

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the

BOROUGH OF TENAFLY,

“Public Employer,”

and

PBA LOCAL 376,

“Union.”

**INTEREST
ARBITRATION
DECISION & AWARD**

Docket No. IA-2013-018

**Before
Robert C. Gifford, Esq.
Arbitrator**

Appearances:

For the Employer:

Mark S. Ruderman, Esq.
Ellen M. Horn, Esq. (On the Brief)
Ruderman & Glickman

For the Union:

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

On February 25, 2013, the Union filed a Petition to Initiate Compulsory Interest Arbitration. On March 20, 2013, I was appointed through random selection from PERC's Special Panel of Interest Arbitrators to serve as interest arbitrator. The law requires that I issue an Award within 45 days of my appointment.

On March 21, 2013, I notified the parties by letter that an interest arbitration hearing was scheduled for April 5, 2013. The parties submitted their final offers to me on or before March 28, 2013.

An interest arbitration hearing was held at the Tenafly Borough Hall on April 5, 2013 at which time the parties argued orally, examined and cross-examined witnesses and submitted substantial documentary evidence into the record. A stenographic recording of the proceedings was taken. Testimony was received from Police Officer and PBA President Hector Olmo, Retired Police Chief Michael Bruno, Police Chief Robert Chamberlain, Borough Administrator Jewel Thompson-Chinn, Detective and PBA State Delegate Wayne Hall. The parties provided post-hearing briefs on April 12, 2013, whereupon the record was declared closed.

FINAL OFFERS OF THE PARTIES

The PBA's Final Offer

1. WAGE INCREASE - The PBA proposes an across-the-board wage increase in each year of a three (3) year contract of two percent (2% across-the-board effective each January 1st.
2. ARTICLE VIII, WORK WEEK, OVERTIME - The PBA proposes a modification of the current work schedule to a twelve (12) hour work hour schedule sequence.
3. The PBA proposes a modification of Article X, Personal Days (p. 16) of the contract so as to provide at Section 4 that if a personal day is not used during the course of a calendar year then said time shall be paid at the straight time rate for the payment to be made during the first month of the subsequent year.

The Borough's Final Offer

ECONOMIC PROPOSALS

Article IX – Vacations

1. All employees hired after January 1, 2013 shall receive vacation under the following schedule:

Less than 1 year up to 10 days	1 day per month
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Completion of 1 year to completion of 5 years	10 days
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Commencement of 6 th year to completion of 10 years	12 days
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Commencement of 11 th year to completion of 15 years	15 days
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Commencement of 16 th year to completion of 25 years	20 days
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Commencement of 26 th year	25 days
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2. Vacation leave shall be prorated during the last year of service.
3. Employee must secure chief's written permission to carry over vacation time.
4. In Section 7 specify that the employee must receive from chief of police written permission to carry over vacation time.

Article X – Holidays and Personal Days

1. In Section 3 specify employees hired after January 1, 2013 shall be entitled to 2 personal days per year.

Article XII – Sick Leave

1. Employees hired after January 1, 2013 shall be entitled to 12 sick days after the first year of service.

Article XIII – Insurance, Health and Welfare

1. Delete first sentence and replace with the following:

“The employer agrees to provide the State Health Benefits Plan. The employer reserves the right to change insurance carrier so long as substantially similar benefits are provided.”
2. Delete Section 7 and Section 8 and specify that employees shall contribute to health insurance pursuant to Chapter 78 Public Laws of 2011.

Article XVII – Terminal Leave

1. Employees hired after January 1, 2013 shall not be entitled to terminal leave.

Article XX – Wages, Detective Stipend and Longevity

1. 2013 0%
2014 0%
2015 0%
2016 0%
2017 0%
2. Employees hired after January 1, 2013 shall be enjoy a fifteen (15) step salary guide and freeze starting salary for life of contract.
3. In Section 3 specify employees hired after January 1, 2013 shall not be entitled to longevity.

Article XXI – School and College Credits

1. Employees hired after January 1, 2013 shall receive a one time payment for any of the credits specified in Section 1.

Article XXX – Military Leave

1. Delete in Section 1 “provided however that during the periods of 12 days or more consecutive training duty, the Borough shall receive credit against a member's salary for the amount of member's compensation during said training.” This is a violation of law.

NON ECONOMIC PROPOSALS

Article III – Preservation of Standards

1. Delete Section 3 as a past practice clause.

Article XXIV – Investigation of Police Officers

1. Add a new paragraph as follows:

“The police officer shall be afforded neither less nor more rights than afforded a citizen involved in an investigation.”

Article XXIX – Bulletin Boards

1. Add the following to Section 4:

“The Chief of Police has the right to remove posted material from the bulletin board if it is not pertaining to the Association, business or matters dealing with the welfare of its employees.”

Article XXXIII - Replacements

1. Delete in its entirety.

New Article – Fully Bargained Clause

This Agreement represents and incorporates the complete and final understanding of settlement by parties of all bargainable issues which were or could have been the subject of negotiations. During the term of this agreement, neither party will be required to negotiate with respect to any other matter whether or not covered by this agreement, and whether or not within the knowledge of contemplation of either or both parties at the time they negotiated or signed this agreement.

BACKGROUND

The Borough is a suburban residential community located in Bergen County. It is comprised of approximately 4.61 square land miles and has a population of over 13,800 residents. Recent statistics indicate that the Borough had a median household income of \$90,931, and a median family income of \$111,029.

PBA Local No. 376 is "the sole and exclusive representative of all Patrolmen, Detectives and other Employees of the Department of Police below the rank of Captain...." The parties' prior Agreement was effective from January 1, 2009 through December 31, 2012. [Ex. J-1].

The Borough's salary data spreadsheets indicate that as of December 31, 2012, there were 32 bargaining unit members – 4 Lieutenants, 6 Sergeants, and 22 Police Officers. [Ex. E-1, Section 1, Parts 2 & 3]. The spreadsheets also indicate that 1 officer was discharged on April 23, 2012, 1 officer received a disability retirement as of August 1, 2012, and 2 Lieutenants retired on February 1, 2012. [Id.]

The parties submitted substantial evidence in support of their respective positions. I thoroughly reviewed that information. Because of the abundance of

evidence admitted into the record and the strict time constraints under the statute I have extracted significant portions of the legal arguments from the parties' briefs rather than providing a general summary herein.

The PBA's Position¹

INTEREST AND WELFARE OF THE PUBLIC

The Tenafly Police Department is a full service law enforcement agency responding to the needs of both the large nighttime and an exceptionally increased daytime population of persons passing through the Borough. The Borough is situated in eastern Bergen County and is traversed by several very heavily traveled County roads. PBA witness Police Officer Hector Olmo described the differences between the nighttime population and the daytime population and its significance to law enforcement. Most of the nighttime population, the regular residents, work out of town, come home to spend the evening and sleep at home. The daytime population is expanded by those who travel through the Borough and seek the Borough as an end destination for shopping, hotel stays, and banking. The impact of the daytime population increase from the approximate fifteen thousand (15,000) nighttime residents was substantial. P-2 is an Exhibit prepared in the ordinary course of business by the County Department of Public Works and is composed of a manual traffic count report. P-2 shows that one intersection on East Clinton Avenue in Tenafly over ten thousand ($\geq 10,000$) cars per day pass. P-3 is a New Jersey Department of Transportation Traffic Count on Sylvan Boulevard, Route 9W, which shows over thirteen thousand ($\geq 13,000$) cars pass each day. All of these persons passing

¹ The PBA's Legal Argument is set forth in pages 8-56 of its Brief.

through the Borough are, of course, the responsibility of the Tenafly Police Department while they are in the Borough. In addition to the people who pass through the Borough daily, the Borough is also an end destination by virtue of its retail offerings, movie theater and hotel. Officer Olmo described some of those attractions and services which bring persons into the town from outside the Borough:

- Movie Theater
- Shopping Center Stores
- Farmers' Market
- Jewish Community Center/Temple
- Greek Orthodox Complex
- Commuter Bus Parking and Transit Services
- Clinton Inn Hotel
- Three (3) Auto Dealerships – D&C Honda, BMW and Kia of Tenafly
- Seven (7) Houses of Worship
- Eight (8) Banks
- Numerous Restaurants, Retail Consumption Locations and Fast Food Restaurants
- In addition to the public high school and six (6) local schools, there is also a Montessori School, a Spring School, Lubevich and numerous other Day Care Centers.

All of this type of activity makes up the "daytime population", which is noted as the real service demand placed on the Police Department.

Introduced as Exhibit P-4 was a copy of the most recent "Tenafly Police Department 2012 Annual Report". Page 3 of the Report notes the significant increase in calls for service for this Police Department in 2012 compared to 2011 and the preceding year 2010. In 2010 there were fifteen thousand one hundred sixty-three (15,163) "total incidents" which number increased to fifteen thousand four hundred twenty-six (15,426) in 2011. The trend increased significantly in 2012. In 2012 there were nineteen thousand five hundred eighty-eight (19,588) incidents, a 26.9% increase. The increased demand for services and "unprecedented problems never seen before" are discussed in the Chief's Report beginning at page 2 of P-4.

Notwithstanding the dramatic increase in Police Department reported incidents and further notwithstanding the increased diversity of complexity of calls, the Borough of Tenafly met the Police Department challenges by reducing the Police Department in sworn staff. As Officer Olmo testified in 2009 there were thirty-nine (39) sworn persons, including the Chief of Police. Today there are only thirty-one (31) sworn Police Officers within the Borough. The bargaining unit in this case is made up of five (5) Lieutenants, five (5) Sergeants and nineteen (19) non-supervisory persons, Patrol Officers/Detectives. Persons who

retired from the Police Department in the immediate past include the former Chief of Police, two (2) Lieutenants, one (1) Sergeant and one (1) Police Officer. Over recent years sworn members at the lower level of execution, non-supervisory have shrunk from twenty-three (23) to seventeen (17). Supervisory opportunities have also been reduced in that there are now fewer Lieutenants and fewer Captains than had existed in the recent past. Thus the career path of Police Officers has been diminished and the workload which had been handled by those upper level supervisors has now been passed downward on the chain-of-command. Those persons who have retired were all twenty-five (25) or more years of service with one (1) disability retirement. These are just the changes that occurred within the immediate past, since January of 2012. Note should also be made that of the new hires many had to go to the Academy which is a six (6) month program in basic Police training. During this period of time those new persons are not Police Officers, are not certified, and cannot perform Police Officer services within the Borough. Thus, even though some people were counted as Employees during the course of hearing, they are not providing law enforcement services at present in Tenafly. This is just one more load placed upon the remaining sworn personnel to meet the day-to-day needs of the Borough and all who pass through the Borough.

Notwithstanding this stressful circumstance as described, at all times the Borough Police Department, including all sworn persons of all ranks, have met

the challenges presented and provided services at their highest professional level.

COMPARISON OF WAGES AND TERMS AND CONDITIONS OF EMPLOYMENT

Notwithstanding the significant productivity and professionalism of the Tenafly Police Department sworn staff, and further notwithstanding the enormous increase in Police incidents of over twenty-six percent ($\geq 26\%$) in 2012 alone, and further notwithstanding the fact that the current compliment of sworn Officers is at the lowest level in years, the Employer has responded by proposing zero (0) increase for all contract years. In fact, the Employer's Proposals on virtually every subject are completely out of touch with the proofs submitted by both parties and the testimony submitted.

The PBA has proved every element of its case with sworn testimony subject to cross-examination by the Employer and further inquiry, where appropriate, by the Arbitrator. This is not the case with the Employer. The Employer simply placed a notebook with various information on the table as its proofs with some incidental information from the Borough Manager. Employer counsel acknowledged that his remarks were advocacy and not testimony subject to cross-examination. The difference in amount and quality of proofs is significant.

The Tenafly Police Officers do not receive the highest compensation package of all Departments. While they may be favored by an above average position in some areas there are other areas where they are lagging. For example, the Tenafly Police Officers work more hours per years (two thousand eighty (2,080)) then do many of the Police Departments placed in evidence by the PBA at hearing. The Employer supplied no contracts in their entirety and only some random samplings of data. The full contracts are clearly more valuable in case evaluation.

The PBA, through testimony of witness Patrol Officer Olmo established a universe of comparison of area towns and like communities. This was not done by the Employer. Within the nearby towns, many bordering Tenafly, the work schedules are significantly different. This is an important note because it is one end of the work/compensation equation. Bergenfield Police Officers work a schedule of four (4) days on, two (2) days off followed by five (5) days on and two (2) days off. This represents two hundred and fifty-two (252) days of work, prior to adjustment. In Tenafly there are two hundred sixty (260) days of work prior to adjustment for the Police Officer. Thus neighboring Bergenfield has a work schedule of approximately eight (8) less per annum than is found in Tenafly. This represent over a three percent (3%) annual differential. Neighboring New Milford also works a short schedule, noted in their contract as one thousand nine hundred forty-six (1,946) hours. This is one hundred thirty-four

(134) hours less per annum in the unadjusted chart in Tenafly, or a differential of 6.4%. Nearby Fort Lee works a five-two, five-two, five-three (5-2, 5-2, and 5-3) schedule which equates two hundred forty-eight (248) days of work per year, twelve (12) days less than is worked by the Tenafly Officer. This represents 4.6% differential in considering Fort Lee. Neighboring Cresskill works a four-two (4-2) work schedule which generates nineteen hundred forty-six (1,946) hours per year, one hundred thirty-four (134) hours less than are worked by the Tenafly Police Officer, a 6.4% differential. Hasbrouck Heights works a five-two/five-three (5-2/5-3) work schedule which also generates nineteen hundred forty-six (1,946) hours per year, again a 6.4% differential. There are some mutual variations, such as in Fort Lee where the Detectives actually work less than the Patrol. There the Detectives work five-two/five-three (5-2/5/3), nineteen hundred forty-six (1,946) hours per year, a 6.4% differential. Numerous other Departments referenced by the PBA work a twelve (12) hour schedule such as Closter and Ridgewood, an issue in this proceeding. The Employer offers no evidence on this subject. It is submitted that the amount of work performed for the compensation received is a critical consideration and also has a significant impact on hourly rate and overall compensation.

The PBA has proposed a two percent (2%) increase per contract year for a three (3) year period and said proposal is consistent with many other area contracts, within the universe of comparison, in evidence. **Chart No. 1** on the

next page considers the PBA exhibits on this subject and analyzes the rates of change.

CHART NO. 1

AVERAGE BASE RATE INCREASES BASED ON PBA EXHIBITS

	2013	2014	2015
Bergenfield	2.5		
Closter	2.25	2.25	
Cresskill	2	2	2
Englewood Cliffs	2.5		
Englewood	2		
Fort Lee	2	2	2
Hasbrouck Heights	1.75	2	
Haworth	2	2	
New Milford	2	1.75	
Northvale	1.5	1.75	2
Paramus	3		
Ridgewood	3.25 (2/1.25)	3.25 (2/1.25)	2.5 (2/.5)
Wallington	1.65	1.65	1.65
AVERAGES	2.185%	2.072%	2.03%

The position of the PBA in this case is fully supported by the averages set forth on **Chart No. 1** above, based on PBA Exhibits and supported by testimony on the record. It may be noted that many of these contract settlements reflected on **Chart No. 1** above commence with the year 2013, therefore under the same law as is applicable here.

The Employer in its position not only chooses to have a series of zero (0) wage rate changes but in addition wants to have future Employees wait longer to get to top pay. The Employer proposes fifteen (15) steps for new Employees. This position is totally out of touch with reality. This Employer is suggesting that a new Employee, perhaps to be hired one day, would have to wait sixty percent (60%) of said Employee's twenty-five (25) year statutory career to reach maximum pay. The Employer's position is further out-of-touch when one considers that the present eight (8) steps for Tenafly Officers are actually slightly less than existing average within the universe of comparison. **Chart No. 2** on the following page compares the number of steps to reach maximum in the various towns with complete contracts placed in evidence by the PBA.

CHART NO. 2

AVERAGE NUMBER OF STEPS TO REACH MAXIMUM PATROL OFFICER RATE

Number of Steps to Reach Maximum Patrol Officer Rate	
Bergenfield	5
Closter	8
Cresskill	10
Englewood Cliffs	9
Englewood	8
Fort Lee	9
Hasbrouck Heights	8
Haworth	8
New Milford	8
Northvale	7
Paramus	9
Ridgewood	8
AVERAGE	8.083 STEPS
TENAFLY	8 STEPS

Again the current position of the existing contract (J-1) meet standards established with complete contract evidence in the record. The Employer's random selection of information may be misleading as it may include longevity changes over the years. The vast majority of towns even in the Employer's own

proofs parallel the averages established on Chart No. 2 on the preceding page. In sum, there is no justification to modify the number of steps on the Guide.

In addition to the issue of lack of evidentiary support for such a change as is proposed by the Employer, the Arbitrator under the current statute is required to cost out changes. Any change ordered must be costed out for each contract year covered by the Award. Thus with steps and other items yet to be considered the fact that they are largely hypothetical and may occur, if they occur at all, in the distant future, well beyond the contract and well beyond the Arbitrator's scope of authority, are problematic. The proposal on steps, as with several Employer proposals are prospective only. They cannot be costed out. Further, under the New Milford Interest Arbitration case future hirings are not to be considered in evaluation of a party's position. Therefore whatever may or may not occur with whatever possible prospective Employees may exist is not relevant in this case.

The Employer's proposals go on. Again, it is stressed that none of these are supported in the record. The Employer wants to change the statement of health care insurance. Why? What is the impact? What is in place today based upon the record established? The sentence sought to be deleted has substantive protections for bargaining unit employees. This type of potentially significant modification should be the subject of rigorous presentation and cross-

examination. The record is completely devoid of any support for such a change.

Terminal leave and college credit modification are other examples of the Employer just "taking a shot" at an existing compensation plan. Both of these points are prospective in impact and therefore cannot be costed out. An Award on this subject matter would be possibly reversible error. One does not know whether someone is going to be hired, when they will be hired, whether they will make it through the Academy, whether they will continue in their employment, and of course how long they will be on staff. Absent specific information these matters are not awardable. One may add somewhat parenthetically that in addition to the complete failure of any costing out of the proposal the actual proposals themselves are contrary to the Employer's own proofs. For example, almost all towns have some form of terminal leave as the Employer's own loose-leaf book says at Tab 2, Sub tab 7. The same is true of educational incentive. A high percentage of towns have such a benefit as the Employer randomly selects in its own exhibit at Tab 2, Sub tab 6.

In addition to the economic points raised by the public employer and commented upon earlier, the Employer also seeks several changes in non-economic points in the existing and long existing contract terms. It is again stressed that the Employer has completely failed to not only prove its case but

even introduce any evidence on its case with respect to these points. The Employer wants to modify Article III, Preservation of Rights, for some reason unknown. There are no proofs, no testimony and no evidence whatsoever on the point. The same is true with Investigation of Police Officers modification. Here, the Employer had an opportunity to cross-examine the most recent Chief and current Chief of Police and elected not to do so on this subject. One would surmise that if there is a problem on the investigation of Police Officer issue that such might be brought out through the person enforcing discipline within the Department, the Chief. It did not occur. Bulletin boards modification is another example of another "shot" being taken. The added language impacts the Chief of Police. If you want a change one would assume that it would be supported by the person at issue, the Chief. There is no testimony on the record. The Chief could have been asked about this but was not. The Article XXXIII Replacements issue was raised but again completely without basis. The Arbitrator is left to guess why such would be dealt with at all, much less removed. The Arbitrator is respectfully requested to keep in mind that these contract provisions are of long term duration. There must be some basis for change. These and other additions such as "Fully Bargained" are just random ideas that somebody wrote down and threw on the table. No proofs, no testimony, no support, no rationale, just a shot taken at the contract. With due respect to the Arbitrator, virtually all of these are statutorily unawardable, and would be error to include in an Award.

At hearing the public employer introduced various documents involving private sector issues. With due respect to the Arbitrator, it is believed that the best comparisons are with other law enforcement units.

Due to the unique statutory obligation and treatment of Police Officers under New Jersey Law, any comparison of said law as it applies to private sector employees as compared to Police Officers must result in a strong justification for significantly higher compensation to be paid to Police Officers. In a recent decision, well known Interest Arbitrator Carl Kurtzman considered this subject of private sector comparisons and wrote as follows:

As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight. (Borough of River Edge and PBA Local 201, PERC IA-97-20, pg. 30)

The PBA respectfully asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable

private sector job compared to that of a Police Officer. A Police Officer has obligations both on and off duty. This is most unusual in the private sector. A Police Officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. Certainly this is not seen in the private sector. The Police Officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Once again such public franchise and unique provision of statutory authority is not found in the private sector. There is no portability of pension in the law enforcement community after age 35. Police Officers may not take their skills and market them in other states as one may market one's own personal skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

The following represents certain statutory and other precedential laws controlling the relationship of Police Officers to their employers. Specifically distinguished is the private sector employee from said employee's employer.

1. The Federal Fair Labor Standards Act, 29 U.S.C.A. §201, et seq. applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7 day work cycle, police officers are treated to much

less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.

2. The New Jersey State Wage & Hour Law, N.J.S.A. 34:11-56a, et seq. does not apply to the employment relationship between a police officer and the officer's Public Employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, *Perry v. Borough of Swedesboro*, 214 N.J. Super. 488 (1986).

3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. N.J.S.A. 40A:14-118. There is no such statute covering private employment in New Jersey.

4. N.J.S.A. 40A:14-122 provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as U.S. Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.

5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, N.J.S.A. 40A:14-122. No such provision exists as to private employment.

6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under N.J.S.A. 40A:14-122.2. There are no such private sector limitations on promotion.

7. A police officer in New Jersey must be resident of the State of New Jersey, N.J.S.A. 40A:14-122.8. No such restriction exists for private sector employees.

8. Hiring criteria and order of preference is set by statute N.J.S.A. 40A:14-123.1a. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, N.J.S.A. 40A:14-127.1. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, N.J.S.A. 40A:14-127.3. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage N.J.S.A. 40A:14-131. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed 6 days in any one week, "except in cases of emergency". N.J.S.A. 40A:14-133. The Fair Labor Standards Act gives superior protection to private sector employees.
11. N.J.S.A. 40A:14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65 year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees' pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the

court after exhaustion of these unique internal proceedings, N.J.S.A. 40A:14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

Perhaps the greatest differentiation between Police Officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the state or not. Police Officers are statutorily conferred with specific authority and "...have full power of arrest for any crime committed in said Officer's presence and committed anywhere within the territorial limits of the State of New Jersey." N.J.S.A. 40A:14-152.1. A Police Officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector.

Police Officers are trained in the basic Police Academy and regularly retrain in such specialties as fire arms qualifications. This basic and follow up training schedule is a matter of New Jersey Statutory law and is controlled by the Police Training Commission, a New Jersey Statutorily created agency. Such initial and follow up training is not generally found in the private sector. Failure

to maintain certain required training can lead to a loss of Police Officer certification and the Police Officer's job. This is rarely found in the private sector.

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one state to another, there is more of a global competition to be considered. The New Jersey private sector employee must consider the possibility that his industrial Employer might move that plant to another state or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The Employees must work locally and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other states, even in Mexico.

Local comparisons are more relevant with Police wages. These types of issues were considered in the recent decision issued by the well known Arbitrator William Weinberg in the Village of Ridgewood case.

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function.

There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g,(2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct Employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such as contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states.

(Ridgewood Arbitration Award, Docket No.: IA-94-141, pages 29 - 31)

For the reasons noted above it is respectfully argued that any time there is a comparison made between a Police Officer and a private employee generally, Police Officer's position must gain weight and be given greater support by such comparisons. The Police Officer lives and works within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility. The level of scrutiny, accountability and authority are unparalleled in employment generally. The Police Officer carries deadly force and is licensed to use said force within a great discretionary area. A Police Officer is charged with access to the most personal and private information of individuals and citizens generally. His highly specialized and highly trained environment puts great stress and demand on the individual. Private employment generally is an overly generalized category that includes virtually every type of employment. To be sure in such a wide array of titles as the nearly infinite number covered in the general category of "private employment" there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in police work. A Police Officer is a career committed twenty-five (25) year statutorily oriented specialist who is given by law the highest authority and most important public franchise. The

Police Officer should be considered on a higher wage plane than private employment generally.

STIPULATIONS OF THE PARTIES

The only stipulations between the parties in this case involve procedural issues. As such, it is not believed that this criteria will impact significantly on the ultimate decision on the issues presented.

LAWFUL AUTHORITY OF THE EMPLOYER

Criteria g5, g6 and g9 all refer to statutory "CAP Laws" which are to be considered as part of the arbitration evaluation. They are commonly referred to as the "Appropriations Cap" the "Levy Cap", and the sometimes referred to as the "Hard Cap". They will be dealt with sequentially.

With respect to the Appropriation Cap and Levy Cap there is absolutely no prohibition for an award of the full PBA Position as is presented in this proceeding. The 2012 and 2013 Municipal Budgets were introduced into evidence by the PBA. The Budget for 2012 is identified as P-5 and the proposed Budget for 2013 was introduced as P-12. The Appropriation Cap calculation is set forth in the standard form State Budget at Sheet 3c. On the left side of the

page on the 2012 Budget (P-5) the Appropriation Cap calculation is set forth. On the left side of said page third line up from the bottom there is a line entitled "Total General Appropriations for Municipal Purposes Within Cap" which is the sum of the calculation preceding. The number therein stated is Twenty-One Million Four Hundred Ninety-Three Thousand Five Hundred Forty-Three Dollars (\$21,493,543.00). The next line is the "Total 2012 Budget Within Cap", the actual amount of budget flexibility utilized in the 2012 Budget. The following number is Nineteen Million Fourteen Thousand Four Hundred Thirty-Two Dollars (\$19,014,432.00). The bottom line is the difference between these two (2) calculations, the actual amount of flexibility not utilized in the 2012 Budget. The statement on that last line is "Amount Below Cap" and the number is Two Million Four Hundred Seventy-Nine Thousand One Hundred Eleven Dollars (\$2,479,111.00). Thus the Appropriation Cap presented no problem in 2012 as the ultimate adopted Budget was over \$2.4 Million under the Appropriation Cap.

The same can be said for the Appropriation Cap for the proposed Budget for 2013 (P-12). Here, at the same page reference, the Amount Below Cap has risen to Two Million Five Hundred Fifty-Nine Thousand Forty Dollars (\$2,559,040.00). Thus, the planned 2013 Budget is in excess of \$2.5 Million under the Appropriation Cap formula. Notably, these underutilization calculations carry forward in the form of "Cap Banking" for future years. Thus it is virtual certainty

that there will be no Appropriation Cap pressure on this municipality in the near future.

The Tax Levy Cap was set forth in the respective document at Sheet 3c on the right hand side of the page. In 2012 the Budget formula resulted in another underutilization of Cap flexibility. In 2012 the amount left forward for "Cap Banking" under the Levy Cap was Eight Hundred Six Thousand One Hundred Ninety-Three Dollars (\$806,193.00). In the proposed 2013 Budget (P-12) at the same Sheet 3c on the lower right side is the "Available Levy Cap Bank" which has now risen to One Million Two Hundred Sixty-Seven Thousand Four Hundred Two Dollars (\$1,267,402.00). Two (2) points are made. First, there appears to be no problem whatsoever with Cap Banking in this municipality. Not only has the Budget been adopted in the last year and proposed for the current year well inside of Cap, but in addition there is a significant trend upward in Cap flexibility unutilized. As noted earlier this Cap flexibility carries forward in the form of Cap Banking. Again, there appears to be no problem with respect to the Levy Cap in this Budget process and likely will be no such restriction in the foreseeable future.

The two percent (2%) Levy Cap formula is also underutilized and the Budget was brought well inside said number as evidenced by the "2013 Summary of Municipal Income", dated March 7, 2013 (P-9). At the bottom of

the first sheet is shown that the Municipal Tax Rate will only rise 1.1%. Clearly, this is well within the two percent (2%) Levy Cap.

Several other points may be made with respect to the budgetary documents placed in evidence by the PBA. The "Borough of Tenafly 2013 Municipal Budget Introduction dated March 12, 2013" was introduced by the PBA (P-10). A review of this document indicates the following:

- Page 1 – The Tax Levy only equates the 1.4% increase in 2013.
- The total assessed valuation, page 1 increased from 2012's number of \$3,838,392,985.00 to the 2013 total assessed valuation of \$3,850,491,900.00. This is not a poor town. They are just under \$4 Billion in ratable.
- State Aid is the same in 2013 as it was in 2012 (p.2).
- Page 2 shows under the category of "Payroll Adjustment" the \$90,000.00 new line item for deferred Police wage increments and longevity increases not included in the police salary and wage budget"
- Page 3 at the top Salaries and Wages reflect a net decrease of \$176,982.00 or 1.8% primarily due to police officer retirements in 2012 and 2013 (\$369,530.00). This decrease is partially offset by contractual wage increases to non-uniformed staff of 3.25%, part-time schedule changes to the Finance and Building Departments and wage adjustments for certain staff in administration, Municipal Clerk and Finance Department.
- Reserve for terminal leave has been reduced by \$31,000 due to availability of sufficient funds to meet 2013 requirements.

- Pension contributions assessed by the State for PERS and PFRS have decreased a total of \$72,597 or 4.5% attributable to the Pension Reform at the State level.

Of key import are the statements at the top of page 3 of the document (P-10) where it states that the decrease of One Hundred Seventy-Six Thousand Nine Hundred Eighty-Two Dollars (\$176,982.00) or 1.8% is primarily due to Police Officer retirements in 2012 and 2013 Three Hundred Sixty-Nine Thousand Five Hundred Thirty Dollars (\$369,530.00). This is a substantial amount that shows the decrease in Police costs in this municipality. The second point is that the savings from Police Officer retirements were used elsewhere in Municipal Finance line items. Specifically stated at the top of page 3 of the exhibit was that the money was used in various other places. In fact, there was a 2.25% wage increase to non-uniformed staff. What about the Police? Here the Municipal Employer is taking money from the Police Salary and Wage line item and giving certain other person or persons a 2.25% wage increase while proposing a zero (0) increase to the Police. The imbalance and lack of logic is clear.

This is not a poor town. The Arbitrator is considering an award on a town with just under \$4Billion in ratables and a very low effective tax rate. The effective tax rate in Tenafly (See P-11) is Two Dollars and Twelve Cents (\$2.12). In bordering New Milford the effective rate is Two Dollars and Forty-Four Cents (\$2.44). In bordering Bergenfield the effective rate is Two Dollars and Eighty-

Three Cents (\$2.83). Cresskill has a Two Dollar and Thirteen Cents (\$2.13) effective rate. Nearby Teaneck is Two Dollars and Forty-Six Cents (\$2.46). This attractive effective tax rate is matched by a high collection rate of current taxes of 98.6% (See Annual Financial Statement, P-6, Sheet 22, Line 13). In addition, and as a barometer of fiscal stability, the annual Debt Statement (P-8) reflects at Line 5 that the percentage net debt is only just over one-half of one percent (0.542%). This is only about one-seventh (1/7th) of the statutory debt ceiling of 3.5%. While the PBA is not suggesting that one borrows to pay for an Award, the evidence of fiscal stability and strength is clear.

A key element in this case is the step movement issue. While the PBA acknowledges the net cost concept, it respectfully requests the Arbitrator to consider the amount of money that this Employer is paying on a reduced basis for its Police Department in the immediate past. Since January 1, 2012 six (6) sworn personnel have left the Department. Four (4) of the persons leaving were senior career Officers who left through retirement. One junior Officer resigned and one (1) senior Officer in the rank of Lieutenant was promoted out of the bargaining unit to Captain, a promotion that occurred the day before the hearing in this case. Chart No. 3 on the next page places an annualized cost on each of these positions separated.

CHART NO. 3

SWORN OFFICERS WHO LEFT BARGAINING UNIT SINCE 01/01/2012

(A)	(B)	(C)	(D)
Name and Rank	Date of Separation	Base + Longevity	Reason for Leaving
Lt. Siegel	02/01/2012	\$163,297	Retired
Lt. Faivre	02/01/2012	\$163,297	Retired
Sgt. Epstein	02/01/2013	\$156,499	Retired
P.O. Economu	02/01/2013	\$147,910	Retired
P.O. Koeler	03/2013	\$66,041	Resigned
Lt. DeMoncama	04/2013	\$163,297	Promoted
TOTAL	6	\$860,241	

One must note that in Tenafly the cost of policing has gone down. Even the proposed Budget (P-12) at Sheet 15 shows a reduction in the appropriated wages from 2012 to 2013 for the Police Officers of Two Hundred Twenty-Nine Thousand Seven Hundred Sixty-Seven Dollars (\$229,767.00). This is in addition to the Thirty-Four Thousand Seven Hundred Eighty Dollars (\$34,780.00) which was reserved from the preceding year's budget. The Arbitrator is not presented with a circumstance where Police costs are going up. This is a municipality where

the Police costs are going down and the Borough has acknowledged using some of the savings for other peoples' wage increases, in some cases 2.25%

The magnitude of the savings is clear from a review of Chart No. 3 above.

Some of the Police Officers who are in step, five (5) in number, will reach maximum pay rate in 2013. **Chart No. 4** below calculates the cost of step movement in 2013 for those persons showing their dates of hire.

CHART NO. 4

COST OF 2013 STEP MOVEMENT OF 2006 HIRES (GUIDE A-2, J-1, p.60)

Police Officer Cost	Date of Hire	2013 Step Movement (Step g to Step h Max)
Adams	01/17/2006	\$8,516
Barnes	07/24/2006	\$3,871
Giodano	07/24/2006	\$3,871
Monte	01/17/2006	\$8,516
Veccheia	01/17/2006	\$8,516
TOTAL		\$33,290

It is clear that the cost of step movement will cease to be an issue for these individuals after 2013. **Chart No. 5** on the next page sets forth the cost of step movement for two (2) persons who were hired on Guide A-2 (J-1, p.60) during calendar year 2009.

CHART NO. 5

COST OF 2013 STEP MOVEMENT OF BOTH 2009 HIRES (GUIDE A-2, J-1, p.60)

Officer	Hire Date	2013 Cost Step 3 to Step 4
Heese	01/13/2009	\$11,352
Grecco	01/13/2009	\$11,352
TOTAL		\$22,704

These people will have a small increase cost for their steps in their second and third year of the contract of Twenty-Four Thousand Seven Hundred Eighty Dollars (\$24,780.00) and Eighteen Thousand Five Hundred Eighty Dollars (\$18,580.00) in new money respectively. **Chart No. 6** deals with the final four (4) persons who were hired during the year 2012. It seems the Employer went on a hiring program when they knew that someone else was going to pick up the cost of step movement out of base wage increases.

CHART NO. 6

COST OF 2013 STEP MOVEMENT FOR OFFICERS HIRED IN 2012

		Probation to After One Year
Moriarity	01/18/2012	\$14,503
Savitsky	01/18/2012	\$14,503
Fidel	07/23/2012	\$6,592
Baumuller	07/23/2012	\$6,592
TOTAL		\$42,190

Again, the cost of step movement for 2013 is factored by the portion of the year in which the Employee will receive the new pay rate. For these people there will be an increase in step cost of Twenty-One Thousand Eighty-Nine Dollars (\$21,089.00) in the second year and Twenty-One Thousand Eighty-Nine Dollars (\$21,089.00) in the third year in new money.

To complete the picture, one would want to calculate the cost of Top Step Officers, Sergeants and Lieutenants as they are currently composed in rank.

CHART NO. 7

CURRENT BARGAINING UNIT BASE

(A) Rank	(B) Census	(C) Base	(D) Col (B) x Col (C)
Lieutenant	4	\$138,976	\$555,904
Sergeant	5	\$132,402	\$662,010
P.O./Detective @ Maximum	6	\$125,215	\$751,290
TOTAL			\$1,373,394
			1% = \$13,733

Chart No. 7 clearly establishes the cost of a wage increase for career Officers

On one additional subject, the PBA questions the full value being given to Officers hired with less than one (1) year of service as of the date of the hearing (**Chart No. 6**, Fidel, Baumuller) as they have not completed their probationary period. While the PBA wishes them well and hopes that they are successful, they have not earned tenure status as of this time. The same goes for any persons in the Academy as they are not Police Officers, are not certified, have no tenure, cannot work within Tenafly, and have no Police Training Commission status.

The PBA asks only that an equitable balance be struck by the Arbitrator among the competing needs. These concerns should be kept in balance with the significant reductions in compensation which are being visited upon Police Officers, as well as other public employees, by virtue of changes in pension and medical contribution mandates. The statutory mandate increases pension contribution by 1.5% and the graduated medical contribution up to thirty-five percent (35%) of the premium can cost as much as Ten Thousand Dollars per annum (\$10,000.00/year) by the time Phase Four is implemented. The net impact of these changes on these bargaining unit member Officers is approximately 2.5% to three percent (3%) per year. Therefore, even an award of the PBA's Last Offer Position is likely to result in less take home pay in each of the years covered by this contract.

COST OF LIVING

The parties have introduced evidence on the cost of living. This figure is close to two percent (2%) and certainly supports a respective wage increase. It is relevant here, not only as statutory criteria g7, but in addition due to the fact in the reduction of net wages as a result of statutory changes. Arbitral notice may be taken that these Employees cannot come out ahead in this proceeding. They are going to lose ground. They will earn less money in each

year that passes by virtue of increased medical costs, which themselves are not inflation indexed or capped in any way.

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

The Arbitrator is again respectfully requested to consider the quality of the proofs in this case. The PBA established its position and the legitimacy of its position in both testimony and documentary evidence. The Employer elected only to hand the Arbitrator a notebook and tell him about it through its attorney. The Employer has offered minimal testimony and even that on virtually none of its points. The individual issues that the Employer has sought to use to attack longstanding PBA benefits and contract provisions are completely and totally unsupported. The Arbitrator is not even favored with a reason for the requests.

A key presented by the PBA however was very well supported and explained in the testimony and the proofs. That specific change is the Work Chart modification. Officer Olmo testified about the work schedule and its advantages. More importantly perhaps the Chief of Police recently retired

testified in support of the PBA's Proposal and testified as to a memo which he supplied to the Municipal Manager dated December 17, 2012 on the subject (P-13). In his memo of December 17, 2012 the Chief specifically stated his opinion on the twelve (12) hour schedule including the following language:

- 1... The proposed shift does not reduce the number of offices on duty in any way
2. Contractual time off is easily converted without any change.
3. There is no change to the current table of organization.
4. There are two advantages that should be noted for our agency:
 - A. Shift changes will take place before or after peak rush hour and school times allowing for adequate road coverage at those times.
 - B. Morale should be higher than it is currently because the majority of the officers want this schedule; how long that will last is debatable.

The Chief acknowledged that certain factors were unknown but believed they could be administratively resolved. In sum Chief Michael Bruno testified for the PBA's Proposal in support of the twelve (12) hour chart.

The next witness called by the PBA was Chief Robert Chamberlain, the newly designated Police Chief who took office earlier in 2013. Tenafly Chief of Police Robert Chamberlain testified at hearing in support of the PBA position for

the twelve (12) hour work schedule. He explained that he was familiar with the Chart and that he could work with it. Chief Bruno and Chief Chamberlain both referenced positive for morale and advantages of the Chart. With respect to the administrative considerations, the Chiefs believed they could all be worked out.

This is a subject that is very important to the Police Officers and the PBA. Officer Olmo testified on that fact. Officer Olmo testified regarding his research and the many positive public advantages that the twelve (12) hour chart provides. The specifics of the twelve (12) hour chart and how it matches Tenafly's needs and public service requirements were all assured by the witnesses. This is a working schedule that the PBA wants and the Chief of Police, both retired and current, support. The Employer presented no evidence whatsoever on the subject. The Employer offered no testimony on the subject. The only testimony offered by the Employer from the Municipal Manager was that she relied upon the Chief and acted as liaison for the Chief of Police. If the only source of opinion upon which the Council acts from the Police Department is the Chief of Police and both prior and current Chiefs support the chart, who is against? The PBA has made a positive showing on the chart. References were made to other municipalities who have the chart where it is successful. Even Officer Olmo who is an elected councilman in the next town spoke of the next, Cresskill, adopting the schedule and working with it. There is general knowledge

on both sides of the issue in this case presented for the Arbitrator's consideration. The only evidence in the record is in support of the work schedule.

It is acknowledged that the Arbitrator cannot completely "due equity" in this case. Statutory restrictions are on the Arbitrator to effectively render a result that is going to cause these bargaining unit members to earn less money each year. Reference is made to the above discussed subjects of significant increase in medical contribution and pension contribution. With those factors in mind and with the fact that these Employees are not coming out with a wage increase that nets more money than they earned in the past, it is respectfully requested that the Arbitrator give special consideration to the Work Schedule issue. It was represented to actually provide superior service while saving the public money and improving morale. While many towns have gone to the twelve (12) hour schedule, none are shown to have come back from that schedule. It works. This is an opportunity for the Arbitrator to improve the terms and conditions of employment for these Employees while staying within the restrictive Caps earlier discussed. This does not cost anything but will mean a lot to the Employees. Everyone who is knowledgeable on the subject supports this schedule.

The public employer's attempt to reduce benefits, create effectively two (2) Police Departments and strip the bargaining unit members of longstanding

non-economic positions are unsupported and ought not to be awarded in this case. Some Employers may be taking the position, that there is a “window of opportunity” to hack at the PBA contracts because of the pendency of the current Hard Cap law. It is submitted that the Hard Cap law is not designed for Employer's to gut contracts and create forfeitures of benefits long enjoyed and paid for through negotiations over many contract cycles in the past. In discussing this type of attempted forfeiture of benefits and protections and the “shotgun approach” taken by Employer Proposals the Arbitrator in the Township of Byram Interest Arbitration case in March 2013 (Docket No.: IA-2013-012) stated the following:

It must also be noted, particularly in considering the array of cuts in economic benefits the Township proposes, that the salary and benefits earned by these police officers is a result of years of collective negotiations. It is generally an axiom of negotiations, especially in the last few years where concessions are being proposed, that you give something up in exchange for something else. Here, the employer asks for an array of give-backs on benefits, but at the same time, proposes to give virtually nothing in increases. I intend to take a more balanced approach.

The PBA believes these words are well stated and they are reasonably sound.

Based upon the evidence and testimony introduced at hearing and further based on the arguments set forth in this Brief it is respectfully requested the Arbitrator rule in favor of the Last Offer Position as presented by the PBA and reject the Employer's Positions. The PBA specifically asks of an award of the Work Schedule Proposal particularly in light of the harsh statutory environment in which this case is being considered. There is a chance to do equity here and it is the Work Schedule.

The Borough's Position²

II. THE POSITIONS OF THE PARTIES

A. COST OUT OF THE PBA'S DEMANDS

1. 2013, 2014 AND 2015 SALARY DEMANDS

The PBA proposes a three-year agreement and demands the following salary increases for 2013, 2014 and 2015:

a. 2013 SALARY DEMAND

The PBA demands the following salary increase in 2013:

January 1, 2013: 2.00%

b. 2014 SALARY DEMAND

The PBA demands the following salary increase in 2014:

January 1, 2014: 2.00%

c. 2015 SALARY DEMAND

The PBA demands the following salary increase in 2015:

January 1, 2015: 2.00%

d. COMPOUNDING COSTS OF SALARY DEMAND

Because salary increases involve compounding costs, the Interest Arbitrator cannot determine the true cost of the PBA's salary demands to the Borough simply by adding the demanded percentage salary increases over the

² The Borough's position was taken from pages 2-86 of its Brief. The footnotes extracted from the County's Brief are misnumbered in this Award because I was unable to renumber the footnotes after I performed the "cut and paste" function in Word format. Footnotes 3-5 in this Award are actually numbered 1-3 in the County's Brief.

three-year period. Compounding costs result because the salary proposal for 2014 must be computed on the 2012 base plus the 2013 increase. Similarly, the salary proposal for 2015 must be computed on the 2012 base plus the 2013 increase, plus the 2014 increase.

In other words, if the Interest Arbitrator awarded the PBA's salary demands, the maximum police officer salary would increase from \$125,215 in 2012, to \$127,719 in 2013, to \$130,274 in 2014 and to \$132,879 in 2015. Over the contract term, maximum police officer salary would increase by \$7,664. Although the bargaining unit would receive a 6.0% straight percentage increase, the bargaining unit would actually receive a 6.12% increase over the three-year period. The compounding cost equals 0.12%. Compounding costs are included in the Borough's cost-out of the PBA's salary demands. See E-1, Section 1, Part 2.

e. SALARY INCREMENTS

The Borough has a three-tiered salary guide. Step increases are significant in the Borough because seventeen out of thirty officers in the bargaining unit will receive step increases in 2012 or during the successor term. Many departments have a larger percentage of employees at maximum base salary, which results in lower increment costs.

For officers hired on or after July 1, 2009, the Borough has a nine-step salary guide. Police officers progress from Academy Rate (paid \$44,582 in 2012) to Probationary Rate (paid \$50,219, a 12.64% increase) to After One Year

(paid \$66,041, a 31.51% increase) to After Two Years (paid \$74,505, a 12.82% increase) to After Three Years (paid \$82,969, an 11.36% increase) to After Four Years (paid \$91,433, 10.20% increase) to After Five Years (paid \$99,897, a 9.26% increase) to After Six Years (paid \$108,361, a 8.47% increase) to After Seven Years (paid \$116,825, an 7.81% increase) to After Eight Years (paid \$125,215, a 7.18% increase). See Appendix A-1 of the Collective Bargaining Agreement between the Borough and the PBA. New hires who are sent to the police basic training academy receive the "Academy" rate for the first six months of employment. Officers progress to the Probationary Rate for the remainder of their first year of service. The Academy Rate and Probationary Rate comprise one step. Each remaining step on the salary guide is a one-year step implemented on the officer's anniversary date. Therefore, police officers hired after July 1, 2009 progress to maximum step after eight years of service. The Borough hired seven officers after July 1, 2009 who will receive increments pursuant to this schedule during the successor contract term.

For officers hired on or after January 1, 2005, the Borough has an eight-step salary guide. Police officers progress from Academy Rate (paid \$44,582 in 2012) to Probationary Rate (paid \$50,219, a 12.64% increase) to After One Year (paid \$66,041, a 31.51% increase) to After Two Years (paid \$73,950, a 11.98% increase) to After Three Years (paid \$81,859, an 10.70% increase) to After Four Years (paid \$94,244, 15.13% increase) to After Five Years (paid \$106,634, a 13.15% increase) to After Six Years (paid \$115,924, an 8.71% increase) to After

Seven Years (paid \$125,215, a 8.01% increase). See Appendix A-2 of the Collective Bargaining Agreement between the Borough and the PBA. Police officers hired on or after January 1, 2005 but before July 1, 2009 progress to maximum step after seven years of service. The Borough employs ten officers who were hired after January 1, 2005 and before July 1, 2009 who will receive increments according to this schedule during the successor contract.

Increment costs are included in the Borough's cost-out of the PBA's salary demands. See E-1, Section 1, Part 2.

f. ARTICLE XX—LONGEVITY (p. 34)

Without any salary increase, the cost of longevity benefits will increase during the three-year contract term. The Borough provides officers with 1% longevity for each two (2) years of service to a maximum of twelve and one-half percent (12½ %) for twenty-five (25) years of service. Longevity benefits are calculated based on an officer's annual salary, holiday pay, and education benefits. In addition to the increased cost of longevity benefits as officers move through the steps of the longevity schedule, the PBA's demand for a 2.0% per year increase in base pay will cause a corresponding increase in longevity benefits. Increases in the cost of longevity are included in the Borough's cost-out of the PBA's salary demands. See E-1, Section 1, Part 2.

2. OTHER DEMANDS

a. ARTICLE VIII—WORK WEEK, OVERTIME (p. 11)

The PBA proposes modifying Article VIII, Work Week, Overtime to provide for a modification of the current work schedule to a twelve (12) hour work hour schedule sequence. Currently, officers work a rotating modified 5-2 schedule. They work eight hour shifts. Shifts change at 8:00 a.m., 4:00 p.m. and 12:00 a.m. Hearing Transcript ("T") 31:3-31:6. The PBA proposes to change the work schedule to a twelve hour 2-3, 3-2 schedule. Under this schedule, officers would work two twelve hours days, be off for three days, work three days, and be off for two days. T50:19-50:21. The day shift would start either at 7:00 a.m. and end at 7:00 p.m. or 6:00 a.m. and end at 6:00 p.m. and the night shift would start either at 7:00 p.m. and end at 7:00 a.m. or at 6:00 p.m. and end at 6:00 a.m. T31:7-31:9.

This proposal will result in increased costs during the contract term, as discussed in detail below, but these costs are too speculative to calculate. The 2010 Amendments preclude an award of the PBA's work schedule proposal. N.J.S.A. § 34:13A-16.7(b) provides in relevant part, "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." Because the work schedule proposal has economic ramifications, it constitutes a "non-salary economic issue" within the meaning of the 2010 Amendments. The 2010 Amendments therefore preclude an award of the PBA's work schedule proposal.

**b. ARTICLE X—HOLIDAYS AND
PERSONAL DAYS (p. 16)**

The PBA proposes modifying Article X, Holidays and Personal Days, to provide in Section 4 that if a personal day is not used during the calendar year, the time will be paid at the straight time rate during the first month of the subsequent year. Officers receive five (5) non-cumulative personal days per year, permitted upon forty-eight (48) hours' notice to the Chief of Police who shall not unreasonably withhold such request. The contract does not provide for payment for personal days that are not used during the calendar year.

The cost to the Borough from this proposal during the successor contract term are speculative because the Borough does not know the number of officers, if any, who will require payment for unused personal days. If officers opted not to take personal days and to instead receive pay for each personal day, this proposal could cost the Borough five days' pay for each of the thirty members of the bargaining unit. Additionally, the 2010 Amendments bar an award of the PBA's personal leave compensation proposal. N.J.S.A. § 34:13A-16.7(b) precludes the arbitrator from rendering an award that includes non-salary economic issues which were not included in the predecessor agreement. Because the PBA's personal leave proposal has economic ramifications, it constitutes a "non-salary economic issue" within the meaning of the 2010 Amendments. The 2010 Amendments therefore preclude an award of the PBA's personal leave compensation proposal.

3. TOTAL COST OF THE PBA'S DEMANDS

The PBA's demands cost out as follows:

	<u>2013</u>	<u>2014</u>	<u>2015</u>
Salary Increase			
Plus Compounding			
Plus Salary Increments			
Plus Longevity Increments	6.04%	6.28%	5.03%
Work Schedule	--	--	--
Personal Days	--	--	--
Total:	<u>6.04%</u>	<u>6.28%</u>	<u>5.03%</u>

THREE YEAR TOTAL = 17.35% OR 5.78% PER YEAR

B. COST OUT OF THE BOROUGH'S PACKAGE

1. 2013, 2014, 2015, 2016 AND 2017 SALARY PROPOSALS

The Borough proposes a five-year agreement with the following salary increases for 2013, 2014, 2015, 2016 and 2017:

a. 2013 SALARY PROPOSAL

The Borough proposes the following salary increase in 2013:

January 1, 2013: 0.00%

b. 2014 SALARY PROPOSAL

The Borough proposes the following salary increase in 2014:

January 1, 2014: 0.00%

c. 2015 SALARY PROPOSAL

The Borough proposes the following salary increase in 2015:

January 1, 2015: 0.00%

d. 2016 SALARY PROPOSAL

The Borough proposes the following salary increase in 2016:

January 1, 2016: 0.00%

e. 2017 SALARY PROPOSAL

The Borough proposes the following salary increase in 2017:

January 1, 2017: 0.00%

f. COMPOUNDING COSTS OF SALARY PROPOSAL

The Borough salary proposal, unlike the PBA's salary proposal, does not involve compounding costs. If the Interest Arbitrator awarded the Borough's wage proposal, the maximum police salary would remain frozen at \$125,215. A wage freeze in the second, third, fourth and fifth year of the contract does not result in any compounding costs.

g. SALARY INCREMENTS

Salary increments, discussed above, also apply to the Borough's offer. As a result, even without a percentage salary increase, the total cost of police salaries in the Borough will increase as the seventeen officers on step in either 2012 or during the successor contract term progress through the salary steps. Salary increment costs are included in the Borough's cost-out of the Borough's salary proposal. See E-1, Section 1, Part 2.

h. ARTICLE XX—LONGEVITY

Increases in longevity costs due to progression on the longevity schedule, discussed above, also apply to the Borough's offer. As a result, even without a percentage salary increase, the total cost of police salaries in the Borough will increase as officers progress through the steps of the longevity

schedule. Longevity increment costs are included in the Borough's cost-out of the Borough's salary proposal. See E-1, Section 1, Part 2.

Because longevity benefits impose significant costs which increase with every salary increase, the Borough proposes that employees hired after January 1, 2013 not be entitled to longevity. The Borough will not receive any savings from this proposal during the contract term but its award will result in long term savings as the Borough hires new officers.

i. SALARY GUIDE AND FREEZE STARTING SALARY

The Borough proposes to add six steps to the existing salary guide, expanding the present salary guide from nine to fifteen steps. This proposal will only affect new employees hired on or after January 1, 2013. The savings to the Borough from this proposal are speculative because it does not know the number of officers, if any, it will hire during the remainder of the contract term.

Additionally, the Borough proposes to freeze the Academy Rate starting salary for the life of the successor contract. This proposal does not affect current officers. The savings to the Borough from this proposal during the successor contract term are speculative because it does not know the number of officers, if any, it will hire during the successor contract term. This proposal, however, will result in savings over the long-term when the Borough hires new officers.

2. ADDITIONAL ECONOMIC PROPOSALS

a. ARTICLE IX—VACATIONS

The Borough proposes reducing vacation benefits for new hires.

Tenafly PBA employees receive the following vacation benefits:

1 year—10 work days	13 years—18 work days
2 years—11 work days	14 years—19 work days
3 years—11 work days	15 years—20 work days
4 years—12 work days	16 years—20 work days
5 years—12 work days	17 years—21 work days
6 years—13 work days	18 years—21 work days
7 years—14 work days	19 years—22 work days
8 years—15 work days	20 years—22 work days
9 years—16 work days	21 years—23 work days
10 years—16 work days	22 years—23 work days
11 years—17 work days	23 years—24 work days
12 years—17 work days	24 years—24 work days
	25 years or more—25 work days

The Borough proposes providing all employees hired after January 1, 2013 with the following vacation benefits:

Less than 1 year	1 day per month up to 10 days
Completion of 1 year to completion of 5 years	10 days
Commencement of 6 th year to completion of 10 years	12 days
Commencement of 11 th year to completion of 15 years	15 days
Commencement of 16 th year to completion of 25 years	20 days
Commencement of 26 th year	25 days

This proposal does not affect current officers. The savings to the Borough from this proposal during the successor contract term are speculative because it

does not know the number of officers, if any, it will hire during the successor contract term. This proposal, however, will result in savings over the long-term when the Borough hires new officers in the future.

Additionally, the Borough proposes to prorate vacation leave during the last year of service. This proposal would affect employees who separate employment on or after the date of issuance of the award. Currently, employees accrue their entire allotment of vacation benefits for that year on their anniversary date. Therefore, if an employee with a January 25, anniversary date retires with twenty-five years of service effective February 1, 2013, the employee will have earned twenty-five vacation days for that anniversary year although he only worked for six days in that anniversary year.³ The savings to the Borough from this proposal during the successor contract term are speculative because it does not know the number of officers, if any, who will separate their employment with the Borough during the successor contract term.

Further, the Borough proposes that Section 7 be amended to require employees to secure the Chief's written permission to carry over vacation time. An award of this proposal will definitively identify vacation time approved for carry over; it will not result in savings or costs to the Borough.

**b. ARTICLE X—HOLIDAYS AND
PERSONAL DAYS (p. 16)**

³ Sergeant David Epstein and Officer James Economou, both hired by the Borough on January 25, 1988, both retired with twenty-five years of service on February 1, 2013. They received full compensation for their vacation benefits for the year of service beginning on January 25, 2013, even though they retired five days into the year of service.

The Borough proposes that Section 3 specify that employees hired after January 1, 2013 shall be entitled to two (2) personal days per year. This proposal does not affect current employees. Currently, all officers receive five (5) personal days per year. The savings to the Borough from this proposal during the successor contract term are speculative because it does not know the number of officers, if any, it will hire during the successor contract term.

c. ARTICLE XII—SICK LEAVE (p. 21)

The Borough proposes that employees hired after January 1, 2013 shall be entitled to 12 sick days after the first year of service. Pursuant to Section 1, officers receive 5 working days after one month of service, 10 working days after two months of service, 2 weeks after three months of service, 4 weeks after one year of service, 6 weeks after two years of service, 8 weeks after three years of service, 10 weeks after four years of service, 12 weeks after five years of service, 14 weeks after six years of service and 26 weeks after ten years of service. This proposal does not affect current employees. The savings to the Borough from this proposal during the successor contract term are speculative because it does not know the number of officers, if any, it will hire during the successor contract term.

d. ARTICLE XIII—INSURANCE, HEALTH AND WELFARE (p. 23)

The Borough proposes to replace first sentence in Section 1 with: “The employer agrees to provide the State Health Benefits Plan. The employer reserves the right to change insurance carrier so long as substantially similar

benefits are provided.” The first sentence of Section 1 in the current contract reads, “The Borough shall provide Blue Cross, Blue Shield (UCR/PACE) Plan, Rider “J” and Major Medical Insurance, Maximum One Million (\$1,000,000.00) Dollars coverage for the member and his family, deductible of \$100/300 or equivalent coverage.” This language change reflects current practice and will not result in any savings to the Borough.

Additionally, the Borough proposes to replace the language Section 7 and Section 8 with language that states, “Employees shall contribute to health insurance pursuant to Chapter 78 of the Public Laws of 2011.” This language incorporates and reflects contribution requirements imposed by law. Section 7, which has been superseded by Chapter 78 of the Public Laws of 2011, provides,

Effective January 1, 2010 all active Employees receiving health benefits under the Borough’s medical insurance program shall contribute Twenty Dollars (\$20.00) per pay period. Employees who elect to “opt out” of the Borough’s medical insurance shall not be required to make such contribution. The Borough shall establish an IRS “Section 125” pre-tax deduction for health care contributions only.

Because the PBA is not entitled to any offset for the cost savings to the Borough as a result of the contributions to health insurance mandated by Chapter 78, the Borough does not calculate a cost-out for the Chapter 78 contributions.

Section 8, which the Borough also proposes to delete, places a limit on the co-pay for a doctor’s visit. It provides,

The current doctor’s office co-payment may be increased up to a maximum of Ten Dollars (\$10.00) during the term of this Agreement (2009 through 2012). This will result in a maximum co-payment of Twenty Dollars

(\$20.00) which shall be implemented if the New Jersey State Health Benefits Plan increases the co-payment for office visits.

The change to the New Jersey State Health Benefits Plan under the Borough's proposal makes the language in Section 8 inapposite.

e. ARTICLE XVII—TERMINAL LEAVE (p. 29)

The Borough proposes that employees hired after January 1, 2013 shall not be entitled to terminal leave. Tenafly employees receive liberal terminal leave benefits. Eligibility does not require that an employee retire within the meaning of PFRS. Employees receive 1½ months as terminal leave benefits after fifteen (15) years of service, 3 months after twenty (20) years of service, 4½ months after twenty-five years of service, 6 months after thirty (30) years of service, 7½ months after thirty-five years of service and 9 months after forty years of service. The Borough will not receive any savings from this proposal during the successor contract term. This proposal, however, will result in savings over the long-term.

f. ARTICLE XXI—SCHOOL AND COLLEGE CREDITS (p. 36)

The Borough proposes that employees hired after January 1, 2013 shall receive a one-time payment for any of the credits specified in Section 1. Presently, in accordance with Section 1, officers receive the following annual lump sum or yearly salary increment based on the completion of stages of education as follows: Officers who obtain 32 credits toward an approved degree in Criminal Justice or a related field are entitled to \$1,000. Upon

obtaining 64 credits, officers receive an additional \$416 per year. Upon obtaining 96 credits, officers receive an additional \$624 per year. Upon obtaining 128 credits, officers receive an additional \$832 per year. Officers receive an additional \$2.50 per credit per year for each additional graduate credit. Alternatively, officers can elect to receive \$4.50 per credit per year added to base salary for supplemental police academy credits. This proposal does not affect current employees. The savings to the Borough from this proposal during the successor contract term are speculative because it does not know the educational levels of officers, if any, hired during the successor contract term.

f. ARTICLE XXX—MILITARY LEAVE (p. 52)

The Borough proposes deleting the following language in Section 1, “provided however, that during the periods of twelve (12) days or more consecutive training duty, the Borough shall receive a credit against a member's salary for the amount of member's compensation during said training pursuant to law.” This is a violation of law. Section 1 in its entirety reads,

Military leave shall be granted in accordance with Federal and State Laws, provided however, that during the periods of twelve (12) days or more consecutive training duty, the Borough shall receive a credit against a member's salary for the amount of member's compensation during said training pursuant to law.

This clause violates N.J.S.A. 38A:4-4 (covering New Jersey National Guard, Naval Militia and State Guard) and N.J.S.A. 38:23-1 (covering Reservist including national Guard members from other states). These statutes require paid leave

for 90 working days per calendar year and 30 working days per calendar year respectively for training. Salary must be paid in addition to military pay. The “pursuant to law” language effectively negates the previous clause. Deleting the language as proposed by the Borough will bring this section into compliance with N.J.S.A. 38A:4-4 and N.J.S.A. 38:23-1.

2. NON ECONOMIC PROPOSALS

a. ARTICLE III—PRESERVATION OF STANDARDS (p. 5)

The Borough proposes to delete Section 3 as a past practice clause. Section 3 reads,

The Borough of Tenafly agrees that all benefits, terms and conditions of employment relating to the status of the Borough of Tenafly Police Officers, which benefits, terms and conditions of employment are not specifically set forth in this Memorandum of Agreement, shall be maintained at not less than the highest standards in effect at the time of the commencement of collective bargaining negotiations between the parties leading to the execution of this Memorandum of Agreement.

The clause does not define the past practices of the parties and permits the PBA to retain rights not identified in the agreement. This clause should be deleted because it generates uncertainty in labor relations, possibly resulting in grievances.

b. ARTICLE XXIV – INVESTIGATION OF POLICE OFFICERS (p. 42)

The Borough proposes adding a new paragraph as follows, “The police officer shall be afforded neither less nor more rights than afforded a citizen involved in an investigation.” See Township of Franklin, P.E.R.C. No. 85-97,

11 NJPER 224 (& 16087 1985). This language accurately reflects a police officer's rights during an administrative investigation.

c. ARTICLE XXIX—BULLETIN BOARDS (p. 51)

The Borough proposes adding a new Section 4 that reads, "The Chief of Police has the right to remove posted material from the bulletin board if it does not pertain to the Association, business or matters dealing with the welfare of its employees." This language clarifies the procedure through which management can affect the removal of material posted on the PBA bulletin board that does not pertain to the Association, business or matters dealing with the welfare of its employees.

d. ARTICLE XXXIII—REPLACEMENTS (p. 56)

The Borough proposes deleting this article in its entirety. This article provides, "No full time Employee covered by this Agreement shall be replaced by a non-Police Officer, part time or other personnel." The deletion of this article will increase the Borough's ability to determine the distribution of work traditionally performed by police officers, thereby increasing its ability to maximize efficiency and productivity while minimizing costs.

e. NEW ARTICLE—FULLY BARGAINED CLAUSE

The Borough proposes to add the following fully-bargaining clause to the collective bargaining agreement.

This Agreement represents and incorporates the complete and final understanding of settlement by parties of all bargainable issues which

were or could have been the subject of negotiations. During the term of this agreement, neither party will be required to negotiate with respect to any other matter whether or not covered by this agreement, and whether or not within the knowledge of contemplation of either or both parties at the time they negotiated or signed this agreement.

The Interest Arbitrator should award the Borough's request for a fully-bargained article, because the language will foster labor peace by strengthening the terms of the contract for the duration of the Agreement. In particular, the fully-bargained Article will encourage the PBA to bring all negotiable issues to the bargaining table prior to the execution of a new Agreement and it will encourage the parties to resolve all outstanding negotiable issues for the term of the contract. It will prevent the PBA from demanding that the Borough bargain on a negotiable issue during the contractual period because the parties could have, but did not negotiate about that item prior to the execution of the Agreement. Mid-term negotiations often foster labor unrest and instability. They also impose additional costs upon the Borough's residents and taxpayers by causing the Borough to repeatedly marshal the money and manpower essential to the collective bargaining process.

The PBA, like the Borough, should view the Collective Bargaining Agreement as the culmination of the parties' negotiations and not merely as a step in on-going negotiations. Additionally, the PBA should recognize the long-term advantages of labor stability achieved when the parties agree to a procedure requiring them to resolve all matters at the bargaining table prior to the execution of the new Agreement. As a result, the Interest Arbitrator should award the Borough's request for a fully-bargained Article.

4. TOTAL COST OF THE BOROUGH'S PACKAGE

The Borough's package costs out as follows:

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Salary Increase					
Plus Compounding					
Plus Salary Increments					
Plus Longevity Increments	4.17%	3.97%	2.67%	2.66%	2.12%
Salary Guide	--	--	--	--	--
Vacations	--	--	--	--	--
Personal Days	--	--	--	--	--
Sick Leave	--	--	--	--	--
Insurance	--	--	--	--	--
Terminal Leave	--	--	--	--	--
Education	--	--	--	--	--
Military Leave	--	--	--	--	--
	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TOTAL:	4.17%	3.97%	2.67%	2.66%	2.12%
FIVE-YEAR TOTAL	=	15.59% OR 3.12% PER YEAR			

C. COMPARISON OF THE TWO PACKAGES

The Borough and the PBA disagree on significant elements of the successor contract, including whether it should be a five year or three year duration, whether to award a wage increase and if so, the amount of the wage increase, whether to increase the number of steps on the salary guide for new hires, whether to eliminate longevity for new hires, whether to modify vacation, personal leave and sick leave benefits for new hires, whether modify the health insurance language, whether to eliminate terminal leave benefits for new hires, whether to modify education benefits for new hires, whether to modify the military leave language, whether to modify the work schedule and whether to require payment for unused personal days.

As discussed below, the Borough seeks a five year contract while the PBA proposes a three year contract. The Borough seeks a five year contract

for labor stability. Moreover, the PBA's last two collective bargaining agreements, one effective from January 1, 2005 through December 31, 2008, and another effective from January 1, 2009 through December 31, 2012, both had a four year duration. Therefore, for the last two contracts, the parties have agreed to lengthier contract terms so that they could benefit by not having to come to the bargaining table as frequently as shorter terms would require. The Borough looks to continue this trend.

The Borough offers a 0.00% increase in 2013, a 0.00% increase in 2014, a 0.00% increase in 2015, a 0.00% increase in 2016 and a 0.00% increase in 2017. The PBA seeks a 2.00% increase in 2013, a 2.00% increase in 2014 and a 2.00% increase in 2015.

Setting aside for the moment that the PBA offer must not be considered because it exceeds the 2.0% salary cap imposed by the 2010 Amendments, and that even a 0.00% per year wage increase will require modification of the existing compensation schedules to comply with the 2010 Amendments, the significant distinction between the two salary proposals lies in their dramatic cost differential. The first three years of the Borough's wage package will cost the Borough \$406,799 (\$156,732 + \$149,559 + \$100,508). See Comparison of the Borough of Tenafly's Wage Proposal to the PBA's Wage Demands attached as Exhibit 1; E-1, Section 1, Part 2. In contrast, the PBA's wage package over the first three years of the successor contract will cost the

Borough \$652,914.⁴ See Exhibit 1; E-1, Section 1, Part 3. Therefore, the PBA's wage package will cost the Borough \$246,115 more over the first three years of the successor contract than the Borough's salary proposal.

In 2013, the first year of the contract, the Borough proposes a 0.00% increase. The PBA proposes a 2.00% increase. Thus, for 2013, the PBA's salary offer, exclusive of increments and compounding, exceeds the Borough's offer by 2.00%. The cost of the PBA's wage demands, including salary increments, longevity increases and longevity increments, exceeds the cost of the Borough's salary proposal by \$70,643 (\$227,375 - \$156,732) in 2013. See Exhibit 1; E-1, Section 1, Parts 2 and 3.

In 2014, the second year of the contract, the Borough proposes a 0.00% increase. The PBA proposes a 2.00% increase. Thus, for 2014, the PBA's salary demand, exclusive of compounding, salary increments, longevity increments and longevity increases, exceeds the Borough's offer by 2.00%. The cost of the PBA's wage demands, including compounding, salary increments, longevity increases and longevity increments, exceeds the cost of the Borough's salary proposal by \$86,842 (\$236,401 - \$149,559) in 2014. See Exhibit 1; E-1, Section 1, Parts 2 and 3.

In 2015, the third year of the contract, the Borough proposes a 0.00% increase. The PBA proposes a 2.00% increase. Thus, for 2015, the PBA's

⁴ The calculation of the PBA's 2.00% increase per year is based on a 2.00% increase in base salary, holiday pay and longevity. Because education benefits do not increase with salary increases, the Borough did not apply the 2.00% increase to education benefits.

salary offer, exclusive of compounding, salary increments, longevity increments and longevity increases, exceeds the Borough's offer by 2.00%. The cost of the PBA's wage demands, including compounding, salary increments, longevity increments, and longevity increases, exceeds the cost of the Borough's salary proposal by \$88,629 (\$189,137 - \$100,508) in 2015. See Exhibit 1; E-1, Section 1, Parts 2 and 3. In total, over the first three years of the successor contract, the PBA's demands, inclusive of compounding, salary increments, longevity increases and longevity increments, will impose an additional cost of \$246,115 over the wage proposal offered by the Borough. The difference between the two packages—the additional cost of the PBA's demands over the Borough's salary offer—represents a 6.54% ($\$246,114$ divided by $\$3,763,060 \times 100$) increase over 2012 base salaries. See Exhibit 1; E-1, Section 1, Parts 2 and 3. Over the first three years of the successor contract, the PBA's wage demands yield a 17.35% increase over 2012 base salaries, while the Borough's wage offer over the first three years will result in a 10.81% increase over 2012 base salaries. See E-1, Section 1, Part 3.

Any salary award will impose a significant burden on the Borough not only over the contract term, but it will continue forever, because future percentage increases will be based on the increased base salaries.

D. APPLICATION OF THE 2010 AMENDMENTS' 2.0% SALARY CAP

P.L. 2010, c. 105, codified at N.J.S.A. 34:13A-16, 16.7, 16.8 and 16.9 (the "2010 Amendments"), amended the interest arbitration process effective

January 1, 2011. The 2010 Amendments imposed a two-percent cap on base salary increases. N.J.S.A. § 34:13A-16.7. More specifically, the law prohibits an arbitrator from rendering an award,

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.

N.J.S.A. § 34:13A-16.7(b). While the law precludes arbitrators from issuing more than a 2.0% per year total increase in base salary, it does not bar unequal annual percentages. Id.

“Base salary” is defined as “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. . . .” N.J.S.A. § 34:13A-16.7(a). “Base salary” also includes “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.” N.J.S.A. § 34:13A-16.7(a). “Base salary” does not include “non-salary economic issues, pension and medical insurance costs.” Non-salary economic issues are defined as “any economic issue that is not included in the definition of base salary.” N.J.S.A. § 34:13A-16.7(a). Therefore, “base salary” includes salary increments and longevity increases but does not include pension or health and medical insurance costs. N.J.S.A. § 34:13A-16.7(a). It precludes an arbitrator from rendering an award that exceeds 2.0% 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" N.J.S.A. 34:13A-16.7(b) (the "Hard Cap").

In accordance with the definition of base salary in the 2010 Amendments the Borough included in "base salary," officers' salary as contained on the applicable salary guide and longevity benefits. Pursuant to N.J.S.A. § 34:13A-16.7(a), which requires that base salary include, "any other item that was included in the base salary as understood by the parties in the prior contract," the Borough included holiday pay and education benefits as part of base salary. Article X, Section 1 of the Collective Bargaining Agreement provides in relevant part, "All holiday compensation shall be paid along with regular base payroll for all Employees and shall be folded in and made part of base pay for all computation purposes." Collective Bargaining Agreement, Article X, Section 1 at 16. Similarly, because the Borough pays education benefits as a salary increment, it is included as part of base salary. Collective Bargaining Agreement, Article XXI, Section 1 at 36; Section 5 at 38. Longevity benefits are a percentage of salary, holiday pay and education benefits. Therefore, the Borough's calculations include holiday pay and education benefits as part of "base salary."

In the twelve months before the expiration of the collective negotiations agreement, calendar year 2012, base salary, inclusive of longevity,

equaled \$3,763,060. Consistent with statutory requirements, percentage increases are calculated based on this figure. See E-1, Section 1, Part 2.

In determining the amount expended by the Borough in the twelve months preceding the expiration of the collective bargaining agreement, the Borough determined actual expenditures as required by the 2010 Amendments. The figures contained in the column, "Actual Total Salary 12/31/12" represent the actual base salary plus longevity paid to each respective officer during calendar year 2012. Therefore, the Borough has included in its 2012 costs, the prorated base salaries plus longevity for officers who were separated or retired in 2012. Costs, therefore, included prorated base salaries plus longevity for Officer Patrick Henderson, who was separated on April 23, 2012; Officer Shaun Novolshelski, who retired on a disability pension on August 1, 2012; Lieutenant Daniel Siegel who retired on February 1, 2012; and Lieutenant John Faivre, who retired on February 1, 2012. The Borough also included in its 2012 costs, the prorated cost of promotions that occurred during 2012. These include accounting for the prorated cost of the promotions of Lieutenant Paul Liataud and Lieutenant Timothy O'Reilly, who were both promoted to lieutenant on February 14, 2012, and the promotions of Sergeant Nicholas Roux and Sergeant Robert Terranova, who were both promoted to sergeant on February 14, 2012.

The figures contained in the columns entitled "Actual Total Salary 12/31/**" represent the base salary plus longevity paid to each respective officer during the respective calendar year carrying their status on December

31, 2012 through the successor years of the proposed contract. Retirements, separations and promotions that occurred during the successor term do not affect the calculations. In Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER ___ (¶ 3 2012), PERC observed,

In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.

PERC continued,

The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its work force.

Id. Slip. Op. at 9 (See E-1, Section 2, Exhibit A). Therefore, the retirement of one sergeant, Sergeant David Epstein, and one police officer, Officer James Economou, effective on February 1, 2013 does not impact the application of the Hard Cap. The cost of their base salaries plus longevity is included in the calculations for the successor contract term as if they did not retire. Similarly, Officer Sean Kohler's separation in March 2013 does not impact the application of the Hard Cap. The cost of his salary increments plus longevity increments is included in the calculations for the successor contract term as if he did not separate his employment. Additionally, promotions that occurred during the successor term do not affect the calculations. More specifically, the promotion

of Lieutenant Ralph Lawrence to lieutenant and the promotion of Sergeant Michael Greeley to sergeant on January 1, 2013 do not impact the application of the Hard Cap. The cost of their base salaries plus longevity is included in the calculations for the successor contract term as if they were not promoted. For the reasons discussed above, the Interest Arbitrator must not account for Sergeant Epstein or Officer Economou's retirement, Officer Kohler's separation or Lieutenant Lawrence or Sergeant Greeley's promotion in calculating the Hard Cap.

Additionally, no "credit" was provided to the PBA for savings to the Borough due to the PBA's statutorily mandated contributions to health insurance. Chapter 78 of the Public Laws of 2011 ("Chapter 78"), which implemented additional comprehensive health benefit reform that increased employee contribution rates to health insurance premiums and provided pension reform, is intended to provide property tax relief, an intent that would be thwarted if the money saved could be used to fund police salary increases. In In the Matter of Interest Arbitration between County of Union and FOP Lodge 103 (Sheriff's Superior Officers), Docket No. IA-2010-118, dated January 17, 2012, Interest Arbitrator Timothy Hundley aptly observed that "nothing in either the new legislation or the interest arbitration statute entitles employees to salary adjustments that balance out the new statutorily mandated contributions." Id. at 68.

In 2013, without any salary increase, base salary plus longevity will increase by \$156,732. See E-1, Section 1, Part 2. The calculation of this figure required adjustments for the seven officers hired in 2012 to discount the increase in 2013 caused by the proration of their salary in 2012. To calculate the increase due to salary step movement (and not due to any salary proration in 2012), increases due to proration were deducted. The increases in 2014, 2015, 2016 and 2017 represent the increases due to salary increments, and increases in longevity.⁵

In the twelve months preceding the expiration of the collective bargaining agreement the Borough expended \$3,763,060 on police salaries. See E-1, Section 1, Part 2. Two percent of the amount spent on police salaries and longevity in 2012 equals \$75,261. A five year contract would permit a 10% increase under the Hard Cap. A 10% increase would equate to a permissible increase of up to \$376,306 over five years. The Borough's proposal with a five year wage freeze results in an increase of \$586,617, which exceeds the Hard Cap by \$210,311. See E-1, Section 1, Part 2. A three year contract as proposed by the PBA would permit a 6% increase under the Hard Cap. A 6% increase

⁵ Because calculations for 2012 include the prorated salaries of officers who separated their employment or retired in 2012 and due to adjustment to the 2013 increases to offset for prorated salaries in 2012, the 2012 total of \$3,763,060 plus the 2013 increase of \$156,732 do not add to \$3,973,561, the total salary for 2013. If the prorated salaries of officers who separated their employment or retired in 2012 are deducted from the 2012 total, the adjusted 2012 total equals \$3,651,575 (\$3,763,060 - (\$10,619 + \$73,450 + \$13,658 + \$13,658)). For 2013, the calculations were adjusted to reflect only the salary increments. The actual total increase equals \$217,136. The amount attributable to the step increases equals \$51,881. The difference equals \$165,255. If this difference is added to the 2013 increase of \$156,732, creating the actual 2013 increase including salary increases, the 2013 increase becomes \$321,987. If this number is added to the adjusted 2012 total of \$3,651,575, the total equals the 2013 total salary of \$3,973,561.

would equate to a permissible increase of up to \$225,784. The PBA's demanded 2% increase per year over three years results in an increase of \$652,914, which exceeds the Hard Cap by \$427,130. See E-1, Section 1, Part 3. Dollar calculations illustrate that even at the zero percent salary increase proposed by the Borough, salary step increases and longevity step increases under current schedules will result in an increase that exceeds the maximum increase permissible under the Hard Cap.

With no salary increase, step increments and longevity increments during the contract term will increase the base salary from \$3,763,060 in 2012 to \$4,403,447 in 2017. See E-1, Section 1, Part 2. The increase equals 15.59% over five years or a 3.12% average annual increase. These calculations place the Borough well above the Hard Cap. For the award to fall within the Hard Cap, the Interest Arbitrator will need to award salary increment reductions and/or longevity step reductions. See E-1, Section 1, Part 2 at 2. The PBA's proposal only exacerbates the discrepancy. With a 2% salary increase per year, plus step increments, longevity increases and longevity increments over a three year contract term will increase base salary from \$3,763,060 to \$4,478,349, representing a 17.35% increase over three years, or an average increase of 5.78% per year. Therefore, the Interest Arbitrator must reject the PBA's wage proposal as barred by statute and render an award that reflects the Borough's offer as modified to bring it within the Hard Cap.

In Tenafly, salary increments and longevity increments alone exceed the Hard Cap. As illustrated by the recent interest arbitration award in Ramsey, discussed in detail below, where even a wage freeze results in an increase that exceeds the Hard Cap, the Interest Arbitrator has to make reductions to salary step increases or longevity increments or both so that the cost of the award remains within the Hard Cap. Hard Cap compliance in Tenafly not only requires a zero percent wage increase over the duration of the contract, but it also requires reductions to salary step increases and longevity increments.

III. LEGAL ARGUMENT

A. CONVENTIONAL INTEREST ARBITRATION

The New Jersey Employer-Employee Relations Act (the "Act"), N.J.S.A. § 34:13A-1 et seq., includes a compulsory interest arbitration procedure for public police departments and the police officers' exclusive representatives who reach impasse in collective bargaining negotiations. On January 10, 1996, the Legislature passed the Police and Fire Public Interest Arbitration Reform Act (the "Reform Act") which implemented significant amendments to New Jersey's compulsory interest arbitration process. On December 21, 2010, the Legislature again passed significant amendments to the compulsory interest arbitration process (the "2010 Amendments"). This section describes New Jersey's compulsory interest arbitration process.

The Reform Act established conventional arbitration, instead of final offer interest arbitration, as the terminal procedure applicable to resolve impasse between parties who fail to agree upon one of six terminal procedures available under the Reform Act. N.J.S.A. § 34:13A-16(d)(2). Conventional arbitration applies to this interest arbitration. The Interest Arbitrator must, therefore, determine “whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria,” discussed below. N.J.S.A. § 34:13A-16(d).

B. THE STATUTORY CRITERIA

N.J.S.A. § 34:13A-16(g) states that the Interest Arbitrator must determine the dispute based upon “a reasonable determination of the issues.” Because reasonableness requires the Interest Arbitrator to apply a subjective standard, the Legislature enumerated nine statutory criteria which the Interest Arbitrator must give “due weight” in determining the appropriate award. More specifically, N.J.S.A. § 34:13A-16(g), as amended, provides,

The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator . . . shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor; provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award:

- (1) The interest and welfare of the public. Among the items the arbitrator . . . 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 [N.J.S.A. § 34:13A-16.2], provided, however, that 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) Stipulation of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator . . . 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.).
- (6) The financial impact on the governing unit, its residents, the limitations imposed upon the local units property tax levy pursuant to section 10 of P.L. 2007, c.62 (C40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator . . . shall take into account, to the extent that the 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 of 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 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 . . . 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).

N.J.S.A. § 34:13A-16(g) (emphasis added to highlight language added by the 2010 Amendments). A review of the enumerated factors reveals three underlying themes: (1) the financial ramifications of the offer; (2) comparability; and (3) the public interest.

Before the Legislature passed the Police and Fire Public Interest Arbitration Reform Act, the New Jersey Supreme Court decided two companion cases that significantly impacted the interest arbitration process. Hillsdale PBA

Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994); Township of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994). The Reform Act incorporated the principles set forth in these decisions.

Specifically, in Hillsdale and Washington, the Court examined the sufficiency of the evidence which the parties must present to an Interest Arbitrator and the relevance of the various statutory criteria. In Hillsdale, the Court instructed that “[i]n general, the relevance of a factor depends on the disputed issues and the evidence presented.” Hillsdale, 137 N.J. at 82 (citing N.J.S.A. § 34:13A-16(f)(5); N.J.A.C. § 19:16-5.9). The Court also directed the Interest Arbitrator to “determine which factors are relevant, weigh them, and explain the award in writing.” Id. Further, the Court cautioned that the Legislature did not intend that any one factor would be dispositive. Id. The Court further explained,

As the statute states, an arbitrator need rely not on all factors, but only on those that the arbitrator deems relevant. An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence. An arbitrator who requires additional evidence may request the parties to supplement their presentations. . . . [T]he arbitrator need not require the production of evidence on each factor. Such a requirement might unduly prolong a process that the Legislature designed to expedite collective negotiations with police and fire departments.

Id. at 83-84. Moreover, even if the parties do not introduce evidence on a particular factor, the Interest Arbitrator's decision must explain the Interest Arbitrator's rationale for deeming that factor irrelevant. Id. at 84. “Without such an explanation, the opinion and award may not be a ‘reasonable

determination of the issues.’” Id. In summary, “an arbitrator’s award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant.” Id. at 84-85.

The Reform Act, among other things, codified the New Jersey Supreme Court’s rulings in Hillsdale and Washington. The Reform Act expressly added the following requirement:

In the award, the arbitrator . . . shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

Therefore, the Interest Arbitrator’s award must address all nine statutory criteria.

The 2010 Amendments dramatically changed the interest arbitration process. It, among other things, emphasized that Interest Arbitrators must consider, among the other statutory factors, the impact of the New Jersey Local Government Cap Law (the “Cap Law”), N.J.S.A. § 40A:4-45.1 et seq., in rendering an award and the limitations imposed upon the local unit’s property tax levy. N.J.S.A. § 34:13A-16(g)(6). The tax levy cap limits the funds that municipalities can raise by taxation. The 2010 Levy Cap Law (the “2010 Cap”) enacted on July 13, 2010 revised the 2007 Levy Cap Law (the “2007 Cap”). More specifically, to control cost increases, it reduced the 2007 Cap from four percent to two percent and amended exclusions. The 2010 Cap excludes pension contributions in excess of two percent and health benefit cost increases in excess of two percent and limited by the State Health Benefit rate increase.

The 2010 Amendments addressed the interest arbitrator's duty to consider all the statutory factors. The law continues to require the interest arbitrator to consider each of the elements. The interest arbitrator can determine that a factor is not relevant, and if so, explain why it is irrelevant. The 2010 Amendments imposed one exception: paragraph 6, the financial impact on the governing unit, its residents, the limitations imposed by the local units property tax levy and taxpayers. As to this subfactor, the 2010 Amendments require that the parties introduce evidence that addresses this subfactor. It further mandates that the interest arbitrator analyze and consider the elements of subsection 6 in any award.

Significantly, the 2010 Amendments demonstrate the Legislature's recognition of the need to control costs. The 2010 Amendments imposed a two-percent cap on base salary increases. N.J.S.A. § 34:13A-16.7. The two-percent cap on base salary increases reflects the permissible two percent 2010 Cap under the Local Government Cap Law. More specifically, the law prohibits an arbitrator from rendering an award,

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.

N.J.S.A. § 34:13A-16.7(b). While the law precludes arbitrators from issuing more than a 2.0% per year increase in base salary, it does not bar unequal annual percentages. Id.

“Base salary” is defined as “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. . . .” N.J.S.A. § 34:13A-16.7(a). “Base salary” also includes “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.” N.J.S.A. § 34:13A-16.7(a). “Base salary” does not include “non-salary economic issues, pension and medical insurance costs.” Non-salary economic issues are defined as “any economic issue that is not included in the definition of base salary.” N.J.S.A. § 34:13A-16.7(a). Therefore, “base salary” includes salary increments and longevity increases but does not include pension or health and medical insurance costs. N.J.S.A. § 34:13A-16.7(a). Additionally, “[a]n 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.” N.J.S.A. § 34:13A-16.7(b).

The salary limitation applies to all collective negotiations between a municipal employer and the exclusive representative of its police department that relate to a collective bargaining agreement that expires on or after January 1, 2011 but before April 1, 2014. N.J.S.A. § 34:13A-16.9. Because the collective bargaining agreement at issue in this interest arbitration expired on December 31, 2012, the salary limitation applies to this interest arbitration.

Because the PBA’s package averages more than 2.0% per year, inclusive of salary increments and longevity increases, the Interest Arbitrator

must reject the PBA's demands. The PBA package significantly exceeds the 6.0% maximum increase on a three-year contract. As calculated above, the PBA's package will result in a 6.04% increase in 2013, a 6.28% increase in 2014 and a 5.03% increase in 2015. Over three years, the package totals 17.35% per year or 5.78% per year. This increase exceeds a 2.0% per year average increase by 11.35% or 3.78% per year. The Legislature worded the statute in the obligatory. It provides, "An arbitrator shall not render any award . . . which, on an annual basis, increases base salary items by more than 2.0 percent." N.J.S.A. § 34:13A-16.7(b). The language of the statute leaves no room for interpretation: any three-year award must average not more than 6.0% inclusive of salary increments and longevity increases. In contrast to the PBA's demands, the Borough's proposed increase equals 4.17% in 2013, 3.97% in 2014, 2.67% in 2015, 2.66% in 2016, and 2.12% in 2017. The five-year total equals 15.59% or 3.12% per year. Any award that exceeds the 2.0% statutory salary cap will be vacated on appeal. Therefore, even with a wage freeze, the Interest Arbitrator will need to reduce salary and longevity increments to comply with the Hard Cap.

Similarly, the Interest Arbitrator must reject the PBA's work schedule change proposal and personal leave proposal. As discussed below, both the work schedule change and personal leave proposal will have an economic component. The 2010 Amendments mandate that, "[a]n 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." N.J.S.A. § 34:13A-

16.7(b). The PBA's work schedule proposal and personal leave proposal constitute a "non-salary economic issue" within the meaning of the 2010 Amendments. Because the 2010 Amendments were passed after the predecessor Collective Bargaining Agreement was signed, it did not and could not have included these terms. Because the 2010 Amendments mandate that an Interest Arbitrator not award any non-salary economic issues which were not included in the prior collective negotiations agreement, the 2010 Amendments preclude an award of the PBA's work schedule proposal and personal leave proposal.

The remainder of this section of the Brief will analyze the statutory criteria as they apply to the present interest arbitration and will show that the Borough's proposals reflect a more reasonable approach than the PBA's demands.

1. COMPARABILITY AND OVERALL COMPENSATION

The Act requires the Interest Arbitrator to consider a 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 in (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions. The Act also requires the Interest Arbitrator to consider the overall compensation presently received by the employees, inclusive of

direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received. As discussed below, the comparable and overall compensation exhibits submitted at the interest arbitration hearing demonstrate that the Borough extends more reasonable proposals than the PBA.

In Hillsdale, the Court criticized the Interest Arbitrator for over-emphasizing comparability with, in the Hillsdale case, police departments in similar communities in rendering an award. Hillsdale, 137 N.J. at 86. The Court noted that the Legislature did not intend any one factor, including comparability to other police or fire departments in similar municipalities, to be dispositive. Id. In fact, section 16(g) "invites comparison with other jobs in both the public and private sectors." Id. at 85. As a result, the Interest Arbitrator should compare the Borough's police compensation package not only to other municipal police compensation packages, but to other public and private sector jobs.

The amendment implemented under the Reform Act changed the weight the Interest Arbitrator should attribute to the consideration of compensation packages in private employment, public employment and in public employment in the same or similar comparable jurisdictions. Prior to the Reform Act, the Act required the Interest Arbitrator to consider a:

- (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 public employment in the same or similar comparable jurisdictions.
- (b) In comparable private employment.
- (c) In public and private employment in general.

Under the Reform Act, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions.

Therefore, the Legislature altered the order of the three subfactors, moving comparability to employees in the private sector from the third subfactor to the first subfactor and moving comparability to public employment in the same or similar comparable jurisdictions from the first subfactor to the third subfactor. This amendment evidences legislative intent to reduce Interest Arbitrators' over-reliance on wage and benefit comparability to public employees in the same or similar jurisdictions--an over dependence criticized by the Court in Hillsdale and Washington--and increase Interest Arbitrators' under emphasis of comparability to private employees in general. Consequently, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions without unduly emphasizing comparability to public employment in comparable jurisdictions and without minimizing comparability to private employment in general.

By definition, the third subfactor, in public employment in the same or similar comparable jurisdictions includes an examination of settlements that a public employer reached with other employee units within the municipality. See In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008). In Somerset County, the Appellate Division upheld an interest arbitration award rejecting the employer's contention that the award gave too much weight to internal settlements with other law enforcement units. The court noted that N.J.S.A. § 34:13A-16g(2)(c) mandates that an interest arbitrator "consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern." Id. at 24 (quoting Union County Corrections Officers, PBA Local 999 v. County of Union, 30 NJPER 38 (2004)). The Court further recognized pattern as "an important labor relations concept that is relied upon by both labor and management." Id. (quoting Union County, 30 NJPER at 38). Therefore, the Interest Arbitrator should consider internal settlements, among the other statutory factors, in rendering an award. Id. at 27.

As a result, this section compares the wage increases and benefits demanded by the PBA and the wage freeze and benefits offered by the Borough with the wage increases and benefits received by private and public employees in general. It also compares the wage increases and benefits demanded by the PBA and the wage freeze and benefits offered by the

Borough with the salary and benefits the Borough provides to its other unionized employee groups. Additionally, it compares the wage increases and benefits demanded by the PBA and the wage freeze and benefits offered by the Borough with those provided by similar municipalities to their police officers.

a. WAGES AND BENEFITS IN THE PRIVATE SECTOR

Wage and benefit packages in the private sector highlight the reasonableness of the Borough's proposals in contrast to the PBA's demands. Wage increases in the private sector fall significantly below the annual increases demanded by the PBA.

Since the end of the recession, wage increases have not kept up with increases in the consumer price index, resulting in a decrease in purchasing power for the nation's workers. Recent wage reports demonstrate the deep impact of the recent economic downturn followed by a slow recovery. The most recent New Jersey Report of Private Sector Wage Changes dated September 11, 2012 showed that private sector wages in New Jersey increased by 2.1% from 2010 to 2011. See E-1, Section 2, Part 13. Bergen County, however, experienced only a 1.1% increase in private sector wages, falling 1.0% below the state average. See E-1, Section 2, Part 13. The Bergen County increase falls well below the PBA demanded increase of 2.0% per year. Therefore, recent economic statistics reflect the impact the current severe economic downturn has on compensation, underscoring the reasonableness of the Borough's offer in contrast to the PBA's demands.

b. WAGES AND BENEFITS IN THE PUBLIC SECTOR

Wage increases in the public sector highlight the reasonableness of the Borough's proposals. Reports on recent public sector salary increases reflect the impact of difficult economic times. According to the New Jersey Report of Private Sector Wage Changes, public sector wages in New Jersey increased by 2.4% from 2010 to 2011. See E-1, Section 2, Part 13. Local government, however, experienced only a 1.4% increase in wages, falling 1.0% below the total government increase. See E-1, Section 2, Part 13. The wage increase for local government in New Jersey falls well below the PBA demanded increase of 2.0% per year.

Recent public sector settlements reflect the new economic reality and illustrate a restrained wage increase trend. For example, in January 2012, two employee unions representing 5,000 state workers reached a four-year contract with the state providing for a 0% wage increase effective July 1, 2011, a 0% increase effective July 1, 2012, a 1.0% increase effective July 1, 2013 and a 1.75% increase effective July 1, 2014. See E-1, Section 5, Part 6. The contract, therefore, provides for an average wage increase of 0.69%. The PBA wage demand surpasses the settlement by 1.31% per year.

Voters have sent a strong message to local government that they will not support increases in property taxes to fund, among other things, salary increases for public employees. In 2011, under new law, municipalities who needed to exceed the 2% property cap have to put the issue before the public.

Previously, local governments appealed to the State for approval if they needed to raise property taxes above the 4% cap. On April 27, 2011, in the first referendum of its kind, voters sent a strong message to local government when they voted down proposals to increase the tax levy above the 2% cap in twelve out of fourteen municipalities. See E-1, Section 5, Part 6. Almost all of the municipalities that voted the referendum down voted no by more than double digits. In two municipalities, voters rejected the proposal by more than eighty percent. Only two municipalities, Brick and Lambertville, passed the measure, which enabled residents to avoid the privatization of garbage collection. See E-1, Section 5, Part 6. Although voters were aware that municipal jobs and services were at stake, the overwhelming defeat of the referendums emphasized the need to control public salaries.

The recent deep economic recession caused a call for the reconsideration of public sector compensation packages. One article commended the implementation of a 2% cap on police salary increases to combat the high cost of public workers and avoid layoffs. See E-1, Section 5, Part 6. Another article advocated police pay freezes, noting that New Jersey police officers are the highest paid in the country. See E-1, Section 5, Part 6. In 2009, New Jersey police officers earned an average base salary of \$75,400 (significantly lower—more than \$35,000 less--than Tenafly's 2009 maximum base salary of \$110,922) plus benefits including comprehensive health plans and the ability to retire after twenty-five years of service with a pension of 65% of their

highest salary. Another article details that in 2009, 6,198 cops, one-third of all municipal police officers, earned \$100,000 or more.

According to another article, municipal police officers earned a median salary of \$90,672. Ninety-nine municipalities out of the 466 towns that have paid police departments have six figure median salaries. Police officers, therefore, earn more than New Jersey's average worker, \$50,313, more than civil engineers, \$87,090, and more than architects, \$85,050. See E-1, Section 5, Part 7. Significantly, these high salaries do not correlate with urban centers with high crime rates. It is the suburban police officers (in places like Tenafly) who earn the high salaries. See E-1, Section 5, Part 6.

On the local government level, one article addressed the situation in Edison, where council members advocated police and fire concessions to avert tax increases. The union opposed any concessions, even though Edison has among the highest paid police officers in the state, and several officers earn over \$200,000 per year. See E-1, Section 5, Part 6. The article further pointed out that Irvington, where the police department was already understaffed, will lay off twenty police officers if the union refuses to agree to a pay freeze and other give-backs. See E-1, Section 5, Part 6.

Moreover, many officers cash in their accrued but unused sick leave for checks totaling over \$100,000. See E-1, Section 5, Part 6. With respect to terminal leave benefits, one article noted that the \$15,000 cap on payment for accrued but unused sick time will bring improvement, but criticized the then

pending legislation because it only applied to new hires. It noted that the day will come when retiring public employees will not retire with huge payments for accrued but unused sick leave, like the New Brunswick police chief who received \$376,234 in unused sick time or the four Parsippany officers who retired in December 2009 with a combined \$900,000 payout. See E-1, Section 5, Part 6. The article further aptly criticized the Legislature for not going far enough. It stated, "Even the \$15,000 is too much. In the private sector, sick pay is typically reserved for those who are actually sick. Imagine that. And if you take a sick day when you are not sick, you can be fired." See E-1, Section 5, Part 6. Another article questioned the \$15,000 cap asking why there should be payment for unused sick leave in the first instance. An additional article advocated ending sick-time case payouts, pointing out that the Toms River Police Chief could retire with a \$250,000 payout of accrued but unused sick and vacation time and that the Parsippany Police Chief will receive a \$379,000 payout upon retirement. See E-1, Section 5, Part 6. Therefore, the public sector world, where sick leave benefits are viewed as entitlements, dramatically contrasts with private sector reality.

Another article referred to the interest arbitration process in New Jersey as one that "ignores reality" and must change. See E-1, Section 5, Part 6. The article focused on an interest arbitration award that gave the Essex County Sheriff's Officers an 8.1% salary increase from 2008 through 2010. In rendering the award, the arbitrator seemingly ignored that the taxpayers were already

paying the highest property taxes in the country, in a county experiencing the State's highest foreclosure and unemployment rates. The high award resulted in part because Bergen County officers, who already earned \$98,076, received a 4.0% raises in 2008. In calling for reform of the arbitration system, the article noted, "That's the binding arbitration gotcha: One silly raise anywhere in the state and everyone eventually pays." A system that fails to reflect economic reality must change. See E-1, Section 5, Part 6.

With economic reality setting in, common words include givebacks, furloughs, wage freezes and layoffs. One article observed, "Thanks to taxpayer anger, salary caps and other cost-containing legislation, it's sinking in: Public workers aren't entitled to automatic raises and better benefits regardless of the economic conditions or job performance, and a public sector job without a raise is better than no job at all." See E-1, Section 5, Part 6. For example, South Brunswick police officers agreed to accept compensatory time instead of overtime, resulting in about \$100,000 in savings. Manalapan police officers agreed to forego overtime for 18 months and pay health insurance contributions one year earlier than required by contract negotiation. Princeton Township reduced tuition reimbursement and uniform allowances. See E-1, Section 5, Part 6. These concessions show the recognition of a new reality.

a. **PUBLIC EMPLOYMENT IN THE SAME JURISDICTION**

Comparing the salary and benefits Tenafly provides its police officers with the salary and benefits the Borough provides to its other employees

further demonstrates the reasonableness of the Borough's proposals. Exclusive of the PBA, the Borough has five bargaining units. OPEIU Local 32 ("OPEIU") represents the Borough's supervisory employees; Tenafly Administrative Employees Bargaining Unit ("TAE") represents the Borough's white collar employees; Long Island Public Service Employees United Marine Division International Longshoremen's Association Local 342 ("ILA") represents the Borough's department of public works employees; and the Tenafly Public Works Supervisory Bargaining Unit ("TPWS") represents the Borough's supervisory public works employees; and the Tenafly Crossing Guards ("TCG") represent the Borough's crossing guards. Because TCG do not receive comparable benefits to the PBA or the Borough's other collective bargaining units, this analysis excludes TCG.

Internal comparisons support the Borough's longevity, vacation leave, personal days and terminal leave proposals for new hires. The Borough proposes to eliminate longevity for officers hired after January 1, 2013. All of Tenafly's other collective bargaining units have eliminated longevity benefits for new hires. OPEIU eliminated longevity benefits for new hires effective January 1, 2012. See E-1, Section 3, Part 1 at 11. TEA eliminated longevity benefits for new hires effective July 1, 2011. See E-1, Section 3, Part 2 at 33. ILA and TPWS eliminated longevity benefits for new hires effective January 1, 2011. See E-1, Section 3, Part 3 at 33; E-1, Section 3, Part 4 at 24. Therefore, the PBA is the only

unit out of five units (exclusive of the crossing guards, who do not receive longevity benefits) who has not eliminated longevity benefits for new hires.

The Borough proposes a modification of vacation leave for officers hired on or after January 1, 2013. Most of Tenafly's other collective bargaining units have implemented modified vacation benefits for new hires. OPEIU's vacation schedule mirrored the PBA vacation schedule. OPEIU adopted the same modified vacation schedule as the Borough proposes in this interest arbitration for its new hires effective May 1, 2012. See E-1, Section 3, Part 1 at 14. TPWS' vacation schedule also mirrored the PBA vacation schedule. TPWS implemented the same modified vacation schedule as the Borough proposes in this interest arbitration for its new hires effective January 1, 2011. See E-1, Section 3, Part 4 at 12.

Moreover, in addition to the savings that will result, internal comparisons support the Borough's proposal to prorate vacation leave in the last year of service. OPEIU and ILA both require the proration of vacation time in the final year of service. See E-1, Section 3, Part 1 at 15; E-1, Section 3, Part 3 at 21.

The Borough proposes to provide officers hired after January 1, 2013 with two personal leave days per year. All of Tenafly's other collective bargaining units have reduced personal leave benefits for new hires. OPEIU provides its employees with six personal leave days per year, one less personal day per year than the PBA receives. It reduced personal leave benefits for new

hires. All employees hired after May 1, 2012 receive three personal leave days per year. See E-1, Section 3, Part 1 at 21. TEA also agreed to reduce personal leave benefits from six personal leave days per year to three personal leave days per year for employees hired after July 1, 2011. See E-1, Section 3, Part 2 at 19. Similarly, ILA and TPWS reduced personal leave benefits from six personal leave days per year to three personal leave days per year for employees hired after January 1, 2011. See E-1, Section 3, Part 3 at 23; E-1, Section 3, Part 4 at 15. Therefore, the PBA is the only unit who has not yet reduced personal leave benefits for new hires.

Aside from the additional expense it will impose, and the fact that it is barred from award by the 2010 Amendments as a non-salary economic item not included in the predecessor collective bargaining agreement, the Interest Arbitrator should deny the PBA's personal leave day proposal because it is unsupported by internal comparisons. The PBA proposes that the Borough compensate officers for personal leave days not used during the calendar year at the officer's straight time rate. None of the Borough's employees presently have the option of receiving compensation for accrued but unused personal days. Moreover, OPEIU and TEA collective bargaining agreements specifically provide that personal days are non-compensable. See E-1, Section 3, Part 1 at 21; See E-1, Section 3, Part 2 at 20.

The Borough proposes to eliminate terminal leave benefits for new hires effective January 1, 2013. The Borough's four other bargaining units have

all eliminated terminal leave benefits for new hires. OPEIU eliminated terminal leave benefits for new hires effective January 1, 2012. See E-1, Section 3, Part 1 at 34. TEA also agreed to eliminate terminal leave benefits for employees hired after July 1, 2011. See E-1, Section 3, Part 2 at 34. Additionally, ILA and TPWS eliminated terminal leave benefits for employees hired after January 1, 2011. See E-1, Section 3, Part 3 at 35; E-1, Section 3, Part 4 at 25. Therefore, the PBA is the only unit that has not yet eliminated terminal leave benefits for new hires.

In sum, internal comparisons evidence pattern bargaining which strongly supports the Borough's proposals to reduce benefits for new hires by eliminating longevity benefits, modifying the vacation schedule, modifying personal leave benefits and eliminating terminal leave benefits. In addition to controlling costs, granting the Borough's proposals will further uniformity in benefits among all Borough employees.

d. PUBLIC EMPLOYMENT IN COMPARABLE JURISDICTIONS

Comparing the salary and benefits Tenafly provides its police officers with the salary and benefits provided by other comparable municipalities to their police officers further demonstrates the reasonableness of the Borough's offer. The Borough of Tenafly is located in Bergen County, New Jersey. Tenafly is bordered by Cresskill and Alpine to the north, Bergenfield to the west, Englewood and Englewood Cliffs to the south and the Hudson River to the east. Bergen County is geographically divided into six sectors, Southwest Bergen, Southeast Bergen, Northern Valley, Pascack Valley and Northwest

Bergen. Tenafly is located in Northern Valley. The Borough selected all Bergen County municipalities with police departments as comparables to the Borough.

Significantly, the reliability of comparability data depends on the selection of comparisons to the Borough. In contrast to the Borough's selection of all Bergen County municipalities as its comparables, the PBA selected some, but not all Bergen County municipalities as their comparables. These municipalities include:

- Bergenfield—Northern Valley (contract through June 2013)
- Closter—Northern Valley (contract through 2014)
- Cresskill—Northern Valley (contract through 2015)
- Englewood Cliffs—Northern Valley (contract through 2013)
- Englewood—Northern Valley (contract through 2013)
- Fort Lee—Southeast Bergen (contract through 2015)
- Hasbrouck Heights—Southwest Bergen (contract through 2014)
- Haworth—Northern Valley (contract through 2014)
- New Milford—Central Bergen (contract through 2014)
- Northvale—Northern Valley (contract through 2016)
- Paramus—Central Bergen (contract through 2013)
- Ridgewood—Northwest Bergen (contract through 2012)
- Wallington—Southwest Bergen (contract through 2015)

The PBA selected thirteen out of sixty-nine municipalities with paid police departments in Bergen County as comparables. Geographically, there are fifteen municipalities, including Tenafly, in the Northern Valley. Rockleigh does not have a paid police department. Among the remaining Northern Valley municipalities, the PBA selected eight out of thirteen towns, inexplicably leaving out Old Tappan, Norwood, Dumont, Alpine and Harrington Park. Without explanation, the PBA selected six municipalities outside the Northern Valley. These include Fort Lee, New Milford, Paramus, Ridgewood, Hasbrouck Heights

and Wallington. Therefore, the PBA handpicked its comparables, substantially reducing the reliability of the PBA comparability statistics.

County-wide comparisons show that the Borough's police officers enjoy salary and benefits that rank among the highest in Bergen County.

(1) BASE SALARY, STARTING SALARY LONGEVITY AND STEPS ON SALARY GUIDE

In 2012, Tenafly provided its officers with a maximum patrol officer salary of \$125,215, which ranked fifth highest out of the fifty-seven Bergen County municipalities for which information was available. The \$125,215 base salary under represents the maximum base salary in Tenafly because it does not include 5% holiday pay, which by contract, is rolled into base salary. Therefore, in 2012, Tenafly provided its officers with a maximum base salary of \$131,475. Including holiday pay with base salary increases Tenafly's ranking to at least the fourth highest in Bergen County, because Mahwah's maximum patrol officers' salary of \$127,796 includes holiday benefits. Additionally in contrast to Tenafly, Saddle River's \$141,242 maximum base salary and Franklin Lakes' \$126,025 maximum base salary include longevity. Tenafly's maximum patrol officer salary therefore actually exceeds Franklin Lakes' maximum patrol officer salary, which would increase Tenafly's ranking to at least the third highest in Bergen County. In comparison with other Bergen County municipalities, Tenafly's maximum patrol officer salary significantly surpassed the 2012 Bergen County average. Tenafly officers at top patrol officer salary, exclusive of holiday pay, received

\$125,215, a base salary that exceeded the Bergen County average of \$114,705 by \$10,510 or 9.16%. See E-1, Section 2, Part 2.

In 2012, Tenafly provided its officers with a starting salary that substantially exceeded the Bergen County average. Tenafly officers received a \$44,582 starting salary, ranking seventh highest out of the fifty-seven Bergen County municipalities for which information was available. Starting salaries in Bergen County ranged from a high of \$49,797 in River Vale to a low of \$25,079 in Norwood. See E-1, Section 2, Part 3. Tenafly's starting salary of \$44,582 exceeded the Bergen County average starting salary of \$36,515 by \$8,067 or 22.1%. See E-1, Section 2, Part 3. These comparables provide support for the Borough's proposal to freeze the starting salary for the duration of the contract. Even without an increase over the next five years, Tenafly will offer a highly competitive starting salary which will enable it to remain competitive and attract highly competent applicants.

Because longevity benefits are based on a percentage of base pay, every salary increase brings a corresponding increase in longevity benefits. An analysis of longevity benefits in Bergen County shows an increasing trend toward the elimination of longevity benefits for new hires. Most recently, Ramsey eliminated longevity benefits for officers hired on or after January 1, 2012. In In the Matter of Interest Arbitration between Borough of Ramsey and PBA Local 155, Docket No. IA-2012-015, dated April 17, 2012, aff'd but remanded on other grounds, Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER

___ (¶ 3 2012), Interest Arbitrator Patrick Westerkamp, Esq., awarded Ramsey's proposal to eliminate longevity benefits. In granting the Borough's proposal Interest Arbitrator Westerkamp observed that longevity benefits are a "slowly shrinking" component of municipal police compensation. Id. at 60. He further noted that ten Bergen County municipalities either do not have longevity or have eliminated longevity benefits for new hires. Id. Additionally, Interest Arbitrator Westerkamp considered internal comparisons, recognizing that the PBA unit was the only unit out of six collective negotiations units who provided longevity benefits for new hires. Id. at 61. As discussed above, all of Tenafly's other collective bargaining units have eliminated longevity benefits for new hires. OPEIU eliminated longevity benefits for new hires effective January 1, 2012, TEA eliminated longevity benefits for new hires effective July 1, 2011, and ILA and TPWS eliminated longevity benefits for new hires effective January 1, 2011. Therefore, as in Ramsey, the Tenafly PBA is the only unit out of five units (exclusive of the crossing guards, who do not receive longevity benefits) who has not yet eliminated longevity benefits for new hires.

With the interest arbitration award, Ramsey joined ten other Bergen County municipalities who do not have or who have eliminated longevity benefits: River Edge, Norwood, Ho-ho-kus, Saddle River, Franklin Lakes, Hackensack, New Milford, Rochelle Park, Wallington and Old Tappan. See E-1, Section 2, Part 4. The timing of the elimination of longevity evidences a strong recent trend. After a seven year gap, Saddle River eliminated longevity

effective January 1, 2010. In 2011, three municipalities, Ho-ho-kus, Norwood and River Edge eliminated longevity. Ramsey followed effective January 1, 2012. See E-1, Section 2, Part 4. Therefore, out of the eleven municipalities who do not have or who have eliminated longevity benefits, five implemented the change within the past three years. The growing trend toward the elimination of longevity benefits supports the Borough's longevity proposal.

Tenafly has fewer steps to maximum patrol officer salary than the Bergen County average. Salary steps determine the number of years it will take for an officer to progress from starting salary to maximum salary. Increased steps translate into employer savings. Tenafly has a nine step salary guide. The first two steps are six months each, while the remaining steps are one year, so officers reach maximum police officer salary upon the completion of eight years of service. In Bergen County, steps on the salary guide range from a high of twenty-five steps in Franklin Lakes to a low of six steps in Hackensack, Palisades Park and River Vale. Out of the fifty-seven municipalities for which information was available, nineteen municipalities in Bergen County have more steps on the salary guide than Tenafly. In fact, at nine steps, Tenafly has one less step than the Bergen County average of ten steps. See E-1, Section 2, Part 5. Tenafly's relative standing in Bergen County provides support for the Borough's proposal to increase the number of steps on the salary guide from nine to fifteen steps.

(2) EDUCATIONAL INCENTIVE

Tenafly officers receive liberal education incentive benefits. Unlike the vast majority of Bergen County municipalities, Tenafly provides its officers with both an annual educational incentive based on the number of credits earned and tuition reimbursement. Tenafly is one of only six Bergen County municipalities—Hackensack, Hillsdale, Moonachie, Old Tappan, and Park Ridge, that provide both tuition reimbursement and annual education incentive benefits. See E-1, Section 2, Part 6. With respect to an annual education incentive, twenty of sixty-six Bergen County municipalities—Allendale, Bogota, Cliffside Park, Franklin Lakes (effective 1/1/99), Hasbrouck Heights, Haworth (effective 1/1/96), Little Ferry (effective 3/1/94), Lodi, Mahwah (effective 1/1/04), Maywood (effective 1/1/10), Midland Park (effective 9/26/06), Norwood (effective 1/1/99), Oakland (effective 1/1/90), Paramus (effective 1/1/81), Ramsey, Ridgefield, River Edge (effective 1/1/90), Saddle River (1/1/97), Upper Saddle River (effective 1/1/00), and Westwood—have either never provided or stopped providing an annual educational incentive benefit. See E-1, Section 2, Part 6. Tenafly is among the twelve out of sixty-six municipalities that provides tuition reimbursement. Tenafly officers, therefore enjoy generous educational incentive and tuition reimbursement benefits, providing comparable support for the Borough's education proposal to provide officers hired after January 1, 2013 with a one-time payment for any of the credits specified in Article XXI, Section 1.

(3) PAID LEAVE TIME

Tenafly officers receive paid leave time that exceeds the paid leave time other Bergen County municipalities provide to their officers. Tenafly officers receive generous vacation benefits. Tenafly officers receive twenty-five vacation days after the completion of twenty-four years of service. Vacation benefits in Bergen County range from a high of a maximum of thirty-two vacation days in Cresskill and River Vale to a low of a maximum of twenty-one vacation days in Midland Park. See E-1, Section 2, Part 10. Tenafly officers receive more liberal vacation benefits than the Bergen County average. At maximum step on the vacation schedule, only twenty municipalities provide more liberal vacation benefits than Tenafly while forty-six municipalities provide less liberal vacation benefits than Tenafly. See E-1, Section 2, Part 10. Comparables support Tenafly's proposal to modify the vacation schedule for new hires. Significantly, Tenafly's proposal does not reduce the vacation benefits at maximum step. Instead it reduces the number of steps from sixteen steps to six steps, implementing a cost saving delay of progression through the steps.

Tenafly provides its officers with liberal personal leave time. Tenafly provides its officers with five personal leave days per year. Only two Bergen County municipalities, Westwood and Little Ferry, provide more generous personal leave time. Tenafly therefore provides the third most generous personal leave time among the sixty-six Bergen County towns. Westwood, who

provides its officers with six personal leave days per year, provides the most liberal personal leave benefits in Bergen County. On the opposite end of the spectrum, eight Bergen County municipalities do not provide their officers with any personal leave time. See E-1, Section 2, Part 9.

Comparables support the Borough's personal leave proposal to reduce the number of personal days to officers hired after January 1, 2013 to two personal leave days per year. At two personal leave days per year, Tenafly would join ten Bergen County municipalities who also provide their officers with two personal leave days per year. At two personal leave days per year, Tenafly would still provide more liberal personal leave benefits than eighteen Bergen County municipalities. Therefore, at two personal leave days per year, Tenafly would provide equal or more liberal personal leave benefits than twenty-eight out of sixty-six Bergen County municipalities, highlighting the reasonableness of the Borough's personal leave day proposal. See E-1, Section 2, Part 9.

Tenafly provides generous sick leave benefits. Tenafly officers receive sick leave benefits based on years of service up to a maximum of six months of sick leave after the completion of ten years of service. In Bergen County, sick leave benefits range from a high of one year (maximum permitted by statute) in Carlstadt, East Rutherford, Harrington Park, Hasbrouck Heights, Little Ferry, Norwood, Palisades Park, River Edge, Washington Township and Wood Ridge to a low of ten days per year in Allendale and Ridgefield. See E-1, Section 2, Part 8. Only the ten Bergen County municipalities that provide

unlimited sick leave provide more liberal sick leave benefits than Tenafly after ten years of service. See E-1, Section 2, Part 8.

Comparables further support the Borough's proposal to modify sick leave benefits for employees hired after January 1, 2013. Under the Borough's proposal, officers would receive 12 sick days after the completion of one year of service. This proposal would modify the following steps in the current sick leave schedule: officers receive 5 working days after one month of service, 10 working days after two months of service, 2 weeks after three months of service, and 4 weeks after one year of service.

(4) TERMINAL LEAVE BENEFITS

Tenafly provides among the most generous terminal leave payments among Bergen County municipalities. Terminal leave benefits are based on years of service and do not condition eligibility on an officer's retirement within the meaning of PFRS. They are not based on accrued but unused sick time. In Tenafly, officers receive up to a maximum of nine months of terminal leave benefits after forty years of service plus payment for all of their accrued but unused compensatory and vacation time. Terminal leave benefits range from payment for all accumulated sick time at the regular rate of compensation in Alpine, Little Ferry and Ridgefield Park to no terminal leave benefits in towns including Cliffside Park, Cresskill, Emerson, Harrington Park, River Edge, Wallington and Wyckoff. Tenafly's generous terminal leave benefits

highlight the reasonableness of the Borough's proposal to eliminate terminal leave benefits for officers hired after January 1, 2013.

Legislative activity provides further support for the Borough's proposal to eliminate terminal leave benefits for new hires. On March 21, 2010, Governor Christie signed Chapter 3 of the Public Laws of 2010 ("Chapter 3") into law. Chapter 3 precludes a local government entity from paying more than \$15,000 for accrued but unused sick leave to employees hired on or after May 21, 2010. N.J.S.A. 40A:9-10.4. This recent law demonstrates that the Legislature recognizes the need to control terminal leave costs.

Moreover, the Legislature is considering several bills aimed at limiting payment for accrued but unused sick leave for current public employees. S1564, sponsored by Senator Stephen M. Sweeney, prohibits state, local government and boards of education from paying supplemental compensation to any current or future employee for accumulated but unused sick leave earned after the bill's effective date. S1564, however, does not affect supplemental compensation for accrued sick leave earned prior to the bill's effective date and provides that supplemental compensation for time earned prior to that date is payable consistent with current law. S1564 was introduced in the Senate on February 9, 2012, and referred to the Senate State Government Committee.

S906, sponsored by Senator Paul Sarlo, also limits payment for accrued but unused sick leave for current public employees. Under S906, an

employee who is entitled to payment for accrued but unused sick time is eligible to receive the accumulated amount or \$7,500, whichever is greater. An employee who has accrued no supplemental compensation or has accrued less than \$7,500 in supplemental compensation based upon accumulated unused sick leave will be eligible to receive not more than \$7,500 upon retirement. S906 was introduced in the Senate on January 17, 2012, and referred to the Senate State Government Committee.

A1179, sponsored by Assemblywoman Pamela Lampitt, limits the payment by a public employer of supplemental compensation for unused sick leave earned after the bill's effective date to a current or future unionized employee to \$7,500, which would only be used to pay for post-retirement health benefits. Unionized employees would collect the sick time they have already accumulated, prior to the bill's effective date, as cash payouts when they retire. In other words, the bill protects payment for existing accrued but unused sick leave. Current employees who have banked \$7,500 when the bill becomes effective cannot earn more than the existing \$7,500 in accrued but unused time. The amount in excess of \$7,500 would have no cash value. Employees who have less than \$7,500 banked when the bill becomes effective can earn up to \$7,500 for accrued but unused sick time after the bill becomes effective for health care costs in retirement. This bill was introduced to the Assembly on January 10, 2012 and referred to the Assembly State Government Committee.

On March 8, 2012, this bill was referred to the Assembly Appropriations Committee.

A2489, sponsored by Assemblywoman Pamela Lampitt, restricts the payment by a public employer of supplemental compensation for unused sick leave earned after the bill's effective date to a current or future non-unionized employee. The bill prohibits supplemental compensation for accrued but unused sick time earned after the bill's effective date. It, however, provides that payment for accrued but unused sick time earned prior to the bills effective date is payable in accordance with current law. This bill was introduced to the Assembly on February 21, 2012 and referred to the Assembly State Government Committee. On March 8, 2012, this bill was referred to the Assembly Appropriations Committee. Legislative focus on limiting payments for accrued but unused sick time demonstrate the reasonableness of the Borough's proposal to eliminate terminal leave benefits for new hires.

(5) WORK SCHEDULE

The PBA proposes modifying the current work schedule to a twelve-hour work day. Currently, officers work a rotating modified 5-2 schedule. They work eight hour shifts. Shifts change at 8:00 a.m., 4:00 p.m. and 12:00 a.m. Hearing Transcript ("T") 31:3-31:6. The PBA proposes to change the work schedule to a twelve hour 2-3, 3-2 schedule. Under this schedule, officers would work two twelve hours days, be off for three days, work three days, and be off for two days. T50:19-50:21. The day shift would start either at 7:00 a.m. and end

at 7:00 p.m. or 6:00 a.m. and end at 6:00 p.m. and the night shift would start either at 7:00 p.m. and end at 7:00 a.m. or at 6:00 p.m. and end at 6:00 a.m. T31:7-31:9.

The Borough opposes the PBA's work schedule proposal on three grounds. First, the PBA failed to sustain its heavy burden of proof with respect to the schedule change. Second, remaining unknown factors and potential unresolved problematic issues, including increased costs, exist and third, the 2010 Amendments preclude an award of the PBA's work schedule proposal.

A party proposing a non-salary contractual change such as a work schedule modification in interest arbitration bears the burden of justifying it. This tenet applies to an arbitrator's analysis of the evidence presented by the parties in rendering an award. See Teaneck Township., P.E.R.C. No. 2000-33, 25 NJPER 450, 455 (¶ 30199 1999), aff'd in part, rev'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003).

The interest arbitrator should reject the PBA's work schedule proposal because the PBA has failed to meet its "heavy burden" of proof in favor of the work schedule change. The party proposing a major alteration of the work schedule bears the burden of proof in interest arbitration. In In the Matter of Interest Arbitration between City of Passaic and Passaic PBA, Local 14 rendered on April 25, 2000, Interest Arbitrator Joel Weisblatt, noted that the party seeking the scheduling change bears a "heavy burden" of proof. See E-1,

Section 2, Part 14 at 36. In rejecting the PBA's proposal to adopt a 4-4 work schedule, Interest Arbitrator Weisblatt observed that "[w]hen it comes to altering an existing work schedule the record must clearly provide a solid basis for making a change in the absence of mutual assent." See E-1, Section 2, Part 14 at 36. The record must prove by at least a preponderance of the evidence that the schedule change is in the public interest. See E-1, Section 2, Part 14 at 36. In denying the schedule change, Interest Arbitrator Weisblatt noted that the PBA "fell short in providing sufficient facts to be reasonably certain that the operational concerns . . . were unfounded." See E-1, Section 2, Part 14 at 36. Similarly, as discussed below, the PBA in this interest arbitration conceded that certain operational concerns remained outstanding.

Moreover, in In the Matter of Interest Arbitration between the Borough of Waldwick and Waldwick PBA, Local 217 rendered on June 6, 2011, Interest Arbitrator Frank A. Mason denied the PBA's request for a change to a 12 hour work schedule. Interest Arbitrator Mason observed,

Although the PBA claims the 12 hour schedule will provide more alert and rested employees there is no real proof of that. And there is the long held opinion that employees should not work more than eight hours unless with incentive pay which was ordered to discourage longer assignment days. I do not believe a person is as capable and alert in a twelve hour situation as would be the case in working only eight hours. Most people tire as the day goes on and I see no compelling rationale to believe police are of different stuff. Police have power and responsibility to be at their top performance. More days off would certainly provide more options as to use of days. Because I cannot find any compelling reason to order the change I will not.

E-1, Section 2, Part 15 at 9. The interest arbitrator should not award the PBA's proposed schedule change because the PBA has failed to meet its burden of proof in support of the 12 hour day.

The presence of unknown factors and unresolved problematic issues militate against an award of the PBA's proposed work schedule change. Chief Michael Bruno (ret.) prepared a memorandum in which he assessed the 12-hour schedule. P-13. Chief Bruno (ret.) identified several unknown factors regarding the implementation of the schedule. He described these unknown factors:

- A. The ability of adjunct officers (Traffic, Detective, etc.) to cover and/or assist patrol shifts remains unknown, although other nearby department that have this schedule use the same adjunct schedule that we do without a problem.
- B. The ability of officers to "switch" shifts with other officers may be limited by the 12 hour rotation, which may impact some of the flexibility they have currently with their work schedules.
- C. Training will be scheduled for just part of a shift as opposed to full shift reassignments as it is done now. There may be need to have two adjunct officers cover a single 12 hour patrol shift for training purposes.

P-13. Shortly after Borough Administrator Jewel Thompson-Chinn received the memorandum, Chief Bruno submitted his resignation. T70:7-70:9. Borough Administrator Thompson-Chinn had concerns about the issues identified in above. T69:24-70:2. Administrator Thompson-Chinn confirmed that these issues remained outstanding. T71:12-71:14. Additionally, Officer Hector Almo and Chief Bruno (ret.) acknowledged that these unknown factors remain unresolved.

T53:18-54:3; T62:11-62:14. Moreover, there have been no formal discussions between Chief Robert Chamberlain and the municipality concerning the work schedule change. T70:20-70:25. Chief Chamberlain has not spoken with the mayor and council about the change to a 12 hour work schedule. T64:5-64:7. The absence of communication between the Borough Administrator and the Mayor and Council on the one hand and the Police Chief on the other regarding open concerns about the implementation of the 12 hour schedule militates against its award.

Moreover, the proposal presents several other problematic open issues. Several aspects of the schedule change will result in increased costs for the Borough. For example, the proposal will result in a 50% increase in bereavement leave. Officers currently receive four eight-hour calendar days of bereavement leave. Under the PBA's proposal, officers would receive four twelve-hour days of bereavement leave, increasing each officer's bereavement leave benefit by sixteen hours. T39:14-40:2. Although the PBA pointed out that officers would not work more than three consecutive calendar days under the 12 hour schedule, bereavement leave has, at least on one occasion, been used on non-consecutive days. T49:24-50:7; T50:19-50:25. Therefore, the 12 hour schedule will result in increased costs relating to a 50% increase in bereavement leave benefits.

Additionally, the PBA work schedule would result in increased overtime. Under the present schedule, when an officer is brought in on overtime

to replace another officer for a shift, he or she receives eight hours of overtime. Under the PBA's proposed schedule, the officer would need to be brought in for twelve hours of overtime, increasing the Borough's costs. T43:9-43:20. There are also potential overtime ramifications for multiple day training programs because under the PBA 12 hour work schedule, it is more difficult to schedule an officer for a five day program than under the eight hour shift. T45:11-46:6. Officers would need to come in on overtime to attend consecutive day training programs. Moreover, if there is an overtime situation, and the Borough needs to hold over an officer on overtime, the present eight hour day provides for more flexibility because an officer can work an additional four hours or even an eight hour shift. Under the PBA's proposal, extending an officer's twelve hour shift would not be practical. T44:25-45:10. The PBA conceded that the proposed 12 hour work schedule has "kinks" that need to be worked out. T46:12-46:16.

Further, the 12 hour work schedule requires officers to work significantly fewer days a year. With an eight hour day, officers work 260 days per year, while under the 12 hour day, officers work less than 200 days per year. Because officers work significantly fewer days per year, some officers may move further away from the town in which he works. T47:14-47:19. Moreover, officers may more readily commit to outside employment on their days off. T48:16-48:16.

Additionally, the 2010 Amendments preclude an award of the PBA's work schedule proposal. N.J.S.A. § 34:13A-16.7(b) provides in relevant part, "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 provision applies "only to collective negotiations between a public employer and the exclusive representative of a public police department . . . that relate to a negotiated agreement expiring on [January 1, 2011] or any date thereafter until April 1, 2014" N.J.S.A. § 34:13A-16.9. Work schedule changes constitute economic issues. See Township of Branchburg, P.E.R.C. No. 89-21, 14 NJPER ___ (¶ 19241 1988); Washington Township, P.E.R.C. No. 83-142, 9 NJPER 285 (¶ 14133 1983). Because the PBA work schedule proposal presents an economic issue, it constitutes a "non-salary economic issue" within the meaning of the 2010 Amendments. Therefore, for the reasons discussed above, the Interest Arbitrator should issue an award that denies the PBA's work schedule proposal.

(6) RAMSEY INTEREST ARBITRATION AWARD

Interest arbitration decisions rendered under the 2010 Amendments demonstrate a significant downward trend in wage increases due to the Hard Cap. For example, in In the Matter of Interest Arbitration between Borough of Ramsey and PBA Local 155, Docket No. IA-2012-015, dated April 17, 2012 (the "Ramsey Award"), remanded by, Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER ___ (¶ 3 2012), Interest Arbitrator Westerkamp rendered a Supplemental Decision and Award. See In the Matter of Interest Arbitration between Borough of Ramsey and PBA Local 155, Docket No. IA-2012-015, Supplemental Decision

and Award (the "Ramsey Supplemental Award") dated July 9, 2012, aff'd, Borough of Ramsey, P.E.R.C. No. 2013-06, 39 NJPER ___ (¶ 34 2012). In the Ramsey Supplemental Award, the interest arbitrator awarded a three-year agreement, commencing on January 1, 2012, that provided for a wage freeze for the duration of the contract. Additionally, to reduce expenditures below the Hard Cap, the Supplemental Award implemented a one-time salary step adjustment. More specifically, it provided that the current salary guide remained in effect for the duration of the contract except that officers who advance a step in 2012 had their step increase reduced by the following amount:

Officers advancing to the 2nd Step had their increment, for that year only, reduced by \$1,500;

Officers advancing to the 3rd Step had their increment, for that year only, reduced by \$1,000;

Officers advancing to the 5th Step had their increment, for that year only, reduced by \$725;

Longevity benefits were also reduced to ensure that the Ramsey Supplemental Award remained within the Hard Cap. The Ramsey Supplemental Award continued longevity benefits for current employees, except that officers who became entitled to longevity compensation at an increased level had their payment reduced by \$1,700 for the first year only. The Ramsey Supplemental Award affirmed the original Ramsey Award, E-1, Section 2, Part 1, in all other respects. See Ramsey Supplemental Award at 7. The Ramsey Award eliminated longevity for new hires effective January 1, 2012. Among other things, the

Ramsey Award also eliminated Senior Officer step for employees hired after January 1, 2012.

The PBA unsuccessfully challenged the Supplemental Award on two grounds. First, the PBA asserted that the interest arbitrator erred because he declined to take into consideration the retirement of a lieutenant on February 29, 2012 in computing the application of the Hard Cap. Second, the PBA argued that the interest arbitrator eliminated longevity for employees hired after January 1, 2012 without providing the required rationale for his decision. PERC rejected the PBA's contentions and sustained the Ramsey Supplemental Award. See E-1, Section 2, Part 1, Exhibit B. The Ramsey Award and Ramsey Supplemental Award illustrate, among other things, that where a wage freeze results in an increase that exceeds the Hard Cap, the Interest Arbitrator has to make reductions to salary step increases or longevity increments or both so that the cost of the award remains within the Hard Cap. Thus, as demonstrated by interest arbitration awards rendered in accordance with the 2010 Amendments, Hard Cap compliance may not only require a zero percent wage increase over the duration of the contract, but it may also include reductions to salary step increases and longevity increments.

e. HEALTH INSURANCE

(1) RECENT LEGISLATION

Because health insurance benefits comprise a significant part of an employee's compensation package, this section is devoted to the critical issues

caused by the dramatic increase in the cost of health benefits in recent years. Insurance benefits constitute a key component of the wages and benefits factor under the Reform Act. In an effort to mitigate the financial burden of the skyrocketing costs of health insurance benefits on public entities, two recent legislations mandate public employee contributions toward the cost of health insurance. First, under Chapter 2 of the Laws of 2010 ("Chapter 2"), effective May 21, 2010, all New Jersey current local government employees are required to pay at least 1.5% of their base salary towards health insurance benefits after the current collective bargaining agreement expires. Because the predecessor Tenafly PBA Collective Bargaining Agreement expired on December 31, 2012, the law would have required the employees to contribute 1.5% of base salary to health insurance premiums effective January 1, 2013. By this time, the legislature passed more expansive health insurance contribution legislation.

Effective June 28, 2011, Chapter 78 of the Laws of 2011 ("Chapter 78") implemented additional comprehensive health benefit reform that increased the contribution rates set forth in Chapter 2. Under Chapter 78, the health benefit contributions established are not negotiable or locally determined for four years or for four years from the expiration of any collective bargaining agreements in effect on June 28, 2011. See Division of Local Government Services Local Finance Notice 2011-20; Division of Local Government Services Local Finance Notice 2011-20R, E-1, Part 4 Section 6. Chapter 78 requires employees to contribute a percentage toward the cost of

their health insurance coverage. The contribution is based on a formula that considers the type of coverage (i.e., family, employee plus, or single), the employee's base salary, and the cost of coverage. Following a four year phase in at 25% per year, employees who earn less than \$20,000 will contribute 4.5% of the premium toward single coverage. At the other end of the spectrum, employees who earn \$110,000 or more will contribute 35% of the premium toward family coverage. A chart details the percent of contribution based on salary and type of coverage. See E-1, Section 4, Part 6, Appendix A—Health Benefit Contribution Schedules at 16.

Because the PBA's collective bargaining agreement expired on December 31, 2012, after Chapter 78 took effect, the contribution, subject to a 4-year phase in at 25% per year took effect in January 2013. By this time, other Borough employees had been contributing to their health insurance first under Chapter 2 and then under Chapter 78 since the middle of 2011. As discussed below, while the contribution requirement will provide some financial relief, it pales in comparison to the spiraling increases in premium costs which public entities have absorbed for years. Private sector employees generally do not receive comparable benefits to the comprehensive health and retiree health benefits enjoyed by public sector employees.

(2) DRAMATICALLY RISING COSTS CONTINUE

Health insurance premium costs continue to skyrocket. Many public employers in New Jersey including Tenafly participate in the New Jersey State

Health Benefit Program (the "SHBP"). The cost of insurance through the State Health Benefits Program has increased dramatically in recent years. Family coverage for the NJ Direct15 Plan in 2013 for employers who offer prescription drugs through the SHBP costs a monstrous \$23,058 per year per employee. See SHBP Local Government Employers Rates Effective 1/1/2013 to 12/31/2013 at E-1, Section 4, Part 8.

A review of historical costs highlights the rapid, spiraling increase in costs over the past six years. In 2007, single coverage for the NJ Plus Plan cost \$424.50 per month while family coverage cost \$1,099.25 per month. Annually, single coverage cost \$5,094 while family coverage cost \$13,191. See SHBP Local Government Employers Rates Effective 1/1/2007 to 12/31/2007 at E-1, Section 2, Part 13. Effective April 1, 2008, the State Health Benefits Program streamlined the number of plans that it offered. Under the NJ Direct15 Plan, employers without a separate prescription drug plan paid \$455.60 per month for single coverage and \$1,139.00 per month for family coverage. On an annual basis, costs totaled \$5,467.20 for single coverage and \$13,668.00 for family coverage. See SHBP Local Government Employers Rates Effective 4/1/2008 to 12/31/2008 at E-1, Section 2, Part 13. The 2008 NJ Direct15 Plan represented a 7.3% increase for single coverage and a 3.6% increase for family coverage respectively over the 2007 NJ Plus Plan. See E-1, Section 2, Part 13.

In 2009, health insurance premiums increased yet further. Under the NJ Direct15 Plan, for employers without a separate prescription drug plan, single

coverage increased to \$469.27 per month, while family coverage increased to \$1,173.17 per month. See SHBP Local Government Employers Rates Effective 1/1/2009 to 12/31/2009 at E-1, Section 2, Part 13. On an annual basis, the NJ Direct15 Plan cost \$5,631.24 for single coverage and \$14,078.04 for family coverage, representing a 3.0% increase over 2008 rates. See E-1, Section 2, Part 13. Aetna HMO and Cigna Health Care HMO premiums increased by 6.0% from 2008 to 2009. Specifically, the Aetna HMO family coverage premium increased from \$1,181.81 per month to \$1,252.72 per month. See E-1, Section 2, Part 13.

Because the State Health Benefits Program had increased insurance premiums at below market increases, it needed to dramatically increase premiums to remain solvent. In 2010, the State Health Benefits Program approved a 20% increase for local government employees and rates effective January 1, 2010 reflected an across the board 20% increase. See SHBP Local Government Employers Rates Effective 1/1/2010 to 12/31/2010 at E-1, Section 2, Part 13. Single coverage for the NJ Direct15 plan increased to \$564.53. Family coverage increased to \$1,411.32. See E-1, Section 2, Part 13. On an annual basis, NJ Direct15 with prescription drugs will range from \$6,774.36 for single coverage, to \$16,935.84 for family coverage. See E-1, Section 2, Part 13. Therefore, in 2010, family coverage cost public employer participants almost \$17,000 per year per employee. Local governments had to absorb the 20% increase in health insurance contributions.

In 2011, the State Health Benefits Program again implemented a substantial rate increase. NJ Direct15 and NJ Direct10 premiums increased by 12.2%. On an annual basis, NJ Direct15 with prescription drugs ranged from \$7,600.80 for single coverage, to \$19,002.00 per year for family coverage. See SHBP Local Government Employers Rates Effective 1/1/2011 to 12/31/2011 at E-1, Section 2, Part 13. Therefore, in 2011, family coverage cost public employer participants over \$19,000 per year per employee. The annual increase in health insurance benefits in 2011 alone far exceeded the then required 1.5% of base salary employee contributions. At 1.5% of base salary, employees must earn \$133,000 to contribute an amount equal to only the 2011 increase. Because the vast majority of public employees earn less than \$133,000, the then applicable 1.5% mandatory contribution did not come close to covering the 2011 increase in premiums. In Tenafly, the PBA did not contribute (other than the \$40 per month negotiated contribution) toward health insurance premiums because the PBA collective bargaining agreement did not expire until December 31, 2012.

In 2012, SHBP again increased premiums substantially. NJ Direct15 and NJ Direct10 premiums increased by 12.1%. On an annual basis, NJ Direct15 with prescription drugs cost \$8,517.60 for single coverage and \$21,294 per year for family coverage. See SHBP Local Government Employers Rates Effective 1/1/2012 to 12/31/2012 at E-1, Section 2, Part 13. In 2013, premiums again increased. NJ Direct 15 and NJ Direct 10 increased by 8.3%. See E-1, Section 4, Part 8. On an annual basis, NJ Direct15 with prescription drugs cost \$9,223.08 for

single coverage and \$23,057.76 per year for family coverage. See E-1, Section 4, Part 8. Over the past seven years, since 2007, health insurance premiums for the NJ Plus plan to the present NJ Direct15 plan have increased from \$424.50 to \$768.59 per month and from \$5,094.00 to \$9,223.08 per year for single coverage. Family coverage increased from \$1,099.25 to \$1,921.48 per month and from \$13,191 to \$23,057.76 per year. These figures show a 74.80% increase in the cost of health insurance premiums since 2007, or an average increase of 12.47% per year. Chapter 78's phased employee contribution requirements do not even come close to matching the increase in premiums, so municipalities have yet to feel the relief from Chapter 78.

Significantly, the increased contributions toward health insurance premiums required by Chapter 2 and more recently Chapter 78 should not be balanced by salary increases to mitigate these increased employee costs. In the Matter of Interest Arbitration between County of Union and FOP Lodge 103 (Sheriff's Superior Officers), Docket No. IA-2010-118, dated January 17, 2012, Interest Arbitrator Timothy Hundley observed that "nothing in either the new legislation or the interest arbitration statute entitles employees to salary adjustments that balance out the new statutorily mandated contributions." Id. at 68. He continued, "[f]urther, these health benefit changes will eventually apply to all New Jersey public employees, while the pension changes will be effectuated for all public safety workers." Id. Interest Arbitrator Hundley concluded by noting, "[i]n this posture, the legislative changes will not materially

affect unit members' overall compensation vis-à-vis other public sector employees in New Jersey." Id. Therefore, the Interest Arbitrator in this matter must not consider employee costs incurred pursuant to the statutorily mandated health insurance contributions in determining the wages or benefits awarded in this interest arbitration. In sum, the significant increase in the cost of employee health insurance and the not-yet-felt relief that will come from Chapter 78 supports the reasonableness of the employer's offer in contrast to the PBA's demands.

2. THE LAWFUL AUTHORITY OF THE EMPLOYER

N.J.S.A. 34:13A-16g(5) requires the Interest Arbitrator to consider the "lawful authority of the employer" in determining a conventional award. The Reform Act specifically requires the Interest Arbitrator to consider, in evaluating this factor, "the limitations imposed upon the employer by [The New Jersey Local Government Cap Law (the "Cap Law"), N.J.S.A. 40A:4-45.1 et seq.]" N.J.S.A. 34:13A-16(g)(5). The Cap Law restrains the lawful authority of the employer by limiting overall budget increases. It thereby restricts a municipality's ability to grant wage increases to its employees.

In enacting the Cap Law, the Legislature declared it to be "the policy of the [State] that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads." N.J.S.A. § 40A:4-45.1. The Legislature also recognized, however, that "local government cannot be constrained to the

point that it would be impossible to provide necessary services to its residents.”

Id.

The Cap Law controls the cost of local government by prohibiting a municipality from increasing certain appropriations, including the cost of police officer salaries, by more than the “cost of living adjustment” over the previous year’s similar appropriations. Several amendments to the Cap Law placed even tighter caps on spending to control local government expenditure. In 2007, Governor Corzine signed into law Chapter 62 of the Laws of 2007 (the “2007 Cap”). This law implemented a property tax levy cap which limited municipalities to a 4.0% increase over the previous year’s amount to be raised by taxation. This change in the law eliminated significant flexibility in municipal budgets by creating a strict limit on increases on the major revenue sources, making it more difficult to balance the budget.

On July 13, 2010, Governor Christie signed into law Chapter 44 of the Laws of 2010 (the “2010 Cap”). The 2010 Cap reduced the 2007 Cap of 4.0% to 2.0% and modified exclusions, further increasing the limitation on major revenue sources. The 2010 Cap added several general exclusions. These include increases in debt service and capital expenditures, extraordinary costs related to emergencies, such as inclement weather, pension contributions in excess of 2% and health benefit cost increases in excess of 2% but limited by the State Health Benefit increase. These limitations directly impact the Borough’s

ability to pay for the salary increases and accompanying increases in benefit costs for its PBA unit.

a. INTRODUCTION

Traditionally, a municipality's "ability to pay" argument has focused on the Current Expense Budget appropriations. If a municipality was budgeted up to "cap", there was no need to consider long-term versus short-term budgetary strategies, capital expenditures, debt service, revenues, etc. If a municipality was budgeted up to "cap" it could appropriate no additional monies within its Current Expense Budget. The sole focus was on whether the municipality had reasonably appropriated monies on each and every line item in the Current Expense Budget.

If a municipality was not budgeted up to "cap", this did not mean that the municipality had the "ability to pay." In the narrow sense, if a municipality was not budgeted up to "cap", there was room in the Current Expense Budget to appropriate monies for additional expenditures. However, to narrowly focus on this fact excluded the necessary considerations of long-term versus short-term budget strategies, necessary capital improvements, debt service and revenues.

However, the "traditional" analysis became virtually obsolete when Governor Corzine signed into law Chapter 62 of the Laws of 2007, which implemented a property tax levy cap limiting municipalities to a four percent (4.0%) increase to the previous year's amount to be raised by taxation.

Previously, municipalities had discretion and flexibility in dealing with budgetary issues. So long as a municipality had room within the "Cap", it had discretion and flexibility in the expenditure side of the budget. Without a tax levy cap, a municipality had greater discretion and flexibility in the revenue side of the budget because of its ability to raise revenue through taxes.

With the implementation of the tax levy cap the discretion and flexibility of municipal budget strategies changed dramatically, with revenues playing a more significant role and expenditures becoming reactionary to the impact of revenues. This situation has been magnified for 2011 and beyond with the modification of the tax levy cap downwards from four (4.0%) per cent to two (2.0%) per cent! Revenue inflexibility has also caused municipalities to consider long-range revenue projections when formulating current budgets.

Previous revenue analyses reviewed a municipality's surplus history, State Aid, and "one-shot deals", indicating that the inability of these revenue sources to fund budgetary expenditure increases left the remaining revenue burden to be shouldered by municipal taxes. With the statutory limitation on tax levy increases, there is virtually no revenue source over which the municipality has any control, discretion or flexibility to counter budgetary shortfalls in other revenue sources. This lack of control, discretion and/or flexibility requires municipalities to curtail expenditures in order to balance their budgets.

Due to the restrictions in New Jersey's "Cap" law, PL 1976, Ch. 68, as revised by PL 1990, Ch. 89 and PL 1990, Ch. 95, limiting increases within the

Current Expense portion of the municipal budget to two and one-half (2.5%) per cent (three and one-half [3.5%] per cent with municipal approval), and due to the above-referenced recent legislation limiting municipal tax increases to four (4.0%) per cent and two (2.0%) per cent beginning in 2011, the traditional analysis does not apply to the Borough's ability to pay. As outlined below, the Borough's "ability-to-pay" argument centers around the revenue portion of the Borough's budget. Additionally, there is no need to differentiate between Current Expense budgetary line items and expenditures excluded from the "cap", since the Borough's revenues are generated to cover both within "cap" and excluded from "cap" expenditures.

b. REVENUE

There are five (5) basic revenue sources: (1) surplus; (2) local revenues; (3) State Aid; (4) "one-shot deals", or non-recurring revenues; and (5) taxes.

Surplus history is illustrative of the Borough's financial woes. As of January 1, 2010, the Borough's surplus balance was \$3,333,959.00, allowing the Borough to anticipate \$1,600,000.00 as revenue in its 2010 budget. The Borough's surplus balance as of January 1, 2011 was only \$2,687,167.00, or a reduction of approximately \$670,000.00. This reduction allowed the Borough to anticipate only \$1,500,000.00 in its 2011 budget, a reduction of \$100,000.00.

The Borough's surplus balance as of January 1, 2012 was only \$2,967,390.00, an increase of approximately \$280,000.00, but still a reduction of

approximately \$390,000.00 from the 2010 level. This increase allowed the Borough to anticipate \$1,544,000.00 in its 2012 budget, an increase of only \$44,000.00 and still a \$56,000.00 reduction from 2010 anticipated surplus.

The Borough's surplus balance as of January 1, 2013 was only \$2,580,670.00, or a reduction of approximately \$386,720.00. This reduction allowed the Borough to anticipate only \$1,500,000.00 in its 2013 budget, a reduction back to 2011 levels.

Just to maintain revenue anticipated in 2013, the Borough had to generate \$44,000.00 more from other revenue sources than in 2012.

Revenue from local revenues further illustrates the Borough's revenue woes. In 2011, the City anticipated \$730,000.00. In 2012, local revenues decreased by \$60,000.00 to \$670,000.00. By 2013, local revenues had increased by approximately \$10,000.00 to \$680,000.00, still \$50,000.00 less than anticipated in 2011. In 2012, the \$60,000.00 decrease in local revenues more than offset the \$44,000.00 increase in surplus anticipated. Similarly, in 2013, the \$44,000.00 decrease in surplus anticipated more than offset the \$10,000.00 increase in local revenues.

State Aid is a "neutral" revenue. From 2011 through 2013, State Aid remained stable at \$1,119,801.00. Therefore, State Aid was not available as a revenue source to compensate for the revenue decreases in 2012 and 2013.

Since Dedicated Uniform Construction fees are offset by appropriations, they have no impact on the remainder of the budget, and were

not available as a revenue source to compensate for the revenue decreases in 2012 and 2013.

It is dangerous for a municipality to rely on "one-shot deals" to balance its budget since these revenues, by their very nature, do not regenerate. From 2011 to 2012, "one-shot deals" increased by approximately \$20,000.00, barely enough to balance previously referenced budgetary deficiencies. From 2012 to 2013, "one-shot deals" decreased by approximately \$16,000.00, increasing the previously referenced budgetary deficiencies to approximately \$50,000.00.

All in all, the Borough's anticipated revenue in 2012, other than from municipal taxes, remained stable compared to 2011 anticipated revenue. Therefore, there were no revenue sources available in 2012, other than municipal taxes, to offset budgetary increases.

All in all, the Borough's anticipated revenue in 2013, other than from municipal taxes, decreased by \$50,000.00 compared to 2011 anticipated revenue. Therefore, the only revenue source available to offset the revenue deficiencies as well as to offset budgetary increases is municipal taxes.

With respect to municipal taxes in 2012, revenue from municipal taxes increased from \$21,482,052.00 to \$21,686,302.00, an increase of approximately \$204,000.00, the entire increase in 2012 revenues.

With respect to municipal taxes in 2013, revenue from municipal taxes increased from \$21,686,302.00 to \$21,993,579.00, an increase of

approximately \$307,000.00, representing an offset of the \$50,000.00 revenue reduction as well as the entire increase in 2013 revenues.

As demonstrated above, both in 2012 and 2013, all revenue sources, except for municipal taxes, are unavailable to absorb budgetary increases. Therefore, even with appropriation cap room, any increase in appropriations would directly result in additional municipal tax increases.

3. THE FINANCIAL IMPACT ON THE GOVERNING UNIT

Before the 2010 Amendments, N.J.S.A. 34:13A-16g(6) required the Interest Arbitrator to consider the economic offer's financial impact on the governing unit, its residents and taxpayers in determining a conventional award. P.L. 2010, Chapter 105 revised this factor to read, "The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c.62 (C40A:4-45.45), and taxpayers." The amendment emphasizes the importance of the restriction on raising revenue through taxes by the local government tax levy cap in rendering an award. The considerations under this factor "do not equate with a municipality's ability to pay." Hillsdale, 137 N.J. at 85. The New Jersey Supreme Court emphasized that "[i]t is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award." Id. at 86 (quoting 263 N.J. Super. At 188 n.16). Moreover, the municipality does not carry the burden of proving its financial inability to meet the union's demands. Id.

The state of the economy directly impacts the Borough's ability to raise revenue through taxes to pay for police salary increases and benefits. The economy recently faced its biggest challenges since the Great Depression in 1929 and recovery has been slow. Unemployment remains high. The federal unemployment rate was 7.9% in January 2013. See E-1, Section 5, Part 4.

New Jersey's unemployment rate consistently exceeds the national average. New Jersey's unemployment rate was 9.5%, in January 2013, decreasing by only 0.2% since February 2010, the recession's lowest point. See E-1, Section 5, Part 4. From December 2012 to January 2013, the unemployment rate was unchanged. See E-1, Section 5, Part 4. New Jersey has only recovered about 33% of the jobs lost in the recession. See E-1, Section 5, Part 4. Although New Jersey's employment is slowly expanding, New Jersey had a long way to go to reach full employment.

Layoffs and the recent severe economic downturn directly affect New Jersey's economy. Evidence points to a slow, weak recovery from the Great Recession. In 2012, New Jersey employers added 59,100 private sector jobs and 7,300 public sector jobs in 2012 for a gain of 66,400 jobs. See E-1, Section 5, Part 4. Despite job growth, unemployment remains high.

The New Jersey Department of Labor requires companies with 100 workers or more to announce job reductions. These layoffs are posted on the New Jersey Department of Labor's website. See E-1, Section 5, Part 4. In January 2013, seven companies announced the elimination of 2,623 jobs,

including 116 jobs at The Estee Lauder Companies in Oakland, a nearby Bergen County municipality. In February 2013, four employers reported that 654 workers would lose their jobs, including 356 from M & T Bank in Paramus, also located in Bergen County. In March 2013, seven companies announced the anticipated elimination of 817 positions, assuming that identical listings are duplicates. These included the elimination of 89 jobs in Allendale, 107 jobs in Lyndhurst and 69 jobs in Carlstadt. In April 2013, three companies announced the layoffs of 643 jobs. See E-1, Section 5, Part 4. Thus, for the four month period from January 2013 until April 2013, New Jersey large employers announced the elimination of 4,737 jobs, an average job loss of 1,184.25 positions per month. See E-1, Section 5, Part 4. Continuing layoffs in the private and public sector in New Jersey dramatically impact the Borough's ability to pay for the salary increases and benefits sought in this interest arbitration.

In the aftermath of the recession, police departments throughout the state, including Tenafly, struggle with lean staffing. With officers seeking to secure their benefits before government denies them their entitlements, retirements have substantially increased. PFRS retirements surged 48% in 2010 and 2011. See E-1, Section 5, Part 5. Jersey City lost 12% of its police force through retirements and attrition. See E-1, Section 5, Part 5. At the same time, hiring remains minimal. This has resulted in an overall 4% decline in police and fire staffing levels from 2010 to 2011. See E-1, Section 5, Part 5. In sum, the continuing after effects of the deepest recession since the Great Depression of

1929 continue to impact the Borough's ability to support continuing increases in PBA salary and benefits.

4. **THE INTEREST AND WELFARE OF THE PUBLIC**

The Act requires the Arbitrator to consider “the interest and welfare of the public” in determining a reasonable award. See N.J.S.A. § 34:13A-16(g)(1). The analysis under this factor requires the Interest Arbitrator to consider “the limitations imposed upon the employer by P.L. 1976 (C.40A:4-45.1 et seq., [the Cap Law].” See N.J.S.A. 34:13A-16(g)(1). This criterion focuses upon the priority to be given to the public employee's wages and other economic benefits within a public employer's finite budget and plans. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 188 (App. Div. 1993), rev'd on other grounds, Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994). The 2010 Amendments demonstrate the importance of considering the public's interest and welfare in rendering an Interest Arbitration award. The salary limitation imposed by the 2010 Amendments reflect New Jersey's public policy of controlling spiraling tax levies and must be applied when crafting the interest arbitration award in this case.

The law prior to these reforms required an Interest Arbitrator consider the interests and welfare of the public as demonstrated by N.J.S.A. 34:13A-16(g)(1). With the 2010 Amendments, the Legislature emphasized that the interest of the public is best served in the context of interest arbitration because the Interest Arbitrator is required to consider factors such as the interest

and welfare of the public, which includes recognizing the limitations imposed upon the local unit's property tax pursuant N.J.S.A. 40A:4-45.45 (the "Cap Law"). N.J.S.A. 34:13A-16(g)(1), (6). Therefore, the interest arbitration law always recognized the importance of the public's interest and welfare being considered as part of rendering an interest arbitration award. The 2010 Amendments do not change that fact; it merely provides an Interest Arbitrator with another factor to consider (limitations imposed upon the local unit's property tax levy) to better assess the public's interest and welfare. N.J.S.A. 34:13A-16(g)(1), (6). In short, the Legislature through the 2010 Amendments, has declared that it is the "interest and welfare" of the public that total economic increases not exceed the Hard Cap.

Generally, a public employer best serves the public interest by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services. While a municipality may have difficulty balancing these competing interests within the available budget, the municipality should not sacrifice fairness to its employees so that it may provide its residents with an overabundance of frivolous government services. On the other hand, a municipality should not reduce essential government services to satisfy the economic demands of over-reaching public employees.

The Supreme Court recognized that although compulsory interest arbitration is an adversarial process between a public employer and its

employees, the public is a “silent party” to the proceeding. Hillsdale, 137 N.J. at 82. The Court described the impact the interest arbitration process has on the public:

This case arises from a salary dispute between a municipality and its police department, but its resolution inevitably will affect the public. In an era of rising costs and budget caps, a municipality feels the initial impact of salary increases for police and fire departments. The taxpayers, however, feel the ultimate effect.

Id. at 76. The Court also observed,

Compulsory interest arbitration of police and fire fighters' salaries affects the public in many ways, most notably in the cost and adequacy of police and fire-protection services. Indeed, section 16g expressly requires the arbitrator to consider the effect of an award on the general public. Hence, an award runs the risk of being found deficient if it does not expressly consider “the interest and welfare of the public.”

Id. at 82-83 (citations omitted). Although the Act requires Interest Arbitrators to consider the impact of an award upon “the interest and welfare of the public,” Interest Arbitrators frequently do not give the factor its proper weight in deliberations. In determining a reasonable award, the Interest Arbitrator must consider the effect the award will have on the citizens and taxpayers of the Borough of Tenafly.

5. THE CONSUMER PRICE INDEX

N.J.S.A. 34:13A-16g(7) requires the Interest Arbitrator to consider the consumer price index (“CPI”) in determining reasonableness of the parties' economic proposals. The CPI measures a wage earner's purchasing power. When a wage earner receives a salary increase which equals the CPI increase,

the wage earner theoretically will be able to continue to maintain his or her standard of living. The present CPI and the fact that the CPI increases in recent years were at their lowest level in many years emphasize the reasonableness of the Borough's proposals.

The consumer price index has been at its lowest level in years. See U.S. Department of Labor, Bureau of Labor Statistics, CPI-U from 1913 to the Present at E-1, Section 5, Part 3. In 2009, the CPI decreased 0.4%, the first decline in the CPI since it declined by 0.4% in 1955, fifty-seven years ago. In 2010, the CPI nationally increased by 1.6%. In 2011, the CPI nationally increased by 3.2%. In 2012, the CPI nationally increased by 2.1%. In a local analysis, in 2011, the CPI for the New York-Northern New Jersey-Long Island area increased 2.7%, 0.5% less than the national increase in the CPI. See E-1, Section 5, Part 2. In 2012, the CPI in the New York-Northern New Jersey-Long Island region mirrored the federal CPI. For the twelve month period ending in December 2012, the CPI in the New York-New Jersey region increased by 2.1%. See E-1, Section 5, Part 2.

As shown by the following chart, over the sixteen years from 1997 to 2012, the PBA received increases that significantly exceeded the CPI.

<u>PBA</u>	<u>Percent Increase</u>	<u>CPI</u>
1997	4.9	2.3
1998	4.9	1.6
1999	3.9	2.2
2000	3.9	3.4
2001	3.9	2.8
2002	4.0	1.6
2003	4.0	2.3
2004	4.1	2.7

2005	4.0	3.4
2006	4.0	3.2
2007	4.0	2.8
2008	4.0	3.8
2009	3.75	-0.4
2010	3.75	1.6
2011	3.75	3.2
2012	3.75	2.1

Average: 4.04% Average: 2.46%

Increases in the CPI averaged 2.46% while PBA increases averaged 4.04%. PBA maximum salary in 1996 equaled \$65,890. If maximum salary increased at the rate of CPI since 1996, maximum patrol officer salary in 2012 would have been \$96,416 not \$124,015 (\$125,215 - \$1,200 clothing allowance rolled into base). The difference, \$27,599, represents the police officers' increase in purchasing power from 1996 to 2012. The Interest Arbitrator should consider that PBA increases have dramatically exceeded the CPI over the last sixteen years in rendering a conventional award.

6. CONTINUITY AND STABILITY OF EMPLOYMENT

N.J.S.A. 34:13A-16g(8) requires an Interest Arbitrator to consider the "continuity and stability of employment" in determining a reasonable economic package. The Borough's proposal will best allow the Borough to maintain and continue a stable work force and avoid additional layoffs in the Police Department and throughout the municipality. The Interest Arbitrator should conclude that the elements of the Borough's proposal more reasonably protect the police officers' stability and continuity of employment than the PBA's demands.

IV. CONCLUSION

In Tenafly, salary increments and longevity increments alone exceed the Hard Cap. As illustrated by the recent interest arbitration award in Ramsey, where even a wage freeze results in an increase that exceeds the Hard Cap, the Interest Arbitrator has to make reductions to salary step increases or longevity increments or both so that the cost of the award remains within the Hard Cap. Hard Cap compliance in Tenafly not only requires a zero percent wage increase over the duration of the contract, but it also requires reductions to salary step increases and longevity increments. The failure to comply with the Hard Cap will subject this award to vacation.

In sum, the Borough's proposals more reasonably reflect the statutory criteria than the PBA's demands. It more closely reflects the 2.0% Hard Cap, and considers Tenafly's ability to pay, the impact of the Cap Law on the Borough's ability to grant wage increases, and the financial impact on the governing unit, its residents and taxpayers. The Borough's offer also considers the interest and welfare of the public, the police officers' overall compensation package, salaries and benefits in the private sector, salaries and benefits in the public sector and the salaries and benefits provided to employees in the same jurisdiction and police officers in other comparable municipalities. It also considers the modest increases in the cost of living. Finally, the Borough's package takes into account its impact on the police officers' continuity and stability of employment. Because the Borough's proposals more reasonably

reflect the statutory criteria than the PBA's demands, the Borough of Tenafly respectfully requests the Interest Arbitrator to issue a decision supporting the elements of the Borough's offer.

DISCUSSION

I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria set forth in N.J.S.A. 34:13A-16(g). The statutory criteria are as follows:

1. The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
2. Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - a. In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - b. In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995., c. 425 (C. 34:13A-16.2); provided, however that 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, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c.62 (C.40A:4-45.45), 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 a 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).

All of the statutory factors are relevant, but they are not necessarily entitled to equal weight. The party seeking a change to an existing term or condition of employment bears the burden of justifying the proposed change. I considered my decision to award or deny the individual issues in dispute as part of a total package for the terms of the entire award.

Base Salary & Base Salary Cap Calculation

This Award is subject to the 2% base salary cap ["Hard Cap"] imposed by P.L. 2010, c. 105. In Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53, 38 NJPER 380 (¶ 116 2012), PERC cited standards as they relate to interest arbitration awards having to meet the 2% base salary cap requirements of N.J.S.A. 34:13A-16.7:

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.

PERC continued its discussion of base salary:

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

* * *

....We note that the cap on salary awards in the new legislation does not provide for the PBA to be credited with

savings that the Borough receives from retirements or any other legislation that may reduce the employer's costs.

In the consolidated case of Point Pleasant Borough & PBA Local 158/SOA, PERC Dkt. Nos. IA-2012-018 & IA-2012-019 (December 2012), the Arbitrator concluded that he was compelled to apply PERC's standards to the facts of that case. I reached the same conclusion in Camden County Sheriff & PBA Local 277/SOA, PERC Dkt. No. IA-2013-010 (March 2013), and continue to do so with respect to this matter.

The Borough indicates that the base salary for 2012 consisted of salary, holiday pay, education pay and longevity. [See Ex. E-1, Section 1, Parts 2 & 3]. The Borough calculated base salary in 2012 to be \$3,763,060 and thus the annual 2% Hard Cap under the statute to be \$75,261. [See Borough Brief, p. 27]. Using the figures above, and applying PERC's standards, the annual cap amount costs that can be awarded for this bargaining unit over a period of three (3) years as applied to the expired salary schedule as of December 31, 2012, assuming an even application of \$75,261 per year, is \$3,838,322 in 2013, \$3,913,583 in 2014, and \$4,365,149 in 2015. Given the structure of the salary guides, the current placement of officers on the guides, and the other economic benefits contained within the expired Agreement, the Hard Cap was a constraint upon the manner in which I was able to craft the salary increases,

the salary guides and the longevity benefits to be received by those currently in the bargaining unit.

Interests and Welfare of the Public

As I expressed in an recent interest arbitration award, Arbitrators have recognized that “[t]he interests and welfare of the public [N.J.S.A. N.J.S.A. 34:13A-16g(1)] is paramount because it is a criterion that embraces many of the other factors and recognizes their relationships.” Ocean Cty. Sheriff & PBA Local 379A (Superiors), IA-2013-002 (2012) citing Washington Tp. & PBA Local 301, IA-2009-053 (Mastriani 2012); see Borough of Roselle Park & PBA Local 27/(SOA), IA-2012-024, IA-2012-026 (Osborn 2012). Having considered the entire record, the interests and welfare of the public criterion factored into my deliberations but the manner in which I reviewed this case was largely influenced by the statutory Hard Cap. I now review the interests and welfare criterion through the other statutory factors addressed below.

Lawful Authority of the Employer/Financial Impact on the Governing Unit, Its Residents and Taxpayers/Statutory Restrictions Imposed on the Employer

N.J.S.A. 34:12A-16g(1), (5), (6) and (9) refer to the lawful authority of the employer, the financial impact of the award, and the statutory restrictions

imposed on the employer. As to the tax levy cap, the Borough's tax levy cap calculation sheet for 2012 indicates that the amount to be raised by taxation was \$461,209 below the maximum allowable amount (\$20,325,959 compared to \$20,787,168). [Ex. PBA-5, Sheet 3c]. In addition, the Borough had an available levy cap bank from 2011 of \$806,193. [Id.] As to the appropriations cap, the total 2012 budget of \$19,014,432 was \$2,479,111 below the total general appropriations for municipal purposes cap of \$21,493,543.⁶ [Id.] With respect to surplus, the Borough indicates that its surplus balance was \$3,333,959 as of January 1, 2010, \$2,687,167 as of January 1, 2011, \$2,967,390 as of January 1, 2012, and \$2,580,670 as of January 1, 2013.

I have calculated the awarded base salary increases including salary, holiday pay, education pay, and longevity to be \$106,222 in 2013, \$107,242 in 2014 and \$0 in 2015. The total cost of the awarded base salary increases that include salary, holiday pay, education pay and longevity over the three (3) year term of the contract is \$213,464.

Having considered the entire record, I conclude that the financial impact of this Award as outlined above will not adversely affect the governing unit, its

⁶ The Borough's budget for 2013 was not finalized as of the date of the arbitration hearing. However, the Borough's introduced budget indicates that its 2013 budget will be \$2,559,040 below the appropriations cap of \$21,581,904. It also indicates that the amount to be raised by taxation is expected to be \$720,018 below the maximum allowable amount (\$21,352,929 compared to \$20,632,911). [Ex. PBA-12, Sheet 3c]. In addition, the Borough indicates that it had an available levy cap bank from 2011-2012 of \$1,267,402.

residents and its taxpayers, and it will not prohibit the Borough from meeting its statutory obligations or cause it to exceed its lawful authority. Further, this Award serves the interests and welfare of the public through a thorough weighing of the statutory criteria after due consideration to the Hard Cap.

Comparability

Private Employment

Given the unique nature of law enforcement jobs, the comparison to private employment has not been allotted significant weight in previous interest arbitration awards. I continue to find no evidence to support a deviation from giving greater weight to public sector and internal comparisons.

Public Employment in General/In the Same or Similar Jurisdictions

With respect to public employment, the PBA and Borough presented comparisons of this bargaining unit to the law enforcement units in other jurisdictions within Bergen County and the State. The Borough also emphasized the internal comparability of this bargaining unit to the 4 other bargaining units. [See Borough Brief, pp. 45-48 & Ex. E-1, Section 3, Parts 1, 2, 3 and 4].

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, reported voluntary settlements averaged 2.65%, 1.87%, 1.77%, and 1.88%. PERC indicates that the average 2012 settlement for post-2011 filings is 1.84%, and the average 2012 award 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 to the ones under the other settlements and awards.

I have reviewed the parties' comparisons and conclude that this bargaining unit enjoys a host of competitive economic benefits that fall within the range of those received in other law enforcement units. The Borough, however, has demonstrated that the other bargaining units in the Borough have, in varying forms, reduced or eliminated longevity, vacation leave, personal days and terminal leave for new hires. I conclude that the internal comparability is entitled to greater weight in my review of the economic benefits for new hires. Based upon all of the foregoing, the modifications contained in this Award are supported by the evidence.

Overall Compensation

The evidence in this matter, as demonstrated by the parties' exhibits and the comparisons outlined above, shows that the overall compensation received by the Borough's officers is fair, reasonable and competitive. The modifications I award herein are based upon the application of all of the statutory criteria, but as to the salary modifications awarded herein, greater weight to the Hard Cap was required. As to the modifications awarded for new hires, the internal comparisons were given greater weight than the external comparisons.

Stipulations of the Parties

There were no stipulations.

The Cost of Living

The most recent statistics from the U.S. Bureau of Labor Statistics' website show the following CPI for All Urban Consumers:

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2003	2.6	3.0	3.0	2.2	2.1	2.1	2.1	2.2	2.3	2.0	1.8	1.9	2.3	2.5	2.0
2004	1.9	1.7	1.7	2.3	3.1	3.3	3.0	2.7	2.5	3.2	3.5	3.3	2.7	2.3	3.0
2005	3.0	3.0	3.1	3.5	2.8	2.5	3.2	3.6	4.7	4.3	3.5	3.4	3.4	3.0	3.8
2006	4.0	3.6	3.4	3.5	4.2	4.3	4.1	3.8	2.1	1.3	2.0	2.5	3.2	3.8	2.6
2007	2.1	2.4	2.8	2.6	2.7	2.7	2.4	2.0	2.8	3.5	4.3	4.1	2.8	2.5	3.1

2008	4.3	4.0	4.0	3.9	4.2	5.0	5.6	5.4	4.9	3.7	1.1	0.1	3.8	4.2	3.4
2009	0.0	0.2	-0.4	-0.7	-1.3	-1.4	-2.1	-1.5	-1.3	-0.2	1.8	2.7	-0.4	-0.6	-0.1
2010	2.6	2.1	2.3	2.2	2.0	1.1	1.2	1.1	1.1	1.2	1.1	1.5	1.6	2.1	1.2
2011	1.6	2.1	2.7	3.2	3.6	3.6	3.6	3.8	3.9	3.5	3.4	3.0	3.2	2.8	3.5
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7	2.1	2.3	1.8
2013	1.6	2.0	1.5												

I have given little weight to this criterion given the impact of the Hard Cap in this case.

Continuity and Stability of Employment

This criterion was considered in my review of the evidence. I conclude that the modifications awarded herein are reasonable under the circumstances presented and will maintain the continuity and stability of employment given the legal constraints on the amount that can be awarded herein.

Having addressed all of the statutory criteria I now turn to the modifications/proposals that I award.

Awarded Modifications/Proposals

Term of Agreement

I award a term of three (3) years – January 1, 2013 through December 31, 2015 because there is a greater degree of economic certainty to calculate a reasonable settlement through 2015 than through a period of time that extends beyond that.

Salary Increases/Guides, Longevity & Cost Analysis

The Borough's salary data spreadsheets indicate that as of December 31, 2012, there were 32 bargaining unit members – 4 Lieutenants, 6 Sergeants, and 22 Police Officers. [Ex. E-1, Section 1, Parts 2 & 3]. The Borough calculated total base salary for 2012 as including salary, holiday pay, education pay and longevity to be \$3,763,060.

The expired Agreement includes 3 salary guides. [See Ex. J-1, Appendices A-1 through A-3]. It also includes longevity in Article XX. All 3 salary guides have been eliminated and will be replaced with the guides below. Longevity for all employees hired on or before May 6, 2013, will be suspended for the duration of the 2013-2015 Agreement. Longevity has been eliminated for all new hires in the

contracts for the Borough's other bargaining units and, therefore, longevity will be eliminated for this unit for employees hired on or after May 7, 2013.

For Sergeants, Lieutenants, and all Patrol Officers at the top step of their respective salary guides as of December 31, 2012, I award a wage freeze and a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement. Their salaries for 2013, 2014 and 2015 are as follows:

2013, 2014, 2015

Patrol Officer	125215
Sergeant	132402
Lieutenant	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on or after January 17, 2006, but prior to January 13, 2009, I award a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement, 2 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015. I award the following salary guide in accordance with the above:

**Employees hired on or after 1/17/06 but prior to
1/13/09 (Not at top step as of 12/31/12)**

<u>POSITION</u>	<u>EFF.</u> <u>1/1/2013</u>	<u>EFF.</u> <u>1/1/2014</u>	<u>EFF.</u> <u>1/1/2015</u>
PATROL OFFICER			
After Six Years	115924	115924	115924
After Seven Years	119021	119021	119021
After Eight Years	122118	122118	122118
After Nine Years	125215	125215	125215
Sergeant	132402	132402	132402
Lieutenant	138976	138976	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on January 13, 2009, I award a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement, 4 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015. I award the following salary guide in accordance with the above:

**Employees hired on January 13, 2009
(Not at top step as of 12/31/12)**

<u>POSITION</u>	<u>EFF.</u> <u>1/1/2013</u>	<u>EFF.</u> <u>1/1/2014</u>	<u>EFF.</u> <u>1/1/2015</u>
PATROL OFFICER			
After Three Years	81859	81859	81859
After Four Years	87279	87279	87279
After Five Years	92698	92698	92698
After Six Years	98118	98118	98118
After Seven Years	103537	103537	103537

After Eight Years	108957	108957	108957
After Nine Years	114376	114376	114376
After Ten Years	119796	119796	119796
After Eleven Years	125215	125215	125215
Sergeant	132402	132402	132402
Lieutenant	138976	138976	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on or after January 1, 2012, I award a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement, 4 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015:

Employees hired on or after January 1, 2012

<u>POSITION</u>	<u>EFF.</u> <u>1/1/2012</u>	<u>EFF.</u> <u>1/1/2013</u>	<u>EFF.</u> <u>1/1/2014</u>	<u>EFF.</u> <u>1/1/2015</u>
PATROL OFFICER				
Academy Rate	44582	44582	44582	44582
Probationary Rate	50219	50219	50219	50219
After One Year	66041	66041	66041	66041
After Two Years	71420	71420	71420	71420
After Three Years	76800	76800	76800	76800
After Four Years	82179	82179	82179	82179
After Five Years	87559	87559	87559	87559
After Six Years	92938	92938	92938	92938
After Seven Years	98318	98318	98318	98318
After Eight Years	103697	103697	103697	103697
After Nine Years	109077	109077	109077	109077
After Ten Years	114456	114456	114456	114456
After Eleven Years	119836	119836	119836	119836
After Twelve Years	125215	125215	125215	125215

Sergeant	132402	132402	132402	132402
Lieutenant	138976	138976	138976	138976

In accordance with PERC's standards, by utilizing the same complement of officers employed by the Borough as of December 31, 2012 over a term of three (3) years, and assuming for the purposes of comparison there are no resignations, retirements, promotions or additional hires, the increases to base salary awarded herein increase the total base salary including salary, holiday pay, education pay and longevity pay as follows:

		<u>Total</u> <u>Base Salary</u>	<u>Increase</u> <u>from</u> <u>Prior Year</u>
Base Year	2012	\$ 3,763,060	
	2013	\$ 3,922,636	\$106,222
	2014	\$ 4,029,877	\$107,242
	2015	\$ 4,029,877	<u>\$ 0</u>
		Total Increase	\$213,464

New Hires – Vacation Leave, Personal Days and Terminal Leave

With respect to new hires, the record shows an emerging pattern of internal settlement resulting in the reduction in vacation leave and personal days, and the elimination of terminal leave. [See Borough Brief, pp. 45-48, Ex. E-

1, Section 3, Parts 1, 2, 3 and 4]. The record supports an award of the following modifications for employees hired on or after May 7, 2013:

Vacation Leave – Amend Article IX to include:

All employees hired on or after May 7, 2013 shall receive vacation under the following schedule:

Less than 1 year up to 10 days	1 day per month
Completion of 1 year to completion of 5 years	10 days
Commencement of 6 th year to completion of 10 years	12 days
Commencement of 11 th year to completion of 15 years	15 days
Commencement of 16 th year to completion of 25 years	20 days
Commencement of 26 th year	25 days

Vacation leave shall be prorated during the last year of service.

Employee must secure chief's written permission to carry over vacation time.

In Section 7, specify that the employee must receive written permission from the chief of police to carry over vacation time.

Personal Days – Amend Article X, Section 3 to include:

Employees hired on or after May 7, 2013 shall be entitled to 3 personal days per year.

Terminal Leave – Amend Article XVII to include:

Employees hired on or after May 7, 2013 shall not be entitled to terminal leave.

Insurance, Health and Welfare – Article XIII

I conclude that there is justification in the record to modify Article XIII, but I do not award the Borough's proposal in its entirety. I award the following modifications to Article XIII:

Section 1. Delete the first sentence and replace it with the following:

The employer agrees to provide the State Health Benefits Plan.

Section 7. Delete in its entirety.

Section 8. Delete in its entirety.

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

Military Leave – Article XXX

The PBA did not dispute the Borough's representation that the language it seeks to eliminate is contrary to law. I conclude that the record supports awarding the following modification to Article XXX, Section 1 so that it provides in its entirety:

Military leave shall be granted in accordance with Federal and State Laws.

Work Schedule – Article VIII

Retired Police Chief Michael Bruno and current Police Chief Robert Chamberlain testified in favor of implementing a 12 hour work schedule. As outlined in Bruno's memorandum to Borough Administrator Jewel Thompson-Chin, the Chiefs agreed that the proposed shift schedule does not reduce the number of officers on duty, the contractual time off is easily converted without change, there is no change in the current table of organization, the shift changes will take place before or after peak rush hour and school times allowing for adequate road coverage, and it will boost officer morale if it is implemented. They agreed that there are unknown factors: the ability of adjunct officers to cover and/or assist patrol shifts; the ability of officers to "switch" shifts may be limited; and training will be scheduled for just part of the

shift rather than the full shift, thus, 2 adjunct officers may be required to cover a single shift for training purposes. Bruno stated in his memorandum that the 3 bordering agencies are working with the 12 hours schedule without major problems. He recommended that the schedule "be implemented on a trial basis with the ability of the administration to revert back to our original schedule in the event of operational problems due to its implementation." [Ex. PBA-13].

The Borough argues against the schedule on the basis that the PBA has not sustained its burden, the "potential unresolved problematic issues, including increased costs", and "the 2010 Amendment preclude an award of the schedule."

I award the PBA's proposal on a 1 year trial basis. All paid time off will be converted to an hourly basis in no greater amounts than currently provided. In order to provide the parties with a reasonable opportunity to resolve the potential operational issues, the work schedule will be implemented no later than January 1, 2014. Either party will have the right to revert back to the prior work schedule at the end of the 1 year trial period by providing 60 days advance written notice to the other party.

Modifications/Proposals not Awarded

As to the remainder of the parties' modifications and proposals I thoroughly reviewed and considered their respective positions. Having examined these items in conjunction with the supporting evidentiary submissions I do not find sufficient justification to award them in whole or in part at this time. The remaining modifications and proposals are therefore rejected.

CONCLUSION

I conclude that the terms of this Award represent a reasonable determination of the issues after applying the statutory criteria. I have given greater weight to the interests and welfare of the public, the Hard Cap, and internal comparisons. I have also considered all of the other factors and conclude there is nothing in the record that compels a different result than I have determined in this proceeding.

AWARD

1. Term. Three (3) years – Effective January 1, 2013 through December 31, 2015.

2. Salary/Salary Guides/Longevity.

Eliminate all 3 salary guides and replace them with the guides below. Longevity for all employees hired on or before May 6, 2013, will be suspended for the duration of the 2013-2015 Agreement. Longevity is eliminated for employees hired on or after May 7, 2013.

For Sergeants, Lieutenants, and all Patrol Officers at the top step of their respective salary guides as of December 31, 2012, a wage freeze and a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement. Their salaries for 2013, 2014 and 2015 are as follows:

2013, 2014, 2015

Patrol Officer	125215
Sergeant	132402
Lieutenant	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on or after January 17, 2006, but prior to January 13, 2009, a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement, 2 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015:

**Employees hired on or after 1/17/06 but prior to
1/13/09 (Not at top step as of 12/31/12)**

<u>POSITION</u>	<u>EFF.</u> <u>1/1/2013</u>	<u>EFF.</u> <u>1/1/2014</u>	<u>EFF.</u> <u>1/1/2015</u>
PATROL OFFICER			
After Six Years	115924	115924	115924
After Seven Years	119021	119021	119021
After Eight Years	122118	122118	122118
After Nine Years	125215	125215	125215

Sergeant	132402	132402	132402
Lieutenant	138976	138976	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on January 13, 2009, a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement, 4 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015:

**Employees hired on January 13, 2009
(Not at top step as of 12/31/12)**

<u>POSITION</u>	<u>EFF.</u> <u>1/1/2013</u>	<u>EFF.</u> <u>1/1/2014</u>	<u>EFF.</u> <u>1/1/2015</u>
PATROL OFFICER			
After Three Years	81859	81859	81859
After Four Years	87279	87279	87279
After Five Years	92698	92698	92698
After Six Years	98118	98118	98118
After Seven Years	103537	103537	103537
After Eight Years	108957	108957	108957
After Nine Years	114376	114376	114376
After Ten Years	119796	119796	119796
After Eleven Years	125215	125215	125215
Sergeant	132402	132402	132402
Lieutenant	138976	138976	138976

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, and were hired on or after January 1, 2012, a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2015 Agreement, 4 new steps effective January 1, 2013, step movement for 2013 (1 step), step movement for 2014 (1 step), but no step movement for 2015:

Employees hired on or after January 1, 2012

<u>POSITION</u>	<u>EFF.</u> <u>1/1/2012</u>	<u>EFF.</u> <u>1/1/2013</u>	<u>EFF.</u> <u>1/1/2014</u>	<u>EFF.</u> <u>1/1/2015</u>
PATROL OFFICER				
Academy Rate	44582	44582	44582	44582
Probationary Rate	50219	50219	50219	50219
After One Year	66041	66041	66041	66041
After Two Years	71420	71420	71420	71420
After Three Years	76800	76800	76800	76800
After Four Years	82179	82179	82179	82179
After Five Years	87559	87559	87559	87559
After Six Years	92938	92938	92938	92938
After Seven Years	98318	98318	98318	98318
After Eight Years	103697	103697	103697	103697
After Nine Years	109077	109077	109077	109077
After Ten Years	114456	114456	114456	114456
After Eleven Years	119836	119836	119836	119836
After Twelve Years	125215	125215	125215	125215
Sergeant	132402	132402	132402	132402
Lieutenant	138976	138976	138976	138976

3. New Hires – Vacation Leave, Personal Days and Terminal Leave.

For employees hired on or after May 7, 2013:

Vacation Leave – Amend Article IX to include:

All employees hired on or after May 7, 2013 shall receive vacation under the following schedule:

Less than 1 year up to 10 days	1 day per month
Completion of 1 year to completion of 5 years	10 days
Commencement of 6 th year to completion of 10 years	12 days
Commencement of 11 th year to completion of 15 years	15 days
Commencement of 16 th year to completion of 25 years	20 days
Commencement of 26 th year	25 days

Vacation leave shall be prorated during the last year of service.

Employee must secure chief's written permission to carry over vacation time.

In Section 7, specify that the employee must receive written permission from the chief of police to carry over vacation time.

Personal Days – Amend Article X, Section 3 to include:

Employees hired on or after May 7, 2013 shall be entitled to 3 personal days per year.

Terminal Leave – Amend Article XVII to include:

Employees hired on or after May 7, 2013 shall not be entitled to terminal leave.

4. Insurance, Health and Welfare – Article XIII.

Modify Article XIII as follows:

Section 1. Delete the first sentence and replace it with the following:

The employer agrees to provide the State Health Benefits Plan.

Section 7. Delete in its entirety.

Section 8. Delete in its entirety.

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

5. Military Leave – Article XXX.

Modify Article XXX, Section 1 so that it provides in its entirety:

Military leave shall be granted in accordance with Federal and State Laws.

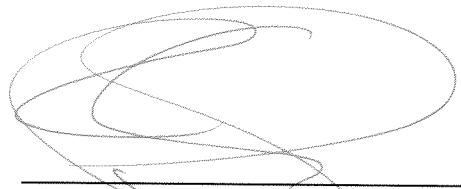
6. Work Schedule – Article VIII.

A 12 hour work schedule shall be implemented no later than January 1, 2014 for a 1 year trial period. All paid time off will be converted to an hourly basis in no greater amounts than currently provided. Either party can choose to revert back to the prior work schedule by providing the other party 60 days written advance notice prior to the expiration of the 1 year trial period.

7. All Other Proposals. All other proposals of the Borough and the Union are denied.

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 the award." My Award also explains how the statutory criteria factored into my final determination.

Dated: May 6, 2013
Sea Girt, New Jersey



Robert C. Gifford

State of New Jersey }
County of Monmouth }ss:

On this 6th day of May, 2013, before me personally came and appeared Robert C. Gifford 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.

Linda L Gifford

Notary Expires
1/10/16