

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

POINT PLEASANT BOROUGH

"Public Employer"

-and-

PBA LOCAL 158

"Union."

Docket No. IA-2012-018

POINT PLEASANT BOROUGH

"Public Employer"

-and-

POINT PLEASANT BOROUGH SOA

"Union."

Docket No. IA-2012-019

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Jerry J. Dasti, Esq.
Dasti, Murphy, McGuckin,
Ulaky, Cherkos & Connors

For the Union:

Richard D. Loccke, Esq.
Loccke, Correia, Limsky & Bukosky

The Borough of Point Pleasant [the "Borough" or "Employer"] and Point Pleasant Borough PBA Local No. 158 and Point Pleasant Borough Superior Officers Association [the "PBA" and "SOA" or "Unions"] are parties to an impasse and subject to the interest arbitration statute in P.L. 2010, c. 105 as referenced in N.J.S.A. 34:13A-16 (2011). On October 19, 2012, I was appointed to serve as interest arbitrator by random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This law requires that an award be issued by 45 days after appointment with no provision for a mutually agreed upon extension of any length. The law also subjects an interest arbitrator to a \$1,000 per day fine for each day an award or awards does not issue after the 45th day from the date of appointment. In this particular case, the 45th day was recalculated by the New Jersey Public Employment Relations Commission ["PERC"] after applying an administrative decision of the New Jersey Judiciary to treat the period of time from October 29, 2012 to November 16, 2012 as legal holidays for the purpose of calculating timeliness requirements. This application was particularly beneficial in this instance given the Borough's proximity to ocean and bay water that aggravated the impact of the storm on its community, including the loss of power and the demands created on the Borough's governing body including the police department.

After the cancellation of a mediation session due to the aftermath of the storm, a mediation session was held but did not result in a resolution. I then scheduled an interest arbitration hearing on December 3, 2012. Although

separate petitions were filed, the hearings were consolidated for the purposes of economy and efficiency. In accordance with N.J.S.A. 34:13A-16(f)(1), each party was directed to submit a final offer and final offers were timely received. Additional submissions were received on December 5, 6 and 11.

At the December 3, 2012 hearing, the Union's and the Borough submitted substantial documentary evidence. In the main, they relied upon their original submissions made in a prior interest arbitration proceeding that resulted in an award that had been vacated by PERC on October 11, 2012. Upon vacating that Award, the case was remanded to a new arbitrator. In addition to the prior record, on December 5, 2012, the Unions submitted two exhibits, RP-1 and RP-2. RP-1 is a copy of Ordinance No. 2012-11 adopted by the Governing Body of the Borough of Point Pleasant at its final reading on August 21, 2012. RP-2 is a copy of a "Memorandum of Understanding 2012-2015" between the Borough and Teamsters Local No. 469 (Communication Officers). The Borough objected to RP-2 on the basis that it was an unsigned document, unapproved by the Borough that only represented a Union proposal and was not a memorandum of agreement. On December 11, 2012, the Borough also submitted a Certification from Business Administrator David Maffei offering information as to the potential adverse impact of the storm on the Borough's finances to which the Unions offered a response on December 17, 2012 objecting to the admission of the document. The Borough and the Unions also submitted additional written argument that supplemented their original post-hearing briefs. The Borough also submitted a roster of unit employees containing base salary data for unit employees as of December 31, 2011.

This proceeding evolved from an unusual set of circumstances. On May 1, 2012, an interest arbitration award issued by a different arbitrator. An appeal of that award was filed with PERC on September 18, 2012. That appeal resulted from a Superior Court Order entered by the Assignment Judge of Ocean County stating in pertinent part:

1. The Court grants the request of the Defendant Borough to permit the Borough to file an appeal of the decision of Arbitrator Frank Mason within seven (7) days of September 12, 2012 to the New Jersey Public Employees (sic) Relations Commission (PERC).
2. In conjunction therewith, the Court tolls the seven (7) day statute of limitations time period within which the Borough is required to file an appeal of an arbitrator's decision with PERC.

The above Order was appealed by the PBA and SOA to the Appellate Division and, as of the date of this Decision and Award, no determination had been made on that appeal.

PERC, in accordance with the Court Order, decided the Borough's September 18, 2012 appeal on October 11, 2012 [P.E.R.C. No. 2013-28]. In pertinent part, PERC found:

First, the arbitrator failed to comply with the requirements of the Reform Act as elucidated in our prior decision in Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53, 38 NJPER 380 (¶ 116 2012). There was no detailed analysis of the costs of the base year, including increments and longevity. There was no analysis as to how these costs would be calculated in any of the years of the four years awarded, nor was there a calculation contrasting how the

award met the 2% salary cap requirements of N.J.S.A. 34:13A-16.7.

Second, the arbitrator's award of health care contributions of 2% of salary or 10% of the premium cost effective January 1, 2012 violates the mandatory contributions established by P.L. 2011 c. 78. That statute mandates employee contributions based upon varying percentages of premium over a four-year period. This failure to recognize the impact of Chapter 78 is specifically violative of N.J.S.A. 34:13A-16g(5) and (9) relating to the lawful authority of the employer, and statutory restrictions imposed upon the employer. Succinctly put, the arbitrator cannot simply issue an award that is contrary to the law.

For these reasons, the award should be vacated and remanded to a new arbitrator to consider the evidence, perform an analysis consistent with the Act, and issue an award.

As a result of the PERC decision, the prior award was vacated and, pursuant to the new appointment, this is a de novo proceeding. As stated, the parties were provided the opportunity to submit final offers. The final offers received from the parties and considered in this proceeding reflect the following:

PBA Local 158 and SOA

1. **Wage Increase** - the employee organizations propose an across-the-board wage increase of two percent (2%) on January 1, 2012 followed by an additional two percent (2%) across-the-board increase effective January 1, 2013. For the year 2014, the PBA/SOA propose a 2.5% wage increase. As part of the wage increase, the SOA proposes an extension of the current Out of Title provision contained within the PBA contract (Section IV, page 10 of the PBA Contract) to cover supervisory positions in the SOA contract.
2. **Overtime Compensation** - The Associations propose a modification of Article V so as to increase the current maximum of fifty (50) hours of compensatory time which are permitted to be carried.

3. Personnel Files - The Associations propose a modification of the language in each of the respective contracts so as to include a provision that the final result of any disciplinary action involving a bargaining unit member be the subject of notice to the respective Association. This Proposal appeared as Item No. 4 on the Original Proposal Sheet (P-1).
4. Unpaid Attendance at Meetings - The Associations proposed a deletion of the current contract provisions (p. 38 of the PBA Contract and p. 31 of the SOA Contract) so as to delete the respective uncompensated meetings therein referenced.

Borough of Point Pleasant

1. 4 year contract through 12/31/15.
2. Raises: 0% in 2012,¹ 1% in 2013; 1% in 2014 and 1.5% in 2015
3. Fold existing longevity into base pay, if applicable. No new longevity for new hires beginning 1/1/12.
4. Reduce the # of paid holidays to 10.
5. If applicable, all personnel days must be used by year end or forfeited.
6. We want to discuss reducing the # of vacation days for new hires, beginning 1/1/12.
7. Paid birthday day off is to be eliminated.
8. Effective 1/1/12, no medical benefits for spouses or family
9. We want to increase the # of steps to 15. See the attached salary guides. Effectively there is a 7.75% increase in each step.
10. Health insurance reimbursement:

¹ As will be detailed later in this decision, responses were received from both parties pursuant to my December 15, 2012 request reflecting that unit employees received a 2% increase for 2012 pursuant to Ordinance No. 2012-11.

- a. All employees pay 2% of their salary or 10% of the actual cost for healthcare, beginning 1/1/12, whichever is greater.
 - b. Beginning 1/1/13 - 2% of salary or 20% of the premium
 - c. Beginning 1/1/14 - 2% of salary or 30% of the premium
 - d. Beginning 1/1/15 - 2% of salary or 35% of the premium (whichever is greater in each instance).
11. In the PBA contract, page 28, there is a provision regarding health benefits for retirees. Pursuant to the Appellate Division Decision resulting from the litigation initiated by the PBA, that provision is not effective unless the Borough adopts the enabling ordinance. In the later part of 2010, we had prepared a proposed ordinance which was rejected by the PBA and their attorney, Mr. DeFillippo. We have not ever, therefore, adopted the enabling ordinance. We chose not to do so. Therefore that provision needs to be stricken from the new agreement.
 12. Horizon Blue Cross/Blue Shield NJ Direct 10 is the Borough health insurance company.
 13. Delete the 1 year guaranteed salary clause in Article VIII Section 6 (f) of both prior contracts.
 14. In the event of a work related injury, the employee will receive the standard work comp disability (temp) payment from the insurance company, and not the 100% of salary as is presently the case.

BACKGROUND

The PBA Local 158 unit consists of nineteen (19) police officers, three (3) of whom are Detectives and three (3) Sergeants. The SOA unit consists of four (4) Lieutenants, one (1) who is a Detective and one (1) Captain. The December 31, 2011 PBA roster submitted by the Borough shows that fifteen (15) of nineteen (19) employees in the PBA unit were at maximum salary at that time

with four (4) eligible to reach the 84 month step in 2014. In addition, two (2) non-tenured Probationary Trainees were hired in March 2012 and, as such, are excluded from the December 31, 2011 roster. The current staffing level represents a decrease from 2003 levels.

The Borough has a year round population of 20,000. At approximately 3.5 square miles, it is the most densely populated municipality in Ocean County. The Department is active and demands for its services have steadily increased over the last decade as reflected in documents in evidence [P. Exs. 11, 12 & 13].

	2003	2011	% Change
Calls for Service	12,963	20,284	+56.5%
Burglary	82	121	+47.5%
Disorderly Persons	589	1,261	+214%
Domestic Violence	153	184	+20%
First Aid Calls	904	1,078	+19.2%
Motor Vehicle Accidents	510	555	+8.8%
Motor Vehicle Stops	1,566	3,151	+201%

A particular strain on the Department is traffic control given its density, its many through roadways and passage to area beaches. This was described in a recent Borough document seeking a grant to blunt aggressive driving [P. Ex. #15]:

Point Pleasant Borough is a densely populated town with a year round population of approximately 20,500 people. The size of the town is approximately 3.5 square miles and it is the most densely populated municipality in Ocean County. Point Pleasant Borough is situated in between Brick Township and the resort communities of Point Pleasant Beach and Bay Head.

Our town has very limited public transportation, and as a result, residents are forced to use their motor vehicles for their daily transportation needs. This causes roadway congestion, which in turn increases the number of aggressive driving offenses that are committed within our borders. We experience traffic congestion problems daily on our major roadways (State Highway 88, Bridge Avenue, Bay Avenue and Herbertsville Road). We also experience these same traffic congestion problems on many of our secondary roadways as vehicles attempt to use them as cut-throughs to other roadways in an attempt to get around traffic congestion. This causes a great number of citizen complaints. These citizens who live on our secondary roadways (side streets) usually call to complain about speeding vehicles and other aggressive type of violations. All of the above problems related to aggressive driving behaviors increase proportionately during the summer months.

A thumbnail sketch of the Unions' submission reflects that it seeks support for its last offer in law enforcement comparability data in the surrounding areas of Monmouth and Ocean counties on terms such as salary, work hours and monetary benefits, an internal comparable in what it believes was a recent settlement in the Borough's blue collar unit containing terms that exceed the Borough's offer, a 2012 salary ordinance with the police department and an analysis of the Borough's budget reflecting the Unions' view that the Borough is able to provide the necessary funds to pay the Unions last offer without adverse financial impact and within the Borough's statutory limitations. The Unions voice strong objection to the number and scope of concessionary proposals made by the Borough which it describes as a "complete assault" on the existing agreement.

the Borough which it describes as a “complete assault” on the existing agreement.

The Borough does not dispute the productivity and effectiveness of its police department. The main theme of its submissions challenge the Unions’ compensation proposals as being incompatible with the Borough’s finances and the interests of the residents and taxpayers. Among the developments which are said to have adversely impacted on the Borough since 2008 are decreases in investment income, a higher amount of tax appeals, declines in court revenues, decreases in state aid, increases in health insurance premiums and pension contributions, increases in the tax levy and a sharp decline in the amounts of surplus available due to the amounts the Borough was required used to offset potential increases in taxes in 2011. The Borough notes that its police officers have not been subjected to the twelve (12) furlough days in 2010 and four (4) furlough days suffered by the Borough’s non-law enforcement employees.

Against this brief background and overview of the parties’ main points of contention, I will proceed to review and decide the issues in dispute. The issues in this proceeding are many. For this reason, the Discussion section will provide a summary of the parties’ arguments and exhibits in support of their respective positions on each issue in dispute in the context of the disposition of each issue followed by an Award reflecting the change to be made to the existing Agreements.

DISCUSSION

I am required to make a reasonable determination of the above 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 my review of the merits of this case, I have applied the following principles. The party seeking to modify an existing term and condition of employment has the burden to prove that there is basis for its proposed change. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. No proposed issue by either party can be deemed presumptively valid without justification that is supported by credible evidence, the statutory criteria or without determining its reasonableness within the overall framework of the entire award. While there may be merit to awarding or denying a single issue if it were to stand alone, a different result may be reached after assessing the merits of any individual issue within the context of the overall award.

Duration

The Borough has proposed that the successor collective negotiations agreement commence on January 1, 2012 and expire on December 31, 2015, a term of four (4) years. The Unions have proposed a three (3) year agreement commencing January 1, 2012 and expiring on December 31, 2014. I am persuaded that the Borough's proposal for an agreement with a four (4) year duration is the more appropriate one. It will allow for greater certainty and control of expenditures over the time period and allow for operational decision-making based upon fixed terms of employment through December 31, 2015. Accordingly, I award the Borough's proposal and award a new agreement that shall commence on January 1, 2012 and expire on December 31, 2015.

Health Insurance Reimbursement

The Borough has proposed a multi-tiered scheme for employee health insurance contributions. Its proposal requires a higher amount of contributions than had previously been contractually required. Article X, Section 7 provided for a 1.5% employee contribution effective May 23, 2010 and thereafter and was consistent with the then requirements of P.L. 2010 c. 2. However, the Borough's proposal does not specify whether its proposed scheme is wholly consistent with the mandatory contributions established by P.L. 2011 c. 78. In order for this issue to be resolved within the parameters of law and the lawful authority of the employer, the scheme for employee contributions must comply with that legislation. It appears from the record of this proceeding that the required statutory deductions are already being made. An award that specifies adherence to the legislative requirements would resolve any uncertainty by having the new Agreement so state. Accordingly, I award language stating that:

Health care contributions shall be consistent with that required by P.L. 2011, Chapter 78 or any subsequent legislation that modifies these requirements.

Health Insurance Carrier and Plan

The Borough has proposed that the health insurance carrier and plan be Horizon Blue Cross/Blue Shield NJ Direct 10. Article X Section 7 of the existing agreement now provides for such authority. The Borough's proposal confirms and continues that authority. Accordingly, the Borough's proposal is awarded:

Article X, Section 7 shall state that Horizon Blue Cross/Blue Shield NJ Direct 10 is the Borough health insurance company.

Health Insurance – Elimination of Spousal and Family Benefits

The Borough has proposed to eliminate medical benefits for spouses or family members for police officers hired after January 1, 2012.

In my evaluation of this proposal, I observe that the police officers are now subject to a statutory scheme for employee contributions that require them to contribute as much as 35% of base salary towards health insurance premiums. While the Borough is required to pay the remainder, employee participation to the extent required by law has diminished the Employer's responsibility from a budgetary point of view.

Currently, unit employees receive spousal and family benefits in similar fashion to those who are similarly employed under the vast majority of law enforcement contracts in evidence. The comparability evidence does not favor the adoption of the Borough's proposal. Given this, the elimination of this benefit has the potential to negatively impact the continuity and stability of employment for new hires.

Accordingly, based upon the above, I do not award the Borough's proposal.

The Borough maintains a proposal on this issue. It describes its proposal in narrative form as follows:

In the PBA contract, page 28, there is a provision regarding health benefits for retirees. Pursuant to the Appellate Division Decision resulting from the litigation initiated by the PBA, that provision is not effective unless the Borough adopts the enabling ordinance. In the later part of 2010, we had prepared a proposed ordinance which was rejected by the PBA and their attorney, Mr. DeFillippo. We have not ever, therefore, adopted the enabling ordinance. We chose not to do so. Therefore that provision needs to be stricken from the new agreement.

As argued, I construe the Borough's proposal as one seeking to delete Article XIV—Retirement Benefits from the Agreement based upon a lack of mutual agreement on a Borough proposed ordinance on the issue. The merits of the proposed ordinance are not before me for determination.

Based on what is before me, the subject matter of this issue has been connected to prior litigation over the enforceability of an existing provision. As such, this is not an issue of negotiations impasse and I decline, as proposed, to strike the provision. This will allow the issue to remain in the agreement subject to the parties' final disposition of the Appellate Division decision. This conclusion is not intended in any way to alter the legal posture of either party on this issue or the merits of their respective positions on the issue in litigation.

Personnel Files

The Unions have proposed to modify the language in each of the respective contracts so as to include a provision that the final result of any disciplinary action involving a bargaining unit member be the subject of notice to each of the respective Unions. There is merit to this proposal because the PBA and SOA have a statutory responsibility to administer and enforce each agreement and fairly represent each unit member. Notice and knowledge of disciplinary action taken will enable each unit to do so. Accordingly, this proposal is awarded.

Longevity

The Borough has proposed to eliminate longevity for new hires beginning January 1, 2012. The Unions urge rejection of this proposal.

Currently, the PBA has a two tiered longevity scheme with the second tier applicable for employees hired after July 1, 1995. The longevity benefits for those employed prior to July 1, 1995 are the same as that provided for the SOA unit. All of these provisions terminate in a ten (10%) percent longevity benefit after twenty-four (24) years.

The Borough's proposal is based upon a desire to reduce future labor costs. The existing benefit levels are not uncommon among the contracts in

evidence although there is evidence of a trend towards lesser longevity benefits for new employees as salaries have increased. In this instance, when salary levels and longevity benefits are viewed in combination, the Borough has established a basis for some change in the benefit level for new hires. I award a modification of the longevity benefit for new hires but do not find sufficient justification present for the elimination of the benefit in its entirety. To do so would cause a significant gap in comparative overall compensation received within the unit which could potentially undermine employee and department morale. Accordingly, effective on or after December 17, 2012, there shall be a new longevity schedule for new hires which shall carry forward into the future into the SOA Agreement for newly hired employees who eventually are promoted into the SOA unit. It shall read as follows:

<u>Years of Service</u>	<u>Percentage of Annual Pay</u>
After eight (8) full years	One (1%) percent
After twelve (12) full years	Two (2%) percent
After sixteen (16) full years	Three (3%) percent
After twenty (20) full years	Four (4%) percent
After twenty-four (24) full years	Five (5%) percent

In the SOA unit, a new Section 3 shall be added stating:

Section 3: For police officers who are hired on or after December 17, 2012 and who are promoted into the SOA unit, the longevity schedule shall be as follows:

<u>Years of Service</u>	<u>Percentage of Annual Pay</u>
After eight (8) full years	One (1%) percent
After twelve (12) full years	Two (2%) percent

After sixteen (16) full years	Three (3%) percent
After twenty (20) full years	Four (4%) percent
After twenty-four (24) full years	Five (5%) percent

Article VIII – Sick Leave – Workers Compensation

The Borough has advanced two proposals that concern Article VIII. As proposed, they would delete an employee's right to receive full pay if disabled from a work connected injury as provided for in Article VIII, Section 6(f) of both prior contracts. The Borough would also require, in the event of a work related injury, that the injured employee receive the standard work comp disability (temp) payment from the insurance company, and not the 100% of salary as is presently the case. These proposals would reduce the Borough's pay obligations in instances of temporary disability but the proposals have not been supported by sufficient credible evidence that would support the modification sought. There is insufficient evidence that the existing provisions have been abused, have had negative impacts on staffing or have had negative economic impact on the Borough due to the contractual standards that now exist. Accordingly, the proposals are denied.

Salary

The parties had originally disagreed over the issue of salary modifications for 2012, 2013, 2014 and 2015 as reflected in their final offers. The 2012 salary increase is now resolved through a stipulation that Borough Ordinance 2012-11 governs that issue by providing a 2% increase that has already been implemented in August 2012. Given this, the salary issue for 2012 is no longer

before me for determination, although for reasons that follow the roster of December 31, 2011 remains the appropriate base for determining salary cap calculations. The focus of the salary dispute is now on 2013, 2014 and 2015. The Borough has proposed annual salary increases of 1% in 2013; 1% in 2014 and 1.5% in 2015 while the Unions have proposed 2% in 2013 and 2.5% in 2014.

In addition to the across the board increases, the Borough has proposed to increase the number of steps in the salary schedule to fifteen (15) with effectively 7.75% annual step increases. The current schedule in Appendix A-2 has two (2) six month steps that are split in the first year, a nine (9) year step after the seventh (7th) year of service and an additional step at the eighteenth (18th) year of service and more. In addition, the SOA proposes an extension of the current Out of Title provision contained within the PBA contract (Section IV, page 10 of the PBA Contract) to cover supervisory positions in the SOA contract.

As stated, the parties have addressed the statutory criteria with emphasis on comparability and Borough finances. In addition to the factors contained in the statutory criteria, this salary dispute may require the application of lawful salary cap requirements.

In PERC's remand of this arbitration to a new arbitrator after it vacated the original award, it cited the standards it set forth in Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53, 38 NJPER 380 (¶ 116 2012) as it relates to

interest arbitration awards having to meet the 2% salary cap requirements of N.J.S.A. 34:13A-16.7. I am compelled to apply those standards to the facts of this proceeding. The relevant portion of New Milford stated the following:

P.L. 2010, c. 105 amended the interest arbitration law N.J.S.A. 34:13a-16.7 provides:

a. As used in this section:

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

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

b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

This is the first interest arbitration award that we review under the new 2% limitation on adjustments to base salary. Accordingly, we modify our review standard to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make

that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

Before addressing the salary cap requirements of N.J.S.A. 34:13A-16.7, an examination of the statutory criteria is required in order to determine whether the salary cap is relevant to the analysis of the salary issue. The salary cap does not in every case automatically determine what the salary result should be. Its relevance and applicability in an arbitration proceeding is dependent on whether the evidence points to there being a substantial potential for the possibility that, in the absence of the cap, an amount could potentially be justified that could exceed the cap.

In the instant case, the Unions have produced credible evidence on the salary issue that could potentially support an award that could exceed the cap. This includes the law enforcement comparability evidence in nearby communities

in Monmouth and Ocean Counties as reflected in the charts submitted by the Unions drawn from contracts in evidence showing average increases of 2.5% in 2012, 2.18% in 2013 and 2.4% in 2014. The cost of living in 2011 has been shown to exceed 2.0%. The budget of the Borough shows appropriation and tax levy cap flexibility well above the costs of the Unions' proposals. This is not to say that the Unions' proposals would be awarded in the absence of the salary cap. There is countervailing evidence showing trends in the Borough's financial posture that support the need for budgetary constraint and respect for the Borough's decision to spend and to tax below allowable statutory levels. When all of the evidence is weighed and balanced, I conclude that a reasonable determination of the salary issue is one that is consistent with the requirements of the salary cap. Thus, I have made the necessary calculations as to what the limit or cap is on the amount of the salary increases that can be awarded pursuant to New Milford.

Initially, I address the Borough's new hire proposal. The Agreement calls for two salary schedules; one for employees hired before July 1, 2006 (Appendix A-1) and the other for employees hired after July 1, 2006 (Appendix A-2). The Borough's proposal for a new hire salary schedule would cause a new schedule for employees hired on the day after the issuance of the Award. A new hire schedule will extend the time between the hire date through the time that the new hire reaches maximum pay in the amount that is equivalent to the amounts that are now provided to existing employees. This will provide annual savings to the

Borough for each newly hired employee as each progresses through the guide. I award a new hire schedule set forth below as Appendix A-3 but in a manner that modifies the Borough's proposal. The new hire schedule will commence at 0-6 month level of Appendix A-2, eliminate the sixth month step and require a full year before advancement to the next step. It will also provide an additional two years to reach the 108 month level at the salary equivalent to the 84th month level in Appendix A-2. An officer will then qualify for the step that reaches the 17 year level prior to eventually receiving the "18th year or more" step. The 108th month to 17th year step and the 18th year and more step shall be in the equivalent amount provided for existing employees. The steps between the 0-12 months step and the 97 to 108 months step shall be in equal dollar amounts. The structure of the new hire guide shall be as follows:

Appendix A-3

0-12 Months
13-24 Months
25-36 Months
37-48 Months
49-60 Months
61-72 Months
73-84 Months
85-96 Months
97-108 Months
108 th Month–17 th Year
18 th Year or More

Salaries for existing employees shall be determined by application of the statutory salary cap in accordance with the standards and methodology decided by PERC in the lead case of New Milford. That decision requires the arbitrator to state the total base salary for the last year of the expired contract and how the base salary was calculated based upon the evidence submitted by the parties. Here, the Borough has provided a roster as of December 31, 2011 for each unit containing base salary and longevity.² The PBA and SOA Agreements provide for longevity pay to be paid in equal amounts in payroll addition to regular salary, thus reflecting that it is a base salary payment. The Agreement also states that holiday pay is a base salary payment. The PBA Agreement, at Article VII(3), states that "the entire holiday benefit (116 annual hours)" is folded into base pay and its value included in the salary schedule. The SOA Agreement differs somewhat but, at Article VII(3)(E), indicates that holiday pay is paid biweekly and is subject to pension contributions. As such, it must also be considered as included in the salary schedule. Section 2 of the SOA Agreement specifically indicates that holiday pay, in addition to other base pay, be the regular rate of pay for Lieutenants and Captains. As set forth in the roster, it shall be considered a base salary payment.

There are two distinct bargaining units each requiring calculation. The SOA unit has a salary schedule without salary steps. There is a single rate of

² The Borough included three \$1,000 stipends for rank and file detectives which I do not incorporate into base salary amounts because the stipends are in dollar amounts that have not been shown to be pensionable and they do not increase by the percentage amounts that have been awarded. The \$1,000 stipends are not changed and are carried forward into the new agreement.

pay. The aggregate amount of base salary, including salary, holiday pay and longevity was \$708,853 (base salary, holiday pay and longevity) as of December 31, 2011. Pursuant to the PERC standards, the total economic award must not increase the base amount by more than 2% per contract year or 2% times the base amount times each contract year in the aggregate. Thus, the annual cap amount costs that can be awarded in this instance for the SOA as applied to the expired salary schedule is \$737,207 in 2013, \$751,384 in 2014 and \$765,561 in 2015. In the PBA unit, the base salary amount on December 31, 2011 is \$1,824,642 (base salary, holiday pay and longevity). The annual cap amount costs that can be awarded in this instance as applied to the expired salary schedule is \$1,897,626 in 2013, \$1,934,118 in 2014 and \$1,760,610 in 2015.³ It is important to note that the actual amounts required to implement an award may or may not exceed the 2% requirement because, as PERC has held, "reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments to the Interest Arbitration

³ There is an anomaly in this case. The final offers and the issues in dispute commence on January 1, 2012, the day after the expiration of the contract on December 31, 2011. The Court Order allowing for the Borough to file an appeal with PERC was issued on September 18, 2012. The PERC appeal was decided on October 11, 2012. The PERC decision vacated the Award which contained a contract duration of January 1, 2012 through December 31, 2015. When, this matter was remanded to this arbitrator the final offers reflected issues in dispute that would commence on January 1, 2012. For that reason, the roster of December 31, 2011 was submitted and considered to be "the total base salary for the last year of the expired contract." During the pendency of this proceeding, RP-1 was submitted on December 5, 2012 reflecting an August 21, 2012 effective date for implementing a 2% wage increase by Borough Ordinance 2012-11. Notwithstanding this, because there is no contract for 2012 and there are disputed issues in 2012 that are subject to this award, December 31, 2011 is the date upon which the actual base amount for the last year of the expired contract must be calculated. It is the roster on that date from which the salary calculations and modifications have been made.

Reform Act.” [New Milford at p. 15]. For this reason, the base salary amounts are as of December 31, 2011 and modifications to the salary schedule shall be based on the roster in effect on that date even if actual costs over the time period differ due to hirings and retirements that occur after December 31, 2011.

The PBA's proposal for a 2.5% increase cannot be awarded because, even if otherwise justified, it does not meet the requirements of the salary cap.⁴ I conclude that an award in both units that applies the 2% statutory salary cap annually pursuant to the PERC standards represents the most reasonable determination of the salary issue and is justified by the totality of the terms awarded that will modify the prior agreement, the evidence on comparability, the cost of living data and the financial criteria concerning impact and statutory limitations. On this latter point, the record clearly reflects that the sums required are substantially less than what the statutory limits are under the appropriation cap and the tax levy cap. The PBA and the SOA schedules shall be modified by 2% annually with an April 1 effective date in 2013, an April 1 effective date in 2014 and an April 1 effective date in 2015. The effective dates will reduce the actual expenditures in each year in both units in response to the Borough's concerns, though speculative at this point, that there is potential for negative impact of the storm on the Borough's tax revenues and other unanticipated expenditures as well as minor compensation movements within the

⁴ The prior award that was vacated required a 2.5% increase in 2014 and 2015.

predominantly senior laden bargaining units. As the Union points out, the concerns about storm impact cannot be validated at this time. But, if realized, unforeseen unreimbursed costs could jeopardize employment levels which would not be in the public interest or those of unit employees. The calculations for the sums awarded fall within the cap of salary amounts that can be awarded, below the cost calculations testified to by the Borough Administrator in the prior proceeding and within the annual cost calculations set forth in this analysis.

I do not award the part of the SOA proposal that would extend the current out of title provision that exists in the PBA agreement to its own labor agreement. That provision appears in Section IV, page 10 of the PBA agreement. The Borough's objection to this proposal has merit. The nature and responsibilities of the work for superior officers in this relatively small department does not lend itself to the same principles that underlie a rank and file police officer's assumption of supervisory authority. Accordingly, this proposal is denied.

Remaining Economic Items Proposed by Both Parties

In addition to the above issues each party has proposed additional benefits and concessions. The Unions have proposed an increase in the current maximum of fifty (50) hours of compensatory time which are now permitted to be carried forward as stated in Article V. The Unions have also proposed to modify Article XX by a deletion of meetings that the Unions claim are now uncompensated. While these proposals may be desirable from the Unions'

perspective, the basis for the changes sought in the status quo have not been met. Accordingly, these proposals are denied. I reach a similar conclusion with respect to the Borough's remaining proposals. The Borough, in addition to other proposals already decided, has proposed to reduce the number of vacation days for new hires, to reduce the number of paid holidays to ten, to eliminate the holiday of employee birthday (as part of that reduction) and to forfeit personal days not used by year end. While benefit expansion or contraction may be a desirable conclusion to negotiations depending upon either party's perspective, there must be a credible basis for such change and supported by substantial evidence that meets the burden for change. I do not find the burden to be met on the Borough's proposals and instead award a continuation of the contractual status quo on these issues.

Accordingly, and based upon all of the above, I respectfully submit the following Award:

AWARD

1. All proposals by the Borough and the Unions not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.
2. **Duration**

There shall be a four-year agreement effective January 1, 2012 through December 31, 2015.
3. **Article X - Health Insurance Reimbursement**

Health care contributions shall be consistent with that required by P.L. 2011, Chapter 78.

4. **Article X - Health Insurance Carrier and Plan**

Horizon Blue Cross/Blue Shield NJ Direct 10 is the Borough health insurance company.

5. **Article XII - Longevity**

Effective on or after December 17, 2012, the longevity schedule for new hires shall read as follows:

<u>Years of Service</u>	<u>Percentage of Annual Pay</u>
After eight (8) full years	One (1%) percent
After twelve (12) full years	Two (2%) percent
After sixteen (16) full years	Three (3%) percent
After twenty (20) full years	Four (4%) percent
After twenty-four (24) full years	Five (5%) percent

In the SOA unit, a new Section 3 shall be added stating:

Section 3: For police officers who are hired on or after December 17, 2012 and who are promoted into the SOA unit, the longevity schedule shall be as follows:

<u>Years of Service</u>	<u>Percentage of Annual Pay</u>
After eight (8) full years	One (1%) percent
After twelve (12) full years	Two (2%) percent
After sixteen (16) full years	Three (3%) percent
After twenty (20) full years	Four (4%) percent
After twenty-four (24) full years	Five (5%) percent

6. **Article XVIII - Personnel Files**

The Unions' proposal to modify the language in each of the respective contracts so as to include a provision that the final result of any disciplinary action involving a bargaining unit member be the subject of notice to the respective Union is awarded.

7. **Salary**

1. The Borough's Ordinance 2012-11 shall govern the salary schedule for 2012. The salary schedules for 2013, 2014 and 2015 shall be

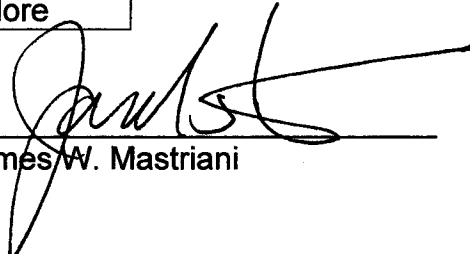
modified by 2% effective April 1 of 2013, April 1 of 2014 and April 1 of 2015.

2. A new hire salary schedule, Appendix 3, shall be in effect on December 17, 2012 in accordance with the salary structure set forth below with calculations made in accordance with the standards set forth on page 24 of this decision.

Appendix A-3

0-12 Months
13-24 Months
25-36 Months
37-48 Months
49-60 Months
61-72 Months
73-84 Months
85-96 Months
97-108 Months
108 th Month–17 th Year
18 th Year or More

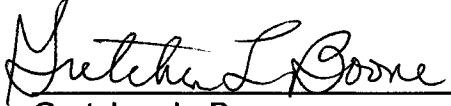
Dated: December 17, 2012
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 17th day of December, 2012, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2014