

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

CITY OF EAST ORANGE

-and-

Docket No. IA-2013-23

FRATERNAL ORDER OF POLICE LODGE NO. 111

Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the City:

Cleary, Giacobbe, Alfieri and Jacobs, Attorneys
(Matthew Giacobbe, of counsel)
(Adam Abramson-Schneider, of counsel)

For the FOP:

Markowitz & Richman, Attorneys
(Matthew Areman, of counsel)

Witnesses:

Stephen M. Rochester, FOP Lodge 111 1st Vice President
Tanya Pulyado, FOP Lodge 111 President
Jillian Barrick, City Administrator

INTEREST ARBITRATION AWARD

On April 4, 2013, the Fraternal Order of Police Lodge 111 filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over a successor collective negotiations agreement with the City of East Orange. The previous agreement expired on June 30, 2010.

On April 29, 2013, I was appointed to serve as the interest arbitrator by a random selection procedure pursuant to

N.J.S.A. 34:13A-16(e) (1). This statutory provision requires that an award be issued within 45 days of my appointment with no provision for any extensions.

An interest arbitration hearing was held on May 28, 2013 at the City Hall. Both parties were offered testimony and documentary evidence. Both parties submitted Final Offers and calculations of financial impact of their respective proposals. The FOP submitted an analysis by its financial expert Joseph Petrucelli. The City submitted a certification from its Chief Financial Officer Victoria Walker. Post-hearing briefs were filed by June 4, 2013.

FOP LODGE 111'S FINAL OFFER¹

Article XXI, Term of Agreement:

July 1, 2010 through June 30, 2014

Article XV, Schedules A-1 and A-2, Wages and Salary:

Modify Paragraph 1(a)-(d) as follows (as well as Schedules A-1 and A-2):

Effective July 1, 2010 wages shall be increased by 3.5%
Effective July 1, 2011 wages shall be increased by 3.5%
Effective July 1, 2012 wages shall be increased by 3.5%
Effective July 1, 2013 wages shall be increased by 3.5%

Add New Paragraph 3 as follows:

An employee who has attained a college degree from a fully accredited college shall, upon the submission of verification, receive an educational bonus in the

¹ The FOP's original Final Offer was filed on May 21, 2013. On May 24, the FOP amended the Final Offer to that which appears above.

following amounts:

AA/AS Degree (60 Credits) - \$2,000 per year

BA/BS Degree (120 Credits)- \$4,000 per year

Article V, Temporary Leave:

Modify Bereavement Leave Paragraph 2(a) as follows:

Leave with pay not to exceed (10) working days shall be permitted where such absence is due to and necessitated by the death of a spouse, parent, child, brother or sister of the employee, and leave with pay not to exceed five (5) workings days shall be permitted where the absence due to and necessitated by the death of another member of the immediate family or the employee.

Article IX, Vacation and Vacation Pay:

Modify Paragraph 3 as follows:

In order to equalize vacation leave distribution, the total number of employees scheduled for vacation each week of the year shall not be less than seven and one half percent (7.5%), nor more than ten percent (10%) of the total number of employees eligible for vacation leave.

Article X, Sick Leave Incentive Program and Retirement Benefit:

Modify Paragraph 1(a) through (e) as follows:

- (a) 0 sick days taken - 6 additional vacation days
- (b) 1-3 sick days taken - 4 additional vacation days
- (c) 4-8 sick days taken - 2 additional vacation days
- (d) 9 or more sick days taken - 0 additional vacation days
- (e) Delete

Article XII, Uniforms:

Increase annual uniform allowance in Paragraph 1 as follows:

- July 1, 2010 through June 30, 2011 - \$925
- July 1, 2011 through June 30, 2012 - \$975
- July 1, 2012 through June 30, 2013 - \$1,050
- July 1, 2013 through June 30, 2014 - \$1,125

Article XIX, Hours of Work & Scheduling:

Modify Paragraph 1 as follows:

All patrol units shall work a "4 on and 4 off" schedule which shall consist of not more than four (4) consecutive days on duty, followed by not less than four (4) consecutive days off duty at ten (10) hours per day.

Modify Paragraph 3 as follows:

Delete paragraph concerning 10-minute muster time.

Add New Paragraph as follows:

Each employee shall be granted a paid meal break not to exceed thirty (30) minutes during each eight (8) or ten (10) hour tour of duty. During said break, the employee shall remain "on call" and shall be required to respond to any priority one (1) call for service which may arise. Any employee denied their meal break shall receive the equivalent credit as compensatory time.

CITY'S FINAL OFFER ²

²The City's "Final Offer," received May 15, 2013, proposed a wage freeze for FY 2010, a 1% increase for FY 2011, and a 1.5% increase for FY 2012. It also proposed adding five steps to the salary guide, the imposition of a ten-day salary holdback, and no clothing allowance increase. At the hearing, the City stated on the record that it wished to change its proposal to match the settlements of other City uniformed services units. I have permitted this amendment to the final offer because there is no prejudice to the FOP. That proposal is reflected above.

Article XXI, Term of Agreement:

July 1, 2010 through June 30, 2013

Article XV, Salary Increases as follows:

July 2010 - 0%
July 2011 - 1.5%
July 2012 - 2.0%

Article X, Sick Leave/Supplement Compensation:

Revise Section 2 to include the following language:

that no lump sum supplemental compensation payments shall exceed \$15,000, or less if required by State law and in accordance with the provisions of the State law.

Article XIII, Retiree Health Insurance:

Revise article to include a provision that retirees are only eligible to receive the same level of medical benefits (including deductibles, co-pays and prescription co-pays) as provided to current employees.

Article XIX, Overtime:

Revise to include a provision that paid sick leave shall not count as hours worked for overtime purposes in accordance with the Fair Labor Standards Act.

BACKGROUND FACTS

Demographics:

East Orange is a city in Essex County, New Jersey. As of the 2010 United States Census, the City's population was 64,270. The City's population has steadily declined by 9,282 since 1990. The City is now the State's 14th most-populous municipality in

2000 (C-15). The City is one of the "Urban 15", which are the 15 most populous municipalities in New Jersey. East Orange City is ranked second out of the ten largest populated municipalities in Essex County (C-17).

The City was originally incorporated as a township from portions of Orange Town by an Act of the New Jersey Legislature on March 4, 1863, and was reincorporated as a city on December 9, 1899 (C-15).

The City is home to two train stations. In fact, the City's has been designated by the NJ Department of Transportation as a Transit Village, making the City eligible for State development funds. In addition, the City's main entertainment venue is the Paul Robeson Stadium, which attracts residents and visitors to its local football games. It also has a local performing arts center. Further, within the City's borders are several twenty-four hour businesses including Walgreens and Shop Rite, and the City's general hospital. These businesses and facilities generate a significant number of calls for police intervention.

According to the United States Census Bureau, the City has a total area of 3.924 square miles, all of which is land. The City shares its borders with Newark to the east and south, South Orange to the southwest, Orange to the west, and Glen Ridge and Bloomfield to the north (C-15).

Portions of East Orange are part of an Urban Enterprise Zone in which its consumers can take advantage of a reduced 3.5% sales tax rate versus the 7.0% rate charged statewide (C-15).

East Orange is governed under the City form of New Jersey municipal government. The government consists of a Mayor and a City Council made up of ten members, two representing each of the City's five geographical political subdivisions called wards. The City Council reviews and adopts the municipal budget that is prepared and presented to the legislative body by the Mayor. (C-15)

The following chart depicts 2010 Census data for the City (C-16):

East Orange 2010 Census Data	
Households	24,945
Families Residing in the City	14,742
Population Density per Sq. Mile	16,377.1
Housing Units per Sq. Mile	28,803
Housing Units Avg. Pop Density per Sq. Mile	7,339.5
Median Age	35
Median Household Income *	\$40,358
Median Family Income *	\$50,995
Per Capita Income *	\$20,298
Below the Poverty Line *	21.4%
* Source: American Community Survey (2006-2010)	

As of August 2012, the unemployment rate for East Orange was 14.6% as compared to New Jersey's 9.7% (C-16).

East Orange Police Department:

According to a press release issued March 27, 2013, the Mayor said that the East Orange Police Department has achieved "Nothing short of a resounding public safety success in every description". Since 2003, the overall crime rate in East Orange has been reduced by 79%. The Mayor attributed this to the "Simple adherence to the guiding principles of good basic fundamental policing". He added that "A system of accountability has delivered a superior brand of professionalism and has helped to make the City of East Orange a much safer place to live, work, shop, play and worship." He noted that the "Police Department remains a model of best practices in the use of technology, community involvement and law enforcement initiatives that has had a transformative impact in the City." In fact, the Mayor has referred to the City's public safety as the "crown jewel" of the City, also stating that the police department has "changed the culture of the City." (UX10)

Since 2003, the City has invested heavily in creating a technologically advanced patrol system that includes, at its core, a "Real-Time Crime Prevention Center," complete with a City-wide video monitoring system in which cameras placed in critical areas throughout the City are linked to police headquarters where officers continuously monitor activities around town. This enables headquarters to constantly watch for

possible criminal activity and monitor suspicious persons or events. Headquarters can then contact personnel on patrol to quickly investigate the activity. Additionally, technology known as "the shot spotter", consists of microphones placed throughout the City, and is used to detect gunfire. The system automatically directs the video cameras in the direction of any such sound anomaly. Headquarters can then dispatch a patrol car to investigate the situation. The evidence demonstrates that these technological innovations have significantly enhanced the police department's ability to quickly respond to situations, thereby reducing crime. However, according to the FOP's witness, the down side is that, at least with the shot-spotter, there are many false-positives, all of which nevertheless must be investigated.

FOP witness Officer Stephen Rochester, the Lodge 111's First Vice-President, testified that while the expanded use of technology has served to help officers reduce crime, it has also resulted in officers being required to perform a greater number of tasks and answer a greater number of calls for service than at any other time in his career. This is largely due to the fact that officers now have to answer calls for service from officers in the Real-Time Crime Prevention Center, as well as the usual calls from citizens and the officers' routine patrols.

The City has also implemented a GPS-based technology which permits headquarters to track the location and response time of each vehicle on patrol. The police administration has divided the City into zones and further broken down each zone into grids. Patrol officers are required to visit each street within their grid at least twice every twenty-four hours or face potential discipline. In addition, a mapping system in headquarters shows the location of each patrol car and a lighted board reveals to headquarters whether calls have been responded to in a timely fashion.

Since approximately 2010, patrol officers have been encouraged by the Police Administration to write more summons, increase "suspicious persons" stops, stop citizens on bicycles or with backpacks, and write more tickets for curfew violations - not only for the curfew breakers, but for their parents as well. Rochester explained that the police department has directed its focus to "quality of life issues," also known as the "broken windows" approach to law enforcement. The administration's philosophy is that, by focusing on minor crimes like public drunkenness, loitering or vandalism, more serious crimes like theft, robbery and assault can be prevented. Rochester testified that during an eight month period in 2012, the police department wrote an unprecedented 40,000 tickets for various offenses. This approach to policing has resulted in a

dramatic decrease in the East Orange crime rate. However, it has also generated criticism from East Orange's citizens who receive the tickets, and created controversy in the police department over what some have argued is a ticket-writing quota. (UX-10)

In addition, businesses such as the 24-hour Shoprite and Walgreens require constant monitoring because they tend to draw perpetrators of theft and assault crimes. Moreover, officers are required to protect residents and visitors attending football games at the local Paul Robeson Stadium or visiting the performing arts school, against auto and personal theft crimes. Likewise, the officers constantly patrol the newly established transit center. In addition, patrol officers are increasingly required to respond to calls at the East Orange General Hospital, sometimes up to four calls per shift. Officers also respond to as many as five calls per shift for suspicious activities at various abandoned properties throughout the City. All of these factors appear to contribute to an increasing workload for patrol officers.

Crime Statistics:

According to the Uniform Crime Reports, published by the New Jersey State Police for 2010 and 2011, the East Orange Police Department has been more successful in reducing overall

and violent crime than their counterparts in comparable jurisdictions:

Uniform Crime Reports ("Urban Fifteen" Profiles) (UX6)					
	2011 Population	2010 Total/Violent Crimes	2011 Total/Violent Crimes	2010 Total Police Officers	2011 Total Police Officers
EAST ORANGE	64,270	1,860/ 491	1,660/ 423	265	237
Camden City	77,344	5,517/ 1,848	6,749/ 2,166	366	265
Newark City	277,140	13,199/ 2,974	14,512/ 3,360	1,308	1,095
Jersey City	247,597	7,962/ 1,851	7,768/ 1,942	831	806
Trenton City	84,913	3,851/ 1,201	3,894/ 1,211	356	238
Paterson City	146,199	6,092/ 1,568	6,228/ 1,493	497	357
Elizabeth City	124,969	6,182/ 1,398	6,475/ 1,320	341	312
Vineland City	60,724	2,369/ 230	2,686/ 235	153	142
Irvington	53,926	3,062/ 901	2,619/ 732	167	153
Bayonne City	63,024	1,049/ 162	958/ 150	195	182
Union City	66,455	1,572/ 261	1,570/ 270	158	153
Woodbridge	99,585	2,505/ 171	2,702/ 129	195	192
Toms River	91,239	2,965/ 103	3,241/ 101	150	150
Clifton City	84,136	1,850/ 206	1,875/ 215	148	141
Passaic City	69,781	1,875/ 215	2,265/ 635	141	163

As demonstrated above, when compared to the fifteen most populous urban municipalities within the State of New Jersey, during this period the City of East Orange was one of only five that saw a reduction in overall and violent crime from 2010

through 2011. Newark, right next door to East Orange, saw an increase in overall crime of 10%, with an increase in violent crime of 13%. The only other municipality of the "Urban Fifteen" to have been as successful as East Orange in reducing crime was Irvington.

However, as demonstrated in the following chart, East Orange still ranks third, within Essex County, in terms of its volume of overall and violent crimes, behind only Newark and Irvington.

UNIFORM CRIME REPORTS (ESSEX COUNTY PROFILES)						
Municipality	2010	2010	2011	2011	2010	2011
	Population	Total Crimes/Violent Crimes	Total Crimes/Violent Crimes	Crime Rate per 1,000	Total Police Officers	Total Police Officers
East Orange	64,270	1,860/ 491	1,660/ 423	25.8	265	237
Belleville	35,926	830/ 75	1,130/ 115	31.5	99	96
Bloomfield Borough	47,315	1,169/ 112	1,174/ 129	24.8	122	122
Caldwell Borough	7,822	76/ 3	79/ 6	10.1	20	20
Fairfield Borough	7,466	243/ 15	312/ 11	41.8	39	35
Cedar Grove	12,411	137/ 9	145/ 5	11.7	30	28
Essex Fells Borough	2,113	9/ 2	18/ 0	8.5	13	13
Glen Ridge Borough	7,527	197/ 7	202/ 13	26.8	22	24

Irvington	53,926	3,062/	2,619/	48.6	167	153
		901	732			
Livingston Twp.	29,336	400/	485/	16.5	72	68
		12	14			
Maplewood	23,867	501/	449/	18.8	61	60
		58	57			
Millburn Twp.	20,194	526/	743/	36.9	51	48
		20	22			
Montclair	37,669	729/	763/	20.3	106	101
		75	81			
Newark	277,140	13,199/	14,512/	52.4	1,308	1,095
		2,974	3,360			
N. Caldwell	6,183	31/	34/	5.5	14	14
		4	2			
Nutley	28,370	315/	350/	12.3	67	70
		24	23			
Orange	30,134	1,439/	1,414/	46.9	106	109
		339	329			
Roseland Borough	5,819	52/	66/	11.3	27	25
		5	4			
S. Orange	16,198	472/	420/	25.9	52	52
		58	59			
Verona	13,332	119/	193/	14.5	28	27
		6	9			
W. Caldwell	10,759	85/	88/	8.2	27	23
		4	1			
W. Orange	46,207	670/	874/	18.9	121	95
		87	77			

STIPULATIONS OF THE PARTIES

The parties stipulated to the following facts in the record:

1. Employee increments are paid annually on the employee's anniversary date. Increments have in fact been paid since the expiration of the prior agreement.

2. Longevity increases are paid on the employee's anniversary date pursuant to Article XV(2) of the contract. Longevity increases have been paid since the expiration of the prior agreement.

3. Employees are hired at the probation step of the contract salary guide and remain on that step until the completion of the police academy. They then move to step one on the guide.

4. Employees are currently paying health care contributions in the second tier of Chapter 78. Employees will advance to the third tier on July 1, 2013.

5. The parties stipulated to the accuracy of the list of employees provided by the City (C-33;U-4) with the exception of two employees brought to the City's attention by the FOP. The City stipulated to the FOP's proposed modifications. The parties further agreed that step increases are based upon the employee's date of hire as a police officer, notwithstanding any prior civilian service.

STATUTORY CRITERIA

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

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the

P.L. 1976 c. 68 (C.40A:4-45 et seq) .

- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45) .

In arriving at the terms of this award, I conclude that

all of the statutory factors are relevant, but not all are entitled to equal weight. I consider the public interest to be the most significant of all statutory factors to be considered. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. Among those factors that interrelate and require the greatest scrutiny in this proceeding are the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)] and the City's statutory budgetary limitations [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)].

In addition, I note that N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying the proposed change. Another consideration is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. I am also required by statute to determine the total net annual economic cost during the term of the contract as required by the Award.

I have also considered wages and economic benefits among other City uniformed services employees and among comparable

police jurisdictions in the County and among the Urban 15 municipalities. I also deem the impact on unit continuity and employee morale to be a factor worthy of consideration.

DISCUSSION:

ARTICLE XXI, TERM OF AGREEMENT:

The FOP proposes a term of agreement of July 1, 2010 through June 30, 2014 while the City proposes a contract covering a term of July 1, 2010 through June 30, 2013. The City's proposal relies on the pattern established with its other uniformed services units, which have settlements for successor contracts which will expire June 30, 2013. It argues that a four-year term would be in contravention of the continual pattern of bargaining between the firefighters and the police officers. (E-5; E-8; E-86)

The FOP maintains that it has spent the last three years negotiating this contract. Awarding a contract with a June 30, 2013 expiration date would mean that negotiations would have to begin immediately for the next successor contract. The FOP asserts that a longer contract would avoid that outcome and therefore would be in the public interest.

I agree that, generally speaking, it is not in the best interest of the public to have the parties in a constant state of on-going labor negotiations. A longer contract would provide stability and financial predictability to the City and to the

police officers. However, it was partly the fault of the parties that we are nearing the end of the third year of continuous negotiations: either party could have filed for interest arbitration sooner.

Extending this contract for another year -- to June, 2014 -- would create a situation where this would be the lead contract going forward into the next round of bargaining. I note that comparative salary data beyond 2013 is not readily available for other employees, inside and outside the City, from which an appropriate pay rate could be pinned. Conversely, a contract set to contemporaneously expire with those of all other uniformed services would put all units on a level playing field to compete for the City's scarce resources and permit negotiations for all units to proceed together. I would also give the City an opportunity to negotiate with all of its units for contract periods to match its budget year, which is now on a calendar year basis.³ Accordingly, I find that a three-year contract would better suit the public interest. It also comports with the statutory criterion of internal consistency with other employees of the same employer. I award a three-year contract covering the period July 1, 2010 through June 30, 2013.

³ The City changed from a July to June fiscal year budget cycle to a calendar year budget cycle in 2012.

ARTICLE XV, SALARIES:

Existing Salary and Benefits:

The previous contract expired in June of 2010 and police officers continued to be paid under the existing salary guide contained in that contract, as follows:

Salary Guide	
Step	Salary
Probation	34,414
1	43,685
2	57,507
3	62,585
4	66,844
5	71,106
6	75,372

At the end of the last contract (June 30, 2010), there were 195 patrolmen in the bargaining unit.⁴ Of these, 61 officers were still moving through the steps of the salary guide and 134 officers were at top step pay (step 6). Over the next three-year period, 41 officers retired or separated from service.⁵ However, during the same three-year period, the City hired 23 new recruits. Thus, by the date of the hearing in this matter, the bargaining unit consisted of 177 police officers.

⁴ The City's May 23, 2013 revised list of employees includes 218 names, of which 23 were hired after July 1, 2010. Therefore, I deduce that as of July 1, 2010 the unit consisted of 195 officers.

⁵ According to the certification submitted by City CFO Victoria Walker, the City laid off municipal employees sometime in 2010, including police officers. It is not clear from the record whether these officers were laid off prior to or after the start of the fiscal year 2011.

In addition to salary, officers also have an array of benefits, the most significant of which is a longevity plan as follows:

East Orange Police Department - Longevity	
Completion of five (5) years of service	2% of Base Salary
Completion of ten (10) years of service	4% of Base Salary
Completion of fifteen (15) years of service	6% of Base Salary
Completion of twenty (20) years of service	8% of Base Salary
Completion of twenty-five (25) years of service	14% of Base Salary
Completion of thirty (30) years of service	16% of Base Salary

It should be noted that no current East Orange police officer has yet completed 30 years of service.

In addition, East Orange police officers are afforded the following benefits: court appearances paid at overtime rates; vacation leave up to 24 days after 20 years of service; 20 sick days annually; comprehensive medical insurance benefits; call-in pay; bereavement leave up to 5 days; and 2 personal leave days. Further, employees have a sick leave incentive program that grants up to 4 additional vacation days annually when an employee does not take available sick leave. Additionally, upon retirement with 25 years of service an officer may cash in his sick leave and accumulated personal leave for a lump sum supplemental payment of up to \$15,000.

Internal Comparables:

The City has three other bargaining units of organized uniformed services employees. In June, 2012, the City reached

an agreement with the Fire Officers Association which represents the City's captains and deputy fire chiefs. That unit agreed to three-year contract (7/1/10 - 6/30/13) with a salary guide freeze for 2010-11, a 1.5% increase, plus \$300 lump-sum cash bonus effective July 1, 2011, and a 2.0% increase effective July 1, 2012. It also agreed to the City's insurance proposal limiting medical benefits for retirees to the same levels (including deductibles, co-pays and prescription co-pays) as active employees. Further, it agreed to the same City proposals as are advanced in this proceeding; that is, to limit supplemental compensation payments upon retirement to \$15,000, or less if required by State law, and to the City's proposal which would discount sick leave from overtime calculations if an employee uses sick leave and works overtime in the prior or subsequent 72 hours. (E-86)

In November, 2012, the City Council approved a nearly identical agreement with the FMBA, representing the City's rank-and-file firefighters. The only provision which varied from the fire officers' settlement was the absence of the \$300 lump-sum bonus. (E5)

The City reached a tentative settlement with the Police Superior Officers Association, PBA Local 16A, in May, 2013. The City submitted a Memorandum of Understanding in support thereof, which is signed by the SOA. It also submitted a letter from SOA

President George O'Brien stating that the Memorandum of Understanding was ratified by the union membership.⁶ That settlement also provides for a three-year contract covering the same time period, and for the same salary percentage increases (0%, 1.5% and 2.0%) as the fire units. It also includes the City's proposed language concerning limiting medical benefits for retirees to those provided to current employees.

Additionally, it contains provisions for three-hour minimum call-back pay for off-duty officers called in to attend Comstat meetings, and a provision that no officer shall be assigned to use compensatory time - both provisions not found in the fire units' contracts. It does not include the provision, as found in fire units' settlements, to exclude paid sick time from overtime calculations.

External Comparables:

In comparing the base pay of East Orange police officers to the base pay of officers in other Essex County municipalities, the following chart reveals that East Orange's top pay (step 6) is currently below the County average and in fact, is the lowest current base pay rate in the County.

⁶ The MoA specifically provides that it is contingent upon ratification by the Union membership and approval by the governing body. At the time of the arbitration hearing, the City had not yet approved the settlement. Accordingly, I have treated the terms of the SOA agreement as a tentative settlement, pending approval by the governing body.

Police Officer Salaries - Top Rates (Comparables)					
Municipality	2009	2010	2011	2012	2013
East Orange - (FOP Proposal)	75,372	78,010	80,740	83,566	86,491
East Orange (City Proposal)	75,372	75,372	76,503	78,033	N/A
Belleville	80,000	N/A	N/A	N/A	N/A
Bloomfield Borough	87,560	N/A	N/A	N/A	N/A
Caldwell Borough	87,125	90,610	N/A	N/A	N/A
Fairfield Borough	87,050	89,226	91,457	N/A	N/A
Cedar Grove	88,909	92,288	95,979	100,011	102,011
Essex Fells Borough	N/A	87,772	89,527	91,766	94,060
Glen Ridge Borough	N/A	\$84,729	\$87,270	\$90,325	N/A
Irvington	\$86,500	\$89,527	N/A	N/A	N/A
Livingston Twp.	\$89,838	\$93,656	\$97,636	\$101,786	N/A
Maplewood	\$81,915	\$84,373	\$87,326	\$89,072	\$90,854
Millburn Twp.	\$82,886	\$85,813	\$88,843	\$91,979	N/A
Montclair	\$82,185	\$83,418	\$84,669	\$86,616	N/A
Newark	\$82,842	\$84,913	\$87,248	\$89,866	N/A
N. Caldwell	\$85,574	\$85,574	\$88,141	\$88,141	\$89,904
Nutley	\$79,534	\$81,822	\$84,577	\$87,837	N/A
Roseland Borough	\$88,236	\$91,765	\$95,436	N/A	N/A
S. Orange	\$81,296	\$83,329	\$84,995	\$86,695	\$88,429
Verona	\$91,914	\$95,591	N/A	N/A	N/A
W. Caldwell	\$92,665	\$96,409	\$100,303	N/A	N/A
W. Orange	\$84,458	N/A	N/A	N/A	N/A
Average	\$85,583	\$88,283	\$90,243	\$91,281	\$93,052

Even with the County's proposed 3.5% increase over the life of the new contract, East Orange's police officers will be earning a base pay of \$78,033 in FY 2012-2013, which will still be the lowest in the County and approximately \$11,500 less than

Irvington's 2010 rate and about \$11,800 less than Newark's 2012 rate.

It is noteworthy that East Orange has a more generous longevity plan than most Essex County municipalities with a longevity rate of 14% of base pay after 25 years of service which is equaled only by Orange Township in Essex County. The following chart compares the effects of longevity payments when added to base pay in key municipalities:

Municipality	2012 Base Pay	5 Year Lgnty %	10 Year Lgnty %	20 Year Lgnty %	25 Year Lgnty %	25 Year Base Pay + Lgnty
East Orange - (FOP Proposal)	\$83,566	2%	4%	8%	14%	\$95,265
East Orange (City Proposal)	\$78,033	2%	4%	8%	14%	\$88,958
Bloomfield Borough	\$87,560	2%	4%	8%	10%	\$96,316
Caldwell Borough *	\$96,010	2%	4%	8%	10%	\$105,611
Fairfield Borough	\$91,457	2%	4%	6%	8%	\$98,773
Cedar Grove	\$100,001	2%	4%	8%	10%	\$110,001
Essex Fells Borough	\$91,766	2%	4%	6%	11%	\$101,860
Glen Ridge Borough	\$90,325	2%	4%	8%	10%	\$99,357
Irvington *	\$89,527	2%	6%	8%	10%	\$98,480
Livingston Twp.	\$101,786	2%	4%	8%	10%	\$111,965
Maplewood	\$89,072	\$800	\$1,600	\$3,200	\$4,000	\$93,072
Millburn Twp.	\$91,979	\$1,317	\$2,634	\$6,585	\$6,585	\$98,564
Newark	\$89,866	4%	6%	10%	12%	\$100,650
N. Caldwell	\$88,141	0%	5%	10%	12%	\$98,718
Nutley	\$87,837	0%	2%	6%	8%	\$94,864
Orange	--	3%	6%	10%	14%	--
Roseland Borough	\$95,436	2%	4%	8%	10%	\$104,980
Verona	\$95,591	2%	4%	8%	10%	\$105,150
W. Caldwell	\$100,303	1%	3%	7%	9%	\$109,330

*Based upon 2010 pay rates.

As seen above, East Orange together with Orange has the highest

longevity pay rates in the County. However, even with East Orange's 14% longevity pay after the employee's 25th anniversary, the combined base pay plus longevity for East Orange's patrolmen is still well below Irvington and Newark and the lowest in Essex County.

CPI:

The March 15, 2013 Consumer Price Index for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics shows that the CPI-U increased by 0.7% in February on a seasonally adjusted basis. Over the last twelve months, the all items index increased 2.0% *before* seasonal adjustment⁷.

(C-60)

PERC Statistics on Settlements:

The most recent salary increase analysis for interest arbitration on PERC's website shows that the average increase for awards was 2.88% from January 1, 2010 through December 31, 2010; 2.05% from January 1, 2011 through December 31, 2011; 1.86% from January 1, 2012 through December 31, 2012; and 2.17% from January 1, 2013 through March 31, 2013. Over the same time periods, it reported voluntary settlements of 2.65%, 1.87%, 1.77%, and 1.88%. PERC indicates that the average 2012

⁷The unadjusted data of the CPI are of primary interest to consumers concerned about the prices they actually pay. Unadjusted data also are used extensively for escalation purposes. Many collective bargaining contract agreements and pension plans, for example, tie compensation changes to the CPI *before* adjustment for seasonal variation (C-60).

settlement for post-2011 filings is 1.84%, and the average 2012 awards for post-2011 filings is 1.85%. The data shows that the salary increases received through voluntary settlement or an award from January 1, 2011 through March 31, 2013 have leveled off over that period of time. I give greater weight to the increases received through the post-2011 filings than I do for the ones under the other settlements and awards.

Budget and CAPS:

Total general revenue realized for 2012 was \$139,563,944 as compared with an anticipated amount of \$132,805,770 for 2013 (C-27). Approximately \$82,930,842 of the City's revenue will come from local property taxes in 2013 versus \$80,311,914 in 2012. According to the Current Fund Worksheet for 2013, local property taxes will contribute 62.4% to the total general revenue.

As of March 15, 2013, the City's net valuation of taxable property was \$2,576,502,418. As a result of the City's property revaluation which occurred during 2012, the City's tax base was reduced by almost one billion dollars in four years. This amounts to a 27.27% decrease in the City's tax base. The following chart depicts the City's net valuation of taxable property since 2009: (C-34).

East Orange Net Valuation of Property	
As of (Date)	Valuation
9-Sep-09	3,542,766,285

13-Sep-10	3,506,107,895
18-Oct-11	3,424,477,886
3-Aug-12	3,314,448,025
15-Mar-13	2,576,502,418
Overall Decrease in East Orange Property Tax Base from (2009-2013) was 966,263,867 or 27.27%.	

The City has also issued Bond Anticipation Notes in the amount of \$7.4 million to pay tax appeals since 2009. Accordingly, the City has paid out almost \$10.0 million dollars to tax appellants. (C-34)

The chart below shows how East Orange's municipal operations were funded through taxation from 2007 through 2012. Since 2009, more than half of the City's municipal operations were funded by taxation. (U-14)

East Orange Collection Tax Revenues or Budgeted Revenue to Total Budget Analysis				
Year		Total Budgeted or Collected	Amount Raised Through Taxation	Percentage Raised Through Taxation
12/31/2012	Budgeted	134,335,723	81,517,402	60.7%
12/31/2011	Actual	68,077,636	39,377,277	57.8%
6/30/2011	Actual	127,278,027	76,261,446	59.9%
6/30/2010	Actual	134,491,516	71,451,323	53.1%
6/30/2009	Actual	129,180,689	65,191,720	50.5%
6/30/2008	Actual	130,808,351	59,931,454	45.8%
6/30/2007	Actual	131,080,522	56,276,064	42.9%

The 2012 anticipated amount for uncollected taxes was \$5,000,000 while \$5,826,714 was realized. The 2013 budget's anticipated amount for uncollected taxes is \$7,100,000. (C-27)

As of March 2013, the City's remainder of revenue is anticipated as coming from other sources such as surplus, local revenues to include State Aid, and receipts from delinquent taxes, etc. State aid, without offsetting appropriations, was anticipated at \$22,117,676 for both 2012 and 2013. State Aid realized for 2012 was \$22,257,912 (C-27). The chart below reflects State Aid and Interest income for the City of East Orange for the years 2010 through 2013: (C-31)

City of East Orange State Aid and Interest Income				
Revenue	FY 2011	TY 2011	CY 2012	CY 2013
Energy Receipts Tax	11,984,793	3,749,775	13,401,545	13,911,554
CMPTRA	9,992,647	9,571,680	8,716,131	8,206,122
Sub-Total	21,977,440	13,321,455	22,117,676	22,117,676
Supplemental Energy Receipts Tax	140,236	0	0	0
Extraordinary Aid	0	0	0	0
Transitional Aid	2,850,000	0	0	0
Building Aid Allowance - School State Aid	0	0	0	0
Reserve for State Aid	0	0	6,783,985	1,872,000
TOTAL	24,967,676	13,321,455	28,901,661	23,989,676
Interest on Investments and Deposits	83,487	32,907	46,019	0

The City's 2012 surplus balance shows that there was no utilization of fund balance as surplus revenue; however, in 2013, the City uses \$3,400,000 in the budget to offset appropriations. The following chart reflects the FY 2008

through FY 2013 Surplus Fund Balance for the City of East Orange: (C-27; U-14, Tab 2)

East Orange - Surplus				
Year	Fund Balance - Beginning	Utilized in Budget	Regenerated Fund Balance	Fund Balance - Ending
FY 2008	11,443,222	7,000,000	3,277,728	7,720,950
FY 2009	7,720,950	5,994,309	2,896,050	4,622,691
FY 2010	4,622,691	3,846,000	1,151,205	1,927,896
FY 2011	1,927,896	0	615,077	2,542,973
TY 2011	2,542,973	0	4,264,999	6,807,972
CY 2012	6,807,972	0	122,698	6,930,670
CY 2013	6,930,670	3,400,000		3,530,670

The City projects to utilize a portion of its surplus for 2013 in order to avoid raising taxes, which would have been necessary to make up for the shortfall in taxes realized as a result of the decrease in the City's tax base/property revaluation (C-34).

The total anticipated water utility revenue for 2012 was \$24,719,460; of which \$23,032,389 was realized. 2013 anticipated water utility revenues are \$22,718,797. (C-27)

The City of East Orange has also received offsetting grants and other revenues generated by the police department. These revenues are depicted in the chart below: (U-14)

East Orange Police Department's Generated Revenues					
Grant Name	CY 2012	TY 2011	FY 2011	FY 2010	FY 2009
Body Armor Replacement Grant	20,640	200,694	21,868	7,337	
Emergency Management Performance Grant	5,000		5,000	5,000	
COPS Hiring Recovery Grant		674,089	541,979	223,232	
Justice Assistance Grant	1,310,962	250,000	86,098	667,585	

Drunk Driving	63,030			8,529	
Police PSAP Enhanced 911 Gen. Assistance					63,392
COPS In School-EO Board of Ed		240,169	452,991	990,046	1,215,416
Safer Grant	930,138				
Totals	2,329,770	1,364,952	1,107,936	1,901,729	1,278,808

Total anticipated general appropriations for 2012 were \$134,335,723. After cap levy modifications of \$32,507,283, the amount on which the CAP is applied was \$101,828,440 (U-14, Tab 18). Total allowable general appropriations for municipal purposes within "CAP" were \$113,305,550 (U-14, Tab 18; C-27). In general appropriations subject to "CAP" set forth in the 2013 budget were \$103,526,448, leaving an amount of \$9,779,102 available for the "CAP" bank (U-14, Tab 18; C-27). The following chart shows the City's Appropriations CAP calculations for 2013: (C-27; U-14, Tab 18)

2013 Appropriations CAP	
Total Appropriations for the CY 2012 Budget	134,335,723
Modifications	<u>-32,507,283</u>
Amount on Which CAP is Applied	101,828,440
2% CAP	2,036,569
Additional 1.5% - Ordinance	1,527,427
Added Value of Construction	15,200
CAP Bank 2011	3,423,342
CAP Bank 2012	<u>4,474,572</u>
Total Allowable General Appropriations for Municipal Purposes Within "CAP"	113,305,550
Total General Appropriations Subject to "CAP" Set Forth in this Budget	<u>-103,526,448</u>
Available "CAP" Bank	9,779,102

The PFRS Local Employer Pension Bills (C-29) show that the City's original bill for its PFRS contributions in 2012 was \$8,893,707; and \$3,517,322 for PERS. The City's bill for PFRS in 2013 is \$8,265,694 which includes a reduction of \$628,013 from the original bill amount; while the PERS bill is \$3,138,486, which also includes a reduction of \$378,836 from the original bill amount. (C-29)

In 2012, the City's anticipated total police department salaries and wages was \$23,463,250 and \$21,556,762 was paid, leaving a reserve balance of \$1,756,488. In 2013, salaries and wages for the police department were anticipated in the amount of \$22,733,352. In 2013, the police department's salaries equate to 40% of East Orange's total anticipated salaries and wages appropriation of \$56,897,728. (C-27)

In 2013, the City did not tax up to the maximum allowable amount to be raised by taxation. The following chart shows the tax levy cap calculation: (C-86, U-14, Tab 18)

2013 Tax Levy CAP		
Prior Year Amount to be Raised by Taxation for Municipal Purposes		80,311,914
Net Prior Year Tax Levy for Municipal Purpose Tax CAP Calculation		80,311,914
Plus 2% CAP Increase		<u>1,606,238</u>
Adjusted Tax Levy Prior to Exclusions		81,918,152
Adjusted Tax Levy After Exclusions		83,477,353
New Ratables	645,966	
Prior Years Local Municipal Purpose Tax Rate (per 100)	2.353	
New Ratable Adjustment to Levy		15,200

CY 2011 CAP Bank Utilized in CY 2013		0
CY 2012 CAP Bank Utilized in CY 2013		0
Maximum Allowable Amount to be Raised by Taxation		83,492,553
Amount to be Raised by Taxation for Municipal Purposes		<u>82,930,842</u>
Amount to be Raised by Taxation for Municipal Purposes Under/Over CAP (+/-)		561,711

The City's debt service, although decreasing since July 1, 2010 from \$67,533,642, has remained at high levels since that time. The City's debt service has remained above \$50 million; moreover, the yearly funds expended for municipal debt service has increased during from 2010 to current.

(C-34)

City Exhibit C-32 shows that overtime payments for the City police department are not inconsequential. For FY 2012, the City paid a total of \$922,225, of which \$602,235 was paid to the FOP rank-and-file unit, with the remainder being paid to police superiors and police administration. For the first 9 ½ months of FY 2013, the overtime bill for the police department was \$1,345,129 of which \$928,503 went to the FOP unit members. However, the record does not provide any information to show what factors are contributing to the costs of overtime.

Proposals:

The FOP seeks the following salary increases:

- Effective July 1, 2010 - 3.5%
- Effective July 1, 2011 - 3.5%
- Effective July 1, 2012 - 3.5%
- Effective July 1, 2013 - 3.5%

The City offers salary increases as follows:

- July 2010 - 0%
- July 2011 - 1.5%
- July 2012 - 2.0%

FOP's Argument:

FOP argues that the interests of its members need not be in conflict with the City's goal of continued economic development and fiscal health. It contends that by paying its officers a respectable salary, the City will attract and retain a police force that will continue to provide for the safety of its citizens and businesses. The FOP proposes that my award should reflect the fact that public safety is and should be one of the pillars of the City's ongoing rebirth.

With regard to the City's ability to fund the increases the FOP seeks, it contends that:

-Since 2007, budgeted revenue to be collected through taxation has increased by \$28,926,580.00 or 52.44% [UX14 at 7-8]. Meanwhile, actual revenue collected increased by \$4,278,330.00 from 2011 FY to 2012 CY (the latest two full twelve month periods) [Id.]. In fact, actual annual revenue collections have increased every year since FY2007 [Id.].

- Also, since 2007 FY the City has created fund balances and generated excess results from the operations to enable the use of fund balances as surplus revenue, and in turn, hold down taxes [UX14 at 4]. Indeed, the City utilized \$3,400,000 of the Fund balance as surplus revenue in the 2013 CY budget leaving the City with a remaining surplus balance of \$3,530,670.00 available before any regeneration of surplus [UX14 at 2-4, 21-23].

- Assisting the City in this regard is the fact that the City added new ratable assessments of \$15,200.00 in the 2013 CY budget and \$471,517.00 in the 2012 CY [UX14 at 41]. The City's ratable value has grown 151.06% since December 31, 2000. The City has also made significant progress in collecting tax delinquencies, whereby the CY 2012 actual delinquent tax collections of \$5,826,714.00 exceeded FY 2011 and FY 2012 actual collections [UX14 at 23].

- The City maintains significant appropriation reserves indicating not only that it has consistently spent less than budgeted, but also reflects the fact that the City continues to generate excess results from operations [UX14 at 21-24]. For example, the City has \$432,284.00 worth of additional miscellaneous revenue that it did not anticipate in the 2012 CY budget [UX14 at 22]. There is also \$117,625.00 of additional miscellaneous revenue available from the 2011 TY budget [*Id.*]. This trend indicates that the City will continue to collect additional revenues not anticipated and/or spend less than appropriated. According to the December 31, 2012 Unaudited Annual Financial Statement, the excess from operations for the CY 2012 budget was \$122,698.00 [UX14 at 22-23].

- The City's cash balance of \$20,131,380.00 represents cash available after completion of the budget cycle for 2012 represents 14.99% of the 2012 realized revenues [UX14 at 26-27]. The cash balance as of December 31, 2012 was \$20,131,380.00 [*Id.*]. As Petrucelli's Report indicates, "free cash" balance is the balance remaining after deducting all current cash liabilities [*Id.*]. After deducting \$17,101,008.00 of cash liabilities, the City had a remaining free cash balance of \$3,030,372.00 as of December 31, 2012 [*Id.*].

- As another source of revenue, the City had consistently received various grants and other revenues that are available to offset the costs of certain program expenses provided by the police [UX14 at 27]. For example, in the 2012 CY, the police generated \$10,555.00 of Miscellaneous Revenues from the Police outside Administrative Fees [*Id.*]. The City has utilized accounting techniques to disguise some of its grant income, reporting overpayments, prepayments and deferrals which do not actually require the expenditure of cash, but are instead offsets against income that will be recognized in a future period [UX14 at 26-27]. These offsets total \$3,642,039.00, and when added back resulted in a positive free cash balance at December 31, 2011 of \$6,672,411.00 [*Id.*]. Likewise, of the \$4,854,256.00 total inter-fund advances, \$4,266,255.00 was advanced to the Grant Fund [UX14 at 38]. Grant revenue is received from various grant sources. These funds will be paid back to the Current Fund and therefore, generate a surplus.

- The City's good fortune has permitted it to forego tax increases. Specifically, the City elected to utilize only \$82,930,842.00 to be raised by taxation for municipal purposes in the 2013 budget, foregoing \$561,711.00 of available tax levy [UX14 at 29-30]. The additional tax levy of \$561,711.00 could have been used to reduce the amount of surplus being utilized in the 2013 introduced budget, freeing up monies for police wages [*Id.*].
[FOP Brief]

The FOP argues that, despite the City's economic success, it has reduced funding for police department salaries by a combined 4.566% for the years CY 2013 and CY 2012 over the prior year's budgeted/modified levels [UX14 at 2-4]. In CY 2013, the City budgeted 2.48% less for police salaries and wages than in CY2012. Yet, during the same time period, the City increased its budget for other City departments' salaries and wages by

3.899% over 2012 budgeted amounts [*Id.*]. The FOP argues that the City is penalizing the police - the very entity that is helping the City achieve its success -- by offering meager wage increases and a diminution in other benefits for its proposed successor collective negotiations agreement. This, the FOP maintains, is creating poor morale in the department and a compression of wages in relationship to other comparable law enforcement agencies.

The FOP contends that its proposed final offer simply seeks to reward police officers for the exceptional job they have performed and to pay them commensurate with their colleagues in comparable jurisdictions. It asserts that the City has sufficient assets and reserves to fund the FOP's proposals. It argues that its proposals are reasonable, appropriate, and should be awarded.

The FOP avers that the City's proposals, on the other hand, are unreasonable, unjustified, and will take money out of the pockets of each police officer. It observes that the 2010-11 wage freeze will result in a net loss for officers due to statutorily mandated increases in healthcare and pension contributions. Thereafter, the meager base wage increases proposed by the City will do little to correct the inequities that exist for these officers.

The FOP argues that the City's residents have a strong interest in their police officers receiving a fair contract with equitable wage increases. Historically, the City has been one of the more dangerous and crime-ridden municipalities in New Jersey. As the FOP states, while the crime rate has leveled off in recent years, it is undisputed that officers still have a difficult job to do on a daily basis. The police officers' efforts to protect the public from this level of crime are hindered when their morale is reduced by low wage increases, such as those proposed by the City in this case.

The FOP avers that employee morale and turnover are negatively impacted by the comparatively low pay rates offered to East Orange's police officers as compared with those in comparable urban jurisdictions. Continuing to widen this pay gap between FOP unit members and the pay rates of urban and suburban locales -- colleagues that East Orange's police officers interact with on a daily basis - will make the officers feel unwanted by the City and inclined to take jobs with higher pay and/or lower stress levels in other jurisdictions. The FOP states that this directly harms the interest and welfare of the residents and businesses of the City, as their level of safety would decline in proportion to the strength and experience level of the City's police force.

The FOP further argues, that it is commonly accepted within New Jersey Interest Arbitration jurisprudence that high turnover produces a continuing spiral of recruitment and training resulting in a significant number of inexperienced officers to perform the duties of a police department. See e.g., Hunterdon County Sheriff's Office and FOP Lodge No. 94, IA-2009-103 (Glasson). The interest and welfare of the public criterion favors a low turnover rate with a stable workforce. *Id.* This is important in all work environments, but it is particularly important in a police agency given the inherent dangers of the job and the need to maintain the highest levels of safety and supervision. Highly trained and experienced police officers are the keys to maintaining these high standards. *Id.* The FOP continues that in addition to a lower standard of police services, high attrition rates also result in increased costs to the City in terms of training, uniforms, etc. The "flight" of police officers from City will leave even fewer officers in and around the City, and, in turn, result in an increased rate of crime. The FOP concludes that the public, therefore, has a strong interest in police officers receiving a fair contract with equitable wage and benefit increases.

The FOP maintains that its proposed salaries are within the rate of inflation, particularly when one considers that metropolitan areas tend to have higher inflationary figures.

Inflation has risen from -2.1% in June, 2009 to approximately 1.6% in January of 2013 [UX14 at 15-16].

The FOP further maintains that the negative impact of the City's proposal is magnified when one considers the costs to the FOP unit in terms of healthcare and pension contributions. The new Chapter 78 legislation mandated that all public employees be required to contribute a percentage of their salary for healthcare contributions. In terms of average minimum costs, the FOP unit stands to incur an increase in costs ranging from \$2,000 to \$4,000 per year.

The FOP estimates that the average 2013 annual health insurance premium for FOP members will be \$2,695.16 [UX14 at 30-31]. By 2014, premium contributions could increase to as much as 33% for some members, resulting in an aggregate health care contribution of approximately \$471,653.87 based on the FOP members estimated 2013 base salaries [*Id.*]. The estimated annual health insurance contributions per member would increase from \$2695.16 in 2013 to \$3,593.55 per year, per member in 2014. That is an annual average premium contribution cost increase of \$898.39 [*Id.*]. Thus, commensurate salary increases will be necessary to maintain current levels of disposable income to the members.

Likewise, the FOP asserts that Chapter 78 also increased pension contribution rates from 8.5% to 10.0%. The increased

pension contribution rate will diminish the disposable income of FOP Lodge No. 111 unit members. The estimated average additional annual contribution increase per employee for the period ending June 30, 2013 is \$1,141.89 or a \$95.16 per month reduction in disposable household income [UX14 at 36-37].

The FOP argues that comparisons of wages paid in the private sector with wages paid to police officers are of limited value in interest arbitration proceedings. Police officers are unique with respect to the recruitment process, physical requirements, training, responsibilities on the job, the ability to carry a weapon both on and off duty, the authority to arrest, apprehend and protect criminals, and the need to make on-the-spot life changing decisions. Therefore, this statutory criterion, the FOP avers, should be given no weight.

The FOP further asserts that, notwithstanding the limited relevance of wage comparisons in the private sector, the most recent data shows that New Jersey saw a 2.1% increase in average annual wages from 2010 to 2011 [UX-12].

In response to the City's argument that the award in this matter should follow the established pattern among City uniformed services contracts, the FOP argues that the more important "pattern" is the low wages of East Orange's police officers as compared with other jurisdictions, and the City's willingness to increase the budgets of other municipal services

while simultaneously decreasing the police budget.

The FOP argues that the City has the ability to fund the award it proposes. It maintains:

- Since 2007, the police salaries and wages and other expenses budgetary line items have resulted in reserves for the City. It notes that in the CY 2012 budget, the City had \$1,756,488.00 left in reserve from Police salaries and wages and \$1,121,450.00 left in reserve in Police Other Expenses [UX14 at 2-4]. The City also had a total of \$1,877,938.00 left in reserves from salaries, wages and other expenses for the 2011 Transition year [*Id.*].

- The City also continues to regenerate surpluses each year. It is hard to fathom the City having any difficulty affording the FOP's proposals when one considers the minimal cost in the greater context of the City's regular annual budget and expenditures. Indeed, it is difficult to understand why the City would choose not to make such a relatively small investment in its police department, when such an investment would pay great dividends in the form of increased morale, better retention rates, and a more experienced workforce.

- In present matter, the City's 2012 CY budget utilized the full 3.5% COLA rate ordinance to maximize the allowable spending cap limit at \$109,843,647.00 (including the 2010 Cap bank of \$4,033,988.56) [UX14 at 28-30]. The City appropriated \$101,828,440 leaving \$8,015,207.00 (\$109,843,647.00 less \$101,828,440) available for spending in their cap bank for the future years [*Id.*].

- Since the City had additional available tax levy of \$2,447,032.00, the City had the ability to appropriate \$2,447,032.00 of additional spending and still be below the maximum allowable appropriations for 2012 [*Id.*]. This would indicate that the City did not have any spending Cap issues [*Id.*]. Thus, the City has available cap bank spending for the 2013 budget of \$4,474,572.03 [*Id.*]. Inasmuch as the cost of the FOP's proposals come nowhere near this Cap amount, the

limitations contained in P.L. 1976, c. 68 and section 10 of P.L.2007, c.62 are of no moment in this case.

In summary, the FOP argues that its members should be awarded a salary that reflects the work they perform, which guarantees better morale and lower turnover will result.

City's Argument:

The City argues that its offer is more reasonable than the FOP's when compared to what benefits Essex County police officers in other municipalities are receiving. Further, it contends that its offer is also more reasonable when comparing the history and continued pattern bargaining within the City between the FOP Lodge 111, East Orange Superior Officers Association, Local No. 16 ("SOA"), FMBA Local No. 23 ("FMBA"), and the Fire Officers. The City argues that its offer will achieve economic and fiscal stability for the City in light of the reduction in the City's tax base being reduced by almost one billion dollars in just four years, the fiscal/economic crisis of the State of New Jersey, increases to medical benefits and pension contributions on behalf of the City's police officers, a 7% decrease in State Aid, increases in tax appeals, and the increased use of surplus used to combat the decrease in the City's tax base/property revaluation and to pay back in tax appeals. See E-34.

The City notes that it is not uncommon for interest

arbitration awards to contain wage freezes as requested by the City in its Final Offer. Not only would a wage freeze continue the pattern of bargaining with all the uniformed employees in the City, but it is necessary in light of a City-wide layoff in 2010 of approximately eight-four (84) employees which included police officers.

The City further argues that other recent public sector settlements in New Jersey demonstrate that the City's proposal is far more in line with the increase provided to public sector employees within New Jersey as well as continuing the City's pattern of bargaining for uniformed employees. The City notes an additional trend has begun with issuing salary increase awards below 3.0% in response to the economic climate of the State, the 2.0% hard tax cap levy, and increases in healthcare and pension contributions.

The City states that its police officers are well compensated and afforded extensive economic benefits compared to most public and private sector employees throughout the State and within the City of East Orange.

As to the argument of the FOP's financial expert that "the mandated 1.5% health insurance contribution legislation will generate savings to the City that could be used to fund the proposed increases by FOP Lodge No. 111 members", the City maintains that the employee premium sharing contributions are

intended to offset the cost of health care, not fund salary increases for the FOP members.

The City opines that any increase in salaries beyond that proposed by the City will only increase taxes more for its residents. It observes that the municipal portion of the average residential property tax increase allocated to the annual cost of police increased by \$52.91 from 2011 to 2012". See F-14. Thus, the City's taxpayers suffered an increase in taxes of \$199.36 in total, \$52.91 of it due to the police department. In contrast, the City is offering increases which will afford each police officer a competitive salary while also trying to minimize the effect of such increases upon the taxpayers as well as continue the City's pattern of bargaining for uniformed employees.

The City argues that its taxpayers are enduring one of the worst economic times in the history of America. The City has faced significant losses in State Aid, increases in health care and pension contributions, a billion dollar reduction in its tax base, and laid off 84 employees in 2010. Accordingly, the City's proposal to continue the pattern bargaining for uniformed employees is far more reasonable and should be adopted by the Arbitrator.

Further, the City contends that the benefits received by its police officers are superior to those in comparable

jurisdictions. In comparing all fringe benefits, the City affords benefits which are competitive to its Essex County counterparts. The City also maintains that the comparability and overall compensation exhibits submitted at the interest arbitration clearly demonstrate the reasonableness of its position.

The City avers that the FOP's offer does not take into account that the 2013 Levy Cap Bank only provides \$561,711 to pay out the retro salary payment increases for the FOP contract, the SOA contract, the Fire Dispatchers contract, the CWA and the ESPA contract.

In summary, the City contends that the effect of granting an economic benefit in excess of the City's proposal will negatively impact on the City's ability to minimize possible future tax rate increases for the City's taxpayers. Moreover, the City is now limited on its ability to increase its tax rate. The City argues that its offer represents a fair balance between reasonable salary increases in the face of an unstable economy in the State and ensures the financial stability of the City without overwhelming already strapped taxpayers or laying off any additional employees.

Salary Analysis:

N.J.S.A. 34:13A-16g(2)(c) requires the arbitrator to compare the wages, salaries, hours and conditions of employment

of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with other employees generally in the same jurisdiction. As the Public Employment Relations Commission recently found in Borough of Madison, P.E.R.C. No. 2013-5, 39 NJPER 33 (2012),

. . . this sub-factor requires the arbitrator to consider evidence of settlements between the employer and other negotiations units, as well as evidence that those settlements constitute a pattern. See N.J.A.C. 19:16-5.14(c) (5) (identifying a "pattern of salary and benefit changes" as a consideration in comparing employees within the same jurisdiction). Pattern is an important labor relations concept that is relied on by both labor and management.

In addition, a settlement pattern is encompassed in N.J.S.A. 34:13A-16g(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. In that vein, interest arbitrators have traditionally recognized that deviation from a settlement pattern cannot affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. See Fox v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994)

In Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002) and P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75, 2003) the Commission observed that an internal pattern of settlement is due significant consideration, that arbitrators must fully articulate the rationale for any decisions to deviate from an internal settlement pattern, and that an award which does not give due weight to such an internal pattern is subject to

reversal and remand. The principle underlying these decisions is that maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. Id.

However, the Commission also cautioned, in Somerset Cty. Sheriff's Office, P.E.R.C. 2007-33, 32 NJPER 372 (¶156 2006), aff'd 34 NJPER 21 (¶8 App. Div. 2008) that a settlement with other units in the same jurisdiction should not be given absolute weight to the exclusion of all other factors.⁸

I and other arbitrators have previously recognized the importance of existing wage and benefit patterns among other employees of the same jurisdiction. See Camden Cty. Sheriff, Docket No. I.A. 2013-09 (S. Osborn 4/15/13); Camden Fire Department, Docket No. I.A. 2009-65 (S. Osborn 5/13/13); Hudson Cty Corrections, Docket No. I.A. 2012-46, (S. Osborn 7/23/12); and Union Cty Corrections, Docket No. I.A.2012-37, (S. Osborn 6/11/12). In each of these matters, it was found that maintaining a pattern of settlement within the same jurisdiction serves the public interest, maintains employee morale, and enhances unit continuity and stability.

⁸In Somerset, the alleged "pattern" involved only one other negotiations unit.

Here, according to City Administrator Jillian Barrick, the City's four negotiations units of uniformed services have followed a lock-step pattern of salary increases as far back as at least 1999 and perhaps longer. The following chart is indicative of such a pattern of settlements:

Year	FOP Lodge No. 111	FMBA Local No. 23	SOA Local No. 16
1999	0%	1%	0%
2000	2.0%	1%	2%
2001	Holiday Roll In	Holiday Roll In	Holiday Roll In
2002	3.5%	3.5%	3.5%
2003	3.5%	3.5%	3.5%
2004	4.0%	4.0%	4.0%
2005	3.5%	3.5%	3.5%
2006	3.75%	3.75%	3.75%
2007	3.75%	3.75%	3.85%
2008	3.85%	3.85%	3.85%
2009	4.0%	4.0%	4.0%
2010	---	0%	0%
2011	---	1.5%	1.5%
2012	---	2.0%	2.0%

The City notes particularly that the recent settlements among its firefighters, the fire superiors and the police superiors are all consistent with the City's proposed contract length and current salary offer to the police. It argues, therefore, that this pattern should be entitled to significant weight by the arbitrator.

The FOP does not deny the existing settlement pattern or the history of such a pattern among the City's uniformed services, but it argues that greater reliance should be placed

upon other patterns present here, such as the developing pattern of the City's willingness to fund other City programs and services while at the same time reducing its budget for the police department. The FOP also argues that the significant gap between East Orange police salaries and those of other comparable jurisdictions is a factor which overrides the internal settlement pattern. It further observes that, in fact, the most recent settlements with the fire units and police superiors contained other elements which are not present in the City's current offer for City police officers.

* * *

The City has presented convincing justification for following the settlement pattern as to contract length and percentage increases. It has two factors present in this regard: (a) all three of the uniformed services units have reached settlements for the identical percentage increases; and (b) there is long history -- at least 11 years -- that all of the uniformed services units have adhered to a consistent wage increase settlement pattern among them. I gave significant weight to both the consistency of settlements among the City employees over a long period, and the present settlements for this round of negotiations among City employees. Maintaining this settlement pattern and applying it to the police unit would assure continuity of negotiations, promote employee morale among

City workers, and further the public interest. Additionally, with regard to the police superiors, imposing the existing settlement pattern upon the rank and file police officers would not upset the rank differential between them and the superiors.

On the other hand, the police officers of East Orange are paid significantly below their counterparts either by comparison to other municipal police forces in Essex County or by comparison to the Urban 15. In fact, using 2012 base salaries as a benchmark, East Orange police are the lowest paid of any by either comparison. More specifically, even assuming the increases to base pay as the City has proposed, East Orange's police officers will be earning \$12,000 less than patrol officers in Newark and \$11,500 less than Irvington. These towns are the nearest neighbors to East Orange and similar crime statistics. The City argues that East Orange's officers have benefits equal to or superior than other comparable municipalities. It is true that the longevity package here is at the top end of any municipality in Essex County with a 14% longevity pay after 25 years of service. However, even when adding this longevity formula to top base pay, the combined total of \$88,958 will be about \$9,500 below Irvington's top base pay plus longevity (at 25 years' service) and nearly \$11,700 below Newark's top base pay plus longevity (at 25 years' service).

Further, a combined 3.5% increase over the life of a three-year contract would not permit employees to keep pace with inflation and is certainly not in line with average settlement increases of between 1.5% and 2.0% annually as reported by PERC's statistics over the last two years (2011 and 2012). Thus, the existing wage pattern of settlements in East Orange would result in less buying power by 2013 than the officers had at the beginning of the contract period.

This factor is in stark contrast to the significant increases in workload and productivity of the police department in the past few years. Thanks to new policing initiatives imposed by the police administration, the enhanced technology for targeting and apprehending criminals, and the efforts of the police officers themselves, crime has dropped a staggering 79% over the last ten years in East Orange. While the City's efforts to create a much safer City have paid off, those efforts have also significantly increased the workload of the police officers on the street. Officers are required to follow up on leads generated from the technology center as well as respond to regular calls for service; they are encouraged to do more suspicious persons stops and issue more summons. In addition, they are mandated to hit certain checkpoints within their grids on a daily basis. It must also be noted that the bargaining unit has reduced its staffing levels during the same time

period, resulting in fewer officers doing more work. It is axiomatic that such a significant decrease in criminal activity would necessitate a concomitant increase in productivity among police officers. Thus, the net effect of the City's proposal for salary increases would result in officers doing more work but earning less, at least in terms of purchasing power.⁹ I accord significant weight to these facts as they relate to the statutory criteria of external comparables, cost of living, overall existing wages and benefits, and continuity of employment.

Therefore, in balancing these factors, I have determined to follow the City's settlement pattern in terms of percentage increases to base pay. I award no across-the-board increases to the salary guide for 2010-2011. I award a 1.5% increase to the salary guide at all steps effective and retroactive to July 1, 2011. I award a 2.0% increase to the salary guide at all steps effective and retroactive to July 1, 2012. However, I also award a one-time equity adjustment of \$1000 to the top rate of the wage scale (step 6). To lessen the impact of this adjustment pay on the City's current budget and on the

⁹I attribute little weight to the FOP's argument that officers' take-home pay will be less because of their contributions to health care and increased pension contributions. These deductions from salary were legislatively mandated; I am confident that it was not the purpose of this legislation to have the employer "make up" the costs of these employee contributions with matching salary increases.

taxpayers, the adjustment will be added to the employee's base pay effective June 30, 2013.

In reaching this award, I have given substantial weight to the internal settlement pattern among other uniformed services of the City and have followed the pattern as to the length of the contract and across-the-board percentage increases. However, I have also given considerable weight to the comparison of wages and benefits between East Orange's police officers and those in other, comparable jurisdictions, as well as the factor of cost of living. While this award will not achieve any measure of parity between this bargaining unit and other municipal police departments, it will narrow the gap. At the same time, providing employees with the equity adjustment awarded here will improve employee morale. As to the continuity of employment, I have given this factor significant weight as well. Continuity of employment, which includes low levels of attrition and the absence of layoffs, results in the ability to maintain a highly skilled and cohesive workforce and does not require the employer to continuously expend training dollars only to see a high turnover among its staff. Training new recruits only to see them leave for other municipalities with a better pay plan squanders taxpayers' resources, diminishes the overall effectiveness of the department's ability to maintain its achievements in reducing crime, and compromises public

safety. Here, it was necessary to balance the need to put the pay scale high enough to retain experienced police officers while at the same time not elevating the payroll costs to the point where the City can no longer afford to maintain its current staffing levels. Therefore, the percentage increases in combination with the equity adjustment, is in the public interest.

Total Cost of the Award:

The cost of the Award is as follows:

Cost of the Award			
Years	Total Base Pay ¹⁰	ATB % Increase	ATB Cost
FY 2011	13,745,135	0.0%	0
FY 2012	13,120,841	1.5%	196,813
FY 2013	13,176,884	2.0%	263,538
Total			460,350

As to the cost of the equity adjustment, this adjustment is being awarded June 30, 2013. Therefore, there is no cost to the Employer to implement this increase until the conclusion of the award on June 30, 2013. For the second half of calendar year 2013, I calculate the cost of the increment adjustment to be \$68,500 (137 employees at top pay X \$1,000 each/2 = \$68,500).

I am confident that this award will not cause the City to

¹⁰ I derived "Total Base Pay" from Employer Exhibit C-33. For FY 2013, the Employer provided salary data from 7/1/12 through 4/22/13; I calculated this total to represent 80.8% of the year and then expanded the amount to cover the entire fiscal year.

exceed either its appropriation cap limit or its levy cap. First, the percentage increases awarded herein, were proposed by the Employer; therefore, I conclude that the Employer believes it has the ability to pay the awarded increases without violating either cap limitation. Second, I note that the overall cost of base pay for the unit has actually decreased from FY 2011 to FY 2013, by \$568,251. As to the cost of the equity adjustment, this will only add \$68,500 in expenses for the calendar year 2014. Even with this additional expense, the cost of providing base pay to the employees in 2013 will be less than it was in 2011. Third, I note that the Employer has significant surplus funds to more than cover the total costs herein. Therefore, I conclude that the Employer has the ability to fund the award.

NON-SALARY ISSUES:

Article V, Bereavement Leave:

The FOP seeks to increase the bereavement leave entitlement and to eliminate the last sentence requiring bereavement leave to be taken in close proximity to the date of the death of the relative. The current contract provides,

2. (a) Leave with pay not to exceed five (5) working days shall be permitted where such absence is due to and necessitated by the death of a spouse, parent, child, brother or sister of the employee, and leave with pay not to exceed three (3) working days shall be permitted where such absence is due to and

necessitated by the death of another member of the immediate family of the employee. This leave must be taken in close proximity to the date of the death of the relative.

The FOP proposes that paragraph 2 (a) be modified as follows:

2. (a) Leave with pay not to exceed (10) working days shall be permitted where such absence is due to and necessitated by the death of a spouse, parent, child, brother or sister of the employee, and leave with pay not to exceed five (5) workings days shall be permitted where the absence due to and necessitated by the death of another member of the immediate family or the employee.

The FOP argues that the bereavement leave provisions contained in the expired contract do not provide sufficient time for an employee to make arrangements and/or attend funeral services for a loved one, particularly if the deceased resided outside of New Jersey. The FOP maintains that this proposal is not anticipated to have any significant impact on the City, financially or otherwise, inasmuch as bereavement leave is utilized infrequently. Accordingly, the FOP submits that its bereavement leave proposal should be awarded, notwithstanding the fact that the proposal would result in more favorable conditions than exists in comparable jurisdictions.

The City argues that, as Rochester testified, a police officer could use a vacation day, a sick day or personal leave in conjunction with their bereavement leave. In addition, the City notes that its five days of bereavement leave for an

immediate family member is at the high mark among other Essex County municipal police forces. (E-70; E-71)

I find that the proposal to increase bereavement leave beyond its current levels has not been justified. The City correctly notes that the bereavement leave benefit in East Orange is at least comparable to, if not better than many municipal police forces in Essex County. Moreover, the Union has not pointed to any other City bargaining unit that has more than five days of bereavement leave. Therefore, neither the statutory criteria of internal or external comparisons has been satisfied. The proposal is denied.

Article IX, Vacation and Vacation Pay:

The FOP proposes to increase the percentage limits for the total number of employees scheduled for vacation each week of the year and at any given time. The current contract provides,

3. In order to equalize vacation leave distribution, the total number of employees scheduled for vacation each week of the year shall not be less than five (5%) percent, nor more than seven, point five (7.5%) percent of the total number of employees eligible for vacation.

The FOP proposes that paragraph 3 be modified as follows:

3. In order to equalize vacation leave distribution, the total number of employees scheduled for vacation each week of the year shall not be less than seven and one half percent (7.5%), nor more than ten percent (10%) of the total number of employees eligible for vacation leave at any given time.

The FOP argues under the current vacation selection scheme, junior officers do not get much of a vacation selection. Vacation days are selected on the basis of seniority, with more senior officers choosing first. Because of the limitations on the number of officers that can be off at any one time, the result has been that less senior officers are unable to obtain vacation picks during desirable times of the year. According to Rochester, newer employee vacation picks are usually limited to the months of January and February because these months are all that remain after more senior officers make their vacation picks.

In order to attempt to rectify this problem, the FOP has proposed increasing the number of officers who can be on vacation during any given week, thus increasing the pool of available days for officers to choose to take a vacation day. According to Rochester, by increasing the number of officers who may be on vacation to 10% of the total number of eligible employees, the number of officers who can be off at any given time would also increase from two to three. This would provide an increase in the number of available days for junior officers.

The City argues the FOP has not justified this proposal. The City points out that if selecting vacation by seniority is a problem, then the FOP could remove the seniority provision from vacation scheduling, all officers at all ranks would be treated

similarly. The City avers that neither Rochester nor the FOP provided any analysis or documentation how the increase in vacation use by officers would impact on the overtime issue in the City. The City points out that, as Rochester testified, there is already an overtime issue due to not enough manpower, such that an officer may be expected to work overtime several times a week. Therefore, based on the FOP's lack of justification, the City argues that the increase in vacation leave availability by officers should be rejected.

I find that the FOP has not provided sufficient detailed information to permit me to properly evaluate this proposal. Whether the City backfills the slots of those officers on vacation under the current scheme by assigning other officers to work overtime is unknown. Equally unknown is the question of whether a greater number of officers off at one time would result in additional overtime costs to the City. I am required by statute to factor in the cost of any proposal being awarded. Given the absence of more specific detail about the possible effects of this proposal on staffing and overtime levels, the proposal must be denied.

Article X, Sick Leave Incentive Program and Retirement Benefit:

The FOP seeks to increase the sick leave incentive benefit for employees taking zero through three sick days within the calendar year; and to reduce the benefit for employees taking

nine or more days in the calendar year. The current contract at paragraph 1 provides,

- (a) 0 sick days taken - 4 additional vacation days
- (b) 1-3 sick days taken - 3 additional vacation days
- (c) 4-8 sick days taken - 2 additional vacation days
- (d) 9-12 sick days taken - 1 additional vacation days
- (e) Over 12 sick days taken - 0 additional vacation days

The FOP proposes the following changes to Paragraph 1(a) through (e) as follows:

- (a) 0 sick days taken - 6 additional vacation days
- (b) 1-3 sick days taken - 4 additional vacation days
- (c) 4-8 sick days taken - 2 additional vacation days
- (d) 9 + sick days taken - 0 additional vacation days
- (e) [Delete]

The FOP argues and Rochester testified that, over the years, the incentive plan has worked. Some officers have taken advantage of the incentive by reducing their sick time use, and have received additional vacation days as a trade-off. The City has also benefited by experiencing a necessary reduction in the use of sick time, and likely a reduction in the overtime costs associated with the use of sick time within the police department.

The FOP contends that its proposal to modify this incentive plan is intended to create greater incentives for officers who truly are utilizing minimal amounts of sick leave, and further save the City the overtime costs associated with the use of sick time.

The FOP opines that implementation of this modification to the sick leave incentive program will result in significant savings to the City, since officers who utilize nine or more sick days will no longer be eligible to receive the incentive. Simultaneously, enhancing the benefit for those employees who utilize a minimal amount of sick time will likely provide that extra incentive to encourage officers to minimize their use of sick time.

With respect to the FOP's sick leave incentive proposal, the benefit to the public is purely financial. Additionally, the FOP contends that, from an administrative point of view, vacation time is much easier to manage than sick time because vacation time is scheduled weeks, if not months, ahead of time. On the other hand, sick leave may be taken with very little notice, which, in turn, results in greater overtime costs. Therefore, converting sick time to vacation time eases the administrative burden to the police department.

The City cites Rochester's testimony that the current sick leave incentive program provides officers with an incentive to have good attendance and is effective. Thus, the City maintains, there is clearly no justification for any changes to the sick leave incentive program.

I am inclined to award a modified version of the FOP's proposal as follows:

- (a) 0 sick days taken - 5 additional vacation days
- (b) 1-3 sick days taken - 4 additional vacation days
- (c) 4-8 sick days taken - 2 additional vacation days
- (d) 9 + sick days taken - 0 additional vacation days
- (e) [Delete]

Although no information was provided that would track the use of sick leave, and no information was provided as to how many employees take advantage of this incentive program, it is beyond dispute that the use of sick leave universally results in increased overtime costs. Members of this bargaining unit receive twenty sick days a year. Under the current scheme, even those employees who use nine to twelve days annually are eligible for the incentive bonus.

I find that the existing incentive program disproportionately rewards employees who use a significant number of their sick days. On the other hand, rewarding employees with perfect attendance, or those with only minimal use of sick leave (1-3 days annually) would maximize the incentive for employees to conserve their sick leave and thus, reduce overtime costs associated with backfilling those positions. Therefore, I have provided for no incentive for employees who use nine or more days annually and slightly increased the incentive for employees with no sick leave use at all.

Supplemental Compensation (Article X):

The City proposes to modify Section 2, Retirement Benefit, to cap the lump sum payment at \$15,000, or less if required by State law. The current contract provides,

2. (a) An employee having at least twenty-five (25) years service with the East Orange Police Department shall be entitled, upon retirement for service and age or disability from a State-administered retirement system, to receive a lump sum payment for earned and unused accumulated sick leave which is credited to him or her on the effective date of his or her retirement in the manner and to the extent provided herein. An employee who elects a deferred retirement benefit shall not be entitled as of right to receive the lump sum payment provided for in this Agreement.

2. (b) Such supplemental compensation payment shall be computed at the rate of one-half (1/2) of the eligible employee's daily rate of pay for each day of earned and unused accumulated sick leave plus one unused accumulated personal day per year, if any; provided, however, that no lump sum supplemental compensation payment shall exceed \$15,000. . .

The City proposes to modify the paragraph to include the following statement:

. . . that no lump sum supplemental compensation payments shall exceed \$15,000, or less if required by State law and in accordance with the provisions of the State law.

I note that all three of the other uniformed services settlements included this proposal. It appears that this proposal simply seeks to add a contingency in the event that there is a statutory revision which would decrease the cap on supplemental compensation payments. As this issue is purely

statutory, I award it.

Article XII, Uniforms:

The FOP proposes to increase the annual uniform allowance.

The current contract provides,

- July 1, 2006 through June 30, 2007 - \$800
- July 1, 2007 through June 30, 2008 - \$825
- July 1, 2008 through June 30, 2009 - \$850
- July 1, 2009 through June 30, 2010 - \$850

The FOP proposes the following changes to the uniform allowance:

- July 1, 2010 through June 30, 2011 - \$925
- July 1, 2011 through June 30, 2012 - \$975
- July 1, 2012 through June 30, 2013 - \$1,050
- July 1, 2013 through June 30, 2014 - \$1,125

The City has agreed to increase the uniform allowance by \$200 effective July 1, 2012, which is consistent with the internal pattern of bargaining for all uniformed employees within the City. Accordingly, I award a \$200 increase in the uniform allowance effective July 1, 2012.

The cost of this clothing allowance increase \$35,400 over the contract period ($\$200 \times 177$ officers = \$35,400).

Article XIII, Insurance:

The City proposes to modify paragraph 7, Medical Coverage after Retirement/Disability. The current contract provides,

Whenever an employee has served twenty-five (25) years or more of service credit with the New Jersey Police

and Firemen's Retirement System (hereinafter "PFRS") and a period of 25 years with the City at the time of retirement, the City shall provide such employee (and his/her dependents) with medical coverage. The City shall continue to pay 50% of the monthly premium for employees enrolled in the POS plans. Retired employees who elect to enroll in the traditional plan shall pay 100% of the monthly premium. A retiree may also elect to enroll in the State Health Benefits Plan. This is intended to include those employees who retired on disability to the extent said coverage is afforded under Chapter 88 of Public Law 1974.

- a) Eligible employees retiring after the execution of the agreement, who enroll in the Direct Access plan shall pay \$15 for each office visit.
- b) Eligible employees retiring after the execution of the agreement, who enroll in the Direct Access plan shall pay a deductible of \$250 per person and \$500 per family.

The City proposes to modify this article to include a provision that retirees are only eligible to receive the same level of medical benefits (including deductibles, co-pays and prescription co-pays) as provided to current employees.

Neither party provided any argument with regard to this proposal in their briefs. I take notice that this provision was incorporated into the prior settlements reached with the firefighters, fire superiors, and police superiors. Accordingly, this proposal is awarded.

Article XV, Educational Incentives:

The FOP proposes to add a new Paragraph 3 as follows:

An employee who has attained a college degree from a fully accredited college shall, upon the

submission of verification, receive an educational bonus in the following amounts:

- AA/AS Degree (60 Credits) - \$2,000 per year
- BA/BS Degree (120 Credits)- \$4,000 per year

The FOP argues that its proposal looks to reward officers who enhance their skill through higher education, and to incentivize the pursuit of higher education for those who have not yet sought to do so.

The FOP argues that citizens of East Orange will benefit from not only having more qualified and better trained officers on the street, but, as Rochester testified, based upon the fact that savings will be realized on costs associated with litigation against the police department. Thus, it is in the public interest to incentivize and reward higher education amongst police officers.

The City opposes this proposal. It notes that, as Rochester testified that the reason for the educational bonus is that some police departments are requiring a college education. However, the City of East Orange does not require any college education, thus there is no justification for any educational bonus.

I agree with the Union in concept that an educational incentive program would be both a benefit to the individual officers and to the City. It is in the public interest that those entrusted with the responsibility to protect and serve the

citizenry be as well educated as possible. Further, an educational incentive program provides officers with a direct incentive to further their education. However, the record does not include any information concerning the percentage of the bargaining unit which already has an associate's degree or bachelor's degree. Therefore, it is not possible for me to determine the possible cost implication of awarding the FOP's proposal. Consequently, the proposal must be denied.

Article XIX, Hours of Work, Scheduling and Overtime:

The FOP seeks to modify paragraph 1, existing hours of work and scheduling. The current contract provides,

The following Units in East Orange Police Department shall work a "4-2 schedule" which shall consist of not more than four (4) consecutive days on duty, followed by not less than two (2) consecutive days off duty, at eight (8) hours per day: All Patrol Units.

The FOP proposes the following changes to paragraph 1 as follows:

All patrol units shall work a "4 on and 4 off" schedule which shall consist of not more than four (4) consecutive days on duty, followed by not less than four (4) consecutive days off duty at ten (10) hours per day.

The FOP seeks to delete Paragraph 3 which currently provides,

Employees shall report to work ten (10) minutes prior to the start of their duty shift.

The FOP argues while these proposals complement each other, they also stand on their own, so that if one proposal were rejected, the other could be awarded without negative repercussions.

The FOP states that, under its 4-4 proposal, each officer would work four ten-hour shifts followed by four consecutive days off. The patrol division would consist of three overlapping shifts; that is, 23:00-09:00, 07:00-17:00 and 15:00-01:00. This schedule would create a two-hour overlap for each shift, thus eliminating the need for the ten-minute unpaid muster time.

The FOP argues that its proposals are reasonable, affordable, meet the statutory criteria and benefit both the City and the employees, and thus, should be adopted. It states that the public stands to benefit threefold from the FOP's schedule change proposal. First, the job of an East Orange police officer is stressful and demanding. Without sufficient time to decompress, officer morale suffers and the stress of the job builds up. By offering officers a more agreeable schedule, such as a 4-4, the City ensures that its police force is fresh and revived for each four-day tour of duty.

Second, the FOP asserts that, the public also stands to gain from reduction in overtime costs, and potentially a reduction in the use of sick time. As Rochester explained,

because the three eight-hour shifts under the current schedule contains no overlap for officers, officers are often required to stay beyond their regularly scheduled shift for purposes of either completing a call or updating the incoming officer with any important information. The Union avers that this system is inherently flawed in that it almost guarantees that overtime costs will be incurred by the City as officers frequently are required to stay after the end of their shift. Indeed, it notes, the City has paid out nearly \$2.5 million in overtime pay over the past three years [EX32]. The FOP observes that, by reducing the necessity for officers to be held over on a regular basis, the cost of overtime will certainly be reduced.

Finally, the FOP argues that, from the public's point of view, is the fact that under the current schedule, there are certain times during the day where there is absolutely no police patrol coverage in the City. During shift change, the very nature of the 4-2 schedule requires a "mad dash" to the police department in order to transition from one shift to another. During this time, there is, apparently, not a single officer patrolling on the road within the entire City. The Union observes that this is certainly not in the public interest. With a 4-4 schedule, the two hour shift overlap eliminates this gap in police coverage, and provides a constant blanket of

police coverage - making the police department a truly 24-hour per day department.

The FOP contends that its proposal for a 4-4 schedule is not an anomaly. Throughout the State of New Jersey, and particularly within the County of Essex, law enforcement agencies have, for a variety of reasons, implemented alternates to the typical 5-2 schedule, as follows:

Law Enforcement Work Schedules (County of Essex)			
Municipality	Schedule (On/Off)	Hours Per Day	Work Period (# days)
Bellville	4/4	--	--
Essex Fells *	7/7	12	14
Fairfield *	7/7	12	14
Irvington	4/4	--	--
Livingston *	7/7	12	14
Maplewood	4/4	--	--
Millburn	4/4	--	--
Montclair	4/2 & 5/2	--	--
Newark	4/2 & 5/2	--	--
N. Caldwell	3/3	12	--
Roseland *	7/7	12	14
W. Caldwell *	7/7	12	14
W. Orange	4/2	--	--
* Pittman Schedule			

Further, the FOP contends that there is no merit to the Employer's concern that if the FOP's proposal is implemented, then the City would also have to change the superior officer's schedule. In fact, so long as there is supervisory coverage, there are no boundaries or limitations on the type of schedule

that supervisors must or must not work, in relation to their subordinates in patrol.

As to financial impact, the FOP maintains that its proposal will have little or no financial consequences to the City. In fact, by changing to a 4-4 schedule, the FOP submits that the City will experience a significant cost savings, in terms of reduced overtime costs.

The City argues that the proposed "4 on and 4 off" schedule, advanced by the FOP, has not been justified. The FOP provided no analysis on how this will affect the police department as a whole. Specifically, outside of the FOP, there is the Detective Division, Violent Crime Division and the FCST on a 5x2 schedule, clerical on a 5x2 schedule and Superior Officers on a 4x2 schedule. Thus, there was no requisite justification or evidence ensuring that a schedule change would benefit the parties. Therefore, the City avers, the request for the schedule change modification should be denied.

I have serious concerns about the existing 4-2 schedule for the patrol division. According to the unrebutted testimony of FOP Vice-President Rochester, the wholesale transition from one shift to the next, three times a day - at 3:00 p.m., 11 p.m. and 7 a.m. - leaves the City virtually without patrol officers on the streets. This potentially creates a significant gap in public safety during those periods. This fact cannot be found

to be in the public interest. Second, because the existing schedule provides no shift overlap (except the 10-minute muster time), it virtually guarantees that any calls uncompleted or report unfinished at the end of an officer's shift will result in some overtime while the calls or reports are finished. There is no doubt that this overtime expense is a cost that must be passed on to the taxpayer, which also does not further the public interest.

However, the Public Employment Relations Commission (PERC) has held that a work schedule should not be changed without strong justification for doing so. PERC has also provided guidance with respect to how an interest arbitrator should analyze a proposed new work schedule. First, before awarding a major work schedule change, an arbitrator must carefully consider the fiscal, operational, supervision and managerial implications of such a proposal, as well as the impact on employee morale and working conditions. Teaneck Township, P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999); City of Clifton, P.E.R.C. 2002-56, 28 NJPER 201 (¶33071 2002). Further, as PERC reasoned, "an arbitrator should consider whether there is evidence of problems with an existing schedule, but interest arbitration must allow for a schedule change that an arbitrator reasonably concludes is warranted after a full and fair consideration of all of the statutory criteria." Clifton.

The burden to produce convincing evidence and rationale for a change, especially a work schedule change of this magnitude, is on the party seeking the change. Here, I find that the FOP has not met its burden. While there are inherent weaknesses in the existing schedules, I am hesitant to implement a new schedule without thoroughly vetting its feasibility and possible impact on overtime costs, the Department's operational needs and overall staffing levels. For example, the proposed two-hour overlap on every shift, for a total of six hours a day of double coverage, may mean that during some periods of the day there would be two officers to a car, which might not provide the greatest efficiency in terms of staffing.

On balance, I find that the record is not detailed enough for me to make an informed decision as to whether the schedule changes are necessary or desirable. I award a joint committee, composed equally City and FOP Lodge 111 representatives, to explore the feasibility of implementing an alternate work schedule.

* * * *

The FOP also proposes to amend the Work Schedule article by adding the following paragraph:

Each employee shall be granted a paid meal break not to exceed thirty (30) minutes during each eight (8) or ten (10) hour tour of duty. During said break, the employee shall remain "on call" and shall be required to respond to any priority one (1) call for service which may

arise. Any employee denied their meal break shall receive the equivalent credit as compensatory time.

Neither party advanced any argument with regard to this proposal. However, this is one proposal that is so reasonable on its face that common sense dictates that I award it. There can be no dispute that the workday of a patrolman in a major urban area is stressful. A 30-minute meal break sometime within the workday seems like a necessity. Working eight hours straight without a break would certainly cause an officer on patrol to become fatigued, which would result in dulled judgment and an increased likelihood of errors and possible injuries. Having just 30 minutes to recharge would tend to keep the officer's skills and attention to detail sharpened. This is of course, in the interest of the public and would also improve employee morale. I foresee no additional out-of-pocket expenses to the City in granting this benefit. I recognize that the trade-off is that the City has fewer officers on full-duty status while officers are on meal break. However, that 30-minute period will assure that the officer will return to full duty status refreshed and able to safely finish his shift. The FOP's proposal is awarded, but without the reference to a 10-hour shift.

The FOP also proposes to eliminate the section of this article that requires employees to report to duty ten minutes

before the start of their shift. The record shows that the purpose of this "muster period" is to transition from one shift to the next including the passing along of information to the on-coming shift necessary to perform their duties. The FOP has not provided sufficient information to justify this proposal nor has it explained how the purpose of the "muster period" would be achieved in its absence. Therefore, the proposal is denied.

The City proposes to include a provision in Article XIX, as follows:

Paid sick leave shall not count as hours worked for overtime purposes in accordance with the Fair Labor Standards Act.

Neither party advanced any argument with regard to this proposal in their briefs. Rochester testified that officers with a sick leave call-out might be targeting to work overtime because the City would not have to pay time-and-one half if this proposal were implemented. This same provision was negotiated into the two fire department contracts, but not into the police superiors' contract.

The record shows that the City's overtime costs for police are significant. It is certainly reasonable to conclude that eliminating sick leave from the calculation of overtime would result in savings to the City of overtime costs. However, the FOP has expressed concern over the possible abuse of such a provision in that the administration

could selectively assign mandatory overtime to those officers who would be ineligible for overtime premium pay because of a sick day. On balance, I do not feel that I have adequate information on which to award this proposal. The record contains no indication about how mandatory overtime is currently assigned, so I am unable to adequately consider the FOP's argument about possible selective assignments. Further, the record does not indicate the extent of sick leave usage; therefore, I could only speculate about whether there is currently a sick leave usage problem that needs to be addressed by this proposal.

Moreover, it cannot be said that there is a universal pattern among City uniformed services to apply this proposal, since the police superiors' agreement does not include it. I am not persuaded by the evidence presented that this proposal will foster the public interests or what the cost savings in overtime would be to the City. Therefore, the proposal is not awarded.

AWARD

Article XXI, Term of Agreement: Three year agreement covering the period July 1, 2010 through June 30, 2013.

Article XV, Salaries:

I award no across-the-board increases to the salary guide for 2010-2011. I award a 1.5% increase to the salary guide at

all steps effective and retroactive to July 1, 2011. I award a 2.0% increase to the salary guide at all steps effective and retroactive to July 1, 2012. I also award an equity adjustment of \$1000 to the top rate of the wage scale (step 6), effective June 30, 2013.

Article X, Sick Leave Incentive Program and Retirement Benefit:

Modify Section 1, (a) through (e) as follows:

- (a) 0 sick days taken - 5 additional vacation days
- (b) 3 sick days taken - 4 additional vacation days
- (c) 4-8 sick days taken - 2 additional vacation days
- (d) 9 + sick days taken - 0 additional vacation days
- (e) [Delete]

Modify Section 2 (b) as follows:

2. (b) Such supplemental compensation payment shall be computed at the rate of one-half (1/2) of the eligible employee's daily rate of pay for each day of earned and unused accumulated sick leave plus one unused accumulated personal day per year, if any; provided, however, that no lump sum supplemental compensation payment shall exceed \$15,000, or less if required by State law and in accordance with the provisions of the State law.

Article XII, Uniforms:

Increase clothing allowance by \$200 effective July 1, 2012.

Article XIII, Insurance:

Modify this article to include a provision that retirees are only eligible to receive the same level of medical benefits (including deductibles, co-pays and prescription co-pays) as provided to current employees.

Article XIX, Hours of Work, Scheduling and Overtime:

With regard to the work schedule, I award a joint committee, composed equally City and FOP Lodge 111 representatives, to explore the feasibility of implementing an alternate work schedule.

Add a new Section as follows:

Each employee shall be granted a paid meal break not to exceed thirty (30) minutes during each eight (8) hour tour of duty. During said break, the employee shall remain "on call" and shall be required to respond to any priority one (1) call for service which may arise. Any employee denied their meal break shall receive the equivalent credit as compensatory time.

* * * * *

All proposals by the City and the FOP not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.

Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have

taken the statutory limitation imposed on the local tax levy cap into account in making this award. My Award also explains how the statutory criteria factored into my final determination.

Susan W. Osborn
Interest Arbitrator

Dated: June 13, 2013
Trenton, New Jersey

On this 13th day of June, 2013, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.