine Disbrow admitted that the POBA's vacation proposal would create a non-salary economic benefit. Since the proposal would create a non-salary economic benefit to the POBA, it cannot be awarded.

3. Tuition Reimbursement, Optical and Dental Benefits Proposals (Proposal #11 and #12)

The POBA's tuition reimbursement, optical & dental benefits, and survival benefits proposals all are non-salary economic benefits that cannot be awarded. The POBA seeks an increase in tuition reimbursement from \$80,000 to \$120,000. Similarly, the POBA seeks to increase the reimbursement amounts for optical and dental benefits. Following Arbitrator Osborn's decision in County of Hudson, I.A. No. 2014-004, where an increase in uniform allowance was found to be precluded by the statute, so too the POBA's request to increase the value of the benefits currently received. Both of these proposals are non-salary economic benefits at levels the POBA does not currently enjoy and therefore cannot be awarded.

4. Health Benefit Contributions for Current Employees and Retirees (Proposal #5, #8, and # 10)

In these two proposals, the POBA seeks (1) to exempt certain officers from contributing to health care benefits in retirement dependent on when the officers reached 20 years in the pension system;² (2) to reduce the amount of contributions paid by current officers under Ch. 78 to no more than 7.5% of salary with a cap of \$7,500 per year; and (3) to set future retirees' contributions at 2.5% of retirement allowance rather than the rates established by Ch. 78. Undoubtedly, these are new non-salary economic benefits that the POBA does not have as part of its current contract and, as such, the Arbitrator is prohibited from being awarded in interest arbitration under N.J.S.A. 34:13A-16.7(b).³

5. Survivor Benefits (Proposal #13)

² Proposals #5 and #8 are inconsistent as drafted. Proposal #5 proposes that those who reached 20 years in PFRS as of 12/31/12 and subsequently retire should contribute only 1.5%. Proposal #8 proposes that those who reached 20 years in PFRS as of 12/31/12 and subsequently retire should be exempt from any contribution in retirement. The law only exempts those who had achieved 20 years in the pension system as of 6/28/11. **[Footnote in original]**.

³ The fact that the level of contributions under Ch. 78 may be negotiated after the four-year phase-in is complete does not equate with being eligible as part of an interest arbitration award. Just like an employer may voluntarily agree to exceed the 2% arbitration cap through a voluntary agreement, or change the level of health care contributions under Ch. 78 through a voluntary agreement, an arbitrator may neither issue an award wherein wages awarded exceed 2% of the cost of the prior year's expenditure nor change the contribution levels for current employees, or future retirees. **[Footnote in original]**.

Like the health benefit contribution rates argued above, the POBA proposal to provide survivorship benefits to dependents of officers is a new non-salary economic benefit that the POBA does not have as part of its current contract. The provision of health benefits, whether to employees, retirees or, as in this case, surviving dependents, is always an economic benefit. Thus, consistent with the PERC and Arbitrator decisions cited above, the Arbitrator is prohibited from being awarded in interest arbitration under N.J.S.A. 34:13A-16.7(b).

6. New Work Schedule (Proposal #6)

Finally, the POBA's proposed 5/3 work schedule also results in a non-salary economic benefit to the POBA. Exhibit C-123 shows the economic impact of the POBA's proposed 5/3 work schedule. Under the current 5/2 – 5/3 schedule, police officers work eight (8) hours per day. Under the proposed 5/3 schedule, police officers would work eight and a half (8.5) hours per day. The increase in hours worked results in a 6.25% increase in cost to the City. For example, as C-123 demonstrates, the City's overtime cost in 2016 was \$7,354,307.83. Under the proposed 5/3 schedule, the overtime cost would increase to \$7,813,952.07. (C-123). As a result, the 5/3 schedule would create a \$459,644.24 non-salary economic benefit to the POBA that was not previously in the collective negotiations agreement.

Furthermore, under the proposed 5/3 schedule, POBA members would work fifteen (15) less days per year. (C-124). That results in 15 less days an officer may use a compensatory day. Thus, this enables POBA members to accrue more compensatory days, which will significantly increase terminal leave pay outs.

Carmine Disbrow testified that the POBA did perform a cost analysis of its schedule proposal. However, Carmine Disbrow admitted on cross-examination that based on the increase from an eight (8) hour day to an eight and half (8.5) hour day, there would be an increase in terminal leave payouts, vacation buy-backs, and increase in overtime. Thus, as admitted by Carmine Disbrow, the schedule change would create a non-salary benefit to the POBA that was not previously in the collective bargaining agreement.

Lastly, the Arbitrator is precluding from awarding the schedule proposal because the POBA did not comply with the regulations issued by PERC regarding interest arbitration items in dispute. N.J.A.C. 19:16-5.5(a) and (b) provide:

- (a) In the absence of a joint petition requesting the initiation of compulsory interest arbitration, the non-petitioning party shall file within

seven days of receipt of a petition, a statement of response setting forth the following:

1. Any additional unresolved issues to be submitted to arbitration;

2. A statement as to whether it disputes the identification of any other issues as economic or non-economic;

3. A statement as to whether it refuses to submit any of the issues listed on the notification or petition to arbitration on the ground that such issue is not within the required scope of negotiations; and

4. Any other relevant information with respect to the nature of the impasse.

(b) Proof of service on the petition of the respondent's statement shall be supplied to the Director of Arbitration. If a party has not submitted a response within the time specified, it shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party. The substance of this response shall not provide the basis for any delay in effectuating the provisions of this chapter.

The 5/3 work schedule was an unresolved issue. The POBA was required to include this issue in its response to the City's petition pursuant to N.J.A.C. 19:16-5.5(a). However, the POBA's schedule proposal that was included in its Final Offer was not listed in its answer to the City's petition to initiate interest arbitration. Thus, the Arbitrator should be limited to awarding only the issues raised in the City's petition. See Borough of Allendale and PBA Local No. 217, P.E.R.C. No. 98-27 (1997); Middlesex Cty. Police, P.E.R.C. No. 97-63 (1996).

In order to provide context to this proceeding, it is appropriate to note that a major point of contention surrounding many of the disputed issues is the weight and meaning to be given to certain terms and conditions that the City voluntarily negotiated with its other public safety units. This includes certain City proposals offered to the POBA that the POBA has declined to accept, as well as certain issues the POBA has proposed to the City that the City has declined to accept. In either instance, the parties urge the adoption of an issue by the arbitrator based upon the fact that the issues were included in the other three public safety

units. Due to this, under applicable case law, the arbitrator must determine whether there is a pattern of settlement on some issues and, if so, the weight to be given to the alleged pattern of settlement or determine whether there is a proper basis for a deviation from the pattern. Both parties have addressed this issue in detailed fashion. The City contends:

The public safety pattern of settlement in Jersey City is overwhelming. Parity in economic benefits is one of the most basic tenets of sound labor relations. Parity and pattern of settlement prevent whipsawing by either the employer or union; eliminates controversy between bargaining units; and, most importantly, enhances the continuity of peaceful labor relations. It certainly is not in the public's interest to treat one group of employees differently than another. Arbitrator Joel Weisblatt faced the issue of disparate treatment in In the Matter of Interest Arbitration between Township of Holmdel and PBA, Local 239, Docket No. IA-93-163 and found that:

The Township presents a compelling argument with respect to the reasonableness of consistency among bargaining units under the public interest criterion. Consistency in treatment among bargaining units of the same employer is unquestionably a generally accepted element of good labor relations policy. Sound and consistent labor relations are certainly in the public interest. It prevents "whipsawing" in negotiations and it reduces the potential for the decline in morale, which often accompanies the perception of disparate treatment. The morale issue is a double-edged sword. Unreasonably favorable treatment of police units could likely cause the morale of the other public employees in the municipality to wane. Such a result would certainly not be in the public interest.

The Commission has recognized the importance of maintaining a pattern of settlement among bargaining units of the same employer. In County of Union, IA-2001-46, 28 NJPER 459, 461 (¶33169 2002), the Commission emphasized that "[P]attern is an important labor relations concept that is relied on by both labor and management." The Commission noted that "[I]nterest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuing and stability of employment by discouraging future settlements and undermining employee morale in other units." Id.

The regulations specifically require the interest arbitrator to consider the “[P]attern of settlement and benefit changes...” when considering the issue of comparability within the same jurisdiction. N.J.A.C. 19:16-5.14(c) (5). Thus, when, as is the case in the instant matter, the employer has demonstrated a clear pattern of settlement with respect to changes in benefits, the Arbitrator should give significant weight to such pattern. In fact, the Arbitrator is required to justify a departure from an internal pattern of settlement or history of parity among similar units, and to show why such a departure is permissible.

Historically, all of the public safety bargaining units in the City have followed the pattern of settlement on universal terms and conditions of employment (i.e. duration, salary, benefits, etc.). In this round of negotiations, the practice was continued. The only unsettled public safety collective negotiations agreement is with the POBA. The pattern of settlement with all of the other public safety units is as follows:

1. Duration

a. PSOA (C-66)

- i. 4 year contract, January 1, 2017 through December 31, 2020

b. Fire Superiors, Local 1064 (C-67)

- i. January 1, 2017 through December 31, 2020.

c. I.A.F.F., Local 1066 (C-68, C-121)

- i. January 1, 2016 through December 31, 2019 (C-68)⁴
- ii. Extended through December 31, 2020 (C-121)

2. Salaries and Longevity

a. Salaries⁵

i. PSOA (C-66)

- 1. Wages to be increased at top step only as follows:

1/1/17 – 1.5%

1/1/18 – 1.5%

⁴ The Collective Bargaining Agreement between the City of Jersey City and I.A.F.F., Local 1066 originally expired one year earlier, but was extended to be co-terminus with the other bargaining units. **[Footnote in original]**.

⁵ The City proposed similar wages to the POBA throughout negotiations (See POBA Workbook I, Exhibit C) which demonstrates equal treatment of employees. **[Footnote in original]**.

1/1/19 – 1.5%
1/1/20 – 1.1%

ii. Fire Superiors, Local 1064 (C-67)

1. The following increases shall be to the top step only.
Effective June 1, 2017 1.5%
Effective January 1, 2018 1.5%
Effective January 1, 2019 1.5%
Effective January 1, 2020 1.95%

iii. I.A.F.F., Local 1066 (C-68, C-121)

1. Base salary at top step of the salary guides will be increased as follows:

January 1, 2016 – 1.95%⁶
January 1, 2017 – 1.5%
April 1, 2018 – 1.5%
July 1, 2019 – 1.5%
April 1, 2020- 1.5%

b. Longevity

i. PSOA (C-66)

1. *Add*: “Officers hired on or after **January 1, 2017**, and promoted thereafter, longevity will be paid as part of base pay in accordance with the following schedule (emphasis added):

First day of 10 th year	\$1,000.00
First day of 15 th year	\$2,000.00
First day of 20 th year	\$3,000.00
First day of 25 th year	\$4,000.00

2. *Add to paragraph B as follows*: “For the purpose of determining eligibility, longevity is defined as the number of years of actual work performed for the City of Jersey City as a police officer and is not dependent upon seniority date.”

ii. Fire Superiors, Local 1064

⁶ This wage increase is consistent with the final year (2016) of the POBA's recently expired contract. (POBA Exhibit A, p. 54) **[Footnote in original]**.

1. All Fire Officers who are hired as firefighters after **January 1, 2017**, shall receive the following longevity. (emphasis added)

10 years	\$1,000
15 years	\$2,000
20 years	\$3,000
25 years	\$4,000

iii. I.A.F.F., Local 1066 (C-68, C-121)

1. Employees hired on or after **January 1, 2016**⁷, longevity will be paid as part of base pay in accordance with the following schedule:

First day of 10 th year	\$1,000.00
First day of 15 th year	\$2,000.00
First day of 20 th year	\$3,000.00
First day of 25 th year	\$4,000.00

3. Insurance and Benefits

a. PSOA (C-66)

- i. *Change paragraph 1.A. to read:* “All employees will be provided health insurance under the Direct Access Blue Cross/Blue Shield Plan. Alternatively, the employee may select one of the HMO plans offered by the City. Employees shall contribute to their health insurance provided for herein in accordance with Chapter 2, P.L. 2010, as modified by Chapter 78, P.L. 2011.”
- ii. *Add to paragraph 2:* “Police officers will be provided with a defense consistent with N.J.S.A. 40A:14-155. The City will pay any civil judgment against the police officer for compensatory damages only so long as the acts committed by the police officer upon which the action is based were within the scope of his/her employment and do not constitute actual fraud, malice, willful misconduct or an intentional wrong.”
- iii. *Add language setting the Emergency Room co-pay to \$100; increase doctor visit co-pay to \$20; change out-of-network deductible to \$250 for individual and \$500 for family. Change out of network reimbursement charges to 70% fair health.*

⁷ Previous Collective Bargaining Agreement expired December 31, 2015, and the new agreement expires 12/31/20. **[Footnote in original]**.

- iv. In *Section 3.B.* create a 3-tier prescription co-pay system with co-pays effective January 1, 2017 as follows:

Generic - \$5; Brand - \$25; and Formulary - \$35. The three tier program shall include the National Preferred Formulary, Quantity Management Control, and Mandatory Generic. Prescription coverage does not include compound medication unless, upon appeal exercised by the officer, it is determined that the compound prescription is medically necessary and there is no other alternative prescription. Human growth hormone (HGH) or similar drugs to enhance normal functions, such as antiaging, the improvement of athletic performance, or memory enhancing are excluded from coverage, unless upon appeal exercised by the police officer, it is determined to be medically necessary and no alternative prescription is available.

[Co-pays for prescriptions over \$1,000 is unchanged]

Mail order shall be \$10, \$50 and \$70 for a 90 day supply prescription.

[No change to maintenance drug language]

- v. *Modify Section 11:* “The City will pay the cost of health coverage, which includes health insurance and the prescription drug plan as set forth in Section 1 above, for all retirees and their eligible dependents so long as the retiree has retired from the City on a disability pension or has retired from the City after twenty-five (25) or more years’ of service credit in the Police and Fire Retirement System, and such benefits shall be vested upon retirement.
- vi. *Add to Section 11:* Except for officers who had 20 years or more in the pension system as of June 28, 2011, officers who are members of the PSOA on the date of this MOA, and who retire on or after January 1, 2017 and are eligible for retiree health benefits from the City shall contribute to their City-provided retiree health benefits for themselves and their dependents, if any, as follows:
 - 1. Officers who retire as Captains shall contribute to twenty-three percent (23%) of the cost of the plan.

2. Officers who retire as Lieutenants shall contribute twenty and one-half percent (20.5%) of the cost of the plan.
3. Officers who retire as Sergeants shall contribute twenty and one-quarter percent (20.25%) of the cost of the plan.

Notwithstanding the above contribution rates by retirees, the parties agree that if a Court determines that police officers hired before June 28, 2011 are not required to make contributions under the rates established by the tables in Ch. 78 toward their health insurance in retirement, or if the requirement under Ch. 78 to make a minimum contribution for health benefits coverage in retirement is ever repealed, allowed to lapse, amended, altered or ruled invalid or otherwise unenforceable by a court or other competent jurisdiction for any reason then, in that instance, those retired police officers shall contribute only 1.5% of their yearly pension, and not the amounts set forth herein.

- vii. *Add* as new Section 13: Subject to the conditions of Section 3.B. and Section 11, the City shall provide health care benefits and prescription benefits to the surviving dependents of police officers who have twenty-five (25) years or more of service credit in the Police and Firemen's Retirement System and who pass away prior to retirement.

b. Fire Superiors, Local 1064 (C-67)

- i. Hospital language to reflect current plan
- ii. Out of network – 70% of fair health rate.
- iii. Prescription co-pays

1. Generic \$5
 Preferred Brand \$25
 Non-Preferred Brand \$35
 Mail Order Stays at 2x the amount of a 30 days retail supply

2. The three-tier system shall include the National Preferred Formulary and does not cover compound medication unless, upon appeal exercised by the fire officer, it is determined that the compound prescription is medically necessary and there is no other alternative prescription. Human growth hormone (HGH) or similar drugs to enhance normal functions, such

as antiaging, the improvement of athletic performance, or memory enhancing are excluded from coverage, unless upon appeal exercised by the firefighter, it is determined that to be medically necessary and no alternative prescription is available.

3. Quantity management to be implemented
 4. Mandatory Generic prior to the implementation of mandatory generic the City will provide each Fire Officer with a list of currently taken brand name drugs that will be subject to mandatory generic. A procedure will be established for those who wish to continue with brand versus generic drugs. Mandatory generic shall be effective 10/1/17, permitting members time to review and submit medical documentation of the medical necessity for other than a generic drug.
- iv. The City and the Local shall meet to discuss any and all health insurance issues.
 - v. Emergency Room co-pay - \$100; doctor visit co-pay - \$20; out-of-network deductible - \$250 for individual and \$500 for family.
 - vi. Eliminate Paragraph E. as duplicative of 12.A. and B.

c. I.A.F.F., Local 1066 (C-68, C-121)

- i. *Eliminate paragraph and replace with following:* Firefighters will be provided with a defense consistent with N.J.S.A. 40A:14-28. The City will pay any civil judgment against the firefighter for compensatory damages only so long as the acts committed by the firefighter upon which the action is based were within the scope of his/her employment and do not constitute actual fraud, malice, willful misconduct or an intentional wrong.
- ii. C.1. Effective September 1, 2016, Emergency Room co-pay will be \$100, doctor visit co-pay will be \$20; the out-of-network deductible will be \$250 for individual and \$500 for family; and the out of network reimbursement charges will be 150% of Medicare reimbursement rate.
- iii. C.2. *MODIFY paragraph as follows:* Effective as soon as practicable for the City following ratification, the out of

network reimbursement charges will be 70% of fair health rate.

- iv. *Eliminate paragraph E. as duplicative of Article 15.A. and B.*
- v. F. *ADD to paragraph:* Effective as soon as practicable for the City following ratification, Quantity Management and Mandatory Generic shall be implemented for prescriptions. Prior to the implementation of quantity management and mandatory generic the City will provide each Firefighter with a list of currently taking brand name drugs that will be subject to mandatory generic. A procedure will be established for those who wish to continue with brand versus generic drugs. Mandatory generic shall be effective no sooner than 10/1/17, permitting members time to review and submit medical documentation of the medical necessity for other than a generic drug.
- vi. G. *ADD:* Effective September 1, 2016, co-pays for prescription medication will be as follows: Generic - \$5; Preferred Brand - \$25; and Non-Preferred Brand- \$35. The three tier program shall include the National Preferred Formulary. Prescription coverage does not include compound medication unless, upon appeal exercised by the firefighter, it is determined that the compound prescription is medically necessary and there is no other alternative prescription. Human growth hormone (HGH) or similar drugs to enhance normal functions, such as antiaging, the improvement of athletic performance, or memory enhancing are excluded from coverage, unless upon appeal exercised by the firefighter, it is determined that to be medically necessary and no alternative prescription is available. [Co-pays for prescriptions over \$1,000 is unchanged]
- vii. P. *MODIFY paragraph as follows:* All firefighters shall, effective 1/1/16, be required to contribute toward the cost of their health insurance benefits provided for in this Article in accordance with P.L. 2011, Ch. 78.
 - 1. Retirees and those Firefighters with 20 years of service as of June 28, 2011 shall not contribute to the cost of retiree health benefits.
 - 2. Firefighters with 20 years of credit as of December 31, 2014 shall only contribute 1.5% of their annual pension.

3. Future retirees who do not meet the criteria of paragraphs 1 and 2 above shall contribute to the cost of retiree health insurance pursuant to P.L. 2011, Chapter 78.

viii. Q. *Add to paragraph Q:* Retirees and those Fire Fighters with twenty (20) years of service as of June 28, 2011 shall not contribute to the cost of retiree health benefits. Fire Fighters with twenty (20) years of credit as of December 31, 2014 shall only contribute 1.5% of their annual pension.

Future retirees who do not meet the criteria above shall contribute to the cost of retiree health insurance pursuant to Chapter 78.

ix. Q. *Add as last sentence to paragraph:* All firefighters shall, effective 1/1/16, be required to contribute toward the cost of their health insurance benefits provided for in this Article in accordance with P.L. 2011, Ch. 78. Except for firefighters who had 20 years in the pension system as of May 28, 2011, firefighters who retire on or after 1/1/16 and are eligible for City-provided health insurance benefits shall contribute 1.5% of their yearly pension or the rates established by the tables in Ch. 78, whichever is greater, provided however, that if a Court determines that firefighters hired before May 28, 2011 are not required to make contributions under the rates established by the tables in Ch. 78 toward their health insurance in retirement, then in that instance, those retired firefighters shall contribute only 1.5% of their yearly pension.

x. S. *ADD:* Subject to the conditions of paragraph R, the City shall provide health care benefits and prescription benefits to the surviving dependents of Firefighters who have twenty-five (25) years or more of service credit in the Police and Firemen's Retirement System and who pass away prior to retirement.

xi. S. *Add as new paragraph S:* In the event that an active Fire Fighter dies with less than 25 years of service, the dependents of the Fire Fighter shall receive health benefits for one (1) year.

xii. T. *Add as new paragraph T:* The City and the Local shall meet to discuss any and all health insurance issues.

4. Work Day and Work Week

b. I.A.F.F., Local 1066 (C-121)

- i. N. *Add new paragraph N:* Effective 1/1/18, all Probationary Fire Fighters during their one (1) year Probationary Period (date of hire forward to first year anniversary as a Fire Fighter) will not be permitted to bid for a permanent assignment until the next calendar year of bidding.⁸

5. Vacation

a. PSOA (C-66)

- i. **No compensatory time will be granted for vacation deferrals. (Emphasis added)**
- ii. All vacations will be recorded electronically
- iii. employees who take qualifying FMLA/NJFLA leave will be required to use available vacation time concurrent with FMLA/NJFLA leave.

b. Fire Superiors, Local 1064 (C-67)

- i. Vacation shall be drawn by seniority.
- ii. Change vacation blocks from 10 blocks of 4 to 20 blocks of 2 in first period, 5 blocks of 4 to 10 blocks of 2 in second period and 6 blocks of 4 to 12 blocks of 2 in third period.
- iii. Staff Fire Officers shall receive the same number of vacation hours as line Fire Officers.
- iv. If military leave and vacation coincide, the vacation will be rescheduled.
- v. Upon retirement, Fire Officers shall only be paid for a maximum of 2 years vacation.
- vi. Reduce conversion to 2 summer days. **Delete 2 terminal days. Delete conversion of 2 spring days. (Emphasis added)**
- vii. Include right to surrender 50% of vacation for cash (effective 1/1/18).

c. I.A.F.F., Local 1066 (C-68, C-121)

- i. *ADD:* Annual vacations shall be granted strictly in accordance with seniority at each battalion pick.

⁸ This proposed language does not impact the Superiors bargaining units and, thus, is not included in those MOAs. **[Footnote in original].**

- ii. *Add to paragraph 8 the following at the end:* “. . . which shall be rescheduled.”
- iii. *Add to paragraph A, section 9:* Staff Fire Fighters shall receive the same number of vacation hours as line Fire Fighters.
- iv. *ADD:* The Office of the Chief of the Division of Fire will provide true copies of all Firefighters vacation schedules, converting, banking and deferring vacations, as received by said office each calendar year to the Union.
- v. *ADD:* All Firefighters who are cleared for any type of light duty positions with the Division of Fire, and are going through any type of therapy, will not be forced to take any vacation or vacations owed until they are cleared from such therapy. Firefighters granted light duty will be assigned to an administrative schedule of Monday-Friday 8:00 a.m. to 4:00 p.m. Overtime will not be available while on light duty. Light duty shall be limited to a period of 90 calendar days. Light duty, when available, may not be refused. The City, in its sole discretion, may extend light duty for an additional period not to exceed 90 calendar days. Any period of time on light duty shall be counted as part of the one (1) year limitation set forth in Article 15 A. and B., as applicable.
- vi. *Replace paragraph D.6. with the following:* Firefighters may convert no more than two (2) summer vacation days in each calendar year to compensatory time off, based upon a ten (10) or fourteen (14) hour tour off. **There will be no grant of Terminal Leave Days for summer vacation days converted.** Firefighters must file their request for such a conversion (summer vacation days to compensatory days) through the office of the Chief. (emphasis added)
- vii. *Eliminate paragraph D.8.*
- viii. *Add to paragraph B, section 2:* The following quotients will take effect effective January 1, 2018 as defined in the Vacation General Order:

Six (6) to twenty (20) in period #1 (Spring)
Six (6) to ten (10) in period #2 (Summer)
Six (6) to twelve (12) in period #3 (Fall)

- ix. *Add to paragraph D, new section 8:* Fire Fighters may have the right to cash in 50% of their vacations for cash effective January 1, 2018 and are required to notify the Office of the Chief in January of said intention via Departmental 489.
- x. *Modify paragraph E as follows:* Employees who take qualifying FMLA/NJFLA leave will **have the option** to use available vacation time concurrent with FMLA/NJFLA leave.

6. **Injury and Sick Leave**

a. **PSOA (C-66)**

- i. *Add as new Section 7:* “Police officers who have been on sick leave for up to one (1) year, must return to work for six (6) months in order to receive the benefit of one-year leave benefit of Section 4. Officers who do not return to work for at least six (6) months will have all sick time, from whatever off-duty injury or illness, counted toward the one (1) year limitation herein and, if granted additional sick time for any reason beyond one (1) year, such sick leave shall be without pay.
- ii. *Add as new Section 8:* “Police officers who have been on injury leave for up to one (1) year, must return to work for two (2) months in order to receive the benefit of one-year leave benefit of Section 3. Officers who do not return to work for at least two (2) months will have all injury leave time, excepting the officer who suffers a different and unrelated on-duty injury before the two (2) month period has been reached, counted toward the one (1) year limitation herein and if granted additional injury leave beyond one (1) year, such leave shall be without pay other than any compensation available under worker’s compensation.”
- iii. *Add as new Section 9:* All use of injury or sick leave pursuant to this Article shall be in accordance with procedures established by General Orders of the Department. Vacation time shall run concurrent with sick time consistent with the current department policy and practice. Any member on sick leave for more than 60 days shall not accrue 2 comp days; after 120 sick days, the member shall not accrue 4 comp days; at 180 sick days, the member shall not accrue 6 comp days; and after 181 sick days, the member shall not accrue 8 comp days. An officer will not forfeit more comp days

that he has accrued in one year. As used herein, sick leave includes leave for off-duty injuries. On-duty injuries shall be exempt from this Section, and will be defined in the General Order.

b. Fire Superiors, Local 1064 (C-67)

- i. In calculating the 1 year of paid leave while injured, the City shall not include the period of time that the Fire Officer is on light duty.
- ii. A Fire Officer will be dispatched to coordinate in the event of injuries to Firefighters or Fire Officers.
- iii. If a Fire Officer is on sick leave during a scheduled vacation, the vacation will not be rescheduled.
- iv. Change paragraph E from 6 months to 3 months.
- v. Modify paragraph D: "In accordance with procedures established by General Order 2107-____, the City reserves the right to amend this General Order, Local 1064 reserves the right to grieve if the changes are to terms and conditions of employment."⁹

a. I.A.F.F., Local 1066 (C-68, C-121)

- i. *B. Add as last sentence:* Vacation and compensatory days will not accrue when a firefighter is on sick leave for 14 calendar days or longer. As used herein sick leave includes injury leave. If a firefighter is on sick leave during his scheduled vacation, the vacation will run concurrent with the sick leave and will not be rescheduled at the conclusion of the sick leave.
If a firefighter is on sick leave for more than 60 days he/she shall forfeit two (2) Compensatory Days.
If a firefighter is on sick leave for more than 120 days he/she shall forfeit four (4) Compensatory Days.
If a firefighter is on sick leave for more than 180 days he/she shall forfeit six (6) Compensatory Days.
If a firefighter is on sick leave for 181 days or more he/she shall forfeit ten (10) Compensatory Days.
The forfeited Compensatory Days will be deducted from the firefighter's yearly allotment. Firefighters will not

⁹ Through this language Local 1064 agreed to be subject to the same sick leave language agreed to by 1066, which language regarding the loss of comp days for being out on extended sick leave, and restrictions on unlimited paid sick and injury leave for up to one year will be incorporated into a general order. **[Footnote in original]**.

forfeit more Compensatory Days than they have earned in a year.

- ii. D. *Add as last sentence:* Employees out on sick leave that qualifies under the FMLA will have FMLA time run concurrent with their sick leave.
- iii. E. *Delete “Six (6) Months” and replace with “Three (3) Months.”*
- iv. H. *ADD as new paragraph H:* “Firefighters who have been on sick leave for up to one (1) year, must return to work for six (6) months in order to receive the benefit of one-year leave benefit set forth in this Article. Firefighters who do not return to work for at least six (6) months will have all subsequent sick time, from any off-duty injury or illness, counted toward the one (1) year limitation., If Fire Fighters need additional leave time after using a total of one (1) year, any time granted beyond one (1) year shall be without pay.
- v. I. *Add as new paragraph I:* “Firefighters who have been on on-duty injury leave for up to one (1) year, must return to work for two (2) months in order to receive the benefit of one-year leave benefit set forth in this Article. Firefighters who do not return to work for at least two (2) months and who go out again on on-duty injury leave will have all injury leave time, excepting the firefighter who suffers a different and unrelated on-duty injury before the two (2) month period has been reached, counted toward the one (1) year limitation herein. If Fire Fighters need additional on-duty injury time beyond the one (1) year, any time granted beyond one (1) year shall be without pay other than any compensation available under worker’s compensation.”
- vi. J. *Add as new paragraph J:* In calculating the one (1) year of paid sick leave while injured, the City shall not include the period of time that a Fire Fighter is on light duty.
- vii. K. *Add as new paragraph K:* In accordance with the procedures established by the Sick Leave/Injury Leave General Order, and the City reserves the right to amend said “General Order”, and Local 1066 reserves the right to grieve or request negotiations, if the changes are to the terms and conditions of employment

7. Maintenance and Modification of Work Rules

a. Fire Superiors (C-67):

- i. The parties agree to a limited past practice clause, to wit: Past practice may be used by either party for the purposes of interpreting the language of this contract. Past practice shall not be used for the establishment of a term and condition of employment not based upon contractual language.

b. I.A.F.F., Local 1066 (C-68, C-121)

- i. *D. Add as new paragraph D:* Past practice may be used by either party for the purposes of interpreting the language of this contract. Past practice shall not be used for the establishment of a term and condition of employment not based upon contractual language.
- ii. *E. Add as new paragraph E.* There shall be no surreptitious recordings of any City employee.
- iii. *F. Add that the parties shall agree and implement a Social Media Policy*

8. Retirement

a. PSOA

- i. Add as new Section 2: "Retirement, as used throughout the contract, shall mean retirement from the Police and Firemen's Retirement System ("PFRS").

b. Fire Superiors, Local 1064 (C-67)

- i. Retirees and those Fire Officers with 20 years of service as of June 28, 2011 shall not contribute to the cost of retiree health benefits.
- ii. Fire Officers with 20 years of credit as of December 31, 2014 shall only contribute 1.5% of their annual pension.
- iii. Future retirees who do not meet the criteria of paragraphs A and B above shall contribute to the cost of retiree health insurance pursuant to Chapter 78.

The City provides additional argument as to why it believes that substantial, if not controlling weight should be given to its proposals that mirror the terms of settlement it achieved with its other public safety units. It further points to record evidence reflecting that it did make wage proposals to the POBA that it made to the other public safety units but that the POBA did not accept the wage proposals because of the presence of other issues that were unacceptable to it. The City's arguments on these points are as follows:

The City has included in its Final Offer an almost identical package on other terms and conditions of employment of universal application that were voluntarily accepted by the other three public safety bargaining units. One of the only differences was wages, which the City could not include in its Final Offer as a matter of statutory restriction because the wage package accepted by the other unions was not 2% compliant¹⁰. Also in contrast to the pattern, the POBA is seeking a two year contract.¹¹ Every other Union settled for four (4) years, and now all public safety contracts expire December 31, 2020.

There must be universal application of the terms and conditions of employment that are applicable to all employees. Breaking the pattern of settlement would change the tone of collective negotiations in the City going forward. No union would ever be the first to settle. The Arbitrator would be setting a new pattern – wait until every other contract is concluded and then ask for more. Worse still, such an award encourages intransigence, dissuades voluntary settlements and leads the parties down the path to interest arbitration and the costs associated therewith. Such results are not in the interest of the public.

...

When deciding upon the final award, the Arbitrator should place considerable weight on the settlements, salary, benefits, and other relevant terms and conditions provided to other employees of the same public entity. Disparity among employees of the same employer will negatively impact morale, undermine effective collective negotiations and lead to mistrust and animosity among employees.

¹⁰ The POBA is the cause of the break in the pattern. The City offered the pattern. The fact that the Arbitrator cannot statutorily award the wage pattern does not change the analysis. **[Footnote in original]**.

¹¹ Throughout negotiations the POBA sought to continue the pattern agreed to with the other units and the historical 4-year deals. See POBA Exhibit B. **[Footnote in original]**.

Maintaining equity and consistency of settlements with employees of the same employer is essential not only from an economic standpoint but also from a public policy standpoint.

Consistent with this labor law maxim, the City offered the POBA the pattern established with the other three public safety bargaining units. Notwithstanding that the POBA's incremental costs significantly exceeded the 2% arbitration cap, the City offered the POBA wage increases at top step of 1.5% on 1/1/17; 1.5% on 4/1/18; 1.5% on 7/1/19; and 1.1% on 10/1/20. (POBA Exhibit C) This wage offer was consistent with the settlement with the Jersey City Firefighters, Local 1066 (Exhibit C-68 and C-121) and similar to the wages received in the settlements with the Jersey City Police Superiors (see Exhibit C-66) and the Jersey City Fire Superiors (see Exhibit C-67) The delays were proposed to the POBA, just like Local 1066, to assist the City's calendar year budgets given the significant incremental costs in step movement and longevity movement for the POBA each year. See Exhibit C-74. This four-year contract offer was also consistent with and agreed to by EVERY other City public safety bargaining, all whose contracts terminate on 12/31/20. See C-66, C-67, C-68 and C-121)

In exchange for this wage offer, which was more than double the arbitration cap, the City proposed modest changes to health benefits agreed to by EVERY other City public safety bargaining unit; a modest change to the unlimited nature of the sick and injury leave provisions of the collective negotiations agreement agreed to by EVERY other City public safety bargaining unit; a change to the level and timing of longevity payments to officers hired after contract expiration agreed to by EVERY other City public safety bargaining unit; the elimination of the grant of additional compensatory days off solely because an officer elects to utilize summer vacation during a different time of year agreed to by EVERY other City public safety bargaining; the elimination of the automatic unrestricted grant of days off once minimum manning is reached, a restriction in place in both fire contract settlements; and the elimination of one of the most absurd contract provisions in any public sector police contract – the unrestricted ability to change the shift the City determined and scheduled the officer to work with him or herself . (See POBA Exhibit C and compare to C-66, C-67, C-68 and C-121).¹²

¹² The City also offered the POBA the pattern on survivorship benefits agreed to with agreed to by EVERY other City public safety bargaining, the new work schedule agreed to with the PSOA, retiree health benefit contribution changes like was agreed to by EVERY other City public safety bargaining, and the expansion of bereavement leave benefits agreed to by EVERY other City public safety bargaining. However, as will be discussed more fully in Point VII below, these contract changes are unavailable to the POBA since it rejected every reasonable offer the City made to settle the contract. The POBA's intransigence does not and should not impact the pattern of settlement achieved by the City lest the POBA be able to use its unwillingness to compromise as both a shield and sword. **[Footnote in original]**.

Surprisingly the POBA rejected the City's generous offer, objecting to having even modest restrictions on the ability to have any day off the employee chooses notwithstanding the cost to the City in executing police initiatives and in overtime dollars. Only in Jersey City can an entire shift take its scheduled shift off so long as another shift is willing to work overtime. Under such a scenario, unchecked, the City could pay overtime for every shift worked. It was evident from the POBA's testimony at interest arbitration (given their objections to restrictions on days off when the City reached minimum manning for any shift, their objections to curbing paid sick and injury leave, and their objection to ending the exchange of tours with themselves) that the City was employing and paying officers so that they could have guaranteed days off. Rather, as the arbitrator knows, the City pays its officers generous salaries and benefits to WORK when scheduled to work, not to call out sick, not to request a guaranteed compensatory day off so they do not have to work a foot post, for example, and not to exchange a shift with themselves because another day would be more convenient to the officer, regardless of the City's needs.¹³

In the instant matter, the pattern of settlement in Jersey City is overwhelmingly clear. The City's offer is consistent with and similar to the settlements reached with the three other public safety bargaining units, as well as other non-public safety bargaining units in the city. The City seeks to continue that pattern of settlement with the POBA. That pattern will assure a generous level of benefits with reasonable cost containment measures that will permit the City to continue to provide competitive salaries and benefits while improving the level of services provided to its residents. When all of the public interest factors are analyzed and applied to the facts of this case, it is clear that the City's cost containment measures and work rule changes must be implemented.

The POBA disagrees with the City's positions on either the existence or the applicability of any pattern of settlement. The POBA voices strenuous disagreement and offers extensive and detailed argument in response to the City's position. The POBA also includes an analysis of the terms of the other public safety unit settlements and provides argument as to why it deemed the

¹³ The ability to change shifts with your self is wholly inapposite to employment in general, and completely at odds with public safety. No example can be found where an employer determines when it needs an employee, schedules that employee to then work, and the employee then determines to work at a different time, at a different day and at a different week. **[Footnote in original].**

City's proposals to the POBA as unacceptable. Its position on these points are set forth in its post-hearing submission as follows:

A review of the Memoranda of Agreements submitted by the City as part of its interest arbitration exhibits relating to contracts concluded between the City and the Jersey City Police Superior Officers Association ("PSOA"), IAFF Local 1064 representing Fire Officers, and IAFF Local 1066 representing non-supervisory Firefighters conclusively establishes that the City has negotiated **substantially better** salary and benefit packages with the PSOA and the two Firefighter Unions than the present salary/benefits proposals that the City has listed in its final offer submissions to the POBA.

A summary of the core economic agreements memorialized in the Memoranda of Agreements negotiated with the two IAFF Firefighter/Fire Officer Units, as well as the PSOA, will be treated **seriatim**.

**MEMORANDUM OF AGREEMENT BETWEEN
THE CITY AND THE JERSEY CITY POBA**

- A new 5/3 work schedule was negotiated that providing the POBA's unit members, in pertinent part, with approximately an additional fifteen days off each year.
- Retiree contribution rates were reduced for all Sergeants, Lieutenants and Captains who retired on or after January 1, 2017 who were eligible for retiree health benefits.
- The City agreed to provide health care benefits and prescription benefits to the surviving dependents of Superior Officers who had twenty-five years or more of service credit in PFRS and who died prior to retirement.
- Minimum overtime payments were increased from three hours to four hours as part of Article 14 (Overtime).
- In addition to the continuation of salary step annual increases, where applicable (for all four years of the contract), and increased longevity in accordance with the existing longevity program, wages were increased at the top step only for the Police Superior Officers as follows:

1/1/17 - 1.5%
1/1/18 - 1.5%
1/1/19 - 1.5%
1/1/20 - 1.1%

- Although a lesser longevity tier was negotiated it only affected Officers hired on or after January 1, 2017, and promoted thereafter, establishing that it may be **many years** before any Police Superior Officer would be subject to substantially reduced longevity benefits.

**MEMORANDUM OF AGREEMENT BETWEEN THE
CITY AND IAFF LOCAL 1064 (FIRE OFFICERS)**

- Fire Officers with twenty years of credit as of December 31, 2014 are required to only contribute 1.5% of their annual pension.
- If an active Fire Officer dies who had twenty-five years of service, the dependents shall receive retiree health benefits.
- In the event that an active Fire Officer dies with less than twenty-five years of service the dependents of the Fire Officer shall receive health benefits for one year.
- The following salary increases were applied to the top step only:

Effective June 1, 2017	- 1.5%
Effective January 1, 2018	- 1.5%
Effective January 1, 2019	- 1.5%
Effective January 1, 2020	- 1.95%
- Any Fire Officer assigned as a Captain of the HAZMAT Unit will receive a stipend of \$2,000 payable in November of each year.
- Enhanced terminal leave benefits were negotiated.

**MEMORANDUM OF AGREEMENT BETWEEN THE
CITY AND IAFF LOCAL 1066 (FIREFIGHTERS)**

- Each Firefighter assigned to the HAZMAT Unit for the full year shall receive a stipend of \$1,500, payable each November.
- Firefighters who were cleared for any type of light duty position were provided with additional benefits.
- Firefighters may convert no more than two summer vacation days in each calendar year to compensatory time off, based upon a 10 or 14 hour tour off.

- The City agreed to provide health care benefits and prescription benefits to the surviving dependents of Firefighters who had twenty-five years or more of service credit in PFRS and who passed away prior to retirement.
- Strengthened mutual exchanges of tours of duty were negotiated.
- In part the City agreed to grant the request of 8 Firefighters' use of compensatory time off per group which shall apply seven days a week subject to certain restrictions. Moreover, 8 Firefighters per group were granted the right to use compensatory days off on specific delineated holidays.
- An On-Duty Deputy Chief was provided with the discretion to grant "emergency compensatory time off" under the delineated circumstances.
- Base salary at the top step of the salary guides will be increased as follows:

January 1, 2016	- 1.95%
January 1, 2017	- 1.5%
April 1, 2018	- 1.5%
July 1, 2019	- 1.5%
April 1, 2020	- 1.5% (a one year salary extension was recently negotiated)

- Employees in guide will continue to receive their step increases each January 1 during the term of the Agreement, with Officers receiving longevity increases during the life of the contract¹⁴.

¹⁴ It must also be noted that City Firefighters work a "24/72" work schedule that results in Firefighters working approximately only 120 days each year, not including their use of paid negotiated leave time. Any operational rules changes negotiated between the City and the two Firefighters' Unions are not at all analogous to the significant "operational changes" that the City is seeking to impose on the POBA relating to compensatory time off, tour exchanges, sick leave and summer vacation policies. In addition, two of the three other Police/Firefighter Negotiations Units are units of supervisory personnel, who are often very closely aligned to the negotiations positions of City negotiators. Any negotiated agreements with the POSA and the Fire Officers restricting pre-existing "operational benefits" were either de minimis in nature as they affected supervisors or were viewed as easily expendable by the PSOA and the Fire Officers in return for substantial salary increases (including annual salary step movement, where applicable, for four years). **[Footnote in original]**.

In sharp contrast to the many positive contract changes negotiated between the City and the PSOA and the two Firefighter Unions, the City's final offer to the POBA would provide step movement to Police Officers only two of the four years of the Agreement, while proposing an amendment to the salary step schedule, effective January 1, 2019, which would add five steps for all Officers on guide. In addition, the only increases offered to top step Officers/Detectives during the proposed four year length of the contract was a 0.6% increase, retroactive to January 1, 2017, with a 1.6% top step increase provided, effective January 1, 2020, i.e. **2.2% over a four year period!**

In addition, the City's final offer would freeze longevity **at 2017 rates for current Officers**, who were eligible for and being paid longevity, **with a conversion to a flat dollar amount**. The City also proposed that Officers hired on or **after January 1, 2017**, and for those current Officers who are not yet eligible for longevity, receive **substantially reduced** longevity benefits as follows:

- First day of 10th year - \$1,000
- First day of 15th year - \$2,000
- First day of 20th year - \$3,000
- First day of 25th year - \$4,000

In addition, the City has proposed substantial Article 17 Comp Time changes that would make it increasingly difficult for Officers to receive the benefit of comp time that they accrued.

The City has introduced proposals wherein the Department may make temporary reassignments, based on seniority, for up to thirty calendar days, while providing the City with the unfettered right to assign or modify a probationary Police Officer's schedule, hours of work, assignments and District at anytime during the one year working test period.

The City has also proposed substantial reductions in or the elimination of vacation time deferral options set forth in Article 11.

In addition, there are substantial City proposals that would significantly change injury and sick leave policies within the Department.

The City's final proposals would also eliminate tour exchanges referred to in paragraph b, c and d of Article 15 and would essentially do away with an Officer's "swaps with himself or herself".

The City has, moreover, advised the Arbitrator that the financial impact of the City's final offer to the POBA is \$3,706,082 over the four year proposed duration of the contract equating to only a **5.88%** increase

over the four year period, **over 2% less than the salary increases that can be legally provided to POBA members under the existing 2% interest arbitration salary cap!**

In consideration of the above, it is averred that a review of "internal comparability" factors relating to the salary agreements negotiated with the two Firefighter Locals, as well as with the PSOA, compared with the City's final salary/compensation proposals submitted to the POBA, establishes that the City has negotiated millions of dollars more in salary with the IAFF and PSOA Unions than the City would have been responsible for paying the members of those three Unions under the 2% interest arbitration cap **while the POBA has received an offer from the City that is millions of dollars "under cap"**.

In my consideration of the above submissions of the parties regarding their exchanges of negotiations proposals, I am aware, and mindful, of the decision in Township of Aberdeen v. Patrolmen's Benevolent Association, Local 163, 286 N.J. Super 372, 669 A.2d. 291 (1996). In that case, the Appellate Division found that information learned by an arbitrator during the mediation process, as opposed to evidence entered into the record at the arbitration hearing, may not be considered in rendering the final decision. Although neither party has raised this issue in its evidentiary presentations or in its post-hearing brief, it is appropriate for me to comment on whether Aberdeen is applicable in this case. In this matter, the record shows that the parties, in their exhibits and arguments, have both made specific reference to negotiations proposals in the context of how they should be considered as supporting one party's final offer or the other. They are in the record of this proceeding and have been used to form a basis of support for the parties' arguments and evidentiary submissions. Moreover, each party has sought to support its position by making reference to its own proposals made during negotiations and why those proposals, when

viewed in light of the various voluntary settlements the City has entered into with its other public safety units, should or should not be granted. In the absence of objections, I have reviewed this record evidence. No consideration has been given to any information learned by the arbitrator during mediation that is not in the record of this proceeding. The negotiations proposals that are in the record may also be properly considered when evaluating whether a proposal from either party should be granted based upon the internal comparability subsection of criterion N.J.S.A. 34:13A-16(g)(2), the interests and welfare of the public criterion N.J.S.A. 34:13A-16(g)(1), or any other statutory criterion that is relevant for the disposition of this impasse. Based on this, I find consideration of this record evidence to be consistent with Aberdeen.

The parties have submitted extensive evidence on the statutory criteria. All such evidence has been reviewed and considered. In respect to statutory limitations or restrictions on the City [N.J.S.A. 34:13A-16(g)(1), (5) and (9)], these criteria are relevant and paramount to the evaluation of any salary or economic benefit to the extent that a salary award or an award on an economic benefit individually or collectively does not compel an employer to be non-compliant with the existing appropriations cap or tax levy cap limitations. Here, the record reflects, based upon the Municipal Budget for the City of Jersey City approved and adopted by the City on July 10, 2017, that the Cap appropriations fall well below the lawfully allowable operating appropriations. Also, the revenue amounts that the City can raise through taxation falls well below the lawfully

maximum allowable amount to be raised by taxation. The costs of the parties' proposals can be accommodated within the spending and tax levy lawful limitations and neither party contends otherwise. Thus, while the lawful authority of the employer and the statutory restrictions on the employer are relevant criteria, none of the criteria regarding statutory compliance needs to undergo more extensive analysis in rendering a reasonable determination of the economic issues. Also, the City, while stressing the need for fiscal prudence, does not rely on an award's potential for causing adverse financial impact on the governing unit, its residents or taxpayers. [N.J.S.A. 34:13A-16(b)(6)]. The remaining criteria will be addressed in the analysis and award of the individual issues in dispute.

DISCUSSION

The statute requires the arbitrator to make a reasonable determination of the disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that are relevant to the resolution of the issues. These factors, commonly called the statutory criteria, are as follows:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

- (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
 - (4) Stipulations of the parties.
 - (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq.).
 - (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing

local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

As previously indicated, review of the statutory criteria must be based on the evidence presented as well as an application of standards that have been established in interest arbitration. The party seeking to modify an existing term and condition of employment has the burden to prove the basis for the contractual change with sufficient evidentiary support. A proposed issue cannot be deemed presumptively valid without being supported by credible evidence. I am also compelled to assess the merits of any individual issue within the context of the entire award.

Initially, given the lengthy submissions on the relevance and weight to be given to internal comparability and/or pattern of settlement, I am obligated to evaluate the merits of the evidence that may implicate this factor. I will set forth

the standards where those factors are alleged apply. The City contends that there is a relationship to other public safety unit settlements in respect to its proposals on contract duration, longevity, health insurance, sick/injury leave, assignments for probationary employees, summer vacation deferrals and certain staffing issues. The POBA contends that there is a relationship to other public safety unit settlements in respect to its proposals for a new 5/3 work schedule, retiree contribution rates, survivor health insurance and prescription benefits and minimum overtime payments and longevity increases.

The parties' positions on the meaning of the terms of the voluntary settlements dictate that the existing standards be explained. Internal comparability is referenced in N.J.S.A. 34:13A-16(g)(2)(c). Internal patterns of settlement have been found to implicate this subsection as well as N.J.S.A. 34:13A-16(g)(8) and N.J.S.A. 34:13A-16(g)(1). PERC rules and regulations at N.J.A.C. 19:16-5.14(c)(5) also speaks to identifying a "pattern of salary and benefit changes." Internal comparability has been deemed to be a persuasive factor when evaluating the merits of a disputed issue. If sufficient justification is established for deviation, a settlement pattern can be given lesser or no weight. The relevance of this subsection of the statutory criteria, N.J.S.A. 34:13A-16(g)(2)(c), and the rationale for examining this subsection are well established. It has been a criterion advanced in past arbitrations by both employers and unions when either party seeks to give meaning to evidence on internal comparability or on an alleged pattern of settlement. One case of significance on

this criterion is In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008). In that case, the County objected to the weight given by an arbitrator to N.J.S.A. 34:13A-16(g)(2)(c) when considering internal law enforcement settlements but its objection was not sustained. PERC has consistently observed that this subsection requires an interest arbitrator to "consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern." In Somerset, although a strict pattern of settlement did not exist, the arbitrator gave significant weight to the terms of various internal settlements between the County and its other law enforcement units. The award was appealed and affirmed by PERC. PERC's decision was appealed to the Appellate Division. There, the court rejected the public employer's contention that the arbitrator erred in his application of this factor and the weight the arbitrator accorded to it.

PERC has also been called upon in other cases to decide the significance of internal comparability or a pattern of settlement not only between and among public safety units, but also with non-law enforcement units as well as non-unionized or non-aligned employees. PERC has held that where a settlement pattern is alleged to be present it must be considered. One lead example was in the matter of the County of Union v. Union County Corrections Officers, PBA Local 999, PERC No. 2003-33. In that case, the County offered a proposal on health benefits that had been accepted by six other bargaining units, including

three non-law enforcement units as well as three law enforcement units. After the County's proposal on health benefits for another law enforcement unit had been denied by the arbitrator, the County appealed the award to PERC. The appeal resulted in a remand of the award back to the arbitrator. PERC stated:

N.J.S.A. 34:13A-16g(2)(c) requires arbitrators to compare the wages, salaries, hours and conditions of employment of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with "other employees generally" in the same jurisdiction. Thus, this subfactor requires the arbitrator to consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern. See N.J.A.C. 19:16-5.14(c)(5) (identifying a "pattern of salary and benefit changes" as a consideration in comparing employees within the same jurisdiction).

The interest arbitrator then issued an award on remand after which time, Union County filed another appeal. This compelled the issue of settlement pattern to be revisited by PERC. PERC once again found that the arbitrator rejected the County's proposal on health insurance without properly addressing the criterion of internal comparability. Although PERC expressed no opinion on the merits of the County's proposal and emphasized that it made no finding on whether a pattern existed or, if so, whether the alleged pattern must be followed, PERC once again ordered a remand of the award for an analysis of the pattern of settlement issue, but this time to a different arbitrator. In doing so, PERC explained:

[T]he arbitrator did not make explicit findings as to whether or not there was a settlement pattern with respect to health benefits and salary – or either of those items. Nor did he make findings as to whether the settlements differed from the offer to this unit or

analyze the significance of any differences. These are critical omissions because, as we explained in Union Cty., the existence – or not – of a pattern is an element that should be considered in determining the weight to be given internal settlements and in assessing the effect of an award on the continuity and stability of employment. 28 NJPER at 461. Further, Union Cty. stated that the Reform Act requires the arbitrator to explain the reasons for adhering or not adhering to any proven settlement pattern. Without specific findings as to the existence, nature or scope of an alleged settlement pattern, we cannot evaluate whether the arbitrator fulfilled that function.

N.J.S.A. 34:13A-16g(2)(c) requires arbitrators to compare the wages, salaries, hours and conditions of employment of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with “other employees generally” in the same jurisdiction. Thus, this subfactor requires the arbitrator to consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern. See N.J.A.C. 19:16-5.14(c)(5) (identifying a “pattern of salary and benefit changes” as a consideration in comparing employees within the same jurisdiction). Pattern is an important labor relations concept that is relied upon by both labor and management.

In addition, a settlement pattern is encompassed in N.J.S.A. 34:13A-16g(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. In that vein, interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. Compare Fox v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994) (in applying N.J.S.A. 34:13A-16g(8), arbitrator should have considered the effect of an award on employees in other units); see also Anderson, Krause and Denaco, Public Sector Interest Arbitration and Fact Finding: Standards and Procedures, 48.05[6], contained in Bornstein and Gosline Ed., Labor and Employment Arbitration (Matthew Bender 1999) (citing arbitrators’ statement that their award, which took pattern into account, would prevent disruption of future employer-wide negotiations and also commenting that arbitrators are generally hesitant to award increases that would disturb a pre-arbitration settlement pattern absent a showing that a break in the pattern is required to address a specific problem).

I have considered all of the above in my evaluation of the parties' proposals that each seeks the arbitrator to award based upon internal comparability or pattern of settlement. I next turn to the individual issues that are in dispute.

DURATION

Article 43 pertains to contract duration. The POBA has proposed a two year contract commencing on January 1, 2017 and extending through December 31, 2018. The City has proposed a four year contract commencing on January 1, 2017 and extending through December 31, 2020. The City also proposes to add the following language to this article:

“In the event that the City and the Union have not agreed upon by January 1, 2021 to terms and conditions of employment for police officers covered by this Agreement for a successor Agreement, then the terms and conditions of this Agreement will remain in full force and effect, except for salary guide movement, until a new Agreement is ratified by both parties.”

The POBA argues at length that a two year agreement that expires on December 31, 2018 should be awarded to allow negotiations for the next agreement in 2019 and 2020 to proceed without the “devastating effect that the 2% interest arbitration salary cap has had on law enforcement unions.” The POBA states that there has been an extraordinary amount of public tension as to whether the salary cap will be eliminated in its entirety or substantially modified in the near future. It points to a likely change in the political atmosphere in State

government that could decide to modify the existing strict limits on base salary increases. It submits that a two year agreement expiring on December 31, 2018 will provide a more level "playing field" than compared to what it currently faces. The two year agreement, according to the POBA, would give it opportunity to engage in salary negotiations thereafter unencumbered by the cap on base salary. The POBA provides a hypothetical example of a new hire under the existing law and the dramatic loss in base salary that such employee would receive in a four year contract under the salary cap in contrast to what the employee's base salary might likely be after four years if a two year contract was awarded. The POBA speculates that if a four year contract was to be awarded many new officers might resign or, if they remain, they would never be able to catch up "salary scale wise". The POBA points to the across the board increases the City agreed to with the other public safety units that exceeded what the arbitrator can legally award in this proceeding. It emphasizes that the PSOA negotiated top step salary increases of 5.6% over a four year contract period in addition to annual salary step movement in contrast with the City's final offer that would only provide a 2.2% increase to officers at the top step of the POBA salary schedule over the four year period of time with frozen steps to those not at top step for one or more of the four years. The POBA argues:

The City of Jersey City, moreover, would not be harmed at all if the interest arbitration award was limited to two years. More specifically, the City and the POBA would have essentially a full one year "cooling off period", at which time the "landscape" may have dramatically changed regarding interest arbitration salary caps that again may be substantially modified or even eliminated. The POBA and the City would also have substantial time to explore

solutions to the core operational issues that have resulted in forcing the parties into this present interest arbitration proceeding.

The City's position with respect to duration places substantial weight on internal comparability and pattern of settlement which has yielded expiration dates of December 31, 2020. It also points to the parties' negotiations process wherein each party has engaged in negotiations proposals that have included a four year contract duration. The City argues:

The City's proposal for a four (4) year contract is in line with the other public safety bargaining units. If the Arbitrator awards a four (4) year contract, all public safety collective bargaining agreements will expire at the same time, given I.A.F.F., Local 1066 amended its Memorandum of Agreement and extended the collective bargaining agreement to December 31, 2020. (C-121). Awarding a two year collective negotiations agreement would create havoc within the City's pattern of settlement regarding duration. If a two year contract were awarded, the parties would be back at the negotiating table in one year, which would not allow for an ample cooling off period during this round of bargaining. Given the level of tension, anxiety and animosity these negotiations have wrought, the parties need more time away from the table to allow each side get back to their business of serving the residents of Jersey City and not engaged in the distraction of contract negotiations so soon. Furthermore, as the POBA submitted into evidence, it proposed a four-year contract during and throughout the course of negotiations. (POBA's Exhibits, Workbook I, B). A two-year contract does not serve the interests of the public.

Award on Duration

After due consideration of the parties' positions and the record developed at hearing, I conclude that a contract that expires on December 31, 2020 represents a reasonable determination of the duration issue based upon the application of the statutory criteria. I reach this conclusion for the following

reasons. In voluntary negotiations with the City's three other public safety bargaining units, the City and all three unions agreed to terms that included a December 31, 2020 expiration. All public safety unions negotiated under the same terms of existing law that allows for flexibility in the terms of voluntary settlements but limits terms set through interest arbitration. The choice of voluntary settlement is a matter for individual units to make and the results of that choice should not alter the uniform terms of contract duration that have been reached on a citywide basis in the absence of evidence that the contract durations that were available to all public safety units were not made available here.

A common expiration date would allow all bargaining units to negotiate successor agreements based upon the existing budgetary, financial, economic and legal framework that will exist at that time in similar fashion to the parties' having to assess these factors during their negotiations for this contract term. Moreover, the record shows that the City and POBA have attempted to negotiate a four year contract with a common expiration date and thus, they have had the same opportunity as the other public safety units to do so. Labor relations stability would not be furthered by fragmenting expiration dates within public safety units and forcing a return to the bargaining table for one bargaining unit in less than one year.

The City has established that there is a pattern of settlement on the issue of contract duration. Insufficient credible evidence has been provided that would warrant a deviation from the contract period that has been accepted by the City and all of its other public safety bargaining units. The speculation that a two year contract expiring on December 31, 2018 might provide a more attractive legal environment for which the POBA could engage in negotiations with the City does not justify a deviation given the fact that all four public safety unions, including the POBA, have had full opportunity to engage in negotiations under the existing law and reach agreements that extend over a common time period. The fact that settlements were reached on more favorable salary terms for the other three public safety units is not persuasive evidence to award a two year contract given the fact that the record shows that more favorable salary terms were available here if a voluntary settlement had been entered into between the City and the POBA. The record clearly reflects that this is not a case where the City has targeted an individual employee organization for the purpose of imposing lesser terms. Instead, the pattern of contract duration is department-wide, extending to firefighters, fire superiors and police superiors. Moreover, the POBA has recognized the possibility that a contract expiration of December 31, 2020 could be awarded and has offered a salary proposal for consideration in the event of such an award. Accordingly, the duration of this agreement to be awarded shall be January 1, 2017 through December 31, 2020.

I do not award the City's proposed addition to Article 33 – Duration. The language would be inconsistent with existing language in the agreement at Article 33.A(11) that provides for salary step movement in the event that a new agreement has not been negotiated prior to expiration date. The negotiability of similar language has been upheld by the New Jersey supreme Court In re County of Atlantic, 2017 N.J. LEXIS 21 (August 2, 2017). While in other circumstances there may be a basis for the inclusion of the proposed language, the facts and circumstances of this case weigh against the awarding of the City's proposal. In particular, the constraints required by the cap on base salaries in this case has required accommodation of that cap with the step movement that has already occurred in the first year of this contract. Upon contract expiration, whatever potential costs that may be associated with step movement must be considered the statutory framework and financial posture of the City at that time and can be accommodated by the parties denying their negotiations process.

ARTICLE 13 – INSURANCE HEALTH AND WELFARE

The parties have negotiated a comprehensive health insurance benefit provision at Article 13 that includes medical insurance, dental benefits, prescription benefits, optical benefits and an employee assistance program. The City has proposed to make the following changes to Article 13:

- a. *Change paragraph A to read.* “All employees will be provided health insurance under the Direct Access Blue Cross/Blue Shield Plan, or one of the HMO plans offered by the City. Employees shall contribute to their health

insurance provided for herein in accordance with Chapter 2, P.L. 2010, as modified by Chapter 78, P.L. 2011. The City reserves the right to change carriers so long as equal to or better benefits are provided.”

- b. *Eliminate paragraph B and replace with following:* “Police officers will be provided with a defense consistent with N.J.S.A. 40A:14-155. The City will pay any civil judgment against the police officer for compensatory damages only so long as the acts committed by the police officer upon which the action is based were within the scope of his/her employment and do not constitute actual fraud, malice, willful misconduct or an intentional wrong.”
- c. *Add* language setting the Emergency Room co-pay to \$100; increase doctor visit co-pay to \$20; change out-of-network deductible to \$250 for individual and \$500 for parent/child, husband/wife and family. Change out of network reimbursement charges to 70% fair health.
- d. In paragraph D, create a 3-tier prescription co-pay system with co-pays effective January 1, 2017 as follows: Genetic - \$5; Preferred Brand - \$25; and Non-Preferred Brand - \$35. The three-tier program shall include the National Preferred Formulary, Quantity Management, and Mandatory Generic. Prescription coverage does not include compound medication unless, upon appeal exercised by the police officer, it is determined that the compound prescription is medically necessary and there is no other alternative prescription. Human growth hormone (HGH) or similar drugs to enhance normal functions, such as antiaging, the improvement of athletic performance, or memory enhancing are excluded from coverage, unless upon appeal exercised by the police officer, it is determined to be medically necessary and no alternative prescription is available.

[Co-pays for prescriptions over \$1,000 is unchanged]

Mail order shall be \$10, \$50 and \$70 for a 90-day supply prescription.

- e. *Eliminate* paragraph H. as duplicative of Article 12.A. and B.

In support of its proposal, the City offers the following argument:

Not only did the three other public safety bargaining units agree to the City's health benefits proposal, but the non-public safety bargaining units also voluntarily agreed to health benefits changes as well. In short, the following health benefit changes were made to all of the public safety bargaining units:

- **Co-pays changes:**
 - Emergency Room - \$100.00
 - Doctor visit - \$20.00
- **Out of net-work deductible:**
 - Individual - \$250.00
 - Family - \$500.00
- **Out of net-work reimbursement charges:**
 - 70% of fair health
- **3-tier prescription co-pay system:**
 - Generic - \$5.00
 - Brand - \$25.00
 - Formulary - \$35.00
 - Three tier program shall include the National Preferred Formulary, Quantity Management Control, and Mandatory Generic.

From 2015 to 2016, the City's health benefits expense increased a staggering \$28,580,000. (C-76). As Exhibit C-120 demonstrates, the City's cost containment under its health benefits proposal is \$1,060,576.46. Due to the constant and consistent increase in the costs of health benefits, cost containment is essential. Both the taxpayers and the police officers benefit by controlling the health benefit increase. Since police officers pay a portion of the premium, the smaller the premium increase, the less the officer has to contribute towards health benefits costs. The City cannot have different health plans for different unions. That would create an administrative nightmare and would lead to labor unrest. As such, in the interest to the public, as well as the POBA, the City's health benefits proposal should be awarded in its entirety consistent with the pattern of settlement throughout the City.

The POBA has proposed:

Except as modified by the POBA in its "Article 13" proposals, all health insurance benefits in effect during the 2013-2016 Collective Negotiations Agreement shall continue during the 2017-2020 Agreement with the exception of the POBA's agreement to change

from the existing 90th percentile "reasonable and customary" standard, in instances involving out-of-network usage, to a 70th percentile rate.

The Union objects to the City's proposed changes to Article 13 and it seeks to preserve the existing article. While doing so, it proposes that "nominal increases" be made to the dental benefit cap in paragraph C and the maximum reimbursement for optical related expenses in paragraph G. It contends that its proposed increases are reasonable offsets for the substantial increases in deductibles and co-payments under the City's proposal, assuming that the City's proposal is awarded. The POBA's proposal is as follows:

1. Paragraph C shall be modified to increase the maximum reimbursement for optical related expenses from \$125 per year to \$250 per year.
2. Paragraph C - Dental Benefit Cap shall be increased from \$2,000 to \$2,500 per year.

The City shall provide health care benefits and prescription benefits to the surviving dependents of Police Officers who have twenty-five (25) years or more of service credit in the Police and Firemen's Retirement System and who pass away prior to retirement.

Award on Health Insurance

The City's proposal on health insurance to the POBA is consistent with the voluntary agreements it has entered into with all of its public safety units and non-public safety units. There is a pattern of settlement on this issue and insufficient evidentiary support to award a deviation from the pattern are the POBA as proposed. The analysis as to the applicability of the internal

comparability criterion is as set forth in the award on Duration and need not be restated. Moreover, the public interest is furthered by the desirability of the City purchasing and administering a common health insurance plan on a uniform basis. I award the City's proposal. I do not award the POBA's proposals to increase reimbursement rates for optical related expenses or the increase in the Dental Benefit Cap. Although the City objects to these proposals as being prohibited new non-base salary economic items, I need not address that argument and deny the proposals as being inconsistent with the terms of the modified health insurance plan agreed to by the City's other units that forms the basis for pattern of settlement. However, I do award the portion of the POBA's proposal regarding survivor benefits. While it may technically fall under the umbrella of a new non-base salary economic benefit, I find that it is so integrally part of the pattern of settlement on the health insurance issue in the public safety units that its inclusion in the new agreement is reasonable and in the interests and welfare of the public.

The City's proposal is awarded. Also, the following shall be added to Article 13:

Subject to the conditions of this Article, the City shall provide health care benefits and prescription benefits to the surviving dependents of police officers who have twenty-five (25) years or more of service credit in the Police and Firemen's Retirement System and who pass away prior to retirement.

ARTICLE 12 – INJURY AND SICK LEAVE

The City and the POBA have negotiated a comprehensive injury and sick leave article similar to what has been provided to the other public safety units.

The City has proposed that the following changes be made to Article 12 – Injury and Sick Leave:

- a. *Add* as new Section: “Police officers who have been on sick leave for up to one (1) year, must return to work for six (6) months in order to receive the benefit of one-year leave benefit of Section B. Officers who do not return to work for at least six (6) months will have all sick time, from whatever off-duty injury or illness, counted toward the one (1) year limitation herein and, if granted additional sick time for any reason beyond one (1) year, such sick leave shall be without pay.”
- b. *Add* as new Section: “Police officers who have been on injury leave for up to one (1) year, must return to work for two (2) months in order to receive the benefit of one-year leave benefit of Section A. Officers who do not return to work for at least two (2) months will have all injury leave time, excepting the officer who suffers a different and unrelated on-duty injury before the two (2) month period has been reached, counted toward the one (1) year limitation herein and if granted additional injury leave beyond one (1) year, such leave shall be without pay other than any compensation available under worker's compensation.”
- c. *Add* as new Section: All use of injury or sick leave pursuant to this Article shall be in accordance with procedures established by General Orders of the Department. Vacation time shall run concurrent with sick time consistent with the current department policy and practice. Any member on sick leave for more than 60 days shall not accrue 2 comp days; after 120 sick days, the member shall not accrue 4 comp days; at 180 sick days, the member shall not accrue 6 comp days, and after 181 sick days, the member shall not accrue 8 comp days. An officer will not forfeit more comp days that he has accrued in one year. As used herein, sick leave includes leave for off-duty injuries. On-duty injuries shall be

exempt from this Section, and will be defined in the General Order.

- d. *Change* paragraph D to 3 months.
- e. *Change paragraph to read:* “Any police officer that has a perfect attendance record during any calendar year (1/1 - 12/31) shall receive pay equivalent to two days' pay, which shall be paid in January of the next year. As used herein, perfect attendance means no missed days on sick or injury leave.”
- f. *Add to Article:* “Employees out on sick or injury leave that qualifies under the FMLA will have FMLA time run concurrent with their sick leave.”

In support of its proposal, the City offers the following arguments:

The City currently administers a very generous sick and injury leave policy. However, when officers are out on sick and injury leave, it creates staffing issues for the Department. Director Shea testified that any given time approximately 8% of POBA members are out sick. In addition, besides officers who are out due to legitimate illnesses, there are officers who abuse the policy. The City has addressed this issue through discipline. However, as Director Shea testified, disciplining officers is not effective since this method makes the City susceptible to litigation due to the types of questions it can ask. As a result, the City proposed changes to the sick and injury leave language in the collective negotiations agreement, to which the other three public safety bargaining units agreed. Consistent with those agreements, the City's proposal to the POBA provides as follows:

- Police officers who have been on sick leave for up to one (1) year, must return to work for six (6) months in order to receive the benefit of one-year leave benefit of Section 4. Officers who do not return to work for at least six (6) months will have all sick time, from whatever off-duty injury or illness, counted toward the one (1) year limitation herein and, if granted additional sick time for any reason beyond one (1) year, such sick leave shall be without pay.
- Police officers who have been on injury leave for up to one (1) year, must return to work for two (2) months in order to receive the benefit of one-year leave benefit of Section 3. Officers who

do not return to work for at least two (2) months will have all injury leave time, excepting the officer who suffers a different and unrelated on-duty injury before the two (2) month period has been reached, counted toward the one (1) year limitation herein and if granted additional injury leave beyond one (1) year, such leave shall be without pay other than any compensation available under worker's compensation.

Director Shea testified that officers currently have unlimited sick and injury leave. The City's proposal would change the long-term usage of leave, and addresses excessive sick leave use. Furthermore, when officers are out on lengthy leaves, it impacts the amount of officers available to work. This proposal does not eliminate sick or injury leave; it does not mean that officers who suffer unexpected illnesses will be terminated. It simply caps the ability of an officer to be out with pay without returning to work for a specified period of time.

The POBA's objection to this proposal is not only speculative (an officer who rarely uses sick time over 20+ years gets sick twice in the same 12 month period and now may go without pay) but presumptive. Assuming that in such a rare event this happened, the POBA could not explain why taxpayers, who may have already carried the officer for 12 months of full pay and benefits, should pay further for no service provided. While one may empathize in such a situation, the residents of Jersey City are not guarantors of every officer's health and pay. What if such a situation happened to 200 officers at once? What if it was 300 officers? Should the City continue to pay not only for their salaries, but also the inevitable overtime that follows, in the absence of service? The offer of one year of full pay and benefits is generous enough. To re-trigger the benefit, officers must be required to return to work for a specified period of time.

The City's proposal also seeks to eliminate the accrual of compensatory days when an officer is out on sick or injury leave. Under Article 16, Holidays, of the collective bargaining agreement between the City and the POBA, POBA members receive ten (10) compensatory days to be used for holidays. (C-60). POBA members receive these compensatory days so they can be used if the officer is scheduled to work on a holiday. However, officers out on sick or injury leave are not working on holidays, but receiving pay. Thus, why should an officer out on sick or injury leave accrue compensatory days if the officer is not scheduled to work on a holiday? This defeats the purpose of the compensatory day. Allowing officers who are out on sick or injury leave to continue the

accrual of compensatory days will further compound the City's staffing issue which impacts its ability to provide its service to the public.

The POBA urge the denial of the City's proposal. It contends that no factual evidence was presented by the City to justify the modifications the City has proposed. It submits that there are sufficient guidelines in existing policy to prevent the hypothetical abuses the City seeks to avoid. It submits that little weight should be given to agreements made by other public safety units. Its central opposition is set forth in its post-hearing submission:

Again there was no factual evidence presented by the City to justify the substantial contractual changes sought by the City to the Article 12 "Injury and Sick Leave" contract article.

POBA witnesses testified regarding the existence of detailed **existing** sick and injury leave policies that prevented the abuse or misuse of existing sick leave or on-the-job injury contractual provisions.

POBA President Carmine Disbrow, for example, referred to examples of individual Officers being severely disciplined because of documented sick leave abuse or misuse in consideration of the City's existing lengthy policies that supplement the prescriptions of Article 12.

Award on Injury and Sick Leave

After due consideration of the parties' presentations, I award the City's proposal to modify Article 12 – Sick and Injury Leave. The analysis on internal comparability and pattern of settlement set forth in the award on Duration is applicable here and need not be restated. The modifications sought by the City are consistent with the terms agreed to by its other public safety units that, in the

main, continue and preserve the quintessential elements of the existing negotiated agreement that allows for up to one (1) year sick and injury leave benefit with pay and additional leave with pay in individual circumstances.

ARTICLE 33 – SALARIES

I next turn to the salary issue and the adjustments each party has proposed. The City has proposed:

January 1, 2017 - 0.6% increase at top only. Step movement for officers in guide and longevity movement for those eligible.

January 1, 2018 - 0% increase at top, and no step movement for those officers in guide.

January 1, 2019 - 0% increase at top. Step movement only for those officers in guide.

Amend step schedule to add 5 steps for all officers in guide. (See Attachment A)

January 1, 2020 - 1.6% at top step only. No step movement for those officers in guide.

The POBA has proposed:

1. Effective **January 1, 2017** there shall be no salary increase applied to any of the steps of the three salary schedules, including (1) the schedule for Police Officers hired before January 1, 2013, (2) the salary schedule for Police Officers hired after January 1, 2013, and (3) the salary schedule for Detectives. Those Police Officers and Detectives who are not at the top step of their respective salary schedules shall not receive an additional salary increase applied to the applicable salary step that they were on as of January 1, 2017.

2. Officers not at the top step shall move to the next step of the salary schedule, effective January 1, 2017

All Officers during the 2017 contract year shall receive their longevity payments, as increased during the 2017 calendar year, in accordance with their respective anniversary dates.

3. Effective January 1, 2017 there shall be no salary step movement or longevity increases paid during the 2018 calendar year. However, the approximately **\$327,584** available for use in 2018, in consideration of the Interest Arbitration salary cap shall be divided equally among all top step Officers; i.e. approximately a 0.65% increase for all Officers and Detectives at the top step.

Given the award of a contract duration through December 31, 2020, the salary award shall extend for four years. The POBA's final salary offer is for two years but addresses the possibility that there may be a contract duration that extends through December 31, 2020. Because of this, it has provided a third and fourth year salary proposal within the text of its post-hearing brief. It submits:

The three and four year POBA contract salary proposals are based upon the following availability of funds vis-à-vis the 2% cap:

	<u>Base</u>
Available in 2017	\$1,235,738
2018	\$1,260,453
2019	\$1,285,662
2020	<u>\$1,311.375</u>
Total available	\$5,093,229

THREE YEAR PROPOSAL

The POBA proposes implementing a Second Salary Step Movement in 2019, **deferred until October 1, 2019**. If a second salary step was effective as of **January 1, 2019** this would consume \$2,188,846, leaving the available money short by \$443,449 for the full funding of a January 1, 2019 increment. However, if the step movement was deferred until October 1, 2019, the cost for that increment would only be \$547,212.

Accordingly, the relevant cost outs would be:

2017	(-800,719)
2018	\$1,260,453
2019	<u>\$1,285,662 less \$547,212</u>
Residual for COLA	
top step officers = \$1,198,185	

Accordingly, \$1,198,185 would be distributed (effective January 1, 2019) to all top step Officers and Detectives (i.e. \$1,198,185 divided by 469 top step Officers and Detectives), equaling \$2,548 each.

FOUR YEAR PROPOSAL

The POBA proposes full implementation of salary step movement (including salary steps and longevity movement) **effective January 1, 2017, January 1, 2019 and January 1, 2020**. This four year proposal would (a) consume \$4,643,054 of the \$5,093,229 available for step and longevity movement and (b) leave \$430,179 for base COLA adjustments for Officers and Detectives at their top step for 2020 (\$450,175 distributed across 489 Officers at the top or approximately \$920 for Officers and Detectives at the top).

The salary cap sets a strict limit on the amount of base salary that can be awarded. The City and the POBA recognize this is what is required in an interest arbitration proceeding. However, the cap is a limit and does not automatically require that an award must expend funds equal to the cap. The City's proposal at 5.8% does not rise to the level of the cap. The imposition of an award up to the cap is dependent on whether the evidence points to a result that, in the absence of the cap, shows justification for an amount of increase reaches or exceeds the cap. The evidence in this record does support an award up to the full cap of 2% in base salaries. This is the amount that is the maximum allowable by law. The required calculation methods to determine the actual amounts the cap requires the application of all expenditures on base salary amounts that are chargeable to the 2.0% cap. By way of example, the costs for step increases

and advancement or adjustments on the longevity schedule create chargeable expenditures. If awarded, they must be calculated in addition to any increases that are made to any of the steps on a salary schedule. As has been previously set forth and was understood by the parties at all phases of this process, the salary issue, in the absence of a voluntary agreement, must not exceed the statutory cap. The standards to be applied have been set by PERC in its prior decisions and have been approved by the courts on appeal. The legal framework, and PERC's interpretation and application of the statute as to the methodology for calculating wage increases has been set forth in Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶ 116 2012) and Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶ 3 2012) and their progeny. A summary of arbitral authority cited in those decisions was recently set forth in State of New Jersey and FOP Lodge 91, P.E.R.C. NO. 2016-11 (2016). In pertinent part, it stated the following:

P.L.2010, c.105 amended the interest arbitration law, imposing a 2% "Hard Cap" on annual base salary increases for arbitration awards where the preceding collective negotiations agreement (CNA) or award expired after December 31, 2010 through April 1, 2014. P.L.2014, c.11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% salary cap, along with other changes, to December 31, 2017. N.J.S.A. 34:13A-16.7 provides:

Definitions relative to police and fire arbitration;
limitation on awards

a. As used in this section:

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount

provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

“Non-salary economic issues” means any economic issue that is not included in the definition of base salary.

b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.

The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

In Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we modified our review standard to include a determination of whether the arbitrator established that the award would not exceed the Hard Cap. ... [T]he Commission has consistently authorized the arbitrator’s approach to calculating

increases in base salary items for those unit members remaining in the unit after the base year. In New Milford, the Commission endorsed the following method for “costing out” an interest arbitration award within the parameters of the 2% Hard Cap:

Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

[New Milford at 344, emphasis added]

In Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), we rejected the union’s assertion that the arbitrator should have taken into account a recent retirement and recent promotions when projecting salary costs in the award, finding:

In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority

representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.

[Ramsey at 20, emphasis added]

The conclusion that the POBA should receive all increases that can be awarded up to the cap renders some of the statutory criteria less relevant than others when fashioning the salary award. For example, voluntary settlements in evidence that exceed the cap, whether in Jersey City or elsewhere in the County or State, are of little evidentiary value given the requirement that the awarded salary increases cannot exceed the statutory salary cap. The evidence submitted by the parties on this criterion supports an award at the maximum amount allowable by law. A similar observation is made as to the cost of living data and wage increases in the public sector generally and in the private sector. The parties have presented evidence on these criteria and this data also supports an award up to the full cap. Even if such data were to point to an award that would exceed the salary cap, the data would be irrelevant because an award cannot be issued that exceeds the salary cap. The other criteria have been considered but do not yield a different result. The overall compensation and benefits criterion reflects that unit employees are reasonably compensated. The record reflects that a top step officer in 2016 receives \$100,295 and a detective \$104,602. Officers hired prior to January 1, 2013 at maximum longevity step receives an additional 16% added to base pay. In addition, there are benefits including, but not limited to, benefit waiver payments, overtime, vacations and vacation buy backs, comprehensive health insurance, paid sick and injury leave

up to one year, clothing allowance, terminal leave, compensatory time and fourteen (14) paid holidays. The record also reflects that a Jersey City police officer can also earn substantial annual income for off duty work authorized by the City that the City values at an average of \$25,000. The evidence relating to this statutory criterion does not alter the conclusion that salaries be awarded up to the level of the cap on base salary increases. A similar observation is made regarding the continuity and stability of employment criterion because the salary award that modifies the salary schedule is the highest amount allowable by law and the remaining issues do not remove or substantially alter the monetary value of a police officer's overall compensation and benefit package. As previously indicated, the record does not reflect that the terms of the award that meets the salary cap limitation would compel the City to exceed the statutory limitation on it such as the tax levy cap or the spending appropriation cap, or that the amount of money equaling the cap would have adverse financial impact on the City. Indeed, the City does not contend that it has an inability to fund an award at the maximum allowable limit of 2%, or that negative consequences would result to the City, the residents or taxpayers.

The parties disagree on the manner in which the funds should be distributed that are equal to the cap. They agree that the gross base salary amount is \$61,786,921 and that a compounded 2% over the four years yields amounts of \$1,235,738 for 2017, \$1,260,453 for 2018, \$1,285,662 for 2019 and \$1,311,375 for a total expenditure of \$5,093,228 over the four years. These

figures have been confirmed in the parties' submissions. The cap amount to be awarded exceeds the City's proposal by \$1,387,146.

In 2017, step increases and longevity increases have been paid at the amount of \$2,144,387 or 3.47%. These increases fall within the definition of base salary increases and are chargeable to the salary cap. Because this sum exceeds the 2% cap in 2017, there is no additional money to apply to the salary steps, including the maximum step in 2017. In 2018, the amount available for base salary increases is \$351,804 [$\$1,235,738 + \$1,260,453 - \$2,144,387$]. This amount cannot accommodate either step movement or increased longevity payments. I award this available sum of \$351,804 to those officers at top step who did not receive an across the board increase in 2017. Assuming 469 officers at top step, the amount to be awarded at top step for 2018 is \$750. In 2019, the amount available is \$1,285,662. However, because the law permits the cap amounts to be distributed over the four year period, I award step movement and longevity increases similar to what was expended in 2017 but without an increase in maximum or top step pay. This sum for 2019 is \$2,188,846. In 2020, the amount available for base salary increases is \$408,192 [$\$1,285,662 + \$1,311,375 - \$2,188,846$]. This amount cannot accommodate either step increases or increased longevity payments. The amount should be applied to those at maximum step. Assuming 480 officers at top step, the amount to be awarded at maximum or top step pay for 2020 is \$850.

Given the fact that the salaries awarded are limited by the amount set by law and that those amounts, in my judgment, have been distributed as equitably as possible, I do not award the City's proposal to add an additional five (5) steps to the salary schedule. This would decrease the costs of step movement in the future but add several years more for junior officers to reach top step.

Accordingly, the Award on salary shall be:

- | | |
|-----------------|--|
| January 1, 2017 | All officers eligible for step increases shall move one step on the salary schedule and all longevity increases shall be paid. |
| January 1, 2018 | There shall be no salary step movement or longevity increases. Officers at top step shall receive an increase of \$750 as added to the top step. |
| January 1, 2019 | All officers eligible for step increases shall move one step on the salary schedule and all longevity increases shall be paid. |
| January 1, 2020 | There shall be no salary step movement or longevity increases. Officers at top step shall receive an increase of \$850 as added to the top step. |

This arbitrator is aware of the differences between the amounts of salary agreed to by the three other public safety units and the salary amounts that have been awarded in this interest arbitration. The differences are not based on the arbitrator's exercise of discretion or a decision to deviate from a settlement pattern. The salary increases in the voluntary settlements are lawfully authorized by statute because the Police Superiors, Fire Superiors and rank and file

Firefighters were able to reconcile all negotiations issues on mutually agreeable terms. In contrast, the parties here, despite their efforts, were unable to reconcile their negotiations resulting in the invocation of the statutory process of interest arbitration. The salary amounts the arbitrator has awarded represent the maximum salary increases that can be awarded under the cap on base salary increases with discretion limited to the distribution of those amounts. The arbitrator's reliance on pattern of settlement on certain other issues such as duration, health insurance and sick/injury leave is not contradictory because the merits of those proposals must be evaluated individually based on the statutory criteria without a requirement that less weight be given to the evidence on those issues because of the statutory limitation on the amount of base salary increases.

ARTICLE 5 – RETIREMENT

The City has proposed the following changes to Article 5 – Retirement:

- a. *Clarify* paragraph to state that retirement, as used throughout the contract, shall mean retirement from the Police and Firemen's Retirement System ("PFRS").
- b. *Clarify* paragraph to state that hospitalization insurance will be provided to those who retire from PFRS in accordance with the provisions of this collective negotiations agreement.
- c. *Add to Article:* Except for police officers who had 20 years in the pension system as of June 28, 2011, police officers who retire on or after 1/1/17 and are eligible for City-provided health insurance benefits shall contribute 1.5% of their yearly pension or the rates established by the tables in Ch. 78, whichever is greater."

The POBA has proposed the following changes to Article 5:

Add to Article: Except for Police Officers who had 20 years in the pension system as of June 28, 2011 and those who subsequently achieved 20 years of service in PFRS as of December 31, 2012, Police Officers who retire on or after 1/1/17 and are eligible for City-provided health insurance benefits shall contribute 1.5% of their yearly pension or the rates established by the tables in Ch. 78, whichever is greater. The City shall agree to comply with any new Legislation enacted after the signing of a new successor contract covering the period between 1/1/17 through 12/31/20 that is passed regarding Chapter 78 health insurance premium contributions from current and retired POBA unit members. (In the alternative, the parties shall agree to the language in the Firefighters' contract addressing this issue).

The existing Agreement has a brief reference to benefits for retirees. It states:

Members who become eligible for retirement under New Jersey law and ordinance of the City of Jersey City shall retain all pension rights, hospitalization insurance and other benefits as currently provided.

Award on Article 5 - Retirement

Both parties have offered proposals to clarify and modify the present language. The City's proposals to clarify the paragraph in its proposals (a) and (b) have been stipulated to and need not otherwise be resolved by award. The remaining proposed language by both parties is intended to more precisely define eligibility and address rates of contribution as required by Chapter 78.

The City's proposal (c) and the first sentence of the POBA's proposal are identical except for the POBA's reference to 2012 and the City's proposal is awarded:

Except for police officers who had 20 years in the pension system as of June 28, 2011 and those who subsequently achieved 20 years of service in PFRS as of December 31, 2012, police officers who retire on or after 1/1/17 and are eligible for City-provided health insurance benefits shall contribute 1.5% of their yearly pension or the rates established by the tables in Ch. 78, whichever is greater.

I need not address the City's objection to the POBA's proposal as being a prohibited new non-base salary economic benefit due to the parties' common position. In respect to the POBA's proposal concerning new legislation, I do not award the language that it has proposed. Instead, I do award its alternative proposal to incorporate the language that the City agreed to with the firefighter unit. That language, as it applied to firefighters states:

If a court determines that firefighters hired before May 28, 2011 are not required to make contributions under the rates established by the tables in Ch. 78 toward their health insurance in retirement, then in that instance, those retired firefighters shall contribute only 1.5% of their yearly pension.

Based on the above, I award the following language to Article 5:

Except for police officers who had 20 years in the pension system as of June 28, 2011, police officers who retire on or after 1/1/17 and are eligible for City-provided health insurance benefits shall contribute 1.5% of their yearly pension or the rates established by the tables in Ch. 78, whichever is greater. If a court determines that police officers hired before May 28, 2011 are not required to make contributions under the rates established by the tables in Ch. 78 toward their health insurance in retirement,

then in that instance, those retired police officers shall contribute only 1.5% of their yearly pension.

ARTICLE 10 – WORK DAY AND WORK WEEK

Each party has proposed modifications to the existing language in Article 10 – Work Day and Work Week. The City has proposed the following:

- a. *Eliminate* the last sentence of paragraph A.4.
- b. *Add* new paragraph that states that “The department may make temporary reassignments based on seniority for up to 30 calendar days.”
- c. *Add* new paragraph that provides that the City has the right to assign or modify a probationary police officer's schedule, hours of work, assignment and district at any time during the one-year working test period.

The POBA has proposed that it be awarded a new work schedule:

Add new section: The normal work week for the Line schedule shall be an eight (8) Section Schedule consisting of five (5) days on duty followed by three (3) days off, in which each daily tour shall be 8.5 hours in length. The current starting times shall be 0700, 1500 and 2300 hours. However, the City reserves the right to alter the starting times if its operational needs require the same.

Officers cannot work more than 17 hours in a 24 hour period, except in cases of emergencies.

The City offers the following rationale in support of its proposals to add new paragraphs (b) and (c) regarding temporary assignments and probationary work assignments:

The Department must have the ability to temporarily reassign officers due to the shifting crime incidents in the City. The Department is precluded from being able to address issues if it is unable to temporarily reassign officers. Based on the erratic and unpredictable nature of crime throughout Jersey City, the Department cannot predict when it may need more officers at another district or location. Thus, it must have the ability to temporarily reassign its officers in order to adjust to the volatility.

Furthermore, in the first part of the City's proposal, Directed Shea testified that the City proposed 30 days in order to be fair to the officers. Director Shea stated that 30 days is a reasonable amount of time for an officer to be reassigned from his or her permanent assignment. In addition, temporary reassignments will be based on seniority to avoid the 'picking and choosing' of officers. As Director Shea explained on cross-examination, when making temporary reassignments based on seniority, the Department would start with the seniority list, and the officer with the least seniority would be temporarily reassigned first, then the next time the Department decides to make a temporary reassignment, the next least seniority officer would be reassigned, and so on and so forth.

Finally, with regards to probationary officers, the City needs the ability to modify the assignment, hours of work, schedule, and district of a probationary police officer. This will enable probationary officers to obtain a broader experience in the field which will help them handle an array of tasks as a Jersey City Police Officer. It heightens their training and it will help the Department determine how an officer's skill set fits within the Department. The proposed language also benefits both the City and the POBA since the probationary officers are being evaluated for permanent appointment during their probationary period. The POBA benefits by having well-trained, better experienced officers to handle the work and stress of being a permanent Jersey City police officer. The POBA is not the only group being asked to provide the City with this ability – Local 1066 has already agreed to allow the City to make such assignments and transfers to probationary firefighters. See C-121, p4.

The POBA's position on the above proposals regarding temporary assignments and probationary officers is a flexible one. It reflects agreement

with those proposals on the condition that the arbitrator award the POBA's position on all disputed issues it defines as "operational." It submits:

The POBA would agree to the two proposals of the City relating to "temporary assignments" and "probationary officers", contingent upon the maintenance of the status quo regarding all of the operational issues that are referred to in the POBA's Point IX that refers to existing comp time, summer vacation deferral, sick leave and injury, and tour exchange policies (with the POBA agreeing to revisions, as per its tour exchange proposal, that reflect the existing contractual language between the City and the **PSOA** concerning tour exchange policies).

More specifically, the City proposals at issue that the POBA would agree to, subject to the above, are:

1. The Department may make temporary assignments based on seniority for up to 30 days.
2. The City has the right to assign or modify a probationary Police Officer's schedule, hours of work, assignment in District any time during the one year working test period.

The POBA also proposes to modify the existing work schedule to provide a 5-3 schedule with a daily tour of 8.5 hours. It explains its rationale in its post-hearing submission:

During the course of his testimony, Director James Shea referred to the City's initiative in proposing a 5/3 work schedule to be worked by supervisors within the Jersey City Police Department that resulted in a negotiated agreement to a work schedule that significantly provides approximately 15 more days off for PSOA Patrol personnel, while maintaining, through the establishment of an 8-1/2 hour day (instead of an 8 hour day that was worked pursuant to the prior 5/2, 5/3 work schedule) the same number of annual hours worked.

There has been no reason submitted by the City for its sudden decision not to offer the same 5/3 work schedule for Jersey City POBA Patrol personnel.

The POBA's specific proposal regarding a new 5/3 work schedule reads as follows:

The normal work week for the Line schedule shall be an eight (8) section schedule consisting of five (5) days on duty followed by three (3) days off, in which each daily tour shall be 8.5 hours in length. The current starting time shall be 0700, 1500 and 2300 hours. However, the City reserves the right to alter the starting times if its operational needs require the same. Officers cannot work more than seventeen (17) hours in a twenty-four (24) hour period, except in cases of emergency.

It is submitted that it is very unusual, if not unprecedented, for a municipality in New Jersey to institute a new work schedule for supervisory personnel without agreeing to the same work schedule for Rank and File Officers.

At the very least there would be a substantial disconnect regarding the continuity of supervision.

The proposed 8 section schedule has been recognized as substantially increasing the number of on-duty Officers working every day around the clock. This increased staffing provides for a greater Patrol presence within the City and, of course, a quicker response for any "call for service".

In addition, it is averred that the 5/3 work schedule will save the City a substantial amount of money in overtime. In this regard, the increase from an 8 hour work day to a 8.5 hour work day should dramatically reduce the "end of shift" overtime that is currently incurred by the City.

As noted above, each Patrol Officer will still work the same number of hours (1939) under the proposed 8 section schedule as worked under the 15 schedule (5/2, 5/3) work schedule

It has also been recognized that the existing 15 section schedule provides Police Officers with only two days off between shifts during every other cycle, in comparison to the 8 section schedule which provides three days off between shifts, a minimum amount of time that Police Unions state is essential for Police Officers and their families to readjust to the hours in which a family normally operates.

The establishment of a 5/3 work schedule, moreover, will directly, intimately and positively impact on the daily life of Officers and their families.

It is also recognized that a 5/3 work schedule provides time for certain training and will make it more possible to have effective communications between in-coming and off-going shifts during roll call.

It should be noted that the part of the POBA's work schedule article that states that "Officers cannot work more than 17 hours in a 24 hour period, except in cases of emergencies" not only reflects the change from an 8 hour day to a 8.5 hour day but also permits hundreds of Officers to work overtime within the Department, who would otherwise be excluded from overtime assignments if the "cap" was 16 hours in a 24 hour period.

For all of the foregoing reasons, it is respectfully requested that the Arbitrator award the 5/3 work schedule, as proposed by the POBA, which again is consistent with the 5/3 work schedule that has been negotiated between the City and the Jersey City PSOA.

The City seeks the denial of the POBA's work schedule proposal. Initially, it contends that the arbitrator does not have the lawful authority to award a proposal that is a non-base salary economic benefit to the POBA resulting in an additional fifteen (15) days off. Its position on this has previously been set forth and focuses on the City's calculations that the new work schedule would result in a 6.25% increase in cost in overtime and additional accruals in compensatory days. It further points to testimony of the POBA President acknowledging that there would be additional increases in terminal leave payouts and vacation buy-back. The City also objects to the issue not being listed in the POBA's response to the City's interest arbitration petition.

Award on Work Day and Work Week

The POBA's proposal would result in a common work schedule for all of the department's law enforcement personnel. The arbitrator would normally have to weigh the merits of a work schedule change proposal based on its operational feasibility, its financial impact on the City and internal comparability. However, in this instance, the dictates of the interest arbitration statute and the case law interpreting and applying N.J.S.A. 34:13A-16.7(b) compels the denial of the proposal based upon the proposal being a new non-base salary economic issue. I credit the City's analysis in Ex. C. #123 depicting that there would be increases in overtime, vacation buy back and terminal leave adjustments. The denial should not be construed to prohibit the City from considering the adoption of the proposed work schedule for operational reasons during the term of the contract.

In respect to the additional proposals concerning Article 10, I do not award the City's proposal to eliminate the last sentence of paragraph A.4. There is no evidentiary basis that supports its removal. I also do not award the City's proposal to add a new paragraph allowing it to make temporary assignments for up to 30 calendar days. This general authority it proposes is overbroad and not tailored to how it would be applied in individual situations. Whatever authority the City currently may have on this issue is retained. I do award the City's proposal to add a new paragraph concerning probationary employees. The ability to assign or modify a probationary police officer's schedule, hours of work, assignment and district is directly related to training and supervision and also

provides the City with the ability to evaluate the performance of a probationary police officer.

ARTICLE 33 – LONGEVITY

The Agreement, at Article 33, provides a comprehensive scheme for the payment of longevity benefits. There are two tiers for longevity. The first is for police officers hired prior to January 1, 2013. The second tier is for police officers hired after January 1, 2013. The City’s proposal would provide for a third tier of longevity benefits for police officers hired after January 1, 2017. The existing benefit is as follows:

- B. Longevity. Police Officers hired prior to January 1, 2013, will receive an annual longevity payment in accordance with the following schedule:

<u>Beginning 1st Day of Year</u>	<u>% of Base Pay</u>	<u>Through Last Day of Year</u>
4	2	7
8	4	11
12	6	15
16	8	19
20	10	22
23	12	24
25	14	27
28	16	each thereafter

Longevity. Police Officers hired after January 1, 2013, will receive an annual longevity payment in accordance with the following schedule:

<u>Beginning 1st Day of Year</u>	<u>% of Base Pay</u>	<u>Through Last Day of Year</u>
6	2	10
11	4	15
16	6	20
21	8	24
25	10	27
28	12	Each thereafter

The City has proposed several modifications to the existing article. They are:

- (1) Effective January 1, 2018, freeze longevity at 2017 rates for current officers eligible for and being paid longevity and convert to a flat dollar amount. (See Attachment B)
- (2) For officers
 - (a) hired on or after January 1, 2017; and
 - (b) those current officers not yet eligible for longevity, longevity will be paid as part of base pay in accordance with the following schedule:

First day of 10th year	\$1,000.00
First day of 15th year	\$2,000.00
First day of 20th year	\$3,000.00
First day of 25th year	\$4,000.00
 - c. *Add to paragraph B as follows:* “Effective for persons hired as police officers on or after January 1, 2017, for the purpose of determining eligibility, longevity is defined as the number of years of actual work performed for the City of Jersey City as a police officer and is not dependent upon seniority date.”
 - d. *Eliminate* the second paragraph of paragraph 11.
 - e. Add to paragraph that all employees must have direct deposit.

In its post-hearing submission, the City offers support of adoption of its longevity proposal:

The City's Final Offer on longevity is fully consistent with the longevity provisions voluntarily agreed to by the three other public safety bargaining units. (C-66 through C-68). The City's proposal does not eliminate longevity, as other municipalities in Hudson County have done, but contains the longevity cost to the City while still rewarding employees who have made the commitment to remain with the City for an extended period of time. (See C -119). Presently, POBA members receive very generous longevity benefits. Unfortunately, the present longevity schedule is unsustainable and antiquated. The City's offer would continue longevity for employees hired after January 1, 2017, but with more sustainable and predictable growth. Instead of receiving a longevity payment based on a percentage of base salary, the City's longevity proposal converts longevity to a flat dollar amount. The longevity proposed by the City of \$1,000, \$2,000, \$3,000, and \$4,000 after ten (10), fifteen (15), twenty (20) and twenty-five (25) years respectively, is both generous and fully consistent with the original intent of longevity as a benefit for long term service. The City's offer is reasonable given that many municipalities throughout Hudson County have eliminated longevity entitlements. (See C-54 through C-57, C-65, and POBA Workbook III, Exhibit B).

Finally, all three public safety bargaining units agreed that the longevity changes would take effect for new hires that were hired on or after the effective date of the successor collective bargaining agreement. I.A.F.F., Local 1066 voluntarily agreed that the longevity changes would become effective for all employees hired after January 1, 2016, which was the start date of the successor contract. This voluntary settlement impacted 30-40 new hires, according to Director Shea.

Thereafter, both PSOA and Fire Superiors, Local 1064 voluntarily agreed that officers hired after January 1, 2017 would be subject to the longevity changes. Both successor collective negotiations agreements began on January 1, 2017.

Here, the POBA's collective negotiations agreement expired December 31, 2016. As such, consistent with the three other public safety negotiations agreements, the longevity changes should become effective for officers hired on or after the effective date of the successor collective negotiations agreement, which is January

1, 2017. The POBA should not be treated any differently than the other three public safety bargaining units that voluntarily agreed to the City's longevity proposal. As such, consistent with the three of units, it is reasonable, just and in the public's interest that the City's proposed longevity language should take effect on January 1, 2017.

The Union urges rejection of the City's longevity proposal. Initially, the POBA submits that the City's proposal compares unfavorably with existing longevity articles in other municipal police departments. The POBA points to the City's exhibits that show that only three out of ten police departments have eliminated longevity (Hoboken, Kearny and Secaucus) while only three others provide lesser longevity benefits than the level of benefits proposed by the City for new hires after January 1, 2017.

The POBA points out that for the new hires, the longevity benefit would max out at \$4,000 as of the first day of the 25th year of service which would be \$12,000 less than those similarly situated who were hired before January 1, 2013. The POBA also argues that even if the City's proposal were to be awarded, the longevity change should be effective January 1, 2018 and not January 1, 2017 because of its impact on officers who are already on payroll. In support of this, the POBA submits:

Testimony submitted on behalf of the City and the POBA, as part of the interest arbitration process, established that, as many as 75 Officers, have been hired by the City during 2017. These Officers would be forced to become part of the third tier of greatly reduced longevity benefits if the City's proposed effective date of January 1, 2017 was awarded.

It is very unusual that any public employer would significantly reduce existing economic benefits, such as longevity benefits, for **currently employed** Police Officers, especially Officers who, as referred to in Point X, have been the subject of other substantially reduced economic benefits and/or subject to increased costs relating to insurance coverage.

In consideration of the above, it is respectfully requested that, if the Arbitrator determines that a third tier of longevity benefits be awarded, this third tier of longevity benefits should be effective **as of January 1, 2018**.

Award on Longevity

Based upon this record, I find that the City has not established a basis to convert longevity payments from percentages to dollars and to freeze longevity at the 2017 rates effective January 1, 2018. These proposals are denied. However, I find that the City's remaining proposals on longevity be awarded. The City has shown that there is a pattern of settlement among its public safety units on this issue and insufficient evidence to warrant a deviation to the effective date of January 1, 2017 does not take into consideration that the other units accepted the January 1, 2017 as the effective date and applied this date to employees similarly situated to the POBA. The POBA has not shown that there should be a different relationship in either eligibility for, or the level of longevity payments, based upon length of service in Jersey City between rank and file police officers, their superior officers, rank and file firefighters or fire superiors. A common longevity payment that extends throughout public safety is in the public interest and supported by the statutory criteria as it concerns internal comparability. The POBA's proposal to a different date for eligibility for the third tier of longevity

would alter the pattern and create different level of benefits for the POBA than other public safety employees without convincing rationale to support more favorable treatment. I also award the City's proposal, as voluntarily accepted by the PSOA, to define longevity as the number of years of actual work performed for the City of Jersey City as a police officer and is not dependent upon seniority date.

I deny all other longevity proposals made by the City based upon insufficient evidence that supports the proposals. The agreements in the other public safety units did not provide a freeze in longevity at 2017 rates and the conversion of longevity payments to flat dollar amounts. The City has also proposed to delete the second paragraph of paragraph 11. I deny this proposal for the reasons expressed in the dismissal of a similar proposal made in the context of the analysis concerning Duration. The City's final proposal on longevity is to add a paragraph requiring employees to have direct deposit. There is insufficient evidence in support of this proposal and it is denied.

ARTICLE 17 – COMPENSATORY TIME

The City has proposed to modify the existing provision governing compensatory time as follows.

- a. *Change paragraph 3 to read: "No compensatory time off will be granted during emergencies. Additionally, once the Department reaches minimum manning, no further compensatory time off will be granted."*

- b. *Eliminate* paragraph 6 and state that the City shall maintain all compensatory time electronically.

In order to provide context to the proposal and to the parties' submissions on this issue, I set forth the existing provision that appears in Article 17.

It is understood that every effort will be made in accordance with the guidelines set forth below to provide Officers with the opportunity to utilize their unused compensatory time. Therefore, the following guidelines for awarding compensatory time are adopted by the parties.

1. Requests for compensatory time off shall be made in writing by the employee at least three (3) calendar days before the date(s) requested, including at least one (1) on-duty tour. The City shall be under no obligation to grant requests under less notice.
2. Valid requests for time off shall not be arbitrarily or unreasonably denied.
3. Compensatory time may be withheld during emergencies and when manpower levels are abnormally low and there are insufficient manpower levels available through the use of overtime lists.
4. In the event that an employee's request for compensatory time is denied, he/she shall be given first preference on his/her next request for such use.
5. Any unused compensatory time shall accumulate from year to year and shall be granted to an employee upon his/her retirement.
6. An accurate record will be maintained by each Unit Commander of all compensatory time and unused vacation time due employees under his/her command. A book designated as the Compensatory Time Book will be kept in each unit for this purpose. It shall be verified annually by the employee and his/her Commanding Officer, and a copy containing the initials of both the employee and his/her

Commanding Officer verifying the accuracy of this book will be given to the employee prior to January 30th.

7. The City may, with the consent of the employee, be relieved of its obligation to grant compensatory time owed to an employee, in an amount in cash equivalent to the normal rate of pay for the amount of compensatory time due.
8. The City shall permit Police Officers of the bargaining unit to buy back compensatory time which they have accumulated on a system to be jointly developed by the Association and the City. The maximum annual obligation of the City under this system shall be [~~\$250,000.00~~] \$300,000.00 per year to the POBA, which is not cumulative.

The POBA emphatically seeks rejection of the City's proposed changes to

Article 17. Its response includes the following:

Article 17 (Compensatory Time), paragraph 3, presently reads as follows:

Compensatory time may be withheld during emergencies and when manpower levels are abnormally low and there are insufficient manpower levels available through the use of overtime lists.

The City has demanded that this paragraph be amended to state that:

No compensatory time off will be granted during emergencies. Additionally, once the Department reaches minimum manning, no further compensatory time off will be granted.

The POBA witnesses testified regarding the significance and importance of the existing contract language which permits the granting of comp time requests, subject to the constraints of the existing contract language.

The POBA's witnesses stated that the City's proposed contractual changes would severely restrict the ability of Officers to use previously accrued compensatory time and would substantially inhibit their ability to use the compensatory time that they earned to

attend family functions and attend to many other personal issues that arise.

The City did not present any evidence to justify any proposed change in the compensatory time language of Article 17 as referred to above. There were no statistics presented, or even anecdotal evidence presented that would provide any substantive basis for the granting of the City's requested comp time modifications.

Director James Shea was also equivocal about whether there was even an overtime component to his concerns that the existing comp time language inhibited his scheduling flexibility.

There were references as well to the Director's concerns that the real problem concerning the existing contract language related to existing friendships and positive working relationships between supervisors (represented by the PSOA) and POBA members that he implied resulted in Police Department supervisors not exercising their existing prerogatives to deny the use of comp time in accordance with the **existing** contractual constraints and past practices. [Emphasis in original].

The City contends that it has met its burden to justify the change it seeks to Article 17. It submits that the essence of its proposal is aimed to insure the proper deployment of officers able to respond to the ebb and flows of crime rate demands and to insure that its districts are properly staffed in line with its ability to initiate proactive policy strategies. It submits that the granting of compensatory time has caused staffing levels to either fall below minimum manning or have created difficulty in staffing above minimum manning. City testimony on the issue was offered by Director of Public Safety James Shea who explained the basis for the proposal.

The City has summarized its position in support of its proposal in its post-hearing submission:

The City has four (4) districts. Direct Shea stated that the current minimum manning levels are six (6) patrol cars on the road per district. Currently, officers are guaranteed the use of a compensatory day even if the district is at the six (6) car minimum, so long as the vacancy is filled using overtime. If the district is above minimums, the officer is guaranteed the use of compensatory day, but the district is not obligated to fill the vacancy until the district falls below minimums. As a result, the Department hires officers on overtime in order to be at or above minimums. Unfortunately, the resulting overtime expense does not guarantee that the department will have the proper staffing levels, only the minimum staffing level.

Director Shea testified that the City should be permitted to decide to generate overtime for proactive policing above minimum manning levels, and not be handcuffed to spend overtime dollars just to provide minimum police coverage, which is not safe for the officers working or the public. The City should be spending money on overtime to deploy officers above minimum manning levels in order to properly serve the public. The Department should not be forced to incur taxpayer money in order to ensure officers maintain their unfettered ability to use a compensatory day without restrictions. Taxpayer money should be utilized to protect the taxpayers.

The current practice is an enormous hindrance to the Department's ability to fight crime since it cannot get officers to work above minimums. This issue is a POBA issue alone. As Director Shea explained, there is no systematic minimum manning issue with the PSOA, and thus, it was not proposed to them.

Director Shea testified that when the district is at the six (6) car minimum, there are not enough officers to provide visible policing. When the district is at minimums, officers only answer radio calls or 911 emergencies. Minimum manning levels do not allow for the use of other police presence tactics or community policing, such as foot patrols. Foot patrols, for instance, increase police presence in a particular district or location. When at minimum manning, Director Shea testified that the Department cannot implement proactive policing initiatives. But most importantly, it is not safe for the officers when the district is at minimum coverage levels. There simply are not enough officers to respond to other calls and assist fellow officers.

Director Shea provided an example that clearly illustrated the problem with the current contract language under Article 17.

Director Shea stated that on one occasion, the City experienced a spike in violent crime. As a result, the community demanded a visible police presence. Therefore, Director Shea deployed more officers on foot patrol in the community. How did the police officers react? Director Shea testified that officers used their compensatory days so that they did not have to work the foot patrol assignment. When the Department offered overtime to fill the vacant foot patrol posts, Director Shea explained that officers did not want to take overtime. This example clearly shows how an officer's unrestricted ability to take compensatory days does not allow the Department to effectively serve the needs and desires of the community. The current practice regarding the use of compensatory day is at the unfettered discretion of the individual officers. In addition to officers using compensatory days, officers out on vacation or sick leave further compound the minimum manning issue.

The Arbitrator is urged to grant the City's proposal on minimum manning so that the Department can properly provide its services to the residents of the City. Having too many officers off handicaps the Department and does not allow it to adequately protect and serve its residents. That is the exact responsibility that every member of POBA signed up for. Under the City's proposal, once the Department hits minimums, officers will no longer be able to use a compensatory day. As a result, the Department can utilize overtime expenses more efficiently by paying overtime to get above the minimum manning level so that the City has more officers available to conduct proactive policing initiatives. Most importantly, by not allowing compensatory days once minimum manning is reached, the Department is best able to protect its residents.

While Carmine Disbrow testified on direct examination that POBA members enjoy the peace of mind of knowing they are guaranteed a day off whenever they need it, the Department's number one priority is protecting its residents, not guaranteeing its employees days off. Protecting the public is what officers committed to when they were sworn in. If an officer is in need a day off, they can swap with another officer. The City's proposal does not change the availability of time off above minimum manning, making the proposal extremely reasonable. In this regard, the POBA acknowledged on cross-exam that upwards of 12 officers assigned to the patrol division per district per shift can still take time off even under the City's proposal.¹⁵ The City's proposal is not so draconian that no officer will be able to get time off. To the contrary, even

¹⁵ Generally 24 officers are assigned to the patrol division per district, although the number may fluctuate because of sick leave and injury leave, another area the POBA objects to addressing. **[Footnote in original].**

under the City's proposal about half of the police officers assigned to the patrol division in each district have the ability to take a day off without the City's proposal being triggered. No police contract was located in the entire state where officers get to dictate to the employer when they work regardless of staff limits.

The City, in addition to the alleged operational improvements that it sees resulting from its proposal, also points out that the firefighter and fire superior units voluntarily settled with the City and agreed upon some staffing restrictions. The City makes the following arguments on this point:

Other public safety bargaining units voluntarily agreed to restrictions on the use of compensatory days. Director Shea testified that Local 1066 made a concession on the use of compensatory time. Prior to negotiations, Director Shea stated that twelve (12) fire fighters could use a compensatory day per scheduled tour. However, Local 1066 agreed to reduce that number to eight (8) firefighters per tour. (C-68, p12). Not only did Local 1066 agree to reduce the number of firefighters off per shift, it also agreed to further control the impact of sick and injury leave per tour. In this regard, the MOA provides that if the number of firefighters on sick or injury leave exceeds 8 per group, the number of firefighters who may use a comp day will be reduced by the number on sick or injury leave. (Ibid.)

Similarly, Fire Superiors, Local 1064, voluntarily agreed to a reduction in the amount of compensatory time off as follows: 1 Deputy Chief, 1 Battalion Chief and 3 Captains by tour from 1,1, and 6. (C-67).

Under this proposal, none of the public safety bargaining units that reached voluntary settlements with the City had their number of compensatory days reduced.¹⁶ However, the units did voluntarily agree to restrictions on how those days are taken. Similarly, the City is not proposing to reduce the amount of compensatory days that POBA members receive. Instead, the City is making a reasonable proposal that does not allow the use of a compensatory day when the City reaches minimum manning. Clearly, this

¹⁶ Comp days are only impacted by extended sick and injury leaves, and the elimination of granting additional comp days for moving summer vacation to another time of year. **[Footnote in original]**.

proposal is in the best interest of the public so the Department can initiate policing strategies that protect its residents and do more than provide a minimum amount of police presence.¹⁷

Award on Compensatory Time

I first note that the proposals and any award on this issue is a matter pertaining to the patrol division. The interests and welfare of the public require the City be able to provide sufficient qualified police officers on the ground to prevent crime, to apprehend those who violate the law and to adequately protect the public and the on duty police officers who perform the law enforcement duties. This must be accomplished while accommodating a police officer's ability to use time off authorized by the contract. Because of these potentially competing goals, there must be a balancing in the department's need to properly staff its patrol shifts with an officer's right to use contractual compensatory days, sick leave or vacation days.

Director Shea's testimony reflects a view that the current ability of an officer to take time off has made it difficult to maintain staffing levels at or above minimum manning levels. His testimony includes examples and situations when the number of officers that were deployed were not sufficient to provide the protections that the department felt were necessary to react to those situations.

¹⁷ In this regard, the POBA wants to maximum wages permitted under the interest arbitration statute, but continually demands that it should have to provide only the minimum amount of police coverage. **[Footnote in original]**.

He testified that each district normally schedules double the number of officers above the minimum manning level but that the district is often faced with having to replace officers on overtime when the taking of time off causes staffing to fall below minimum staffing levels. His testimony provides context to the City's proposal that guarantees officers with time off but only until such time that a district reaches minimum manning. Under the City's proposal, the department may, but would not be required, to grant additional officers with time off when the district falls below minimum manning if an officer can be found to work overtime.

The POBA contends that the existing language provides sufficient protections to the department to insure that there are sufficient staffing levels. In particular, it points to language stating that compensatory time may be withheld during emergencies, when manpower levels are abnormally low and/or when there are insufficient manpower levels available through the use of overtime lists.

The arbitrator is keenly aware of the tension between scheduling/staffing and contractual time off cannot ever be fully resolved to the total satisfaction of the City and the POBA. Yet, a fair balance must be struck that takes into consideration the need for officers to be able to take contractual time off and the need of the department to not only meet minimum staffing levels but also to fill posts above that level through overtime replacements. The adequate staffing of posts for whatever law enforcement service is deemed necessary to protect

police officers and the public should be provided so long as the officers' contractual rights are also protected.

The testimony reflects that the patrol division is broken down into four (4) districts, that the minimum staffing level is twelve (12), that double the minimum staffing level (24) is normally scheduled to work on each of the three (3) shifts. Under this present scheme, twelve (12) patrol officers per district are required dictating that forty-eight (48) officers be "on the road" for each shift. Because of the normal scheduling of twenty-four (24) officers per District per shift, an equal number of officers on any given shift can receive a day off and the Department can still meet the minimum manning level. In sum, each day 144 officers must work their shifts while up to 144 officers can be granted time off without requiring a replacement during those same shifts. It is at this level of minimum manning that the City seeks to impose a cap on the granting of additional compensatory time off.

The City contends that its proposal is reasonable. However, it must also be viewed in the context of the practice under Article 17 that has required the City to grant patrol officers time off regardless of minimum manning levels so long as an officer is available and willing to work overtime.

I conclude that it is in the interests and welfare of the public to award a modification to Article 17 that, to the extent possible, provides police officers with

time off, that gives the City the ability to spend overtime money to fill overtime slots and that conditions the City's obligation to grant all requests for time off on a clear standard of staffing that is understandable and known to all parties. I do not award the City's proposal to set that standard at the twelve officer minimum staffing level at which time it would grant no further compensatory time. Instead, I award a modification to Article 17 and the City's proposal that would require it to grant two (2) additional officers with time off per district through the use of compensatory days, sick leave or vacation days so long as the City can fill these positions through overtime after it reaches the minimum number of patrol officers on the road. Thereafter, the City could grant more officers with additional time off by its exercise of discretion after these two positions are filled. This award would guarantee that up to fourteen (14) officers per shift of the twenty-four (24) that are scheduled to work would be able to be off per shift per district. Put another way, the additional eight (8) officers per shift required by the award would enable the total number of patrol officers who can take time off on any workday to reach 168, a number well above the 144 who are required to work to fulfill the minimum staffing requirements.

This award is also consistent with record evidence that no other City bargaining units have an unrestricted right to time off when staffing levels are below minimum manning, although this award authorizes time off for two additional officers per shift per district after the district reaches minimum manning

levels. The award is also consistent with the evidence that the two firefighter units have agreed upon certain staffing restrictions in their voluntary agreements.

I next address the City's proposal (b) to eliminate paragraph 6 and state that compensatory time be tracked electronically. Consistent with the award on this issue on vacations, it is also awarded here.

Accordingly, I award the following language:

No compensatory time off shall be granted during emergencies. Officers assigned to the patrol division shall be granted time off, whether through the use of compensatory days, sick leave, or vacation days, until the district in which the officer works reaches minimum manning, regardless of whether a substitute officer is available and willing to work overtime to cover the shift. Once a district reaches the minimum of patrol officers on the road, two additional officers only shall be granted time off through the use of compensatory days, sick leave or vacation days so long as the City can fill these two positions through overtime. Thereafter, after these two positions are filled, the City shall have no obligation to grant additional time off, but may do so in its sole discretion.

The City shall have the right to record compensatory time electronically as the official means of maintaining compensatory time information. The City may continue the use and availability of the manual entry book.

ARTICLE 11 - VACATIONS

Both parties have proposed modifications to Article 11 – Vacations. The City has made several proposals, none of which affect existing vacation allowances that are set forth in Article 11(C)(1), (2) and (3). The City's proposals

are intended to eliminate extra compensatory days officers get for converting summer vacation weeks.

The vacation allowances are currently set in three tiers. The first is for all employees hired prior to February 17, 2003. The second is for all employees hired on or after February 17, 2003 and the third is for all employees hired after January 1, 2013. The POBA proposes to eliminate the third tier of vacation benefits.

The City's proposals are as follows:

- a. *Add* to Article that employees who take qualifying FMLA/NJFLA leave will be required to use available vacation time concurrent with FMLA/NJFLA leave.
- b. *Eliminate* paragraphs D.2., D.4., D.5., and D.6.
- c. *Eliminate* grant of compensatory day in paragraph D.3.
- d. *Add* language that no summer vacations will be granted once minimum manning, i.e. number of cars on the road, has been reached.
- e. *Add* language that vacations will be selected by districts and in order of seniority. Summer vacation must be submitted by February 1.
- f. *Eliminate* paragraph E. All vacation will be tracked electronically.

The POBA has proposed to eliminate the third tier and to reduce the number of existing tiers to two. Its proposal is as follows:

For all Officers hired after January 1, 2013 these Officers shall be entitled to the same vacation allowances provided to Officers hired on or after February 17, 2003 (**Three tiers reduced to two tiers**).

In order to provide context to the POBA's proposal, I set forth the three tiers for vacation allowances as they appear in the agreement:

1. For all employees hired prior to February 17, 2003, the vacation allowance shall be as follows:

0-1 Year	1 working day per month through end of first calendar year in which appointed
2-3 Years	15 working days
4-5	20 working days
After 5 years	30 working days

2. For all employees hired on or after February 17, 2003, the vacation allowance shall be as follows:

0-1 Year	1 day per month of employment
2-4 Years	15 working days per year
5-7	17 working days per year
8-14 Years	22 working days per year
15-29 Years	23 working days per year
Start of 30 th Year	25 working days per year

3. For all employees hired after January 1, 2013, the vacation allowance shall be as follows:

0-1 Year	1 working day per month
2-4 Years	15 working days
5-10	17 working days

11-29 Years	22 working days
30 Plus Years	30 working days

I first address the City's proposal (a) to require employees who take qualifying FMLA/NJFLA leave time to use available vacation time concurrent with FMLA/NJFLA leave. The proposal would conform this procedure to the agreement the City reached with the PSOA. There is no valid justification presented in the record for the police department to administer its vacation leave provisions in a differential manner between a police officer/detective and sergeants, lieutenants and captains. Common administration of this benefit in relation to FMLA/NJFLA is in the interest and welfare of the public and warranted by the internal comparability standard.

I next address the City's proposal (f) to require all vacation time to be tracked electronically. Currently, this information is recorded manually in what is referred to as a "book." This method of recording is set forth in Article 11, Section E which states that "a vacation book shall be established to contain all unused vacation time." In the PSOA agreement, the parties agreed to record vacations electronically as the official means of maintaining vacation information. I find that a consistent and more modern method of maintaining official vacation information within the police department is reasonable and would promote administrative efficiency without adverse impact on unit employees. Accordingly, I award this proposal, although its inclusion in the Agreement is not intended to eliminate the use and availability of the manual entry book.

The remaining parts of the City's proposal (b), (c), (d) and (e), concern Article 11, Section D(2) through Section D(6). These paragraphs, among other things, concern procedures for vacation requests and approval, vacation use during the "summer season" and the conversion of blocks of vacation into single use vacation days and the use of the single use vacation days as compensatory time. For the purpose of providing context to the proposals, I set forth the existing contractual language on these issues:

- D. Vacation time off requests shall be granted according to the vacation schedule agreed upon between the City and the Association. Vacation requests shall be submitted no later than January 31st. Notification of approval shall be granted no later than March 1st. Each employee shall receive at least fifteen (15) working days vacation during the calendar period May 20th through September 10th which shall be considered the "summer season." Each employee shall be entitled to use ten (10) working days vacation time as time off during the summer season at his/her request. Each employee shall defer the use of one (1) or more weeks (5 working days) of his/her summer season vacation. The employees shall make written request to defer such vacation time when the yearly vacation requests are submitted as specified in this Article. The employee shall have the right to exchange such deferred vacation time pursuant to options 1, 2, or 3 below:
 - 1. This option consists of exchanging summer season vacation for equivalent cash payment. Each employee may initially request to exchange for cash one (1) week (5 working days) of vacation. The City agrees to fund this vacation buy-back option with at least a dollar amount equal to the aggregate dollar amount of one (1) week's pay for each member of this bargaining unit. In the event this option to exchange one (1) week for cash is not utilized by all members, the number of weeks unused will be available for members who may wish to exchange a second week

of summer season vacation. If this still leaves weeks unused, any member may exchange a third week of summer season vacation for cash. In any event, if the number of weeks requested to be exchanged exceeds the number of weeks available, seniority shall be the determining factor in which applicant receives the exchange. Payment for exchanged weeks shall be made no later than June 15th for employees commencing summer season vacation prior to August 1 and no later than August 15th for vacations commencing subsequent to August 1st.

2. This option consists of exchanging one summer season week vacation (5 working days) for five (5) single use vacation days which are to be used at a time other than during the summer season, and must be used within that calendar year and which must be used at a time other than during the summer season or during the period December 20th through January 3rd ("holiday season").
3. This option consists of deferring the use of any or all summer season vacation weeks to other than the summer season or holiday season. Any employee exercising this option shall, in addition to receiving the re-scheduled vacation, receive an additional compensatory day for each such week deferred, which compensatory day may be either used or accumulated as are all other compensatory days.
4. This option permits any employee to request the restoration of five (5) deferred summer season vacation days (1 week) to be taken within the summer season. Such requests shall only be granted with the approval of the Chief of Police who, in consideration of the staffing requirements and reduction in leave time sought of approximately one (1) week per unit member in the aggregate, shall not arbitrarily or unreasonably deny such requests.
5. This option consists of an employee converting one (1) non-summer season vacation week for five (5) single use vacation days to be used at a time outside the summer season and must be used within that calendar year. Eligibility for this option shall be that the employee must have exercised the option in

Paragraphs 1, 2 or 3 above. In no event shall an employee be entitled to more than five (5) single use vacation days in a calendar year, unless hired on or after February 17, 2003 which employees will be entitled to up to seven (7) single use vacation days. Scheduling of single use vacation days shall be treated as compensatory time and subject to the provisions of Article 17 herein.

6. In addition to what has been set forth above, an employee may exchange one (1) week of vacation for five (5) single use vacation days. Eligibility for this option shall be that the employee must have exercised the option in Paragraphs 1, 2 or 3 above. In no event shall an employee be entitled to more than five (5) single use vacation days in a calendar year, unless hired on or after February 17, 2003 which employees will be entitled to up to seven (7) single use vacation days. Scheduling of single use vacation days shall be treated as compensatory time and subject to the provisions of Article 17 herein.

The City explains the rationale for its proposals to eliminate Article 11, Section D(2) through Section D(6) in its post-hearing submission:

When one (1) week of vacation is converted into single use vacation days, it is more difficult for the Department to predict when officers are not available to work. Thus, a staffing nightmare is created. Thus, the City has proposed to eliminate conversion of weeks into single use vacation days under Paragraphs D.2, D.4, D.5, and D6. Thus, the City's proposal helps the City predict its staffing needs.

Additionally, under the current contract language, specifically Section D. 3, POBA members can defer the use of any summer season vacation week to another season (besides a holiday season). (C-60, p19). If an officer exercises this option, he or she receives an additional compensatory day for each week deferred. Staffing issues are further compounded when officers are able to accumulate additional compensatory days simply by deferring and converting vacation. Not only does the Department need to adjust to officers taking these additional days off, but the Department

incurs additional overtime expense since it needs to bring officers in to fill the vacancy.

Simply stated, officers should not be permitted to accrue additional compensatory days simply by deferring their summer vacation to another season. POBA members are not losing any vacation time or the ability to take vacation. The City is proposing that officers should not accrue **additional** compensatory days which later results in officers taking more days off, thus creating staffing nightmares for the Department. (emphasis added). The City prefers that the officers simply take their vacations when scheduled.

Further, there is an added future liability cost to the City for the grant of additional compensatory days simply for taking vacation at a different time. During cross-examination, Carmine Disbrow stated that if an officer does not use a compensatory day, it accrues. Thus, the officer can bank these compensatory days, and later cash them out. The constant conversion of vacation for additional days accumulates in the officer's compensatory time banks, increasing the cost of payments to retiring officers, who convert vacations at one rate of pay, but are paid out years later at a much higher rate. There is also no guarantee that the use of a comp day will not cause the City to incur overtime cost since the Department must fill that officer's shift should manning drop below minimums.

The other public safety bargaining units voluntarily agreed to make changes to their vacation conversion language. Fire Superiors, Local 1064, voluntarily agreed to reduce conversion to two (2) summer days, BUT delete receiving any additional days that can be placed in their terminal leave bank for converting, AND deleted the conversion of two (2) spring days. (C-67). Local 1066 agreed to the same. (C-68, p8)

The PSOA voluntarily agreed that it can continue to defer summer vacation, BUT superior officers will not be granted additional days for converting. (C-66)

Thus, City proposes that the PSOA language agreed to be applied to the POBA as well. It is reasonable that officers should not be granted additional days off simply by deferring summer vacation to another season. Furthermore, it is reasonable for the City to eliminate the conversion of vacation to single use days so it can be in the best position to properly staff each shift in order to best protect and serve the public.

The POBA urges the denial of the City's vacation proposals concerning Article 11, Section D. Its reasoning in support of rejection was set forth in its post-hearing submission as follows:

Testimony was presented regarding the **collective successful efforts** of the POBA and the City to limit the amount of vacation time that is taken during the summer season, which is defined contractually as the calendar period between May 20th through September 10th of each year, by providing options that provided incentives to Police Officers not to take their contractual summer vacation time.

Although the City initially requested the elimination of multiple options referred to in Article 11, paragraph D, the one option that was the focal point of negotiations between the City and the POBA related to Article 11(D)(3) which was referred to as "Option C" by the parties that states that:

3. This option consists of deferring the use of any or all summer season vacation weeks to other than the summer season or holiday season. Any employee exercising this option shall, in addition to receiving the rescheduled vacation, receive an additional compensatory day for each such week deferred, which compensatory day may either [be] used or accumulated as are all other compensatory days.

Although there were potentially productive negotiations regarding possible modifications to "Option C", that included referring to the conversion of compensatory days to additional "single use vacation days", no agreement was reached by the parties.

The City again failed to provide any factual evidence to substantiate its perception that this particular option was often used, especially by younger Officers, and was ultimately too costly to maintain in its present form.

It is averred that "perceptions", without specific documentation supporting an employer's position to change the **status quo** with regard to contract articles, cannot support a change from long standing existing contract language.

It is also submitted that Article 11 (Vacations), paragraph D(7) (referred to as "Option F"), currently prohibits the hundreds of younger Jersey City Police Officers hired after January 1, 2013 from requesting the benefits of the option described in D(6) where an employee may exchange one week of vacation for five or seven single use vacation days to be treated as compensatory time and subject to the provisions of Article 17.

An Award that would eliminate "Option C", as proposed by the City, when considered with the inability of younger Officers to avail themselves of the benefits of "D(6)" (**Option F**) would, as a practical matter, result in many Officers hired after January 1, 2013 choosing to take their full allotment of vacation time during the summer season, which can only result in escalating overtime liability for the City.

By applying the principles that you highlighted in your **Point Pleasant Beach** decision, the City's proposed changes to "Option C" should also be rejected.

The POBA has also proposed to reduce the vacation allowances from three tiers to two tiers. This would entitle officers hired on or after January 1, 2013 to the same vacation allowances provided to officers hired on or after February 17, 2003. The POBA submits that:

This is another instance where a very modest benefit is actually extended to younger Jersey City POBA members, in contrast to the significant diminution in those Officers' "salary expectancies" as a result of the initiation of the interest arbitration process, especially in further consideration of all of the City proposals that would take away existing contractual benefits for "new hires."

The granting of this proposal will not affect any POBA members during the length of the contract and will only provide POBA members, who qualify for the receipt of this enhanced benefit, with approximately 25 additional vacation days **spread out over a 25 year period**. [Emphasis in original].

Award on Vacations

As previously indicated, I award the City's proposal to require employees to take qualifying FMLA/NJFLA leave time to use available vacation time concurrent with FMLA/NJFLA leave. I award the City's proposal to require all vacation time to be recorded electronically. I do not award the POBA's proposal to reduce the number of vacation allowance tiers from three to two.

The arbitrator is legally prohibited from awarding the vacation compression proposal that results in increased vacation days in an interest arbitration proceeding pursuant to N.J.S.A. 34:13A-16.7(b) and legal precedent interpreting and applying this section of the statute. The City has established that the tier compression would result in an officer receiving 26 more vacation days after 25 years, also resulting in an opportunity for a cash out of the days.

Although the POBA contends that the City has not met its burden to justify any change to the summer deferral and conversion procedures, its argument does not recognize that all three of the other public safety units, the PSOA, the Fire Superiors, Local 1064 and IAFF Local 1066 have voluntarily agreed to some modifications in the method of deferring and converting summer vacation days and the benefit of adding compensatory days by doing so. By way of example, the PSOA agreed that no additional compensatory days will be granted for converting summer weeks into single use vacation days. IAFF Local 1066 agreed that there would be no grant of any terminal leave days for summer

vacation days converted to compensatory days. It did maintain the ability to convert no more than two summer vacation days in each calendar year to compensatory time off, based upon a ten or fourteen hour tour off. The Fire Superiors Local 1064 agreed to delete two terminal leave days, to delete the conversion of two spring days and to reduce conversion to two summer days.

I am persuaded by this evidence on internal comparability that the City has established a basis to modify the existing contractual scheme but not to the extent that it seeks. I do not award the City's proposal to add language stating that no summer vacations will be granted once minimum manning, i.e. number of cars on the road, has been reached and to add language stating that vacations will be selected by districts and in order of seniority and that summer vacation must be submitted by February 1. I also do not award the City's proposals to eliminate paragraphs D.2, D.4, D.5 and D.6. They shall remain as they currently exist, thus preserving the options, among other things, for officers to exchange or defer summer season vacation weeks to single use days. I do award a modification to paragraph D.3. Paragraph D.3 permits an officer to defer the use of any or all summer season vacation weeks to other than the summer or holiday season and, by exercising this option, the officer, receives the rescheduled vacation, and also receives an additional compensatory day for each week the officer defers. Instead of the elimination of this benefit as agreed to by the PSOA, I award a phase out of an officer's ability to convert summer vacation weeks for additional compensatory days. The phase out shall allow an officer to

receive no more than an additional two compensatory days in 2018, no more than one additional compensatory day in 2019 and no additional compensatory days in 2020.

ARTICLE 15 – EXCHANGE OF DAYS OFF

Article 15 provides for the ability of an officer to exchange or swap a tour of duty with another officer. The existing article provides the following:

- A. The Police Department may grant the request of any employee of this bargaining unit to exchange or “swap” a tour with another bargaining unit member, provided both employees consent to said mutual swap.
- B. The Police Department may agree to an employee’s swap of tours without obtaining a replacement, provided the tour that is swapped is repaid at the City’s convenience.
- C. Such requests shall be granted on a uniform basis, with standard rules and regulations applying to all employees of the bargaining unit making such requests.
- D. Such requests which are made in conformity with the rules and regulations established pursuant to Section C above shall not be unreasonably or arbitrarily denied.

Both parties have proposed modifications to Article 15. The City has proposed:

- a. *Add to paragraph A:* In order to swap shifts, officers must have the same qualifications.
- b. Eliminate paragraphs B, C, and D.

The POBA has proposed:

- a. Paragraphs B, C and D shall be replaced with the following language:
1. Requests for tour exchanges shall be granted only upon confirmation that minimum manpower exists for that tour if granted; i.e. the exchange work date for Police Officers shall be determined by the Shift Commander, not by the Officer requesting the time off.
 2. All requests for a tour exchange shall be made in writing and submitted to the Officer's Shift Commander at least 72 hours prior to the tour to be exchanged unless the Shift Commander specifically agrees to waive the 72 hour requirement.
 3. No tour exchanges shall be approved on designated holidays.
 4. Any Officer who reports off sick on the scheduled make up day regarding said tour exchange shall still be required to make up the exchange day off.
 5. Upon refusal by Officer on second request to work make up for the exchange day off owed, the Officer will have a comp day deducted from their accumulated time.

Prior to analyzing the parties' proposals and their respective positions on the modifications they have sought the differences between a tour swap and a tour exchange, as is understood by the parties, need to be made. Paragraph A involves an officer swapping his/her scheduled tour with another officer who consents to the swap, thus making the exchange a mutual tour swap. The mutual swap can be accomplished without limitation. The City does not seek to place any limitation on it except for language requiring that the officers who swap have the "same qualifications." According to the City, as presented in the

testimony of Director of Public Safety Shea, if an officer in the Emergency Services Unit wanted a tour swap, under its proposal for “same qualifications” the officer would have to swap tours with another officer in the Emergency Services Unit. The tour exchange is a different process than a tour swap. How it actually works in practice, and the resulting impact of the practice, is explained differently by the parties. Paragraphs B, C and D involve the tour exchanges which do not involve a mutual swap. The tour exchange allows an officer to change his scheduled tour without having to find a replacement. The tour exchange, according to POBA testimony, is a tour swap involving oneself or, as the City sees the transaction, as swapping with yourself. When this occurs, the officer involved chooses not to work on the day he is scheduled to work. The Agreement, at Article 15.B states the officer who has chosen not to work his scheduled tour without having to find a replacement must repay, or work the tour he has chosen not to work “at the City’s convenience.” Director Shea testified that the Department’s staffing levels are thrown off because there is no replacement for the officer who has decided not to work his scheduled shift. The City also contends that because that officer is not required to use a paid day off or required to use a day of compensatory time to take the tour off this results in the preservation of the officer’s compensatory time bank.

The City seeks to eliminate the tour exchange in its entirety by removing Paragraphs B, C and D of Article 15. By eliminating the tour exchange, the City contends that it will be able to avoid the “administrative nightmare” affecting its

staffing levels and the impact of allowing unlimited choice of days off that permits the accrual of compensatory time. It also cites POBA testimony acknowledging that the Union is unaware of any other police unit that has the ability to swap tours with oneself.

The POBA asserts that in response to the City's concerns, it has proposed additional restrictions on an officer's ability to swap a tour with oneself. Its proposal eliminates Paragraphs B, C and D and replaces them with five new subsections as they appear above. The POBA contends that the restriction it has proposed should satisfy the City's concern over the tour exchange process.

Award on Exchange of Days Off

I first address the City's proposal to add language to Paragraph A requiring the officer who swaps a tour with another to have the "same" qualifications. I note that the City has a managerial prerogative to determine whether an employee is qualified to perform a job. To require an officer to have the "same" qualifications could lead to countless grievances if an officer is qualified to perform a position but his qualifications may not be deemed to be the same or equal to the officer he is replacing. For this reason, I do not award the City's proposal and instead award language to Paragraph A stating "In order to swap shifts, an officer must be qualified to perform the position that is swapped."

I next turn to the tour exchange. The record reflects that the right to a tour exchange has existed for many years. It is a benefit of significance. An officer who wishes not to work a scheduled tour need not find a replacement, need not take a vacation day nor any other contractual paid day of leave. The officer may simply choose not to work as long as, at some future time, the officer repays the City by working another tour at another time.

I find that a reasonable determination of this issue is to deny the City's proposal to eliminate the benefit and instead provide a reasonable limitation on its use. As it currently stands, there is no limitation on its use. This creates the potential for the City not having the ability to properly staff the department because no replacement is required as a condition for an officer choosing not to work his/her regularly scheduled tour. I also deny the POBA's proposed guidelines seeking to retain benefit in its present form. It contains no limitations on its use and does not resolve issues raised at hearing over whether an officer could refuse to work makeup for the exchange day owed. Its proposal suggests that this occurs by providing a penalty for when an officer refuses to work on a second occasion. Instead of elimination, I award a continuation of Paragraphs A, B, C and D and add a new Paragraph E stating that an officer shall be allowed one tour exchange day each month on a noncumulative basis commencing January 1, 2018, unless the Director of Public Safety or his designee agrees in his/her sole discretion to grant additional days beyond the limitation.

ARTICLE 2 – MAINTENANCE AND MODIFICATION OF WORK RULES

The existing agreement includes a provision governing the maintenance and modification of work rules. The City has proposed modifications to this provision. They are:

- a. *Eliminate* paragraph A and replace with following: “The parties agree to a limited past practice clause, to wit: Past practice may be used by either party for the purpose of interpreting the language of this contract. Past practice shall not be used for the establishment of a term and condition of employment not based upon contractual language.”
- b. *Eliminate* the practice of providing compensatory days for members who go for a yearly physical. Officers who request a medical test day shall go on their own time.
- c. *Eliminate* practice of adding additional compensatory days on terminal leave during last 5 years of employment for perfect attendance.
- d. *Eliminate* practice of receiving compensatory time for missed meal breaks.

The POBA has proposed:

Effective January 1, 2017, any Officer who has perfect attendance during any calendar year shall receive two days pay to be paid by January 31st the following year. (Eliminate practice of adding additional compensatory days on terminal leave during the last five years of employment for perfect attendance).

During this process, the parties have stipulated to proposals (a), (b) and (c) set forth above. The POBA, after the submission of the post-hearing briefs, has sought to rescind its stipulation as to (c) as having been a mistake. The City objects. I maintain the inclusion of (c) as a stipulated agreement. After having

stipulated to (c) at hearing, after an issue by issue review that incorporated the stipulations into the award pursuant to N.J.S.A. 34:13A-16(g)(4), this removed this issue as an item in dispute. A removal of the issue from the stipulated agreements after close of the record would create instability in the hearing process and deprive the objecting party of its right to have presented evidence on the issue. Accordingly, all stipulated issues in this article are awarded.

I do not award (d), the only issue in dispute. There is insufficient record evidence to award this proposal. This will maintain the practice of crediting compensatory time to officers who miss meal breaks.

**RETIREE EXEMPTION FROM ANY HEALTH INSURANCE
PREMIUM CONTRIBUTION (NEW ARTICLE)**

The POBA has proposed to add a new article to the Agreement that would exempt certain retirees from paying for retiree health insurance benefits. The POBA proposes that:

All Officers who were covered by the Collective Negotiations Agreement between the POBA and the City of Jersey City that was in effect as of June 28, 2011, and who subsequently acquired twenty (20) years of service in PFRS during the term of that existing Collective Negotiations Agreement that expired as of December 31, 2012, shall be exempt from paying for retiree health insurance benefits.

In support of this proposal, the POBA has offered the following arguments:

This proposed contract provision has been negotiated between the City and the two Firefighter Unions, as well as being negotiated with the PSOA as well.

The City has concluded that this contract proposal is fully consistent with the Chapter 78 language that, for several years in this State, was viewed by the State Division of Local Government Services as representing a fair and appropriate interpretation of the term "effective date" when included as part of the Chapter 78 legislation.

As a practical matter there are no more than a dozen Jersey City Police Officers, who acquired twenty years of PFRS creditable service during the term of the last collective negotiations agreement that, while in effect as of June 28, 2011, subsequently expired as of December 31, 2012.

The POBA is simply seeking a benefit that had been "t-okayed" by the City and the POBA as part of contract negotiations and that again had been negotiated with the City's Firefighter Unions, as well as with the PSOA.

The City seeks the rejection of the POBA's proposal. Initially it contends that because the proposal is a new non-base salary economic issue the arbitrator is legally prohibited from awarding this proposal exempting retirees from health insurance contributions in an interest arbitration proceeding. It cites to N.J.S.A. 34:13A-16.7(b) and legal precedent interpreting and applying this section of the statute. The City also alleges that the POBA has made contradictory proposals as to these retirees. In one proposal, it has asked for a 1.5% contribution for those who reached 20 years in PFRS as of December 31, 2012 and subsequently retire, while in this proposal it has asked for exemptions from any contributions for those who reached 20 years in PFRS as of December 31, 2012 and subsequently retire. The City also contends that this issue is governed by statute that only exempts retirees from contribution to those who had achieved

20 years in the pension system as of June 28, 2011. The City further contends that the POBA's proposal, despite its arguments, is not similar to any of the agreements it made with any of the other public safety units, all of which provide a June 28, 2011 date.

Award on Retiree Exemption from Health Insurance Premium Contribution

I do not award the POBA proposal to extend this benefit to December 31, 2012. All three other public safety units, as does the POBA, have agreements exempting retirees from paying for retiree health insurance benefits connected to June 28, 2011. The weight to be given to internal comparability compels the denial of the POBA proposal even if it were to be deemed prohibited by N.J.S.A. 34:13A-16.7(b).

HEALTH INSURANCE PREMIUM CONTRIBUTION RATES (NEW ARTICLE)

The POBA has proposed a new article addressing health insurance contribution rates. Currently, unit employees, as well as all other employees in the public safety units make contributions at levels that are required by Chapter 78. The POBA proposes to modify those rates as follows:

1. Effective January 1, 2018 all current employees shall contribute 7.5% of their base salaries, not to exceed \$7,500, as their share of the City's health insurance premium obligations.
2. For those Officers who are required, upon their retirement, to contribute regarding their retiree health insurance benefits,

those Officers (who are not exempt from any health insurance premium contributions) shall be responsible for retiree health insurance premium contributions amounting to 2.5% of the annual pension benefits they receive. (For example, if a former Officer's annual retirement allowance is \$60,000 per year that Officer's retiree health insurance premium contribution shall be \$1,500).

The City opposes the proposal contending that if awarded, it would represent a deviation from the premium contribution rates that have been incorporated into all three of the other public safety units.

The analysis here is similar to that expressed in the Duration and Health Insurance sections of this decision that concluded there was a pattern of settlement and insufficient evidence to justify a deviation for a single bargaining unit. The ability of the City to administer a department-wide health insurance benefit is in the interest and welfare of the public. The proposal is denied.

ARTICLE 18 - OVERTIME

At Article 18 the parties have negotiated a comprehensive provision concerning overtime. It has many components expressed in twelve (12) paragraphs. One such paragraph (A) provides for overtime at the time and one-half rate for hours exceeding an eight (8) hour tour of duty. The POBA has proposed to add new overtime language providing a new optional method for the receipt of overtime compensation. It proposes:

1. Effective no later than January 1, 2018, at the option of the Officer, the Officer shall either receive cash overtime at time and one-half rates, or shall be provided with a single use vacation day, at a time and one-half rate, wherein said Officer selecting this alternative cannot use said single use vacation days during the summer months, as defined by past practices within the Department, or during designated holiday breaks to be determined by the City and the POBA.
2. Said single use vacation days must be used within a 12 month period from the date when said single use vacation days are accrued by the affected Officer.

The POBA offers support for its proposal in its post-hearing submission:

It is requested that the Arbitrator take administrative notice of how unusual it is in New Jersey, or anywhere else, to deny law enforcement personnel the option as to whether or not to take overtime in cash or in compensatory time off.

The POBA, consistent with the prescriptions of the Fair Labor Standards Act, has referred to the "**non cash** overtime option" as relating to the use of "single use vacation days". Single use vacation days, based on the past practices within the Jersey City Police Department, and consistent with the POBA proposed contract language, cannot be used during the summer season stretching from May 20th through September 10th and, moreover, single use vacation days can't be used during designated holiday breaks, as established by the City and the POBA.

In addition, it is averred that since single use vacation days are essentially a form of compensatory time off, the City can also limit the granting of single use vacation days, within the context of FLSA compensatory time off regulations, to being used within a "reasonable period" and in a manner where the City's operations are not "unduly disrupted".

The United States Supreme Court held in **Christiensen vs. Harris County**, 529 **U.S.** 576 (2000), that nothing in Section 207(o) of the Fair Labor Standards Act forbids an employer from compelling an employee to use FLSA compensatory time off (or in this case single use vacation days) **at a time selected by the employer, not the employee.**

The granting of the POBA's overtime proposal, moreover, will result in a diminution in the City's overtime liability, while again controlling the actual use of single use vacation days.

The City contends that the POBA overtime proposal must be denied asserting that the arbitrator is statutorily prohibited from awarding it pursuant to N.J.S.A. 34:13A-16.7(b). It submits that providing a single use vacation day in lieu of overtime creates a new economic benefit not previously provided because it can be later cashed out by use of a vacation buy out. It further argues that even if it is not banked until retirement, it could have increased economic value when the value of a workday, even during a 12 month period, is increased through a step increase or an across the board increase. The City also contests the POBA's assertion that under the FLSA it can legally require the single use vacation day to be used within a twelve (12) month period because earned time cannot be required to be used within a certain period of time. Thus, the single use days would be able to be accumulated like compensatory time and paid out at a future higher rate than the time in which it was earned.

Award on Overtime

The POBA's overtime proposal to provide an officer with the option of a single use vacation day has been shown by the City to have a potentially additional financial component to it in contrast to the existing provision providing for a time and one-half cash payment for hours worked in excess of an eight (8) hour tour. This may implicate the prohibition in N.J.S.A. 34:13A-16.7(b).

However, this issue need not be addressed because I do not find that internal comparability justifies the proposal or that the interests and welfare of the public would be served by awarding a different scheme for the payment of overtime than that which currently exists within the police department. The City has established that overtime payments throughout the department are on a pay as you go basis and that the POBA's proposal represents a deviation without sufficient justification. Accordingly, the proposal is denied.

ARTICLE 14 - TUITION REIMBURSEMENT

The existing agreement has a provision providing for a tuition reimbursement benefit. It states:

- A. The Association and the City mutually recognize the importance and advantage of higher education. Therefore, it is agreed that the City shall provide funds in accordance with the system set forth below to reimburse members of this bargaining unit for taking courses in an approved college which are part of a degree granting program. College courses for which reimbursement will be permitted are limited to police science, public administration, public safety, criminology, criminal justice, criminal law, law, sociology or a course directly related to the performance of public duties as a law enforcement officer.
- B. For an employee to be eligible for tuition reimbursement under the provisions of this Article, said employee must provide the Department with a notice of intention to attend college courses not later than September 1st of the calendar year in which the employee intends to take courses for which reimbursement is sought.
- C. Employees shall be entitled to reimbursement for tuition for courses taken in accordance with this Article upon submission of evidence of successful completion and the

qualification of the course as part of a degree granting program.

- D. There will be a POBA unit cap on cost of this program of \$80,000.00, which will be available to employees on the basis of seniority.

The POBA has proposed an increase in the POBA unit cap on the cost of the program. It has proposed:

The POBA tuition reimbursement cap shall, be increased from \$80,000 to \$120,000 effective the 2017 calendar year.

The POBA asserts that an increase of \$40,000 in this benefit would have a positive effect on the department and unit employees. It submits that the increase in the cap would encourage more officers to further their education and obtain advanced degrees.

The City contends that the arbitrator is legally prohibited from awarding a proposal increasing the dollar amounts of the tuition reimbursement cap in an interest arbitration proceeding citing to N.J.S.A. 34:13A-16.7(b) and legal precedent interpreting and applying this section of the statute.

Award on Tuition Reimbursement

The City's objection to an increase in the tuition reimbursement cap under the interest arbitration statute is supported by the case law from PERC. PERC has found that simply because there is an existing provision providing for a non-

base salary economic benefit, this does not mean that an economic award expanding that benefit is exempt from the proscriptions in N.J.S.A. 34:13A-16.7(b). Accordingly, based upon this limitation, this proposal is denied.

Based upon all of the above, I respectfully enter the terms of this Award.

AWARD

1. All proposals by the City and the POBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.
2. **Stipulations**
 1. **Article 2 - Maintenance of Standards**
 - a. *Eliminate* paragraph A.
 - b. *Eliminate* the practice of providing compensatory days for members who go for a yearly physical, effective 1/1/18. Officers who request a medical test day shall go on their own time.
 - c. *Add* that, effective 1/1/17, any officer who has perfect attendance during any calendar year shall receive two day's pay to be paid by January 31 of the following year. *Eliminate* practice of adding additional compensatory days on terminal leave during last 5 years of employment for perfect attendance. As used herein, perfect attendance means no missed days on sick or injury leave.
 - d. *Add* that the City will be implementing a Social Media Policy, which will be provided to the Union for review and discussion over those items contained therein which may be negotiable with the City, outside the scope of these negotiations.
 2. **Article 5 – Retirement**
 - a. *Clarify* paragraph to state that retirement, as used throughout the contract, shall mean retirement from the Police and Firemen's Retirement System ("PFRS").

- b. *Clarify* paragraph to state that hospitalization insurance will be provided to those who retire from PFRS in accordance with the provisions of this collective negotiations agreement.
3. **Article 18 - Overtime**
- a. *Add* federal court to paragraph D conditioned on the officer being there to testify as part of his duties as a Jersey City police officer and not as a defendant.
4. **Article 20 - Terminal Leave**
- a. *Clarify* paragraph A that retirement as used herein means retirement from PFRS.
 - b. *Clarify* paragraph B to eliminate reference to retirement and state that any officer who dies while employed by the City, his/her estate will receive the compensation listed in the paragraph.
5. **Article 21 - Bereavement Leave**
- a. *Add* "Step Parents, Step Children, Step Sisters and/or Step Brothers" to paragraph B.
6. **Article 24 - Grievance Procedure**
- a. *Rewrite*: Step Four: If the grievance is not settled through Steps One, Two or Three, only the City or the Union may refer the matter to the Public Employment Relations Commission within ten (10) days after the determination by the Director. An arbitrator will be selected pursuant to the rules of the Public Employment Relations Commission.
 - b. The parties can agree to waive all steps of the grievance procedure concerning contractual grievances, permitting the POBA to file for arbitration.
7. **Article 36 - Miscellaneous**
- a. *Eliminate* paragraph C as duplicative of Article 41.
 - b. *Add* to paragraph J that the Police Department I.D. must be approved by the Director of Public Safety.
8. **Article 41 - Fully Bargained Agreement**
- a. *Change* title of Article.
 - b. *Replace Article with the following*: "This Agreement represents and incorporates the complete and final

understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter whether or not covered by this Agreement, and whether or not within knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.”

9. **Article 42 - Discharge and Discipline**

- a. *Change* “Director of Police” to “Director of Public Safety” throughout Article.
- b. *Modify paragraph B to state:* “A police officer may request an Association representative be present at any meeting at which the officer will be disciplined or called to a meeting that would result in discipline.”
- c. *Modify* paragraph G to state that Formal hearings will be conducted when the penalty sought in the charges preferred against the police officer is major discipline.
- d. *Modify* paragraph H to state that Informal hearings will be conducted when the penalty sought in the charges preferred against the police officer is minor discipline, consistent with how major and minor discipline are defined by the Civil Service Commission.
- e. *Modify* paragraph I to state that the written reprimand must be served on the officer within 14 days of the Director receiving notice of the occurrence.

3. **Duration** – There shall be a four-year agreement effective January 1, 2017 through December 31, 2020.

4. **Article 5 – Retirement**

The following language shall be added to Article 5:

Except for police officers who had 20 years in the pension system as of June 28, 2011, police officers who retire on or after 1/1/17 and are eligible for City-provided health insurance benefits shall contribute 1.5% of their yearly pension or the rates established by the tables in Ch. 78, whichever is greater. If a court determines that police officers hired before May 28, 2011 are not required to make contributions under the rates established by the tables in Ch. 78 toward their health insurance in retirement,

then in that instance, those retired police officers shall contribute only 1.5% of their yearly pension.

5. **Article 10 – Work Day and Work Week**

A new paragraph shall be added to Article 10 – Work Day and Work Week that provides that the City has the right to assign or modify a probationary police officer's schedule, hours of work, assignment and district at any time during the one-year working test period.

6. **Article 11 - Vacations**

I award a phase out of an officer's ability to receive additional compensatory days after the conversion of summer vacation weeks. The phase out shall allow an officer to receive no more than an additional two compensatory days in 2018, no more than one additional compensatory day in 2019 and no additional compensatory days in 2020.

The City shall have the right to record vacation time electronically as the official means of maintaining vacation information. The City may continue the use and availability of the manual entry book.

7. **Article 12 – Injury and Sick Leave**

- a. *Add* as new Section: "Police officers who have been on sick leave for up to one (1) year, must return to work for six (6) months in order to receive the benefit of one-year leave benefit of Section B. Officers who do not return to work for at least six (6) months will have all sick time, from whatever off-duty injury or illness, counted toward the one (1) year limitation herein and, if granted additional sick time for any reason beyond one (1) year, such sick leave shall be without pay."
- b. *Add* as new Section: "Police officers who have been on injury leave for up to one (1) year, must return to work for two (2) months in order to receive the benefit of one-year leave benefit of Section A. Officers who do not return to work for at least two (2) months will have all injury leave time, excepting the officer who suffers a different and unrelated on-duty injury before the two (2) month period has been reached, counted toward the one (1) year limitation herein and if granted additional injury leave beyond one (1)

year, such leave shall be without pay other than any compensation available under worker's compensation.”

- c. *Add as new Section:* All use of injury or sick leave pursuant to this Article shall be in accordance with procedures established by General Orders of the Department. Vacation time shall run concurrent with sick time consistent with the current department policy and practice. Any member on sick leave for more than 60 days shall not accrue 2 comp days; after 120 sick days, the member shall not accrue 4 comp days; at 180 sick days, the member shall not accrue 6 comp days, and after 181 sick days, the member shall not accrue 8 comp days. An officer will not forfeit more comp days that he has accrued in one year. As used herein, sick leave includes leave for off-duty injuries. On-duty injuries shall be exempt from this Section, and will be defined in the General Order.
- d. *Change paragraph D to 3 months.*
- e. *Change paragraph to read:* “Any police officer that has a perfect attendance record during any calendar year (1/1 - 12/31) shall receive pay equivalent to two days' pay, which shall be paid in January of the next year. As used herein, perfect attendance means no missed days on sick or injury leave.”
- f. *Add to Article:* “Employees out on sick or injury leave that qualifies under the FMLA will have FMLA time run concurrent with their sick leave.”

8. **Article 13 – Insurance Health and Welfare**

The City’s proposal to modify Article 13 is awarded.

- a. *Change paragraph A to read.* “All employees will be provided health insurance under the Direct Access Blue Cross/Blue Shield Plan, or one of the HMO plans offered by the City. Employees shall contribute to their health insurance provided for herein in accordance with Chapter 2, P.L. 2010, as modified by Chapter 78, P.L. 2011. The City reserves the right to change carriers so long as equal to or better benefits are provided.”
- b. *Eliminate paragraph B and replace with following:* “Police officers will be provided with a defense consistent with

N.J.S.A. 40A:14-155. The City will pay any civil judgment against the police officer for compensatory damages only so long as the acts committed by the police officer upon which the action is based were within the scope of his/her employment and do not constitute actual fraud, malice, willful misconduct or an intentional wrong.”

- c. *Add* language setting the Emergency Room co-pay to \$100; increase doctor visit co-pay to \$20; change out-of-network deductible to \$250 for individual and \$500 for parent/child, husband/wife and family. Change out of network reimbursement charges to 70% fair health.
- d. In paragraph D, create a 3-tier prescription co-pay system with co-pays effective January 1, 2017 as follows: Genetic - \$5; Preferred Brand - \$25; and Non-Preferred Brand - \$35. The three-tier program shall include the National Preferred Formulary, Quantity Management, and Mandatory Generic. Prescription coverage does not include compound medication unless, upon appeal exercised by the police officer, it is determined that the compound prescription is medically necessary and there is no other alternative prescription. Human growth hormone (HGH) or similar drugs to enhance normal functions, such as antiaging, the improvement of athletic performance, or memory enhancing are excluded from coverage, unless upon appeal exercised by the police officer, it is determined to be medically necessary and no alternative prescription is available.

[Co-pays for prescriptions over \$1,000 is unchanged]

Mail order shall be \$10, \$50 and \$70 for a 90-day supply prescription.

- e. *Eliminate* paragraph H. as duplicative of Article 12.A. and B.

10. **New Article – Survivor Benefits**

The following language regarding survivor benefits shall be added to Article 13:

Subject to the conditions of this Article, the City shall provide health care benefits and prescription benefits to the surviving dependents of police officers who have twenty-five (25) years or more of service credit in the Police and Firemen's Retirement System and who pass away prior to retirement.

11. **Article 15 – Exchange of Days Off**

I award a continuation of Paragraphs A, B, C and D and add a new Paragraph E stating that an officer shall be allowed one tour exchange day each month on a noncumulative basis commencing January 1, 2018, unless the Director of Public Safety or his designee agrees in his/her sole discretion to grant additional days beyond the limitation.

12. **Article 17 – Compensatory Time**

No compensatory time off shall be granted during emergencies. Officers assigned to the patrol division shall be granted time off, whether through the use of compensatory days, sick leave, or vacation days, until the district in which the officer works reaches minimum manning, regardless of whether a substitute officer is available and willing to work overtime to cover the shift. Once a district reaches the minimum of patrol officers on the road, two additional officers only shall be granted time off through the use of compensatory days, sick leave or vacation days so long as the City can fill these two positions through overtime. Thereafter, after these two positions are filled, the City shall have no obligation to grant additional time off, but may do so in its sole discretion.

The City shall have the right to record compensatory time electronically as the official means of maintaining compensatory time information. The City may continue the use and availability of the manual entry book.

13. **Article 22 - Longevity**

For officers

- (a) hired on or after January 1, 2017; and
- (b) those current officers not yet eligible for longevity, longevity will be paid as part of base pay in accordance with the following schedule:

First day of 10th year	\$1,000.00
First day of 15th year	\$2,000.00
First day of 20th year	\$3,000.00
First day of 25th year	\$4,000.00

Add to paragraph B as follows: “Effective for persons hired as police officers on or after January 1, 2017, for the purpose of

determining eligibility, longevity is defined as the number of years of actual work performed for the City of Jersey City as a police officer and is not dependent upon seniority date.”

14. **Article 33 – Salary**

January 1, 2017 All officers eligible for step increases shall move one step on the salary schedule and all longevity increases shall be paid.

January 1, 2018 There shall be no salary step movement or longevity increases. Officers at top step shall receive an increase of \$750 as added to the top step.

January 1, 2019 All officers eligible for step increases shall move one step on the salary schedule and all longevity increases shall be paid.

January 1, 2020 There shall be no salary step movement or longevity increases. Officers at top step shall receive an increase of \$850 as added to the top step.

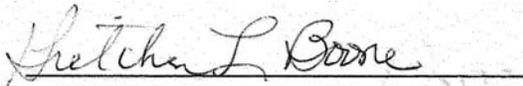
Dated: October 4, 2017
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 4th day of October, 2017, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



Gretchen L Boone
Notary Public
New Jersey
My Commission Expires 8-24-2022
No. 50066778