

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**Case No: IA-2021-016**

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**In the Matter of the Interest Arbitration between:**

**Borough of Bergenfield,**

**PUBLIC EMPLOYER**

**and**

**Police Benevolent Association, Local 309,**

**EMPLOYEE ORGANIZATION**

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**INTEREST ARBITRATION  
DECISION AND AWARD**

**BEFORE:**

**Marc A. Winters  
Interest Arbitrator**

**APPEARANCES**

**For the Employee Organization:**

**Of Counsel and On The Brief:**

**Richard D. Loccke, Esquire  
Michael A. Bukosky, Esquire  
Corey M. Sargeant, Esquire**

**For the Public Employer:**

**Of Counsel and On The Brief:**

**John L. Shahdanian II, Esquire**

**On The Brief**

**Valentina M. Scirica, Esquire**

## **PROCEDURAL HISTORY**

On February 9, 2021, the PBA Local 309, filed a Petition to Initiate Compulsory Interest Arbitration (“Petition”) with New Jersey’s Public Employment Relations Commission (“PERC”). By filing the Petition, the Union asked PERC to appoint an interest arbitrator pursuant to the Police and Fire Interest Arbitration Reform Act, *N.J.S.A.* 34:13-16(e)(1) to make an award concerning a successor collective negotiation agreement. (“CNA”) with the Borough of Bergenfield. On February 17, 2021, this Arbitrator was appointed, by PERC, to serve as interest arbitrator.

Pursuant to *N.J.S.A.* 34:13-16(b)(3), on Thursday, April 1, 2021, this Arbitrator conducted a mediation session, virtually, with the parties to “effect a voluntary resolution of the impasse.” At the conclusion of the April 1, 2021, mediation session, it was determined that the impasse should proceed to interest arbitration. An Evidentiary Hearing was scheduled and conducted, in-person, at Bergenfield Borough on May 6, 2021.

At the Hearing Michael A. Bukosky, Esquire and Corey M. Sargeant, Esquire of the firm Locke, Correia & Bukosky represented the Union. John L. Shahdanian, Esquire and Valentina M. Scirica, Esquire of the firm McCusker, Anselmi, Rosen & Carvelli, P.C. represented the Borough.

During the hearings, the parties were permitted the opportunity to argue orally, present documentary evidence, and examine and cross-examine witnesses.

The parties’ most recent executed contract had a term through December 31, 2020. During the hearing, the Employer waived their ability to pay argument, and confirmed their ability to pay.

In addition, the parties submitted extensive documentary evidence, to include various collective negotiations agreements, memorandums of agreement, prior interest arbitration awards, and financial/economic data. Subsequently, the parties were permitted to submit post-hearing briefs. Ultimately, post-hearing briefs were submitted on June 18, 2021, and the record was closed

at that time. The evidence provided and the arguments set forth by both parties have been fully considered in preparation and issuance of this Interest Arbitration Decision and Award. The above-mentioned Statutory provisions requires this Arbitrator to issue a written decision within 90 days of the Arbitrator's appointment.<sup>1</sup>

## **BACKGROUND**

Bergenfield is a municipality organized under the Borough form of government and located within Bergen County, New Jersey. Bergenfield's governing body consists of a democratically elected Mayor and Borough Council, and the day-to-day administration of the Borough government has been delegated to a Borough Administrator. N.J.S.A. 40:60-2; N.J.S.A. 40A:60-7; N.J.S.A. 40A:9-136. As of the 2017 census, Bergenfield has a population of 27,927, making it the 7<sup>th</sup> largest municipality in Bergen County.

Pursuant to § 17-5 et seq., of Bergenfield's Administrative Code, the Bergenfield Police Department (the "Department") provides police services to the citizens of Bergenfield. Pursuant to New Jersey Employer-Employee Relations Act, the police officers employed in the Department are entitled to negotiate collectively concerning the terms and conditions of employment. The PBA serves as the exclusive bargaining representative for all police officers employed by Bergenfield/Department, other than the Chief of Police and Deputy Chief. Police dispatchers and Department employees who are not sworn officers are likewise not represented by the PBA.

## **THE BERGENFIELD POLICE DEPARTMENT**

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<sup>1</sup> A waiver/extension of the 90day requirement was issued, to this Arbitrator, by PERC, on April 8, 2021, due to and based on Covid-19 pandemic issues.

The Bergenfield Police Department is a full-service agency serving both a large residential population and a significant transient population on a daily basis. The “public” for this Police Department is not just the twenty-seven thousand nine hundred twenty-seven (27,927) local residents but in addition, largely due to the Borough’s geography, a significant transient population moving through the Borough throughout the day and particularly during rush hours. One may almost take arbitral notice of heavy traffic patterns in northeast New Jersey and in Bergen County particularly. One of the main thoroughfares to move north and south in Bergen County passes through the Borough of Bergenfield.

Motor vehicle incidents, safety demands, accidents, and general duty all spike during these periods when one is serving the greater population served by the Bergenfield Police Department.

The PBA placed into evidence as exhibits Bergenfield Police Department data going back to 2018 presented on an annual basis. These are actual Police Department records maintained in the ordinary course of business. These Annual Reports show virtually every type of criminal activity, routine Borough activity and police services in many forms provided to the public. In addition to this wide variety of criminal/law enforcement services provided were also many identifiable services in the form of somewhat routine activities.

This is indeed a very busy Police Department as is evidenced by the Employer’s own business records. Even during a pandemic, the Police Department remained busy with demand from the community. D/Lt. William Duran acknowledges the difficulties of Covid, stating within his report that there was a “manpower shortage” and that “coverages were needed due to officers being absent recovering from COVID-19.”

In addition to the various activities identified above one must note that the assignments/details and total calls for service in 2020, demands made of the Police Department,

numbered two thousand one hundred ninety-five (2,195). These calls for service were requests/demands/emergencies responded to by the Department in total. There are of course in addition Officer initiated stops which were not calls from outside the agency but rather proactive enforcement activities. One proof of proactive community protection is the Bergenfield Police Department Detective Bureau assisting patrol officers on Five Hundred Seventy-Three (573) occasions, assisted other agencies on Four Hundred and Seventeen (417) occasions, and assisted Bergenfield residents and other civilians with non-criminal matters on Three Hundred and Forty-Three (343) occasions during a pandemic. The referenced D/Lt. Detective Bureau Report for the year 2020 is excerpted from page 11 as follows:

During 2020, the Juvenile Bureau faced significant challenges due to not only the ongoing Pandemic, but a continued shortage of manpower. In the 1<sup>st</sup> fourth months of the year, we were operating minus a Juvenile Detective. This not only put a strain on the remaining Juvenile Detective, but the other members of the Bureau, as everyone's case load increased, including the supervisors. In May, we gained a Juvenile Detective, but he was not initially able to help relieve some of the stressors, as he was in training and worked cases with a senior Detective to learn his craft. In August, the Detective Sergeant was promoted to Lieutenant and was reassigned to the Patrol Division, thus again creating a manpower shortage. This once again put a strain on the entire staff, as caseloads and responsibilities increased throughout the Bureau. All while there were times when the remaining members of the Bureau supplemented Patrol, in a much-needed scenario, as coverages were needed due to officers being absent recovering from COVID-19.

Even though we were dealing with these unprecedented times, we not only faced an approximate 20% increase in cases (100 more than 2019), we also observed a monumental increase through the state (294% increase) in Firearm Identification Card and Firearm Purchase Permit Application Investigations, which increased for the Bureau approximately 87% (105 more cases than 2019).

During 2020, the Detective/Juvenile Bureau also carried out two thousand one hundred and ninety-five (2195) other assignments/details and calls for service:

Detectives made a total of fourteen (14) Court appearances (virtual or in person) at the Bergenfield Municipal Court, Grand Jury and Juvenile Court. Detectives participated in one hundred fifty (150) Transportations that included bringing indictable cases to the Grand Jury Pre-Screening Unit of the Bergen County Prosecutor's Office, delivering evidence to the NJ State Police Lab in Little Falls for Forensic examination, delivering and picking up evidence from the Bergen County Sheriff's Department BCI and Bergen County Prosecutor's office, as well as other various in town and out-of-town locations for police related business. The Detective Bureau also completed thirty-nine (39) Sex Offender Registrations (or re-registrations).

The Detective Bureau Assisted Patrol officers on five hundred seventy-three (573) occasions, Assisted other agencies on four hundred and seventeen (417) occasions and Assisted Bergenfield residents and other civilians with non-criminal matters on three hundred and forty-three (343) occasions during a pandemic. Some of these other agencies included the Bergen County Prosecutor's Arson Investigations Squad, the Division of Youth & Family Services (DYFS), NJ State Parole Board, BC Probation Department and Juvenile Probation, BC Sheriff's BCI Unit, the Bergenfield Community Outreach, Englewood, Teaneck, Tenafly, New Milford, and Dumont Police Departments.

Detectives also conducted surveillances and/or checks at Borough parks, Coopers Pond, the library, areas of Howard Drive/Georgian Ct, and within the borough's business districts to deter acts of narcotic use, graffiti, public alcohol consumption, littering and other illegal acts. SNAP was conducted on seventy-nine (79) occasions at the schools in Bergenfield. Fingerprint Services were conducted on ninety-four (94) occasions. Twenty-Seven (27) Peddler Background Check investigations were conducted. A total of sixty-nine (69) employee/volunteer background checks/investigations were conducted. These include checks on potential Borough employees, DPW summer help, Bergenfield Fire Department and Bergenfield Ambulance Corp. volunteer applicants and Police Officer Background checks for applicants.

Sixteen (16) arrests were also issued/conducted. Two Hundred and twenty-six (226) Firearms background checks were completed for applications to purchase handguns and Firearm ID cards.

The Report also stressed with pride that this is an accredited Police Department from the New Jersey Association of Chiefs of Police and maintains services to the public of the highest

quality. The excellence in performance by the Bergenfield Police Department and its many successes maintain through a year plus pandemic.

## **FINAL OFFERS OF THE PARTIES**

### **PBA Final Offer:**

The PBA in its Last Offer Position proposed a three-year term contract to commence January 1, 2021, with only one change:

1. The PBA proposed a 3.0% wage increase applied across-the-board to the Salary Schedule.

### **Borough Final Offer:**

Bergenfield's Final Proposal/Offer is as follows:

- (1) 5 year CBA;
- (2) Eliminate longevity for new hires;
- (3) Employees covered by the agreement may accumulate a maximum of 250 hours of compensatory time pursuant to the prior contract. Employees covered by the agreement may hold their accumulated compensatory time, but it shall be paid out at the rate of the year in which it was earned;
- (4) Employees covered by the agreement shall no longer contribute to healthcare coverage at 15%, and instead shall contribute to healthcare at levels consistent with P.L. 2011, c.78;
- (5) Salary guide for new hires shall include 10 steps;
- (6) Include language which states that step movement shall be automatic during the term of "this contract only;"
- (7) Removal of Article III, Section 2 of the 2017 Agreement which states that "Increments shall be paid in accordance with past practice;"
- (8) 2% average annual salary increases for officers who reach top step, contingent upon #4 being accepted. If the PBA members stay at a 15% healthcare premium contribution than 0% salary increases; and
- (9) Include language that the PBA will present its first offer for a successor contract 18 months before the expiration of this contract. If a successor contract is not settled by the

expiration of this contract, the Borough will make the appropriate step payment due at that time, with no salary increases, pending either a mutual agreement amongst the Parties or an arbitration award. Further, no step increases will be awarded after the last step payment is made pursuant to this contract, until a successor contract is mutually agreed upon by the Parties or awarded by an arbitrator.

## **POSTION OF THE PARTIES**

### **POSITION OF THE PBA**

The PBA in its Last Offer Position (PBA 1 “*P-I*”) proposed a three-year term contract to commence January 1, 2021, with only one change:

The PBA proposed a 3.0% wage increase applied across-the-board to the Salary Schedule.

The public employer presented as its Proposal a one (1) page document which also provided for a continuation of the contract but for five years, an elimination of longevity for new hires, an immense reduction in the value of compensatory time creating a giant financial windfall for the employer, an immense increase in the healthcare contribution from 15% to tier 4 levels within Chapter 78, (a 20% increase) a 10 step salary guide for new hires, a revision to the step movement that creates another financial windfall for the employer, removal of Article III Section 2 of the 2017 Agreement which states that “Increments shall be paid in accordance with past practice,” a 2% average annual salary increase for officer who reach top step only contingent upon the acceptance of the Chapter 78 health benefit contribution levels (with an alternative that if the 15% healthcare premium contribution remains then 0% annual salary increases), and language that the PBA will present its first offer for a successor contract 18 months before the expiration of this contract which also eliminates the continuation of current benefits while a future contract is negotiated and agreed upon.

The Borough seeks to eliminate longstanding contractual benefits with a major and significant impact on individual Employees.

The Employer Last Offer Position, it is submitted, is unawardable as a matter of law in this proceeding. The public employer's Last Offer Position as presented at the hearing fails to adhere to the PERC statute and regulations. The employer failed to file an answer. In its attempt to circumvent its failure to file its answer, it replied that it presented a Final Proposal/Offer. However, the Employer was required to file an answer, which presented any further issues to be negotiated beyond the Employee's presented issue of wages. The filing of a Final Proposal/Offer, while being another procedural requirement, does not replace, substitute, or offset the requirement to file a final answer. The Employer's failure to submit said answer waived their right to raise any further issues to negotiate. As further argued in the brief presented to Arbitrator Winters, those issues are precluded as a matter of law.

At the hearing, the Employer waived their ability to pay argument, and confirmed their ability to pay.

The PBA's 3% wage increase applied across the board to the salary schedules for the duration of a three-year contract must be awarded. The additional issues presented by the Employer are outside the scope of the Interest Arbitration Petition filed by the Employee and unanswered by the Employer.

The Employer failed to answer the Interest Arbitration Petition and presented no reason at the hearing for failure to answer. The Employer Final Offer, which should not be considered by the arbitrator, is not supported by the documents presented in the hearing. The PBA will rely upon the statutes, the rules and applicable case law in defending the proposed encroachments to the existing contractual working conditions.

## **POSITION OF THE BOROUGH**

The Borough of Bergenfield respectfully submits for arbitration the task of establishing fair terms and conditions for employment for Bergenfield employees who are members of the Police Benevolent Association Local 309 (the “PBA”). For more than a year, Bergenfield has implored the PBA to come to the bargaining table and engage in reasonable dialogue concerning the terms and conditions of employment. Bergenfield has made numerous fair and reasonable offers to the PBA, all of which were ultimately rejected. The PBA members have continuously refused to negotiate their healthcare contribution rate, which is currently at an unprecedented low rate of 15%. Frustratingly to Bergenfield, it had always been the Parties mutual understanding that the PBA’s 15% healthcare contribution level was a temporary measure, and it is Bergenfield’s position that the PBA members must now increase their healthcare contributions pursuant to P.L. 2011, c.78. Despite the many attempts by Bergenfield to negotiate a successor collective negotiations agreement (“CNA”), the PBA, without objection from Bergenfield, submitted to binding interest arbitration.

As it will be demonstrated *infra*, nothing produced in the record supports the PBA’s position that they should not be required to contribute to healthcare benefits in accordance with P.L. 2011, c.78. Rather, the evidence demonstrates that the PBA – the highest compensated class of Bergenfield employees – should shoulder their fair share of the healthcare costs under New Jersey law. To allow the PBA members to shirk this responsibility while the other bargaining units in Bergenfield have contributed their fair share, is clearly inequitable. For this reason, Bergenfield respectfully contends that the only reasonable determination that can be made, would be to require PBA members to contribute to the cost of their health insurance premium at the rates set forth in *N.J.S.A. 52:14-17.28c*, just as the legislature had required, and other Bergenfield employees have

agreed to. Furthermore, Bergenfield respectfully contends that its Final Proposal/Offer in regard to the PBA salary guide and salary increases is fair and equitable in comparison to other municipalities within Bergen County.

**NOTE:**

Prior to the interest arbitration hearings being conducted, and then in their closing brief PBA 309 filed an objection to the proposals put forth by the Borough in its final offer. In short, PBA 309 contended the Boroughs failure to file a timely Answer to PBA 309's Petition to Initiate Compulsory Interest Arbitration precluded it [the Borough] from submitting proposals due to its failure to properly identify those subject areas as being in dispute. In defense of their objection, they cite *N.J.A.C. 19:16-5.5*.

More specifically, PBA 309 argued: The Employer failed to answer the Interest Arbitration Petition and presented no reason at the hearing for failure to answer.

At mediation and the Interest Arbitration hearing, the Employer attempted to raise further issues, and the PBA objected and provided memorandum of law on the subject at the Interest Arbitration hearing.

The Employer Last Offer Position, it is submitted, is not awardable as a matter of law in this proceeding. The public employer's Last Offer Position as presented at the hearing fails to adhere to the PERC statute and regulations. In its attempt to circumvent its failure to file its answer, it replied that it presented a Final Proposal/Offer. However, the Employer was required to file an answer, which presented any further issues to be negotiated beyond the Employee's presented issue of wages. The filing of a Final Proposal/Offer, while being another procedural requirement, does not replace, substitute, or offset the requirement to file a final answer. The Employer's failure to submit said answer waived their right to raise any further issues to negotiate.

The additional issues presented by the Employer are outside the scope of the Interest Arbitration Petition filed by the Employee and unanswered by the Employer.

The Borough responded by arguing: In accordance with both *N.J.S.A. 34:13A-16 et seq.*, and *N.J.A.C. 19:16-5.7*, Bergenfield submitted via electronic mail, its Final Proposal/Offer to both Arbitrator Winters and the PBA on April 8, 2021. Further, on April 26, 2021, Bergenfield submitted an updated final proposal/offer. Both submissions by Bergenfield were made in accordance with the time prescribed by *N.J.A.C. 19:16-5.7(g)2*. Thus, both proposals/offers were made at least 10 days prior to the Arbitration Hearing, which was scheduled before Arbitrator Winters on May 6, 2021. In response to Bergenfield's April 8, 2021, submission, the PBA responded with a brief email which failed to state specifics as far as any kind of objection to the issues listed within Bergenfield's offer. In fact, the PBA did not object to the issues listed in Bergenfield's Final Proposal/Offer until the day of the Arbitration Hearing, despite receiving Bergenfield's Final Proposal/Offer on two separate occasions.

As both final proposals/offers were made at least 10 days prior to the Hearing, this Arbitrator finds that under the New Jersey Statutes listed above, the Borough is not barred from submitting all their issues listed in their final proposal offer from being heard and decided by this Arbitrator. And by this Arbitrator's ruling, now in this decision, PBA 309 has not been prejudiced or harmed in these proceedings.

## **STATUTOR REQUIREMENTS**

This Arbitrator is required to make a reasonable determination of the issues, giving due weight to the statutory criteria set forth in N.J.S.A. 34:13A-16(g). 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).

In arriving at the terms for this Award, this Arbitrator has concluded that all the Statutory factors are relevant but not all are entitled to equal weight.

This Arbitrator, however, is required to make a reasonable determination of the issues with a reasoned explanation for the decision and award, indicating which statutory factors are deemed relevant, the due weight that was given to each factor, and which factors, if any, are deemed to be irrelevant. The criteria also provide this Arbitrator with the authority to consider other such factors not confined to those specifically stated which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment. [*N.J.S.A. 34:13A-16(g)(8)*].

Having reviewed all the Statutory criteria, this Arbitrator, has determined the following to be the most significant criteria to be applied for this decision. That being: The interests and welfare of the public. The interests and welfare of the public grasps and envelops many other factors and recognizes the interconnection and correlation among all the statutory criteria.

Those factors and criteria that interconnect and correlate with the interest and welfare of the public and should be accorded more weight, in this case, are the public sector comparisons, and the financial impact on the governing unit, its residents, and taxpayers.

This Arbitrator has also given due weight to the fact that this Award will not require the Borough to exceed its lawful authority or any statutory restrictions. The party seeking a change or to modify an existing term or condition of employment bears the burden of justifying the proposed change.

The decision, hereunder, is to award or deny any individual issue in dispute as part of the overall terms that have been awarded, along with the continuation of contract terms and benefits that are not in dispute.

The parties argue that the statutory criteria must be applied in comportment to and aligned with their respective final offers.

The parties, in this case have submitted very extensive and voluminous amounts of documentation as exhibits as well as very lengthy and comprehensive closing arguments addressing their positions along with the statutory criteria.

This Arbitrator can assure both parties that all submission have been thoroughly reviewed and considered when determining the merits of each final offer.

Each issue in dispute will be discussed and analyzed, in the Discussion and Analysis Section below, and will include, in this decision, to award or deny thereby resolving each issue. The totality of the issues awarded will be set forth in the Awards Section of this decision at the end.

## **DISCUSSION AND ANALYSIS SECTION - ISSUES IN DISPUTE**

### **Term of the Contract**

Regarding the length of the new CNA, Bergenfield proposes a 5-year contract while the PBA proposes a 3-year contract.

The PBA believe that their proposed 3-year contract should be awarded because the issues presented by the Bergenfield are outside the scope of the Interest Arbitration Petition filed by the Employee and unanswered by the Employer.

Bergenfield, on the other hand, believes that a 5-year contract would benefit Bergenfield and its citizens by creating continuity and peace of mind for both Parties.

This Arbitrator having ruled that Bergenfield could present their issues, in accordance with PERC rules, over the objection from the PBA, must award this proposal to Bergenfield since they provided the only justification as to why the new CNA should be a 5-year contract.

The term of the parties' new CNA shall be. January 1, 2021, till December 31, 2025.

### **Analysis. Decision & Award**

#### **Wages/Salaries**

For the reasons set forth below and after careful consideration of the facts developed from the extensive submissions presented by the parties (the record), this Arbitrator has concluded the following:

First, that the Borough is well funded and does not have an ability to pay issue.

Second, while acknowledging that the previous hard cap and chapter 78 contributions may have contributed to a decline in the PBA members compensation and earnings, the PBA 309

members are still well compensated when compared to other Borough employees and with their external comparables found in Bergen County.

The seminal issue or issues in almost every interest arbitration proceeding usually revolves around the wage/salary and healthcare proposals of the parties. This case is no different. Taking into consideration how the parties presented and argued their respective cases, it would make sense to discuss both the salary and healthcare issues together.

P.B.A. #309 has submitted a salary proposal for a three (3) year contractual term, whereas the Borough has submitted a salary proposal for a five (5) year contractual term.

The PBA has proposed the following wage proposal:

A 3.0% wage increase applied across-the-board to the Salary Schedule.

The PBA believes that the only issue for this arbitration is the wage proposal, and no other issues should be presented, argued, and discussed. However, and based on this Arbitrator's decision to allow other issues to be presented and argued, the PBA request that their healthcare contribution should remain at the status quo.

The Borough has proposed the following wage and healthcare proposals:

2% average annual salary increases for officers who reach top step, contingent upon contributions to healthcare at levels consistent with P.L. 2011, c.78; being accepted. If the PBA members stay at a 15% healthcare premium contribution than 0% salary increases.

Salary guide for new hires shall include 10 steps.

Employees covered by the agreement shall no longer contribute to healthcare coverage at 15%, and instead shall contribute to healthcare at levels consistent with P.L. 2011, c.78;

**The Borough argues that:**

**BERGENFIELD'S FINAL PROPOSAL WITH REGARD TO IMPLEMENTING 10 STEPS IN THE STEP GUIDE FOR NEW HIRES WITH A 2% ANNUAL INCREASE FOR BOTH NEW AND CURRENT OFFICERS WHO REACH TOP STEP, IS**

**COMPARABLE TO SIMILAR DEPARTMENTS WITHIN  
BERGEN COUNTY.**

Bergenfield's current salary guide, as shown within the 2017 CNA at Appendix A-2, is comprised of seven steps, a Training Step and Step One through Step Six. As exemplified through Bergenfield's Final Proposal/Offer, it is Bergenfield's position that the salary guide for new hires should include ten steps, which include a Training step and an additional nine steps (Step One through Step 9), which is comparable to similar departments within Bergen County.

Of the 10 CNA's that Bergenfield has admitted in evidence, 7 municipalities implement a salary guide that is comprised of ten steps or more. Those municipalities include: (1) Cliffside Park; (2) Garfield; (3) Paramus; (4) Lodi; (5) Ridgewood; (6) Palisades Park; and (7) New Milford. In analyzing these municipalities, Bergenfield's findings are as follows:

**Cliffside Park (BF Ex. 13)**

The Borough of Cliffside Park has 13 steps within its salary guide. Cliffside Park's salary guide is comprised of an Academy Entry-Level step, Post-Academy step, Patrolman Steps 1 through 10, and a Senior Officer step. At top step, which is the Senior Officer step, an officer in 2021 will earn \$116,909.00. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step (Step Nine) would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Although officers employed by Cliffside Park receive annual increases of 1% without being at top step, officers at top step employed by Bergenfield earn \$15,140.65 more than those employed by Cliffside Park. Further, Cliffside Parks Senior Officer step, which would be equivalent to Bergenfield's proposed Step Nine, would receive an annual increase of 1.5%, whereas Bergenfield is proposing a 2% annual increase for equivalent officers.

Further comparison between Cliffside Park and Bergenfield reveals that since Cliffside Park has 13 steps within its salary guide, technically Bergenfield's proposed top step, Step Nine, would be equivalent to Cliffside Parks Patrolman Step 8, who in 2021 will earn \$95,122.00, while an officer at Step Nine employed by Bergenfield would earn \$132,049.65 in 2021. Therefore, an officer employed by Bergenfield would earn \$36,927.65 more annually than an officer employed by Cliffside Park.

In analyzing Bergenfield's proposal to Cliffside Park, Bergenfield's proposal is more than reasonable regardless of the method of analyzation. It should also be noted that as of the 2017 census, Cliffside Park had a population of 25,142, which is comparable to the population of Bergenfield at 27,927. Thus, Cliffside Park is comparable to Bergenfield. *See* BF Ex. 19.

#### **Garfield (BF Ex. 6)**

The City of Garfield has 14 steps within its salary guide. Garfield's salary guide is comprised of a Probationary Step and steps 1 through 13, which are labeled "Upon Completion of 1<sup>st</sup> Year" through "Upon Completion of 13<sup>th</sup> Year." At top step, which is Upon Completion of 13<sup>th</sup> Year, an officer in 2021 will earn \$129,236.00. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers employed by Garfield do not receive annual increases, other than their step increases, until they reach Step 12. Even though officers employed by Garfield receive an approximate 1.26% increase when they reach step 12 and a 2% increase when they reach step 13, an officer at top step in Bergenfield would still earn \$2,813.00 more annually than those employed by Garfield.

Further comparison between Garfield and Bergenfield reveals that since Garfield has 14 steps within its salary guide, technically Bergenfield's proposed top step, Step Nine, would be

equivalent to Garfield's 9<sup>th</sup> Step, in which an officer in Garfield's 9<sup>th</sup> Step in 2021 will earn \$97,196.00, while an officer at Step Nine employed by Bergenfield would earn \$132,049.65 in 2021. Therefore, an officer employed by Bergenfield would earn \$34,853.65 more annually than an officer employed by Cliffside Park.

Thus, in analyzing Bergenfield's proposal to Garfield, Bergenfield's proposal is reasonable in regard to the amount of steps Bergenfield is proposing and in regard to providing an annual increase of 2% to those officers who are at top step. It should also be noted that as of the 2017 census, Garfield had a population of 32,393, which is within 25% of Bergenfield's population of 27,927, making Garfield comparable to Bergenfield. *See* BF Ex. 19.

**Paramus (BF Ex. 7)**

The Borough of Paramus has 11 steps within its salary guide. Paramus' salary guide is comprised of an Academy step and Steps 1 through 10. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers in Paramus at top step, Step 10, will receive \$150,115.00 in 2021.

However, further comparison between Bergenfield and Paramus reveals that technically Bergenfield's proposed Step Nine is equivalent to Paramus' Step 9. An officer employed in Paramus at Step 9 will earn \$138,542.00 in 2021, while an officer of Bergenfield at Bergenfield's proposed Step Nine would receive \$132,049.65. Even though Bergenfield and Paramus have similar populations, the median household income in Paramus is \$128,306.00, while the median household income in Bergenfield is \$96,335.00. *See* BF Ex. 20. Therefore, the median household income is \$31,971.00 more in Paramus than in Bergenfield. Thus, it is reasonable for officers

employed by Paramus to earn slightly more than officers employed by Bergenfield, since citizens and taxpayers would be less burdened given the higher household income.

**Lodi (BF Ex. 15)**

The Borough of Lodi has 14 steps within its salary guide. Lodi's salary guide is comprised of 1<sup>st</sup> 6 months, 2<sup>nd</sup> 6 months, and Steps 1 through 12. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers in Lodi at top step, Step 12, will receive \$134,274.00 in 2021. Officers employed by Lodi do not receive annual increases until they reach Step 11. At Step 11, those officers receive a 1.9% annual increase. Officers in Lodi's Step 12 receive a 3% annual increase.

However, further comparison reveals that technically Bergenfield's proposed Step Nine is equivalent to Lodi's Step 7. An officer employed by Lodi at Step 7 will earn \$104,211.00. Therefore, PBA members employed by Bergenfield at top step would earn \$27,838.65 more than an officer in an equivalent step in Lodi. Therefore, when comparing Bergenfield's proposed top step, Step Nine, to Lodi's equivalent, Step 7, Bergenfield's proposal is reasonable. It should also be noted that as of the 2017 census, Lodi had a population of 24,96, which is comparable to Bergenfield. *See* BF Ex. 19.

**Ridgewood (BF Ex. 8)**

The Borough of Ridgewood has 13 steps within its salary guide. Ridgewood's salary guide is comprised of Steps 1 through 13. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers in Ridgewood at top step, Step 13, will earn 137,886.00 in 2021. Officers in Ridgewood do not receive annual increases

until they reach top step, in which they then receive increasing annual increases. In 2020 the annual increase for an officer at top step in Ridgewood was 2%.

However, further comparison reveals that technically Bergenfield's proposed Step Nine is equivalent to Ridgewood's Step 10. An officer employed by Ridgewood at Step 10 will earn \$112,721.00. Therefore, an officer employed by Bergenfield at Bergenfield's proposed top step would earn \$19,328.65 more than an officer of equivalent step employed by Ridgewood. When comparing equivalent steps between Bergenfield and Ridgewood, Bergenfield's proposal is reasonable. It should also be noted that as of the 2017 census, Ridgewood had a population of 25,692, which is comparable to Bergenfield. *See* BF Ex. 19.

Additionally, even though Bergenfield and Ridgewood have similar populations, the median household income in Ridgewood is \$184,335.00, while the median household income in Bergenfield is \$96,335.00. *See* BF Ex. 20. Therefore, the median household income in Ridgewood is \$88,000.00 more than in Bergenfield. Thus, it is reasonable for officers employed by Ridgewood to earn more than officers employed by Bergenfield since citizens and taxpayers would be less burdened given the much higher household income.

#### **Palisades Park (BF Ex. 10)**

The Borough of Palisades Park has 10 steps within its salary guide, which range from 1<sup>st</sup> Year through 10<sup>th</sup> Year. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers in Palisades Park at top step, 10<sup>th</sup> Year, will earn \$112,000.00 in 2021. Officers in Palisades Park do not receive any annual increases. Therefore, an officer at Bergenfield's proposed Step Nine would earn \$20,049.65 more annually than those officers employed by Palisades Park at top step. Therefore, when comparing the annual

salaries of officers employed by Bergenfield and those employed by Palisades Park, Bergenfield's proposal is reasonable. Further, as of the 2017 census, Palisades Park had a population of 20,988, which is within 25% of Bergenfield's population of 27,927, making Palisades Park comparable to Bergenfield. *See* BF Ex. 19.

**New Milford (BF Ex. 12)**

The Borough of New Milford, which neighbors Bergenfield, has 10 steps within its salary guide, which starts at Probation and then Patrolman 1 through 9. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers in New Milford at top step, Patrolman 9, will earn \$120,342.00 in 2021. Once at top step, officers in New Milford receive a 2.5% annual increase, which although is .5% more than that proposed by Bergenfield, officers employed by Bergenfield would still earn \$11,707.65 more than those employed by New Milford. Further, Bergenfield and New Milford have very similar median incomes. Bergenfield's is \$96,335.00 and New Milford's is \$94,334.00. *See* BF Ex. 20. Therefore, when comparing the annual salaries of officers employed by Bergenfield and those employed by New Milford, Bergenfield's proposal is reasonable.

In addition to the CNA's submitted by Bergenfield, the PBA has submitted 19 collective negotiation agreements concerning other police departments. These municipalities include:

Tenafly; Hackensack; Oakland; South Hackensack; Wood-Ridge; Bloomingdale; Pompton Lakes; Rutherford; North Arlington; Wyckoff; East Rutherford; Demarest; Upper Saddle River; Allendale; BCPO; Fort Lee; Dumont; Englewood Cliffs; and Glen Rock. Of the 19 additional CNA's submitted by the PBA, not including those also submitted by Bergenfield, 17 of the CNA's maintain salary guides with 10 steps or more. However, most of the CNA's submitted by the PBA

are not comparable to Bergenfield. First, the populations of most of the municipalities submitted by the PBA are either far more or far less than Bergenfield. As previously discussed, Bergenfield’s population according to the 2017 census is 27,297. *See* BF Ex. 19. The populations of the municipalities submitted by the PBA according to the 2017 census are as follows: (*See* BF Ex. 19)

<b>Municipality</b>	<b>Population</b>
Tenaflly	14,900
Hackensack	45,248
Oakland	13,224
South Hackensack	2,492
Wood-Ridge	9,018
Bloomington	8,061
Pompton Lakes	10,986
Rutherford	18,782
North Arlington	16,069
Wyckoff	17,322
East Rutherford	9,928
Demarest	17,998
Upper Saddle River	8,415
Allendale	6,906
Fort Lee	37,907
Dumont	17,998
Englewood Cliffs	5,453
Glen Rock	12,045

Comparison to other CNA’s submitted by the PBA serves to further support Bergenfield’s Final Proposal/Offer in regard to the implementation of a 10 step salary guide with 2% increases for those officers at top step of both the current and new proposed salary guide. As explained, the CNA’s submitted by the PBA, with exception of those submitted by both Bergenfield and the PBA, are from municipalities with populations that are either far greater or far less than the Bergenfield. Furthermore, the populations are not even within 25% of Bergenfield’s population of 27,297. It has been Bergenfield’s position that Arbitrator Winters should only consider municipalities with populations equivalent to Bergenfield’s when considering Bergenfield’s Final Proposal/Offer. If Arbitrator Winters were to consider the alternative to what Bergenfield urges,

of the CNA’s of municipalities solely submitted by the PBA, he would only potentially be able to compare the municipalities of Rutherford and Fort Lee. Rutherford’s population is 8,515 less than Bergenfield and Fort Lee’s population is 10,610 more than Bergenfield. Both municipalities do not have populations within 25% of Bergenfield’s, although they come the closest when analyzing the CNA’s submitted solely by the PBA. *See* BF Ex. 19.

Further comparison reveals that the PBA submitted CNA’s of municipalities that have incomparable median incomes to Bergenfield. As previously mentioned, the median income in Bergenfield is \$96,335.00. *See* BF Ex. 20. The median incomes of the municipalities submitted solely by the PBA are as follows: *See* BF Ex. 20.

<b>Municipality</b>	<b>Median Income</b>
Tenaflly	\$172,926
Hackensack	\$70,090
Oakland	\$126,319
South Hackensack	\$66,786
Wood-Ridge	\$110,625
Bloomingtondale	\$93,603
Pompton Lakes	\$102,371
Rutherford	\$101,473
North Arlington	\$84,527
Wyckoff	\$153,736
East Rutherford	\$80,896
Demarest	\$158,906
Upper Saddle River	\$158,536
Allendale	\$170,968
Fort Lee	\$83,767
Dumont	\$100,219
Englewood Cliffs	\$148,446
Glen Rock	\$187,000

It is further Bergenfield’s position that Arbitrator Winters should only consider municipalities with median incomes equivalent to Bergenfield’s when considering Bergenfield’s

Final Proposal/Offer. Thus, in relation to median income, realistically, Arbitrator Winters is only able to consider Bloomingdale, Pompton Lakes, Rutherford, North Arlington, and East Rutherford.

Both Bloomingdale and Pompton Lakes are not located in Bergen County and are located within Passaic County, which does not truly allow for an accurate comparison. It is Bergenfield's position that Arbitrator Winters should only consider municipalities that are located within Bergen County, as is Bergenfield, when reviewing Bergenfield's Final Proposal/Offer. If Arbitrator Winters were to consider the alternative to what Bergenfield urges, it is still accurate that officers in Bergenfield would receive more annual base salary than officers in Bloomingdale and Pompton Lakes. An officer at top step in Bloomingdale will earn \$120,225.00 in 2021. Therefore, pursuant to Bergenfield's Final Proposal/Offer an officer employed by Bergenfield would earn \$11,824.65 more than officer employed by Bloomingdale. Similarly, an officer employed by Bergenfield would earn \$5,373.65 more pursuant to Bergenfield's Final Proposal/Offer than an officer in Pompton Lakes, since an officer at top step in Pompton Lakes will earn \$126,676.00 in 2021,

Comparing Bergenfield's proposed salary guide to Rutherford, reveals Bergenfield's proposed top step, Step Nine, is equivalent to Rutherford's Begin 9 Year, in which Rutherford officers will earn \$123,600.00 in 2021. Therefore, officers employed by Bergenfield would receive \$8,449.65 more annually than those employed by Rutherford. Although Bergenfield urges Arbitrator Winters to only consider municipalities with median incomes equivalent to Bergenfield, even if Arbitrator Winters were to use Rutherford as a point of comparison when reviewing Bergenfield's Final Proposal/Offer, it is clear that Bergenfield's Final Proposal/Offer is reasonable since officers employed by Bergenfield would be earning more than those employed by Rutherford, despite Rutherford's higher median income.

Comparing Bergenfield's proposed salary guide to North Arlington reveals similar results. Bergenfield's proposed top step, Step Nine, is equivalent to North Arlington's 9<sup>th</sup> step, in which North Arlington officers will earn \$111,150.38 in 2021. Therefore, an officer employed by Bergenfield would earn \$20,899.27 more than an officer employed by North Arlington pursuant to Bergenfield's Final Proposal/Offer. Currently, North Arlington has 12 steps within its salary guide. At top step, an officer in North Arlington will earn \$126,815.96 in 2021, in which an officer at Bergenfield's proposed Step Nine would still earn more annually. Although Bergenfield does not believe that Arbitrator Winters should consider North Arlington when reviewing Bergenfield's Final Proposal/Offer due to the disparity in median income and population as described *supra*, Bergenfield still maintains its position that Bergenfield's Final Proposal/Offer is reasonable since it is reasonable for officers in Bergenfield to receive a slightly higher annual salary based on Bergenfield's higher median income and higher population.

Comparing Bergenfield's proposed salary guide to Dumont also reveals similar results. Bergenfield's proposed top step, Step Nine, is equivalent to Dumont's Start of 9<sup>th</sup> step, in which Dumont officers will earn \$107,135.00 in 2021. Therefore, officers employed by Bergenfield will earn \$24,914.65 more than officers employed by Dumont. Currently, Dumont has 12 steps within its salary guide. At top step, an officer in Dumont will earn \$125,699.00 in 2021, in which an officer employed by Bergenfield at the Bergenfield's proposed top step will still earn more than an officer in Dumont. Again, although Bergenfield does not believe that Arbitrator Winters should consider Dumont when reviewing Bergenfield's Final Proposal/Offer due to the disparity in median income and population as described *supra*, Bergenfield still maintains its position that Bergenfield's Final Proposal/Offer is reasonable based on comparison to Dumont.

Based on the aforementioned comparisons, it is clear that the PBA's Final Offer which provides for a 3% annual increase across the salary guide is wholly unreasonable. Officers within Bergenfield would earn increasingly more than officers in similarly situated municipalities and as shown *supra*, even in municipalities that Bergenfield believes are incomparable, which would cause an unnecessary burden on Bergenfield and its taxpayers. Therefore, Bergenfield maintains its position that its Final Proposal/Offer, which provides for a ten step salary guide for new hires and a 2% annual increase for both new officers on the new proposed salary guide and current officers on the current salary guides once an officer reaches top step, is the *only* fair and reasonable determination.

Since Bergenfield's Final Proposal/Offer seeks to create a 10 step salary guide, Bergenfield's Final Proposal/Offer also seeks to remove Article III, Section 2 of the 2017 CNA, which states that, "Increments shall be paid in accordance with past practice." *See* BF Ex. 29 at number 7. First, there is nothing that prohibits the Parties from negotiating a new salary guide. Thus, if Arbitrator Winters were to approve Bergenfield's proposal to implement 10 steps, the step increments and payment at each step would clearly change accordingly and the Parties past practice in regard to step increase increments would become irrelevant. Including the language that "Increments shall be paid in accordance with past practice" would only create confusion in interpreting the new CNA and lead to potential grievances and future impasses amongst the Parties. Bergenfield further argues that if the PBA wishes to include the past practice language within the CNA, then it would only be reasonable to conclude that pursuant to the 2017 CNA, it is the "past practice" for PBA members to receive a 0% annual increase, especially since PBA members have not received annual increases since 2016. The PBA simply cannot have it both ways; in the interest

of fairness and reasonableness in implementing a new CNA, the language regarding past practice must be removed.

Bergenfield's Final Proposal/Offer also seeks for the new CNA to include language which states that "step movement shall be automatic during the term of *'this contract only.'*" (*Emphasis added*). See BF Ex. 29 at number 6. Bergenfield strongly believes that this language is needed in order to alleviate ambiguities within the CNA and to avoid future impasses when entering into a successor CNA. As it is made clear through the Parties bargaining history, the issue of step movement after the expiration of an agreement, specifically the 2017 CNA, has caused the Parties grave difficulties and created a point of contention when attempting to enter into a new agreement.

**THE PBA MEMBERS HEALTHCARE CONTRIBUTION MUST BE MAINTAINED AT THE LEVELS SET FORTH BY N.J.S.A. § 52:14-17.28c.**

Though public employee's healthcare contributions have traditionally fallen within the scope of negotiations, the Legislature temporarily preempted bargaining on this subject via the passing of P.L. 2011, c. 78. This legislation imposed broad revisions to the salaries and benefits afforded to public employees in New Jersey, which included increasing employees' and retired employees' healthcare contributions. This increase was codified in *N.J.S.A. 52:14-17.28d*, which provides in pertinent part:

Notwithstanding the provisions of any other law contrary, public employees of the State and employers other than the State shall contribute, through the withholding of the contribution from the pay, salary, or other compensation, toward the cost of health care benefits coverage for the employee and any dependent provided under the State Health Benefits Program or the School Employees' Health Benefits Program in an amount that shall be determined in accordance with section 39 of P.L. 2011, c.78 (*N.J.S.A. 52:14-17.28c*). This contribution shall apply to: State employees and employees of independent State authority, board, commission, corporation, agency, or organization for whom there is a majority representative for collective negotiations purposes who accrue 25 years of nonconcurrent service credit in one or more State of locally-administered retirement

systems on or after the effective date of P.L.2011, c.78, or on or after the expiration of an applicable binding collective negotiations agreement in force on that effective date, and who retire on or after that effective date or expiration date, excepting employees who elect deferred retirement.

*N.J.S.A. 52:14-17.28d*. To summarize, *N.J.S.A. 52:14-17.28d* imparted on all public employees and retired public employees an obligation to contribute to the cost of their health insurance benefits at the levels set forth via *N.J.S.A. 52:14-17.28c*. This increased contribution level was to take effect on the operative date of P.L. 2011, c.78, on June 28, 2011. *See N.J.S.A. 52:14-17.28e*. Furthermore, P.L. 2011, c.78 provided for a four-year phase-in period for current employees, allowing them to gradually build to the levels provided at *N.J.S.A. 52:14-17.28c*. Only after the statutorily mandated healthcare contributions of c.78 were “fully implemented,” were employers and employees free to resume negotiations on the issue of the PBA’s healthcare contributions, with c.78 levels representing the *status quo* in such negotiations. *See N.J.S.A. 52:14-17.28e*. *See also In re Clementon Bd. Of Educ.*, 2016 N.J. Super. Unpub. LEXIS 2163, \*6. Further echoing the sentiment that all employees must contribute to their health coverage, *N.J.S.A. 40A:10-21.2* provides that:

A public employer and employees who are in negotiations for the next collective negotiation agreement to be executed after the employees in that unit have reached full implementation of the premium share set forth in Chapter 78, shall conduct negotiations concerning contributions for health care benefits as if the *full* premium share was included in the prior contract. (*Emphasis added*). . .

After full implementation, those contribution levels shall become part of the parties’ collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties.

*N.J.S.A. 40A:10-21.2*. As discussed *supra*, in the 2013 CNA, the Parties acknowledged that they were preempted from bargaining over employee healthcare contributions in 2013, 2014, and 2015 in accordance with P.L. 2011, c.78. The 2013 CNA provided that employees would contribute to the statutorily mandated amount in the first three years of the contract, but once negotiations

reopened in 2016, the employees would contribute 15%. Bergenfield's consent to reduce the employees' healthcare contribution to 15% **was only in consideration** of the PBA's consent to switch from Bollinger to SHBP prescription plan and was universally understood to be limited to the year 2016. Upon the expiration of the 2013 CNA on December 31, 2016, the Parties agreed to enter into a one year CNA covering solely the year 2017. By virtue of that CNA, the Parties agreed to extend the PBA's 15% contribution for **one year only**, in exchange for the PBA members accepting no annual percentage increase of salary levels set forth in the salary guides.

The PBA's refusal to negotiate over the healthcare contribution of PBA members is contrary not only to *N.J.S.A. 52:14-17.28d*, but also to well established New Jersey case law. As explained *supra*, prior to the passage of P.L. 2011, c.78, the issue of contributions for healthcare coverage for active and retired employees was a negotiable subject for unionized employees. *See Hamilton Twp. Superior Officers Ass'n V. Twp. of Hamilton*, 2019 N.J. Super. Unpub. LEXIS 2282 \*2. P.L. 2011, c.78 removed the issue from negotiations and implemented mandatory contribution levels, up to thirty-five percent of the cost of premium coverage. *Id.* No statute or judicial interpretation prohibits the Parties from negotiating the issue of healthcare contributions at this juncture, especially since the Parties completed the mandatory phase in period. Further, the Parties negotiations should be based around P.L. 2011, c.78 levels, since pursuant to New Jersey statutes and corresponding case law, c.78 levels represent the *status quo* in regard to healthcare contribution negotiations.

- 1. Bergenfield has implemented a pattern of settlement among its other bargaining units that requires PBA members to contribute to healthcare coverage at the levels set forth at P.L. 2011, c.78.**

New Jersey law dictates that the PBA's healthcare contributions must be consistent with levels set forth at *N.J.S.A. 52:14-17.28c*. PERC rules and regulations speak to identifying "a pattern

of salary and benefit changes,” among an employer’s bargaining units. *See N.J.A.C. 19:16-5.14(c)*. PERC has recognized the importance of maintaining a pattern of settlement among bargaining units of the same employer. *See County of Union, IA-2001-46, 28 NJPER 459, 461 (2002)*. “[P]attern is an important labor relations concept that is relied on by both labor and management,” and “interest arbitrators have traditionally recognized that deviation from the settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units.” *Id.* To that end, Bergenfield has endeavored to foster a harmonious relationship with all labor units by promoting continuity in the benefits offered employee wide.

Bergenfield, in addition to the PBA , has six other bargaining units, the Bergenfield Employee’s Association (“D.P.W.”), Local 108 R.W.D.S.U., UFCW (“R.W.D.S.U.”), the Bergenfield Fireman’s Association F.M.B.A. Local No. 65 (“F.M.B.A.”), Bergenfield Police Department Civilian Employees Association (“PD Civilian Employees Association”), Bergenfield Public Works Supervisors of Personnel (“DPW Supervisors”), and Bergenfield Police Department Telecommunicators Association (“PD Telecommunicators”), which have their exclusive representatives engage in collective negotiations with Bergenfield concerning terms and conditions of employment. The current CNA for the D.P.W. has been submitted into evidence as BF Ex. 3. The current CNA for the R.W.D.S.U. has been submitted into evidence as BF Ex. 4. The current CNA for the F.M.B.A. has been submitted into evidence as BF Ex. 5. The current CNA for the PD Civilian Employees Association has been submitted into evidence as BF Ex. 34. The current CNA for the DPW Supervisors has been submitted into evidence as BF Ex. 35. The current CNA for the PD Telecommunicators has been submitted into evidence as BF Ex. 36. The D.P.W., R.W.D.S.U., F.M.B.A., PD Civilian Employees Association, and PD Telecommunicators CNA’s

provide that as to the subject of employee healthcare contribution that employees are required to make the appropriate Chapter 78 contribution. As for the DPW Supervisors, members covered by the CNA are required to contribute 35% to the cost of their health insurance premiums, regardless of their salary. Such contribution by DPW Supervisors is more than what Bergenfield is proposing PBA members to contribute in Bergenfield's Final Proposal/Offer, since Bergenfield is only requesting PBA members to contribute according to c.78, which takes an employee's salary into consideration.

Furthermore, the evidence in the record leads to the unmistakable conclusion that failure to adhere to this pattern of settlement with relation to the PBA will serve to undermine the harmonious work environment Bergenfield has worked so hard to cultivate, and which the pattern of settlement principle is intended to promote. For instance, PBA members are by far higher compensated than D.P.W., R.W.D.S.U., PD Civilian Employees Association, and PD Telecommunicators employees, with a current top step for patrol officers reaching \$126,992.00 in base pay alone. D.P.W. Public Works Laborer's at top step cap out at \$75,275.05 in 2021, Public Works Repairer's at top step cap out at \$85,092.86 in 2021, and Tree Maintenance Worker's at top step cap out at \$75,435.52 in 2021. R.W.D.S.U. Keyboard Clerks/Clerk IV's are able to earn a maximum of \$58,850.00 in 2021. PD Civilian Employees are unable to earn more than \$33,447.08 in their 5<sup>th</sup> Year in 2021. Additionally, an 8<sup>th</sup> Year PD Telecommunicator, which is the highest step on the telecommunicator salary guide, is unable to earn more than \$71,222.00 in 2021. It would be an unjust result if a PBA employee at top step, making a current base pay of \$126,992.00, were to continue to only be required to contribute to healthcare at 15%, but a D.P.W. employee at top step is required to contribute 23-34% of the cost of his/her premium, depending on the type of coverage. *See* BF Ex. 16. Similarly, a R.W.D.S.U. employee at top step is required

to contribute 14-23% to the cost of his/her premium, depending on the type of coverage. *Id.* Similarly, a F.M.B.A. member employed by Bergenfield at top step, is able to earn a maximum of \$107,151.72 in 2021 and is required to contribute 32-35% to his/her premium, depending on the type of coverage. A PD Telecommunicator at top step would be required to contribute 22-32% of the cost of his/her premium, depending on the type of coverage. *Id.* Continuation of this unjust result will undeniably create discontent among the D.P.W., R.W.D.S.U., F.M.B.A., PD Civilian, and PD Telecommunicator employees, thus discouraging future settlements with those units, which runs directly afoul to PERC's policy considerations. *See Fox v. Morris Cty.*, 22 N.J. Super. 501, 509 (App. Div. 1993), *certif. denied*, 137 N.J. 311 (1994).

During the Arbitration Hearing, the PBA made comparison to the F.M.B.A. CNA in relation to F.M.B.A. members healthcare contribution and salary increases. *See* BF Ex. 31 at 165-168. As explained during the hearing and as mentioned *supra*, F.M.B.A. members are required to contribute to healthcare pursuant with P.L. 2011, c.78. As alluded to by the PBA during the hearing, Bergenfield is able to request for F.M.B.A. members to contribute more than what is required by Chapter 78, however, as explained in Bergenfield's Brief at Point II, Chapter 78 levels represent the status quo in negotiations. Further, it would be unprecedented for any bargaining unit to contribute more than what is represented by Chapter 78. During the hearing, the PBA made further mention to the annual percent increase that F.M.B.A. members receive pursuant to the current CNA. *See* BF Ex. 31 at 166. *See also* BF Ex. 5. The PBA mentioned that F.M.B.A. members *at top step* currently receive an approximate \$2,000.00 increase per year, despite the fact that they were not asked to contribute more to their healthcare than what they were already required to contribute pursuant to their prior CNA. In analyzing the F.M.B.A. CNA, F.M.B.A. members receive a 1.75% annual increase once they reach top step. *See* BF Ex. 5 at Schedule "A."

Accordingly, in the interest of promoting continuity and stability amongst the bargaining units, Bergenfield is seeking for the PBA members to contribute to healthcare at Chapter 78 levels, in which then PBA members at top step would receive an annual increase of 2%. Thus, Bergenfield's Final Proposal/Offer in regard to healthcare contribution and corresponding annual salary increase is appropriate. Since Bergenfield is proposing that PBA members contribute to healthcare at a percent higher than what they are currently contributing, in turn, PBA members at top step would receive a 2% annual increase, which is more than what F.M.B.A. members receive. Thus, it is only reasonable, as expressed by the PBA, that since PBA members are asked to "contribute more" towards their healthcare, they would receive a greater annual increase than the increase received by the F.M.B.A. *See* BF Ex. 31 at 167:12-15. Essentially, as alluded to by the PBA at the hearing, the PBA is seeking for a CNA in regard to salary and healthcare contribution that is parallel to the F.M.B.A. CNA, which is essentially what is being proposed by Bergenfield in Bergenfield's Final Proposal/Offer.

For these reasons, there is no rational justification that exists to support the PBA's continued refusal to enter into negotiations regarding PBA members healthcare contributions being set at levels above 15%. It is both the principle of settlement and the notion of basic fairness that dictate that the PBA members *must* contribute an equitable amount to the healthcare cost, as compared to employees of the D.P.W., R.W.D.S.U., F.M.B.A, PD Civilian Employees Association, PD Telecommunicators, and DPW Supervisors.

**2. The PBA's demand for PBA members to contribute to healthcare coverage at 15% is unprecedented in comparison to similar departments.**

Comparison to other employees in similar municipalities only serves to further support Bergenfield's position that PBA members must contribute to healthcare coverage pursuant to P.L.2011, c.78. Bergenfield has submitted 10 CNA's concerning other police departments into

evidence. The majority of the contracts in evidence contain clauses mandating that employees make healthcare contributions as per P.L.2011, c.78. The municipalities submitted by Bergenfield which contain such clauses include: (1) Garfield; (2) Paramus; (3) Ridgewood; (4) Mahwah; (5) Palisades Park; (6) Teaneck; (7) New Milford; (8) Cliffside Park; (9) Englewood City; and (10) Lodi. The municipalities submitted by the PBA in which PBA members are required to make healthcare contributions as per P.L.2011, c.78 include: (1) Tenafly; (2) Mahwah; (3) New Milford; (4) Wood-Ridge Supervising Officer's Association; (5) Paramus; (6) Lodi; (7) Rutherford; (8) North Arlington; (9) Wyckoff; (10) Demarest; (11) Upper Saddle River; (12) Allendale; (13) The Office of the Bergen County Prosecutor's Office and PBA Local No. 221 ("BCPO"); (14) Teaneck; (15) Ridgewood; (16) Garfield; (17) Fort Lee; and (18) Glen Rock. Not including duplicate submissions, of the CNA's submitted by both the Borough and the PBA, 21 out of the 29 CNA's require officers to contribute to healthcare at levels set forth by P.L. 2011, c.78.

Of the 29 CNA's submitted by both Bergenfield and the PBA, only 5 municipalities do not require PBA members to contribute to healthcare coverage at levels pursuant to P.L. 2011, c.78. Those municipalities include: (1) Hackensack; (2) Oakland; (3) Bloomingdale; (4) Pompton Lakes; and (5) Dumont. The 3 municipalities of South Hackensack, Englewood Cliffs and East Rutherford do not make mention of employees healthcare contribution, therefore, are not considered within Bergenfield's analysis. With the exception of Oakland, Pompton Lakes and East Rutherford, those municipalities still require PBA members to contribute to healthcare over 15%. The municipality of Hackensack participates in the 70/30 plan. Bloomingdale's health benefits contribution rates are determined based on salary, however, PBA members earning above \$100,000.00 still contribute more than 15% to healthcare. Officers in Dumont are not required to

contribute to healthcare at c.78 levels, however, all officers are required to contribute 30% to healthcare, despite their salary.

It is clear through Bergenfield's and the PBA's submissions that the vast majority of similarly situated municipalities require PBA members to contribute to healthcare at levels set forth by P.L. 2011, c.78, thus Bergenfield PBA members should also contribute accordingly.

- 3. By contributing only 15% to healthcare, PBA members are essentially receiving annual salary increases through a received benefit. Accordingly, if the PBA continues to contribute to healthcare at 15%, PBA officers at top step would be required to forgo their annual 2% increase as proposed in Bergenfield's Final Proposal/Offer.**

Within Bergenfield's Final Proposal/Offer, Bergenfield seeks for PBA members to contribute to healthcare coverage at P.L. 2011, c.78 levels. As discussed *supra*, Bergenfield's consent to reduce the employees' healthcare contribution to 15% **was only in consideration** of the PBA's consent to switch from Bollinger to SHBP prescription plan, and was universally understood to be limited to the year 2016. Bergenfield extended the 15% contribution for the one year 2017 CNA and in return the PBA members did not receive an annual increase. Since the Parties have been unable to negotiate a successor CNA to the 2017 CNA, PBA members have not received annual increases since 2016. Bergenfield maintains its position, as it did when negotiating the 2017 CNA, that if PBA members are to continue to contribute to healthcare coverage at 15%, it would only be reasonable for them to forgo their annual increase. Based on Bergenfield's calculations, which are believed to be true and accurate, Bergenfield is burdened with paying an additional \$170,877.12 annually in 2021 alone, towards PBA members healthcare, since PBA members refuse to contribute at P.L. 2011, c.78 levels. It is Bergenfield's position that if PBA members continue to contribute only 15%, that they essentially would be receiving annual increases through this received benefit.

Bergenfield employs 43 PBA members. Out of those 43 members, 33 members save at least 2% of their annual salary by not contributing to healthcare at Chapter 78 levels. Further analysis shows that 6 members save at least 3% of their annual salary by not contributing at Chapter 78 levels. 13 members save at least 4% of their annual salary by not contributing at Chapter 78 levels, and 5 members save at least 5% of their annual salary by not contributing at Chapter 78 levels. By way of comparison, 33 PBA members receive at least a 2% annual increase just by virtue of their contribution rate.

Further, there are 12 PBA members who at their next step increase would be at top step. If those 12 officers were to receive both an annual increase and were to continue to contribute to healthcare coverage at 15%, they would essentially be receiving the following annual increases:

<b>PBA Member at Top Step When New CNA is Implemented</b>	<b>2% Increase Amount</b>	<b>Savings Annually by Contributing 15% to Healthcare</b>	<b>Percent Savings Annually by Contributing 15% to Healthcare</b>	<b>Annual Percent Increase including Benefit and 2% Increase</b>
<b>Joseph Arrigo</b>	\$2,589.21	\$2,348.78	1.81%	<b>3.81</b>
<b>Hilda I. Colon</b>	\$2,614.59	\$4,204.32	3.22%	<b>5.22</b>
<b>Ramon E. Cruz</b>	\$2,589.21	\$6,533.10	5.06%	<b>7.06</b>
<b>John P. Galarza</b>	\$2,691.00	\$6,553.10	4.87%	<b>6.87</b>
<b>Eric Lind</b>	\$2,795.52	\$2,348.78	1.68%	<b>3.68</b>
<b>Robert J. Madder</b>	\$2,589.21	\$6,553.10	5.06%	<b>7.06</b>

<b>Firman A. Masri</b>	\$2,589.21	\$6,553.10	5.06%	<b>7.06</b>
<b>Peter J. Morano</b>	\$2,563.82	\$6,553.10	5.11%	<b>7.11</b>
<b>Jose W. Portorreal</b>	\$2,563.82	\$6,553.10	5.11%	<b>7.11</b>
<b>Richard Ramos</b>	\$2,639.98	\$6,553.10	4.14%	<b>6.14</b>
<b>Marc Rispoli</b>	\$2,614.59	\$6,553.10	5.01%	<b>7.01</b>
<b>Jon Sommer</b>	\$2,639.98	\$6,553.10	4.96%	<b>6.96</b>

Based on the above calculations, it is clear that Bergenfield’s Final Proposal/Offer is reasonable and advisable. If the PBA members at top step receive both 2% annual increases and continue to contribute to healthcare coverage at 15%, they would essentially be receiving an average increase of 6.26%. Of the CNA’s submitted by both Bergenfield and the PBA, there is **not one** municipality in which PBA members receive that high of an annual increase. Such annual increase would place a severe burden on Bergenfield and would require Bergenfield to acquire such money from Bergenfield taxpayers in order to shoulder the cost.

Further, it should be of great importance to and consideration of Arbitrator Winters that PBA members have not received annual increases since the expiration of the 2013-2016 Agreement. Even while not receiving annual increases, PBA members at top step currently earn \$126,922.00 according to the 2018-2019 CNA. Despite the fact that PBA members’ base pay has been stagnant for over 4 years, PBA members at top step still currently earn more annually than officers in other municipalities when comparing steps equivalent to Bergenfield’s current top steps.

Of the municipalities submitted by both Bergenfield and the PBA, Bergenfield's officers, absent annual increases since 2016, currently earn more annually than the following:

<b>Municipality</b>	<b>Step Equivalent to Bergenfield's Top Step in the Appendix A-1 Salary Guide (Fifth Step) and Equivalent Base Salary in 2021</b>	<b>Step Equivalent to Bergenfield's Top Step in the Appendix A-2 Salary Guide (Step 6) and Equivalent Base Salary in 2021</b>
Cliffside Park (BF Ex. 13)	Patrolman Step 4 - \$64,509.00	Patrolman Step 5 - \$72,100.00
Garfield (BF Ex. 6)	Upon Completion of 5 <sup>th</sup> Year - \$67,598.00	Upon Completion of 6 <sup>th</sup> Year - \$74,997.00
Paramus (BF Ex. 7)	Step 5 - \$92,249.00	Step 6 - \$103,820.00
Lodi (BF Ex. 15)	Step 4 - \$74,147.00	Step 5 - \$81,663.00
Ridgewood (BF Ex. 8)	Step 6 - \$79,173.00	Step 7 - \$87,560.00
Palisades Park (BF Ex. 10)	6 <sup>th</sup> Year - \$72,000.00	7 <sup>th</sup> Year - \$80,000.00
New Milford (BF Ex. 12)	Patrolman 5 - \$77,275.00	Patrolman 6 - \$85,071.00
Mahwah (BF Ex. 9)	Fifth Year - \$79,271.00	Sixth Year - \$87,370.00
Teaneck (BF Ex. 11)	5 <sup>th</sup> Year - \$83,933.00	6 <sup>th</sup> Year - \$100,242.68
Englewood City (BF Ex. 14)	Step 5 - \$103,899.00	Step 6 - \$115,303.00
Tenafly (Submitted by PBA)	After Four Years - \$88,014.00	After Five Years - \$93,776.00
Hackensack (Submitted by PBA)	6 - \$77,824.00	7 - \$85,220.00
Oakland (Submitted by PBA)	Step 6 - \$80,320.00	Step 7 - \$86,824.00
South Hackensack (Submitted by PBA)	After 4 Years - \$91,956.00	After 5 Years - \$100,407.00
Bloomington (Submitted by PBA)	4 <sup>th</sup> Year - \$73,631.00	5 <sup>th</sup> Year - \$81,732.00
Pompton Lakes (Submitted by PBA)	5 <sup>th</sup> Year, Step 6 - \$69,358.00	6 <sup>th</sup> Year, Step 7 - \$78,618.00
Rutherford (Submitted by PBA)	Begin step 5B, Year 4 - \$80,450.00	Begin Step 6, Year 5 - \$91,201.00
North Arlington (Submitted by PBA)	Fifth Step - \$80,076.32	Sixth Step - \$87,884.84
Wyckoff (Submitted by PBA)	4 - \$73,856.00	5 - \$81,242.00
East Rutherford (Submitted by PBA)	Step 6 - \$90,850.00	Step 7 - \$100,106.00
Demarest (Submitted by PBA)	Over Five (5) Years - \$90,065.00	Over Six (6) Years - \$104,658.00

Upper Saddle River (Submitted by PBA)	Patrol Officer Over 3 Yrs. - \$99,595.00	Patrol Officer Over 4 Yrs. - \$111,755.00
Allendale (Submitted by PBA)	During the Sixth Year - \$84,844.00	During the Seventh Year - \$94,606.00
BCPO (Submitted by PBA)	Step IV - \$100,411.00	Step V - \$114,174.00
Fort Lee (Submitted by PBA)	5 <sup>th</sup> Grade - \$93,814.50	4 <sup>th</sup> Grade - \$104,777.46
Dumont (Submitted by PBA)	Start of 5 <sup>th</sup> - \$70,007.00	Start of 6 <sup>th</sup> - \$77,289.00
Englewood Cliffs (Submitted by PBA)	Patrol Officer 6 - \$96,231.00	Patrol Officer 7 - \$107,836.00
Glen Rock (Submitted by PBA)	Step 5 - \$84,886.24	Step 6 - \$95,329.77

Based on the above comparison, it is clear that Bergenfield’s PBA members’ base salaries on both the Appendix A-1 and Appendix A-2 salary guides are substantially above those officers in other municipalities, even taking into consideration that they **have not received annual increases** in over 4 years. Since PBA members have been contributing to healthcare at 15%, their annual base salary is actually higher, since they are saving money annually based on their extremely low contribution rate. As explained *supra*, currently officers at top step generally save \$6,553.10 annually by not contributing to healthcare at c.78 levels. Therefore, it is reasonable to conclude that in addition to a top step officer’s current base salary of \$126,922.00, an officer also receives \$6,553.10 through a received benefit, in essence making that officer’s base salary \$133,457.10, which as shown through the chart immediately *supra*, is significantly more than equivalent officers in other municipalities. Based on the aforementioned analysis, it is clear that Bergenfield’s Final Proposal/Offer is more than reasonable in relation to healthcare contribution.

**PBA 309 argues that:**

While public service is provided at the highest level by the Bergenfield Police Department, the Borough of Bergenfield has not maintained staffing or career path opportunity consistent with

the exceptional increases in activity and demands for service. Increased workload has only increased during the Covid Pandemic. Staffing in the Bergenfield Police Department has been static at best and falling behind at worst. The PBA introduced into evidence as *Exhibit P-9* staffing levels for both Police Officers and supervisors in the Bergenfield Police Department for the last forty-six (46) years. A trend is established with this data, a negative trend. The Bergenfield Police Department has not maintained staffing as it had in the same levels as it had in decades past notwithstanding significant increases in activities and demands for service. **Chart No. 2** is a decade by decade comparison of staffing at the Bergenfield Police Department for both the category of supervisor and Police Officer based upon the data in *Exhibit P-9*.

**CHART NO. 2**

**BERGENFIELD POLICE DEPARTMENT STAFFING CHANGES (EXHIBIT P-9)**

	<b>Supervisor</b>	<b>Police Officer</b>	<b>Total</b>
<b>1978</b>	<b>19</b>	<b>32</b>	<b>51</b>
<b>1988</b>	<b>16</b>	<b>31</b>	<b>47</b>
<b>1998</b>	<b>15</b>	<b>30</b>	<b>45</b>
<b>2008</b>	<b>15</b>	<b>31</b>	<b>46</b>
<b>2018</b>	<b>13</b>	<b>31</b>	<b>44</b>
<b>2020</b>	<b>13</b>	<b>32</b>	<b>45</b>

Two (2) major trends are established with respect to Bergenfield Police Department staffing over the years sampled in **Chart No. 2** above. First, at the end of 2020/beginning of 2021 there were less sworn Police Officers on staff in the Bergenfield Police Department than there were forty (40) years ago in 1978. It would have taken a more than thirteen percent (13%) increase in sworn Officer staffing at end of 2020/beginning of 2021 just to reach the same level of sworn Officer staffing that existed forty (40) years ago in 1978. The second key point established with the data analyzed at **Chart No. 2** is that there are less supervisory positions today than there were forty (40) years ago. Six (6) less positions today would require an increase of over forty-six percent

(46%) just to equate to the number of supervisors that were on staff in 1978. This represents several impacts. An alteration of the Table of Organization, a flattening of the managerial triangle, shifts downward obligations and workload from supervisors to persons in subordinate ranks and non-supervisory personnel. This increases not just the workload but the decision-making obligation, an administrative load.

Importantly, the reduction in supervisory positions alter the career paths of a Bergenfield Police Officer. Forty (40) years ago in 1978 there was a better opportunity to receive a promotion during one's career than there exists today. In 1978 over thirty-seven percent (37%) of the Police Department had supervisory positions. Today, just under twenty-nine percent (29%) of the staff is in supervisory positions. The alteration of a career path affects, not only the factors listed above, but also the ability to advance from an earnings standpoint. In fact, the trend is that the only way to advance financially, now that the career path has been diminished, is through wage increase in processes such as this interest arbitration.

Finally, and this will be developed later in this Brief under financial impact, the cost of policing Bergenfield has been reduced based not only upon the reduction in supervisory positions and the increased percentage of Patrol Officer, but in addition many of the senior Patrol Officers in recent years have retired resulting in lesser paid Step Position Police Officers being in the non-supervisory positions. Virtually all of the people in the Steps presently serving are young Officers who have been brought into the position to replace senior Officers at the top of the Wage/Longevity Guide who have retired.

In sum, there is no question that the public is well served by the exceptional level of professionalism and productivity as well as cost efficient services provided by the Bergenfield Police Department. Unit employees have been responding to more calls with less officers. The

clear impact upon the public in maintaining the current level of salary juxtaposed against the cost of living, which has increased by 5%, militates in favor of the PBA's proposal.

### **COMPARISON OF WAGES AND TERMS OF EMPLOYMENT**

An analysis of the proofs submitted consistent with criteria N.J.S.A. 34:13A-16, g (2) provides strong support for an award of the PBA's Position as submitted in this case. The referenced statutory criteria stresses comparisons and "conditions of employment of other employees performing the same or similar services...". The PBA proofs in this category, specifically *Exhibit P-20 and P-21*, illustrate clear and definitive support for an award of the PBA Position.

There are three (3) Police contracts covering Bergenfield Police personnel. *Exhibit P-20 and P-21* consist of the two (2) contracts covering the Chief of Police and the Deputy Chief of Police. These two (2) persons, the Chief of Police and Deputy Chief, represent law enforcement Officers working in the Bergenfield Police Department in the same building, under the same statutory authority, in the same jurisdiction, on a day-to-day basis with bargaining unit personnel, having regular interactions and having common missions with bargaining unit personnel, and serve the same public demands as are faced by bargaining unit personnel. In essence there is no difference, from the service perspective, from any member of the Bergenfield Police Department. With respect to public service and the obligation to protect and serve they are homogeneous. Under statute they are all given the same statutory authority to enforce the law and obligation to protect the public interest. From a service standpoint there is virtually no differential. They are covered by the same public budget.

The Borough of Bergenfield has set a clear and definitive pattern for contract resolution in the two (2) contracts represented in evidence as the contract for the Chief of Police and the contract for the Deputy Chief of Police (*P-20 and P-21*). Both of these police contracts have a term through December 31, 2021. Thus, they cover a similar timeframe as is under consideration in this arbitration proceeding. Notably most of the terms set forth in the individual Articles of the Chief and Deputy Chief's contracts replicate the same language in the PBA contract. Parallel treatment from a contractual standpoint appears clear. Also noted is the fact that a pattern of treatment is further evidenced as these contracts did not commence at the same time but rather represent two (2) separate yet near identical settlements on two (2) separate dates in different years. In the Preamble of each of these contracts the dates indicate separate settlements made over a period of time by the same public employer. For some reason, the public employer after establishing multi-year agreements on two (2) separate dates with these two (2) contracts represented in *Exhibit P-20 and P-21* now have taken a vastly different approach with respect to what is being proposed to the rank-and-file of the Police Department in this proceeding. For some reason, the terms of settlement recognized and executed in the two (2) other Police Department contracts have been replaced with Draconian changes stripping long enjoyed benefits and compensation elements from the rank-and-file personnel in this Interest Arbitration proceeding.

The two (2) Police contracts represented in *Exhibit P-20 and P-21* guarantee those Police Officers with at least a two percent (2%) wage increase for the term of this Interest Arbitration proceeding and guarantee the same medical contribution rates as the Employer challenges in this Interest Arbitration proceeding, fifteen percent (15%). The Chief's contract in the Salary clause guarantees a pay differential in the form of a rank differential. The subordinate rank, Deputy Chief of Police also has a "Salary" clause which provides:

Effective January 1, 2018 the Deputy Chief will receive a two percent (2%) increase in addition to raises in that calendar year. The Deputy Chief shall receive the same raise as the members of the Bergenfield Police Officers Association PBA Local 309. The Deputy Chief shall receive his pay in accordance with the current practice of payroll. (Emphasis supplied).

Thus, the Deputy Chief is guaranteed a minimum of two percent (2%) for 2018 “in addition to raises” for that year. It would appear therefore that whatever increase is received by the rank-and-file will be enhanced by an additional two percent (2%) for the Deputy Chief for 2021.

The Chief’s contract provides for maintained rank differential. Clearly those Articles when read in *pari materia* provide for an additional float over and above the Deputy Chief’s contract rate for the Chief’s contract rate. In sum, these two (2) Police contracts guarantee for those covered by same a minimum of two percent (2%) as well as additional raises for 2021. In this proceeding, and for some unknown reason, the same public employer that signed those two (2) contracts in P-20 and P-21 and is refusing a 3% wage increase for these personnel.

The Settlement Agreements with respect to medical insurance premiums for the two (2) signed Police contracts both show a pattern of settlement completely opposite that which is challenged by the same Employer in this proceeding. In the Chief’s contract under the Article entitled “Insurance and Death Benefits” at Section 1 there is a specific provision that the “Chief of Police shall contribute to his health insurance cost in an amount equal to fifteen percent (15%) of the total cost of health care benefits.” The health insurance costs rise to twenty-five (25%) with a corresponding Six Thousand Four Hundred Seventy-Three (\$6,473.00) compensation increase. The next year, 2021, the health insurance costs remain the same, but another compensation increase of Three Thousand (\$3,000) Dollars is received. While the Employee Union object to any issues presented besides Wages, the Employer is challenging the Medical Benefits there.

Notably in the Deputy Chief's contract in the Article entitled "Insurance and Death Benefits", paragraph 8, starting at line 5 there is the provision that "The Deputy Chief shall contribute to his health insurance cost in an amount equal to fifteen percent (15%) of the total cost of health care benefits." Again, in a separate contract negotiated and executed in a separate year for the Deputy Chief and the Chief of Police the same Governing Body has established a continuation in a multi-year contract of the fifteen percent (15%) medical contribution provision. Why is this bargaining unit in this proceeding of people who work shoulder-to-shoulder with the Chief and Deputy Chief at the Police station should be treated differently and criticized for this same benefit remains a mystery.

The pattern of settlements within the Bergenfield Police Department with respect to wages and medical contribution is clearly well-established by the Governing Body of the Borough of Bergenfield. With due respect to these other employees, the jobs performed, and the risks exposed are vastly different than Police Officers. Other non-police employees in a low paying position, pursuant to *Chapter 78* guidelines, are making only a nominal contribution towards health care. That nominal contribution is significantly less than the amount that current Police Officers are paying.

Other contracts within the Borough of Bergenfield should be noted as well, specifically the Borough Administrator, Corey Gallo. Administrator Gallo has received \$5,000 annual salary increases in years 2019 and 2020, as well as being scheduled to receive \$5,000 annual salary increases for years 2021 and 2022. This while the PBA received a 0% increase in 2019 and 2020.

It appears that the public employer's position is based on a misunderstanding of compensation in like agencies. The Bergenfield Police Officer is not a highly paid Officer using

the standard of Top Step Officer Base Pay but in fact is paid below average. **Chart No. 3** is based upon contracts in evidence, most of which were introduced into evidence by the public employer.

**CHART NO. 3**

**COMPARISION OF TOP STEP POLICE OFFICER BASE RATES FOR 2017 BASED ON CONTRACTS IN EVIDENCE**

<b>2021 Top Step Police Officer Base Pay</b>	
Wyckoff	\$131,782
Englewood Cliffs	\$142,761
Ridgewood*	\$146,343
Fort Lee	\$137,662
Paramus*	\$150,115
Upper Saddle River	\$139,618
East Rutherford	\$154,227
Teaneck*	\$118,430
Hackensack	\$129,598
Tenafly	\$146,615
New Milford*	\$120,342
Lodi*	\$134,274
Englewood*	\$142,761
<b>AVERAGE</b>	<b>\$138,041</b>
<b>BERGENFIELD</b>	<b>\$126,922</b>

\* Also Appears on Employer’s Evidence Submission

The relative position of the Bergenfield Police Officer is clearly well below average among said Officer’s peers based upon the evidence presented by both parties in this proceeding. Even the clothing allowance, a common form of reimbursement, and an issue in this proceeding comparisons show, again, a level for the Bergenfield Officer which is below average of the parties’ contracts.

**CHART NO. 4**

**AVERAGE ANNUAL CLOTHING ALLOWANCE BASED ON CONTRACTS IN EVIDENCE**

**Annual Clothing Allowance**

North Arlington	\$950
Wyckoff	\$875
Englewood Cliffs	\$1,000
Fort Lee	\$1,000
Paramus	\$600
Hackensack	\$1,000
New Milford	\$800
East Rutherford	\$1,500
South Hackensack	\$1,000
Lodi	\$1,000
<b>AVERAGE CLOTHING ALLOWANCE</b>	<b>\$972.50</b>
<b>BERGENFIELD ALLOWANCE</b>	<b>\$950</b>

It is important to note that the numbers set forth in **Chart No. 3** on the prior page and the comparative position of the Bergenfield Police Officer with respect to base wage are not static numbers. Most of the contracts placed into evidence by the parties have terms that cover not only 2021 for comparative wage purposes but also extend several years into the future. **Chart No. 5** on the following page compares base rate changes expressed in percentages for contracts placed into evidence by the PBA.

**CHART NO. 5**

**BASE RATE INCREASES BASED ON PBA EXHIBITS IN EVIDENCE**

<b>PBA Exhibit #</b>	<b>Municipality</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
(P-54)	Teaneck PBA	2.5	2			
	Teaneck SOA	2.5	2			
(P-28)	Tenafly PBA	2	2	2		
(P-38)	Lodi PBA		3	3	3	3
(P-43)	North Arlington PBA		2	2	2	
(P-62)	Englewood Cliffs PBA	2	2	2	2	
(P-58)	Fort Lee PBA	2	2	2	2	
(P-36)	Wood Ridge SOA	2	3	3		
(P-29)	Hackensack PBA		2.75	2.75	2.75	2.75

(P-47/48)	Demarest PBA		2.5	2.25	2.5	2.25
(P-49)	Upper Saddle River PBA	2	2.5	2.5	2.75	2.75
(P-45)	East Rutherford PBA	2	2			
(P-35)	South Hackensack	3	3	2		
<b>AVERAGES</b>			<b>2.22%</b>	<b>2.45%</b>	<b>2.35%</b>	<b>2.43%</b>
						<b>2.69%</b>

Referencing **Chart No. 5** one notes that the average rate of increase for 2020 was 2.22% when the Bergenfield PBA took a zero (0.0%). In 2021 and thereafter the average rates of increase varied across the board and are similar to that which is proposed by the PBA in this case.

The Employer’s evidentiary submissions support the PBA position in this case as is illustrated on **Chart No. 6** on the following page which is based on Employer evidence introduced at hearing.

**CHART NO. 6**

**BASE RATE INCREASES BASED ON EMPLOYER EXHIBITS IN EVIDENCE**

<b>Employer Ex. #</b>	<b>Municipality</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
(E-11)	Teaneck PBA	2.5	2			
	Teaneck SOA	2.5	2			
(E-9)	Mahwah PBA	2.5	2			
(E-8)	Ridgewood PBA	2	2			
(E-6)	Garfield PBA	2	2	2		
(E-7)	Paramus PBA	2	2	2		
(E-10)	Palisades Park PBA	2				
(E-12)	New Milford PBA	2	2.5			
(E-15)	Lodi PBA		3	3	3	3
(E-14)	Englewood City PBA	2.5				
<b>AVERAGES</b>		<b>2.22%</b>	<b>2.18%</b>	<b>2.33%</b>	<b>3%</b>	<b>3%</b>

Here the comparator for 2020 wage increases, using the Employer’s exhibits, is actually higher than the PBA exhibits and reflect a timeframe in which the PBA took a zero percent (0%) wage increase (P-2). The Employer’s own exhibits further illustrate average rate increases over

future years which do not in any way support the Employer's assertion of 2% rate change in those years. Once again, the Employer's own exhibits undercut any support for its own Last Offer Position.

### **LAWFUL AUTHORITY OF THE EMPLOYER**

Considering the lawful authority of the Employer criteria one must deal with both the Appropriation Cap and Tax Levy Cap imposed by State statute on municipalities. Neither of these statutory limitations has any negative impact on the ability of this public employer to meet the requirements of the PBA's Last Offer in this proceeding.

Pursuant to New Jersey law the respective Cap calculations, Tax Levy and Appropriation, are set forth in the Budget document. The PBA introduced the current year's Municipal Budget as *Exhibit P-87*, the current year's Municipal Budget (as passed) as *Exhibit P-88*, as well as the 2020 Municipal Budget as *Exhibit P-69*. Reference is made to Sheet 3c of *Exhibit P-88*. Therein is the calculation set forth of both Cap issues.

Bergenfield's Appropriation's set forth on Sheet 14 of the Budget (*P-88*) evidence that the 3.25% increase for police salaries has already been included in the budget. Under Public Safety, Police, Salaries & Wages, the appropriation for 2021 is in the amount of Seven Million Nine Hundred Forty-Seven Thousand Three Hundred Dollars (\$7,947,300.00). Under Public Safety, Police, Salaries & Wages, the appropriation for 2020 is in the amount of Seven Million Six Hundred Ninety-Seven Thousand Three Hundred Dollars (\$7,697,300.00). A different of Two Hundred Fifty Thousand Dollars (\$250,000.00), or a 3.25% increase. Further, the same line shows the 2020 "Paid or Charged" in the amount of Six Million Six Hundred Thirty-Nine Thousand Two Hundred Forty-Five Dollars (\$6,639,245.00). The same line shows a 2020 "Reserved" in the of One Million Fifty-Eight Thousand Fifty-Five Dollars (\$1,058,055.00). It is clearly evident that

the Employer **has budgeted more than the 3% requested by the PBA.** Additionally, the Reserved amount shows an immense savings by the Employer in 2020. Clearly there is no issue with the payment of the 3% requested by the PBA.

The Tax Levy Cap is a limitation on how much the tax rate may be increased. On the low right side of the page on a line captioned “Maximum Allowable Amount to be Raised by Taxation” there is the sum of Thirty Million Seven Hundred Ninety-One Thousand Sixty-Nine Dollars and Seventy-Four Cents (\$30,791,069.74). This is the amount that one may statutorily raise the taxes in Bergenfield. This was not done. The line below is captioned “Amount to be Raised by Taxation for Municipal Purposes.” This is the actual amount that taxes were raised and the sum represented is Twenty-Nine Million Nine Hundred Thirty-One Thousand Nine Hundred Fifty-Nine Dollars (\$29,931,959.00). The next line below is captioned “Over or (Under) 2% Levy Cap” in the amount of Eight Hundred Fifty-Nine Thousand One Hundred Thirty Dollars and Seventy-Three Cents (\$859,130.73). The next sheet, Sheet 3d has a “total Levy CAP Bank” from the past four years (2018 through 2021) in the amount of Four Million One Hundred Thirty-Seven Thousand Three Hundred Seventeen Dollars (\$4,137,317.00). What these lines mean sequentially is that the Borough under the statutorily formula could have raised the local taxes by up to \$30.79 Million. The Budget as proposed and passed did not require this amount to be raised but needed only needed \$29.93 Million. The difference, Eight Hundred Fifty-Nine Thousand One Hundred Thirty Dollars and Seventy-Three Cents (\$859,130.73), represents amount of flexibility not utilized in 2020. This bottom line of maximum allowable underutilized, Eight Hundred Fifty-Nine Thousand One Hundred Thirty Dollars and Seventy-Three Cents (\$859,130.73), does not go away. It rolls forward into the subsequent year as a “Cap Bank”. In other words, it is added to the adjustment in the subsequent year. What is established is that the Borough has had a pattern of structuring

Budgets which are well inside the limitation under the “Tax Levy Cap”. These amounts are rolling forward for increased flexibility. There is no question that there is no prohibition for an award of the PBA Position under consideration of the Tax Levy Cap.

The “Surplus Anticipated” line in the Budget (*P-88, Sheet 4, Line 1*) is increased from Four Million Nine Hundred Fifty-Three Thousand Four Hundred Twenty-Four Dollars (\$4,953,424.00) in 2020 to Five Million Fifty-Four Thousand Seven Hundred Sixty-Six Dollars (\$5,054,766.00) in 2021. This is a 2.05% increase in the anticipated surplus. These increases however only tell part of the story. The actual surpluses at the end of each year are far greater. Referring to this same Budget at Sheet 39 at the right top line the “Surplus Balance” for January 1 of 2019 was over \$9.5Million. That amount remained immense as of January 1, 2020 to Seven Million Nine Hundred Ninety-Three Thousand Three Hundred Fifty-Four Ten Dollars (\$7,996,354.00). Referring now to the lower right grid on the same Sheet 39 there is a line “Surplus Balance December 31, 2020” in the amount of Eight Million Six Hundred Four Thousand Nine Hundred Ninety-Three Dollars (\$8,604,939.00). This is the result of operations for 2020. On Sheet 39 in the lower right grid one notes that the surplus anticipated is Five Million Fifty-Four Thousand Seven Hundred Sixty-Six Dollars (\$5,054,766.00) as noted a “Surplus Remaining” of Three Million Five Hundred Fifty-Five Thousand One Hundred Fifty-Three Dollars (\$3,550,153.00). This town is certainly not without funding and certainly not limited by either the Levy Cap or the Appropriation Cap.

Another barometer of fiscal strength of this municipality is the very high percentage of current tax collections. Reference is made to the Budgets for years 2021 (*P-88*) and 2020 (*P-69*) respective Sheet 3, Line 3. The percentage of collection for 2021 was 97.85%, 2020 was 97.89%.

These represent very strong collection ratios and are an indicator of a lack of tax burden on the taxpayers.

Another *indicia* of fiscal strength is the Annual Debt Statement for 2020 (*P-68*). On the lower right line on page one it shows that the “Total Net Debt” as expressed in percentage of equalized value is 0.953%. The statutory debt limit is 3.5% of equalized value. While the PBA is not suggesting borrowing to pay for an Interest Arbitration Award, it is clear that there is a very strong fiscal picture presented here.

In sum, there is no statutory reason why the proposal of the PBA cannot be met in this Interest Arbitration case. There is no levy cap or appropriations cap which would have any impact upon granting of the PBA salary proposal.

With respect to the oft-challenged by Employer negotiated modification of *Chapter 78* premium contribution, the evidence does not support the Employer position nor even its criticism of said contract benefit. The change challenged by the Employer occurred three (3) contracts ago. The fact that the PBA paid for this change with real benefit cuts and real savings to the Employer will be developed later in this Brief. In the most recent contract, covering the single calendar year 2018 through 2020, the PBA took a freeze on pay rates with no increases for the Wage Guide rates for a full year just to continue the prior contract terms and to in part to offset the cost of limited Step Movement (*P-2*). The Employer continues to assert that there should be increased contributions to the employee premium contributions following the sunset of *Chapter 78*. Such is not the case. Reviewing the evidence illustrates several modifications in varying forms for *Chapter 78* and sunset *Chapter 78* for premium costs:

- **Attachment A** – The parties to the Upper Saddle River PBA contract (*P-49*) have agreed at page 28, Section 1, to a maximum Employee contribution towards

medical premiums of 1.5% of base. This is significantly less than is paid by the Bergenfield Police Officer.

•**Attachment B** – Is an excerpt from the Wood Ridge SOA contract (*P-36*) which provides at page 31, paragraph 24.10 that retiree medical will be wholly absorbed and paid by the Employer. Once again this is a superior benefit than is available in Bergenfield to its Police Officers.

•**Attachment C** - Is an excerpt from the East Rutherford PBA contract (*P-46*) which at page 16, mid-paragraph 29.3 provides that in retirement all cost of medical exceeding 1.5% will be paid by the former public employer, Borough of East Rutherford. Once again, this is a superior benefit then exists in Bergenfield (a decrease of the usual 33%).

•**Attachment D** – Is an excerpt from the Garfield PBA contract (*E-17*) which again limits retiree contribution to 1.5% at page 22 (a decrease of the usual 33%).

One can readily see that the nature of modification of *Chapter 78* is in fact a trend which is growing in comparable municipalities placed into evidence by the parties at hearing. Bergenfield is not unique. Bergenfield does not have the best benefit and is only part of said trend established.

There are no offsetting benefits or compensation that would set Bergenfield aside from the clear trends established by the evidence in the record regarding compensation and rate of increase. One may take arbitral notice that virtually all Departments have some people in Steps. They only vary in number. It is the nature of police work. Here, in Bergenfield, there are people in Steps but these are new Employees who replaced senior Employees who retired. The history of these transactions is set forth in the list of Bergenfield Police Department changes (*P-9*). In addition, the cost of policing in Bergenfield with fewer Officers making less money should be noted as well. Suffice it to say that an analysis under the statutory criteria support an award of the PBA Position in this case.

The arbitrator should first consider the truly massive and unprecedented change which the Borough is proposing concerning the obligations to contribute towards health benefits. The history in this matter is simple. Prior to 2011 the PBA did not contribute towards health benefits premiums. With the advent of Chapter 78 the unit members were required to pay 35% of health benefits.

The PBA negotiated this rate down to 15% at great cost to its bargaining capital. The PBA negotiated this rate at great detriment to its compensation scheme. In consideration for this change the PBA accepted minimal salary increases.

The Borough now requests the arbitrator to wash away this arms length bargain and to wash away the consideration which the PBA sacrificed to achieve it.

Administrator Gallo testified that the change from a 15% to a 35% contribution rate, as he proposes, would result in approximately a \$4,000 to \$8,000 increased payment obligation. (It is highly likely that the actual amounts are higher than the estimates provided by the administrator)

Based upon a \$126,000 salary the Borough's proposal would amount to a reduction in pay of between 3.17% and 6.34%. In effect, based upon these estimated contribution levels the Borough proposes a net loss of compensation by 1.17% to 4.34% per year. Such a proposal of course runs contrary to every settlement and award which has been provided as evidence in this case - both within the Borough and throughout the State.

The Borough failed to file an Answer to the Interest arbitration petition. It therefore waived any ability to add new proposal and new economic items to the proceeding.

The PBA is significantly prejudiced because it did not have the ability to address the arguments raised by the Borough as they concerned the health benefit changes it sought.

Notwithstanding the failure of the Borough to include this item in their Answer, even if the health benefit changes are ultimately considered by the arbitrator the health benefits proposal seeks

to alter existing contract language and would represent a major alteration in the terms and conditions of employment. Such a major change in an important benefit is clearly unwarranted for the following reasons:

1. The Borough provided no evidentiary justification for awarding such an immense change in working conditions.

2. The Borough did not provide any evidence of any other unit or individual either in the Borough or throughout the State, which either agreed to or was awarded *an increase* in premium contributions - to the contrary *every* applicable comparison revealed that premium contributions have been significantly *reduced* - not increased.

3. The Borough never even costed the contributions out for the arbitrator's consideration which underscores the lack of commitment and seriousness of this proposal

4. The proposed increase in health benefit premiums would strip and erase the PBA of the concessions it has made in the past (in terms of reduced compensation) in order to achieve the current level of contribution.

Should an arbitrator even consider such a stark increase in premium contributions, the level of wages would need to be significantly augmented on an order which offsets the increased cost for each of the years of the contract. Changes to the Borough's medical insurance situation cannot be justified without substantial additional wage or benefit inducements, which should not be imposed by an Interest Arbitrator absent an offset in increase in wages - which is usually negotiated directly by the parties.

In any arbitration an arbitrator should require that a party requesting a contract change explain the need for it. Simply put, the Borough has not provided that justification in this case.

**Arbitrator Decision:**

The salary proposal submitted by the PBA, in its final offer, is a little too high and is not supported by the evidence submitted into the record nor when applying the statutory criteria.

The salary proposal submitted by the Borough, in its final offer, on the other hand, is more appropriate and more in line with the statutory criteria.

To make a determination, this Arbitrator has taken into consideration the following statutory criteria:

**External Comparisons: Bergen County Jurisdictions with Police Contracts:**

The Borough and the PBA have provided approximately 29 jurisdictions for comparison purposes.

After a thorough review of all the submitted 29 jurisdictions, looking at the charts, documents and evidence provided by the parties as well as all the CNAs provided by the parties, this Arbitrator has determined that the following jurisdictions are more in line and more suited to be considered as comparables for the use in this decision.

Garfield, Paramus, Lodi, Ridgewood, New Milford, Mahwah, and Teaneck.

Although there are no “perfect comparisons” when it comes to evaluating compensation among public employers, the above jurisdictions, within Bergen County, make up the appropriate representation to be used since each of the above jurisdictions have been referenced and relied upon by both the Borough and the PBA in defense of their respective positions. Thereby, providing this Arbitrator with the necessary comparative information to determine the appropriate wage/salary increase for the term of this CNA.

It should be noted that while PBA members have not received annual increases since the expiration of the 2013-2016 Agreement and their base pay has been stagnant for over four years. At top step, they currently earn \$126,922.00 according to the 2018-2019 CNA.

When comparing steps equivalent to Bergenfield’s current top steps, with the jurisdictions being used for comparative value, the PBA members at top step currently earn more annually than officers in those municipalities as referred to below:

<b>Municipality</b>	<b>Step Equivalent to Bergenfield’s Top Step in the Appendix A-1 Salary Guide (Fifth Step) and Equivalent Base Salary in 2021</b>	<b>Step Equivalent to Bergenfield’s Top Step in the Appendix A-2 Salary Guide (Step 6) and Equivalent Base Salary in 2021</b>
Garfield (BF Ex. 6)	Upon Completion of 5 <sup>th</sup> Year - \$67,598.00	Upon Completion of 6 <sup>th</sup> Year - \$74,997.00
Paramus (BF Ex. 7)	Step 5 - \$92,249.00	Step 6 - \$103,820.00
Lodi (BF Ex. 15)	Step 4 - \$74,147.00	Step 5 - \$81,663.00
Ridgewood (BF Ex. 8)	Step 6 - \$79,173.00	Step 7 - \$87,560.00
New Milford (BF Ex. 12)	Patrolman 5 - \$77,275.00	Patrolman 6 - \$85,071.00
Mahwah (BF Ex. 9)	Fifth Year - \$79,271.00	Sixth Year - \$87,370.00
Teaneck (BF Ex. 11)	5 <sup>th</sup> Year - \$83,933.00	6 <sup>th</sup> Year - \$100,242.68

Additionally, relying on and referring to PBA submitted charts 5 & 6 showing Base Rate Increases, for the comparables being used by this Arbitrator, the 2% being offered by the Borough is more in line with those comparable base rate increases.

And referring to PBA submitted Chart 3 showing comparison of top step Police Officer Base Rates for 2017 based on contracts in evidence puts Bergenfield to be in the middle of the pack with the comparisons used.

PBA Charts 5 & 6 combined: Base Rate Increases\*

	<b>Municipality</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	
	<b>2024</b>					
(E-11)	Teaneck PBA	2.5	2			
	Teaneck SOA	2.5	2			
(E-9)	Mahwah PBA	2.5	2			
(E-8)	Ridgewood PBA	2	2			
(E-6)	Garfield PBA	2	2	2		
(E-7)	Paramus PBA	2	2	2		
(E-12)	New Milford PBA	2	2.5			
(E-15)	Lodi PBA		3	3	3	3

\*(Showing only relative comparisons used by Arbitrator)

PBA Chart 3 - 2021 Top Step Police Officer Base Pay\*

Ridgewood	\$146,343
Paramus	\$150,115
Teaneck	\$118,430
New Milford	\$120,342
Lodi	\$134,274
Bergenfield	\$126,922

\*(Showing only the relative comparisons used by Arbitrator)

Bergenfield's final proposal implementing 10 steps in the step guide for new hires with a 2% annual increase for both new and current officers who reach top step is very comparable to the comparisons being used and considered by this Arbitrator.

For example:

### **Garfield**

The City of Garfield has 14 steps within its salary guide. Garfield's salary guide is comprised of a Probationary Step and steps 1 through 13, which are labeled "Upon Completion of 1<sup>st</sup> Year" through "Upon Completion of 13<sup>th</sup> Year." At top step, which is Upon Completion of 13<sup>th</sup> Year, an officer in 2021 will earn \$129,236.00. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers employed by Garfield do not receive annual increases, other than their step increases, until they reach Step 12. Even though officers employed by Garfield receive an approximate 1.26% increase when they reach step 12 and a 2% increase when they reach step 13, an officer at top step in Bergenfield would still earn \$2,813.00 more annually than those employed by Garfield.

Further comparison between Garfield and Bergenfield reveals that since Garfield has 14 steps within its salary guide, technically Bergenfield's proposed top step, Step Nine, would be equivalent to Garfield's 9<sup>th</sup> Step, in which an officer in Garfield's 9<sup>th</sup> Step in 2021 will earn \$97,196.00, while an officer at Step Nine employed by Bergenfield would earn \$132,049.65 in 2021. Therefore, an officer employed by Bergenfield would earn \$34,853.65 more annually than an officer employed by Garfield.

Thus, in analyzing Bergenfield's proposal to Garfield, Bergenfield's proposal is reasonable in regard to the amount of steps Bergenfield is proposing and in regard to providing an annual increase of 2% to those officers who are at top step. It should also be noted that as of the 2017 census, Garfield had a population of 32,393, which is within 25% of Bergenfield's population of 27,927, making Garfield comparable to Bergenfield.

### **Paramus**

The Borough of Paramus has 11 steps within its salary guide. Paramus' salary guide is comprised of an Academy step and Steps 1 through 10. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers in Paramus at top step, Step 10, will receive \$150,115.00 in 2021.

However, further comparison between Bergenfield and Paramus reveals that technically Bergenfield's proposed Step Nine is equivalent to Paramus' Step 9. An officer employed in Paramus at Step 9 will earn \$138,542.00 in 2021, while an officer of Bergenfield at Bergenfield's proposed Step Nine would receive \$132,049.65. Even though Bergenfield and Paramus have similar populations, the median household income in Paramus is \$128,306.00, while the median household income in Bergenfield is \$96,335.00. Therefore, the median household income is \$31,971.00 more in Paramus than in Bergenfield. Thus, it is reasonable for officers employed by Paramus to earn slightly more than officers employed by Bergenfield, since citizens and taxpayers would be less burdened given the higher household income.

### **Lodi**

The Borough of Lodi has 14 steps within its salary guide. Lodi's salary guide is comprised of 1<sup>st</sup> 6 months, 2<sup>nd</sup> 6 months, and Steps 1 through 12. If Bergenfield were to implement 10 steps

within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers in Lodi at top step, Step 12, will receive \$134,274.00 in 2021. Officers employed by Lodi do not receive annual increases until they reach Step 11. At Step 11, those officers receive a 1.9% annual increase. Officers in Lodi's Step 12 receive a 3% annual increase.

However, further comparison reveals that technically Bergenfield's proposed Step Nine is equivalent to Lodi's Step 7. An officer employed by Lodi at Step 7 will earn \$104,211.00. Therefore, PBA members employed by Bergenfield at top step would earn \$27,838.65 more than an officer in an equivalent step in Lodi. Therefore, when comparing Bergenfield's proposed top step, Step Nine, to Lodi's equivalent, Step 7, Bergenfield's proposal is reasonable. It should also be noted that as of the 2017 census, Lodi had a population of 24,96, which is comparable to Bergenfield.

### **Ridgewood**

The Borough of Ridgewood has 13 steps within its salary guide. Ridgewood's salary guide is comprised of Steps 1 through 13. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers in Ridgewood at top step, Step 13, will earn 137,886.00 in 2021. Officers in Ridgewood do not receive annual increases until they reach top step, in which they then receive increasing annual increases. In 2020 the annual increase for an officer at top step in Ridgewood was 2%.

However, further comparison reveals that technically Bergenfield's proposed Step Nine is equivalent to Ridgewood's Step 10. An officer employed by Ridgewood at Step 10 will earn \$112,721.00. Therefore, an officer employed by Bergenfield at Bergenfield's proposed top step

would earn \$19,328.65 more than an officer of equivalent step employed by Ridgewood. When comparing equivalent steps between Bergenfield and Ridgewood, Bergenfield's proposal is reasonable. It should also be noted that as of the 2017 census, Ridgewood had a population of 25,692, which is comparable to Bergenfield. *See* BF Ex. 19.

Additionally, even though Bergenfield and Ridgewood have similar populations, the median household income in Ridgewood is \$184,335.00, while the median household income in Bergenfield is \$96,335.00. Therefore, the median household income in Ridgewood is \$88,000.00 more than in Bergenfield. Thus, it is reasonable for officers employed by Ridgewood to earn more than officers employed by Bergenfield since citizens and taxpayers would be less burdened given the much higher household income.

#### **New Milford**

The Borough of New Milford, which neighbors Bergenfield, has 10 steps within its salary guide, which starts at Probation and then Patrolman 1 through 9. If Bergenfield were to implement 10 steps within its salary guide, an officer at top step would earn \$132,049.65 in 2021, which includes Bergenfield's proposed 2% annual increase to officers who reach that top step. Officers in New Milford at top step, Patrolman 9, will earn \$120,342.00 in 2021. Once at top step, officers in New Milford receive a 2.5% annual increase, which although is .5% more than that proposed by Bergenfield, officers employed by Bergenfield would still earn \$11,707.65 more than those employed by New Milford. Further, Bergenfield and New Milford have very similar median incomes. Bergenfield's is \$96,335.00 and New Milford's is \$94,334.00. Therefore, when comparing the annual salaries of officers employed by Bergenfield and those employed by New Milford, Bergenfield's proposal is reasonable.

In addition, the medium income for New Milford is similar to Bergenfield. While the populations of Lodi, Garfield and Ridgewood are similar to Bergenfield. And having the medium incomes of Paramus and Ridgefield being higher adds to why the use of all these jurisdictions, combined, for comparable purposes is appropriate.

### **Comparison to Other Borough's Officer Contract Settlements**

There are three (3) Police contracts covering Bergenfield Police personnel. The PBA 309 contract and two (2) contracts covering the Chief of Police and the Deputy Chief of Police.

These two (2) persons, the Chief of Police and Deputy Chief, represent law enforcement Officers working in the Bergenfield Police Department in the same building, under the same statutory authority, in the same jurisdiction, on a day-to-day basis with bargaining unit personnel, having regular interactions and having common missions with bargaining unit personnel, and serve the same public demands as are faced by bargaining unit personnel

Both have contracts through 2021.

The PBA has argued a difference in the wage/salary increases received by the Chief and Deputy Chief and healthcare contributions made by the Chief and Deputy Chief.

However, a review of both contracts indicates that:

In the case of the Chief from 2020 to 2021 his salary increase was less than 2% while his healthcare contribution went from 15% in 2019 to 25% in 2020 and 25% in 2021.

In the case of the Deputy Chief after his 2018 increase of 2% and other raises which were not substantiated, the Deputy Chief would receive the same raises as members of PBA 309. And his healthcare contribution currently at 15% would be in accord with that of PBA 309.

Both the salary increases, and the healthcare contribution of the Chief and the Deputy Chief are very similar if not the exact same as to what's being awarded in for this CNA which purports to be in the best interest of the Bargaining Unit, the Department and the public.

**With respect to the Continuity of Service:**

The issue of continuity of employment was really not addressed, by the parties, with the exception of the following two PBA arguments:

First, that over the last 40 years there has been a reduction in supervisory positions which may alter the career path for Officers and could affect an Officer's ability to advance financially. Second, that many of the senior Patrol Officers in recent years have retired resulting in lesser paid Step Position Police Officers being in the non-supervisory positions.

Even with those two arguments being true does nothing to prove or assert that the retention of competent Officers has been affected or that the continuity and stability of employment among members of the bargaining unit is in any way diminished.

In this Arbitrator's review, the above-listed PBA arguments does not show any current significant deviation in the number of Officers leaving Bergenfield Police Department for other Police Departments or anywhere else for that matter.

**With respect to the Cost of Living:**

The Borough introduced into evidence a copy of a news release from the Borough of Labor Statistics, U.S. Department of Labor, dated April 13, 2021. The April 13, 2021, release, discussed the 12 month increase of the Consumer Price Index.

The release indicated that "Over the last 12 months, the all-items index increased 2.6 percent before seasonal adjustment." Table 4, of that same release states that the CPI-U for New York-Newark-Jersey City-NY-NJ-PA increased by 2.0 percent from March 2020 to March 2021.

The PBA introduced into evidence a copy of a news release from the Bureau of Labor Statistics, U.S. Department of Labor dated June 10, 2021. In the first paragraph of the first sheet there is statement that over the last 12 months, the all-items index increased to 5.0 percent.

PBA 309 also request that since they believe the CPI has increased to 5% after they made their final offer requesting 3%, under the circumstances, granting an increase of only 3% would place PBA unit members in a financial position which does not keep pace with the cost of living. They asked that this Arbitrator properly exercise his conventional authority to award salary increases somewhere closer to the 5%.

The figures shown, however, are seasonally adjusted changes from the previous month. Where, the Borough provided all the charts and tables, including table 4 which is representative of the area for this Interest Arbitration, the PBA only provided the beginning chart which does not give the entire picture.

The Award given here, is fair and is supported by the CPI-U data regarding the cost of living, provided by the Bureau of Labor Statistics as listed in Table 4. In any event, after considering this criteria, lesser weight is given than such factors as the Borough's ability to pay, the lack of adverse impact, the interest and welfare of the public and public sector comparisons and comparability.

**With respect to PERC Stats:**

PERC'S website includes the most recent salary increase analysis for interest arbitration awards. Here, for comparison purposes four (4) interest arbitration awards, for Police Units, are listed for 2021, which arose and were conducted and decided during this Covid Pandemic period similar to this Bergenfield Interest Arbitration.

IA-2021-004, Passaic County Sheriff's Office and PBA Local 286, dated April 27, 2021  
Arbitrator Winters

2019, 2020, 2021, 2022, & 2023 – 2% each year.

IA-2021-001, Borough of Old Tappan and PBA Local 206, dated June 17, 2021  
Arbitrator Winters

2019 -1% & 1%, 2020, 2021 & 2022 – 2% each year.

IA-2021-13, Stafford Tp., and PBA Local 297, dated May 7, 2021  
Arbitrator Gifford

2021, 2022, 2023 & 2024 – 2% each year.

IA-2021-14, Stafford Tp., and PBA Local 297 SOA, dated May 7, 2021  
Arbitrator Gifford

2021, 2022, 2023 & 2024 – 2% each year.

After reviewing the above stats, the Award in this matter is well in line with those increases for the same comparative years.

**With respect to overall compensation:**

The overall compensation presently received by PBA members, in addition of direct wages/salary: vacations, holidays, personal and sick leave, medical insurance, terminal leave, college credit compensation, longevity, differential, and clothing allowance are as follows:

Holidays: Each employee shall enjoy 13 holidays each year which are included in base pay.

Vacations: Each employee shall be entitled to annual vacation leave depending on his years of service within the Department.

- Personal Leave: Each employee shall be entitled to 3 personal leave days annually without loss of pay.
- Sick Leave: Sick leave shall be granted to each employee who has completed 4 years of continuous service in the amount equal to one full working year which shall be renewed annually but shall not accumulate past December 31st of each year. Employees who have not completed 4 years of continuous service will be granted 15 sick days per year.
- Medical: The employer will provide and pay for medical insurance coverage. All employees shall contribute towards the cost of providing healthcare coverage currently a 15%
- Terminal Leave: All employees who have served in the Borough for 15 years or more shall be entitled at retirement to terminal leave with pay in accordance to the schedule.
- College Credit Comp: Each member shall receive as additional compensation \$18.00 per credit for each college credit earned. Such additional compensation shall not exceed the sum of \$1,300.00 per man in one calendar year.
- Longevity: Each officer shall receive longevity compensation based upon years of service with the Borough.
- Differential: There is a "Senior Officer Differential" pay step given to members with 20 years of creditable service. The annual amount of said step shall be \$2,500.000 which shall become part of base pay.
- Clothing Allowance: Employees hired prior to July 1, 1992, shall receive an annual clothing allowance in the amount of \$950.00. Employees hired after July 1, 1992, receive an annual clothing allowance pursuant to a voucher system.

The evidence in this matter, as demonstrated by the parties exhibits and briefs, including the discussion of comparisons outlined earlier in this decision shows that the overall compensation received by PBA 309 members is competitive.

As stated above: The salary proposal submitted by the PBA, in its final offer, is a little too high and is not supported by the evidence submitted into the record nor when applying the statutory criteria as listed above.

The salary proposal submitted by the Borough, in its final offer, on the other hand, is more appropriate and more in line with the statutory criteria.

The Borough's Final Proposal with respect to wages/salary and salary guide, as altered and tweaked by this Arbitrator, provides PBA members a very competitive salary in comparison to similarly situated municipalities within Bergen County.

The salary award below will permit the Borough to maintain its fiscal responsibility to their taxpayers while providing the PBA members with a fair and reasonable wage/salary increase which comports to be in the best interest of the public.

Additionally, Bergenfield's Final Proposal/Offer seeks to remove Article III, Section 2 of the 2017 CNA, which states that, "Increments shall be paid in accordance with past practice."

Since the Award is granting the Borough's proposal for a salary guide for new hires to include 10 steps the step increments and payment at each step would clearly change.

This Arbitrator agrees with the Borough that the Parties past practice in regard to step increase increments would become irrelevant and could potentially create confusion in interpreting the new CNA.

Based upon the above, this Arbitrator, hereby awards the following:

**Award:**

**Wages/Salaries:**

Effective January 1, 2021 - 2% salary increases for officers who reach top step.

Effective January 1, 2022 - 2% salary increases for officers who reach top step.

Effective January 1, 2023 - 2% salary increases for officers who reach top step.

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Effective January 1, 2025 - 2% salary increases for officers who reach top step.

Effective January 1, 2022 - Salary guide for new hires shall include 10 steps.

Effective January 1, 2022 - Article III, Section 2 of the 2017 Agreement which states that “Increments shall be paid in accordance with past practice” will be removed.

The salary cost outs for each year of the Agreement are as follows:

2021- \$67,079.11	2022 - \$68,420.70	2023 - \$69,789.11
2024 - \$71,184.89	2025 - \$72,608.59	

### **Healthcare Contributions:**

The Borough agreed, during a re-negotiations for 2016, to reduce the employees’ healthcare contribution from the Chapter 78 levels to 15% in consideration of the PBA’s consent to switch from Bollinger to SHBP prescription plan, and according to the Borough was understood to be limited to the year 2016. Upon the expiration of the 2013 CNA on December 31, 2016, the Parties agreed to enter into a one-year CNA covering solely the year 2017. By virtue of that CNA, the Parties agreed to extend the PBA’s 15% contribution for one year only, in exchange for the PBA members accepting no annual percentage increase of salary levels set forth in the salary guides.

The Borough, in its attempt to change the Healthcare contributions being made by the PBA has relied on three points

First, the Borough has implemented a pattern of settlement among its other bargaining units that requires PBA members to contribute to healthcare coverage at levels set forth at P.L. 2011, c78.

Second, the PBA’s demand for PBA members to contribute to healthcare coverage at 15% is unprecedented in comparison to similar departments. And,

Third, by contributing only 15% to healthcare, PBA members are essentially receiving annual salary increases through a received benefit.

**With respect to the settlements of other bargaining units.**

The Borough, in addition to the PBA , has six other bargaining units, the Bergenfield Employee's Association ("D.P.W."), Local 108 R.W.D.S.U., UFCW ("R.W.D.S.U."), the Bergenfield Fireman's Association F.M.B.A. Local No. 65 ("F.M.B.A."), Bergenfield Police Department Civilian Employees Association ("PD Civilian Employees Association"), Bergenfield Public Works Supervisors of Personnel ("DPW Supervisors"), and Bergenfield Police Department Telecommunicators Association ("PD Telecommunicators"), which have their exclusive representatives engage in collective negotiations with Bergenfield concerning terms and conditions of employment.

The D.P.W., R.W.D.S.U., F.M.B.A., PD Civilian Employees Association, and PD Telecommunicators CNA's provide that as to the subject of employee healthcare contribution that employees are required to make the appropriate Chapter 78 contribution. As for the DPW Supervisors, members covered by the CNA are required to contribute 35% to the cost of their health insurance premiums, regardless of their salary. Such contribution by DPW Supervisors is more than what Bergenfield is proposing PBA members to contribute in Bergenfield's Final Proposal/Offer, since Bergenfield is only requesting PBA members to contribute according to c.78, which takes an employee's salary into consideration.

Furthermore, the evidence in the record leads to the unmistakable conclusion that failure to adhere to this pattern of settlement with relation to the PBA will serve to undermine the

harmonious work environment Bergenfield has worked so hard to cultivate, and which the pattern of settlement principle is intended to promote.

For instance, PBA members are by far higher compensated than D.P.W., R.W.D.S.U., PD Civilian Employees Association, and PD Telecommunicators employees, with a current top step for patrol officers reaching \$126,992.00 in base pay alone. D.P.W. Public Works Laborer's at top step cap out at \$75,275.05 in 2021, Public Works Repairer's at top step cap out at \$85,092.86 in 2021, and Tree Maintenance Worker's at top step cap out at \$75,435.52 in 2021. R.W.D.S.U. Keyboard Clerks/Clerk IV's are able to earn a maximum of \$58,850.00 in 2021. PD Civilian Employees are unable to earn more than \$33,447.08 in their 5<sup>th</sup> Year in 2021. Additionally, an 8<sup>th</sup> Year PD Telecommunicator, which is the highest step on the telecommunicator salary guide, is unable to earn more than \$71,222.00 in 2021. The Borough argues It would be an unjust result if a PBA employee at top step, making a current base pay of \$126,992.00, were to continue to only be required to contribute to healthcare at 15%, but a D.P.W. employee at top step is required to contribute 23-34% of the cost of his/her premium, depending on the type of coverage. Similarly, a R.W.D.S.U. employee at top step is required to contribute 14-23% to the cost of his/her premium, depending on the type of coverage. Similarly, a F.M.B.A. member employed by Bergenfield at top step, is able to earn a maximum of \$107,151.72 in 2021 and is required to contribute 32-35% to his/her premium, depending on the type of coverage. A PD Telecommunicator at top step would be required to contribute 22-32% of the cost of his/her premium, depending on the type of coverage. The Borough further argues that the continuation of this unjust result will undeniably create discontent among the D.P.W., R.W.D.S.U., F.M.B.A., PD Civilian, and PD Telecommunicator employees, thus discouraging future settlements with those units, which runs

directly afoul to PERC's policy considerations. *See Fox v. Morris Cty.*, 22 N.J. Super. 501, 509 (App. Div. 1993), *certif. denied*, 137 N.J. 311 (1994).

Additionally, as discussed above, the Bergenfield Chief and Deputy Chief will follow suit with the PBA 309 contract.

### **With respect to comparisons with other Police Departments**

The Borough has submitted 10 CNA's concerning other police departments into evidence. The majority of the contracts in evidence contain clauses mandating that employees make healthcare contributions as per P.L.2011, c.78. The municipalities submitted by Bergenfield which contain such clauses include: (1) Garfield; (2) Paramus; (3) Ridgewood; (4) Mahwah; (5) Palisades Park; (6) Teaneck; (7) New Milford; (8) Cliffside Park; (9) Englewood City; and (10) Lodi. The municipalities submitted by the PBA in which PBA members are required to make healthcare contributions as per P.L.2011, c.78 include: (1) Tenafly; (2) Mahwah; (3) New Milford; (4) Wood-Ridge Supervising Officer's Association; (5) Paramus; (6) Lodi; (7) Rutherford; (8) North Arlington; (9) Wyckoff; (10) Demarest; (11) Upper Saddle River; (12) Allendale; (13) The Office of the Bergen County Prosecutor's Office and PBA Local No. 221 ("BCPO"); (14) Teaneck; (15) Ridgewood; (16) Garfield; (17) Fort Lee; and (18) Glen Rock. Not including duplicate submissions, of the CNA's submitted by both the Borough and the PBA, 21 out of the 29 CNA's require officers to contribute to healthcare at levels set forth by P.L. 2011, c.78.

Of the 29 CNA's submitted by both Bergenfield and the PBA, only 5 municipalities do not require PBA members to contribute to healthcare coverage at levels pursuant to P.L. 2011, c.78.

The above include the seven (7) comparable jurisdiction being used by this Arbitrator in making an award in this case: Garfield, Paramus, Ridgewood, Mahwah, Teaneck, New Milford, and Lodi.

**With respect to that the PBA is receiving a salary increase through a received benefit.**

Based on the Borough's calculations the Borough will be paying an additional \$170,877.12 annually in 2021 alone, towards PBA members healthcare if nothing changes. since PBA members refuse to contribute at P.L. 2011, c.78 levels. It is the Borough's position that if PBA members continue to contribute only 15%, that they essentially would be receiving annual increases through this received benefit.

Bergenfield employs 43 PBA members. Out of those 43 members, 33 members save at least 2% of their annual salary by not contributing to healthcare at Chapter 78 levels. Further analysis shows that 6 members save at least 3% of their annual salary by not contributing at Chapter 78 levels. 13 members save at least 4% of their annual salary by not contributing at Chapter 78 levels, and 5 members save at least 5% of their annual salary by not contributing at Chapter 78 levels. By way of comparison, 33 PBA members receive at least a 2% annual increase just by virtue of their contribution rate.

It is clear that if the PBA members at top step receive both 2% annual increases and continue to contribute to healthcare coverage at 15%, they would essentially be receiving an average increase of 6.26%. Of the CNA's submitted by both the Borough and the PBA, there is not one municipality in which PBA members receive that high of an annual increase. Such annual increase would place a severe burden on Borough and would require Bergenfield to acquire such money from Bergenfield taxpayers in order to shoulder the cost.

The PBA believe and argue that:

The Borough failed to file an Answer to the Interest arbitration petition. It therefore waived any ability to add new proposal and new economic items to the proceeding.

The PBA is significantly prejudiced because it did not have the ability to address the arguments raised by the Borough as they concerned the health benefit changes it sought.

The proposed increase in health benefit premiums would strip and erase the PBA of the concessions it has made in the past (in terms of reduced compensation) in order to achieve the current level of contribution.

Should an arbitrator even consider such a stark increase in premium contributions, the level of wages would need to be significantly augmented on an order which offsets the increased cost for each of the years of the contract. Changes to the Borough's medical insurance situation cannot be justified without substantial additional wage or benefit inducements, which should not be imposed by an Interest Arbitrator absent an offset in increase in wages - which is usually negotiated directly by the parties.

Additionally, the PBA believes that negotiating a reduction in the Chapter 78 healthcare contributions is a trend in comparison municipalities.

Reviewing the evidence illustrates several modifications in varying forms for Chapter 78 and sunset Chapter 78 for premium costs:

The parties to the Upper Saddle River PBA contract (P-49) have agreed at page 28, Section 1, to a maximum Employee contribution towards medical premiums of 1.5% of base. This is significantly less than is paid by the Bergenfield Police Officer.

An excerpt from the Wood Ridge SOA contract (P-36) which provides at page 31, paragraph 24.10 that retiree medical will be wholly absorbed and paid by the Employer. Once again this is a superior benefit than is available in Bergenfield to its Police Officers.

An excerpt from the East Rutherford PBA contract (P-46) which at page 16, mid-paragraph 29.3 provides that in retirement all cost of medical exceeding 1.5% will be paid by the

former public employer, Borough of East Rutherford. Once again, this is a superior benefit then exists in Bergenfield (a decrease of the usual 33%).

An excerpt from the Garfield PBA contract (E-17) which again limits retiree contribution to 1.5% at page 22 (a decrease of the usual 33%).

The nature of modification of Chapter 78 is in fact a trend which is growing in comparable municipalities placed into evidence by the parties at hearing.

Decision:

In this decision, this Arbitrator must award the Borough's position in part. For this Arbitrator to do anything different would not be in the interest and welfare of the public.

For this CNA, this Arbitrator agrees with the Borough position that the level of contribution should be increased for the PBA members. The current 15% is too low in comparison not only to other Borough employees but in comparison to other Bergen County Police Departments.

The internal comparability evidence, provided by the Borough above is not only overwhelming but when coupled with the external comparables, that evidence combined outweighs, in this Arbitrator's mind, any arguments made by the PBA to the contrary.

This Arbitrator is convinced that the Borough has met its burden of proof to demonstrate that their proposal is necessary and advisable. Again, in part. However, for the Borough to try to achieve and have the contribution level increase to the Chapter 78 statutory level, all in this new CNA, is a move that is too aggressive and not in the best interest of this PBA bargaining unit as it would be at the expense of the bargaining unit morale. Which then would not be in the interest and welfare of the public.

Based upon the above, this Arbitrator, hereby awards the following:

**Award:**

**Healthcare Contribution:**

Effective January 1, 2022 - Employees covered by the Agreement shall pay the percentage of the total cost of their health care benefits as set by the Tier 4 schedule of Chapter 78. However, no employee covered by the agreement shall contribute more than 25% of the total cost of healthcare benefits.

**APPLICATION OF THE STATUTORY CRITERIA**

This award is in the public interest because it will allow the Borough to continue to maintain its fiscal responsibility to the taxpayers. This award provides a fair and reasonable increase which is in the public interest since it will boost the morale of the PBA membership.

This Award also serves the interests and welfare of the public through a thorough weighing of all statutory criteria as discussed throughout this decision.

Since this Arbitrator is primarily adopting the Borough's wage/salary proposal this Award will not have an adverse impact on the Borough, its taxpayers, and residents and it will not prohibit the Borough from meeting its statutory obligations or cause the Borough to exceed its lawful authority as there is no levy or appropriations cap which would be impacted.

This award also meets with the statutory criteria related to internal and external comparable. This Arbitrator has compared the salary and benefits to those of other law enforcement groups in Bergen County and where possible or appropriate the Borough's other Police employees as well as taking into consideration the overall compensation presently received.

This Arbitrator's decision will allow the PBA members to keep pace with the cost of living.

There were no stipulations presented or discussed.

Based upon the above, this Arbitrator, hereby awards the following:

### **AWARD SECTION SUMMARY**

1. Term of the Agreement:

The term of the agreement shall be for a period of five (5) years commencing on January 1, 2021 and expiring on December 31, 2025.

2. Wages/Salaries

Effective January 1, 2021 - 2% salary increases for officers who reach top step.

Effective January 1, 2022 - 2% salary increases for officers who reach top step.

Effective January 1, 2023 - 2% salary increases for officers who reach top step.

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Effective January 1, 2022 - Salary guide for new hires shall include 10 steps.

Effective January 1, 2022 - Article III, Section 2 of the 2017 Agreement which states that “Increments shall be paid in accordance with past practice” will be removed.

3. Healthcare Contribution:

Effective January 1, 2022 - Employees covered by the Agreement shall pay the percentage of the total cost of their health care benefits as set by the Tier 4 schedule of Chapter 78. However, no employee covered by the agreement shall contribute more than 25% of the total cost of healthcare benefits.

As to the remainder of the parties’ changes, modifications, and proposals for which this Arbitrator has thoroughly reviewed, considered, and have examined all supporting testimony and evidence provided, to include but not limited to: the Borough’s proposals on longevity, comp time payout, the Borough’s new language for starting negotiations for a successor CNA and the

Borough's proposal for the elimination of language that step movement be automatic this Arbitrator finds, based on insufficient evidence, that Borough has failed to justify their demands.

With respect to the elimination of longevity for new hires, just the fact that other external comparables have adopted similar language does not justify doing it here without further financial justification which was not provided. Same with the comp time payout. There was insufficient financial justification to make that change during the term for this CNA. And, in the case of the new language for starting negotiations for a successor CNA, the Borough did not demonstrate that such language is either necessary or advisable.

All proposals by the Policemen's Benevolent Association, Local 309 and the Borough of Bergenfield not awarded or discussed herein are considered denied and dismissed as there was insufficient evidence to award or discuss. All provisions of the existing Collectively Negotiated Agreements shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements and stipulations between the parties.

The testimony given and the evidence provided at the Hearing as well as contained in the post-hearing briefs supports the above conclusions.

CERTIFICATION

This Arbitrator has given due weight to the statutory criteria set forth in *N.J.S.A.* 34:13A-16(g) and have conclude that the terms of this Award represent a reasonable determination of the issues as justified by the evidence and testimony provided.

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Marc A. Winters  
Interest Arbitrator

September 14, 2021  
Seven Fields, Pennsylvania

State of Pennsylvania

County of Butler:

On this     day of                    2021, before me personally came and appeared Marc A. Winters 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.

CERTIFICATION

This Arbitrator has given due weight to the statutory criteria set forth in *N.J.S.A.* 34:13A-16(g) and have conclude that the terms of this Award represent a reasonable determination of the issues as justified by the evidence and testimony provided.

Marc A Winters

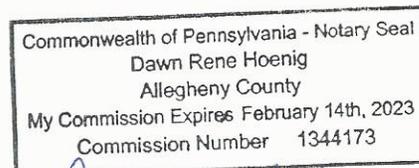
Marc A. Winters  
Interest Arbitrator

September 14, 2021  
Seven Fields, Pennsylvania

State of Pennsylvania

County of Butler:

On this 14<sup>th</sup> day of September 2021, before me personally came and appeared Marc A. Winters 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.



Dawn Rene Hoenig