

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

Case No: IA-2021-001

In the Matter of the Interest Arbitration between:

Borough of Old Tappan,

PUBLIC EMPLOYER

and

Old Tappan Police Benevolent Association, LOCAL 206,

EMPLOYEE ORGANIZATION

**INTEREST ARBITRATION
DECISION AND AWARD**

BEFORE:

**Marc A. Winters
Interest Arbitrator**

APPEARANCES

For the Employee Organization:

**Merick H. Limsky, Esquire
Of Counsel and on the Brief**

Limsky Mitolo

For the Public Employer:

**John L. Shahdanian II, Esquire
Of Counsel and on the Brief**

**Valentina M. Scirica, Esquire
On the Brief**

**McCusker, Anselmi, Rosen &
Caravelli, P.C.**

PROCEDURAL HISTORY

On July 13, 2020, the Borough of Old Tappan, filed a Petition to Initiate Compulsory Interest Arbitration (“Petition”) with New Jersey’s Public Employment Relations Commission (“PERC”). By filing the Petition, the Borough asked PERC to appoint an interest arbitrator pursuant to the Police and Fire Interest Arbitration Reform Act, *N.J.S.A. 34:13-16(e)(1)* to make an award concerning a successor collective negotiation agreement. (“CNA”) with the Old Tappan Patrolmen’s Benevolent Association, Local 206. On August 19, 2020, this Arbitrator was appointed, by PERC, to serve as interest arbitrator.

Pursuant to *N.J.S.A. 34:13-16(b)(3)*, on October 20, 2020, this Arbitrator conducted a mediation session, virtually, with the parties to “effect a voluntary resolution of the impasse.” At the conclusion of the October 20, 2020 mediation session, it was determined that the impasse should proceed to interest arbitration. At the conclusion of this mediation and through further correspondence the parties decided to forgo a Hearing with testimony and proceed with a document only Hearing as the parties stipulated that ability to pay was not an issue.

Merick H. Limsky, Esquire of the firm Limsky Mitolo represented the Union. John L. Shahdanian, Esquire of the firm McCusker, Anselmi, Rosen & Caravelli, P.C. represented the Borough.

Both parties were afforded a full opportunity to submit evidence, and present arguments in support of their respective positions. As agreed by the parties, all evidence, to be considered, was submitted and exchanged by December 4, 2020. Both parties submitted briefs by December 11, 2020 and the record was closed at that time. The evidence provided and the respective positions

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

BACKGROUND

The Borough is a municipality organized under the Borough form of government and located within Bergen County, New Jersey. The Borough's governing body consists of a democratically elected Mayor and Borough Council, and the day-to-day administration of the Borough government has been delegated to a Borough Administrator. *N.J.S.A.,40:60-2; N.J.S.A., 40A: 60-7; N.J.S.A. 40A: 9-136*. As of the 2010 census, the Borough has a population of 5,750 residents. Pursuant to § 27-1 of the Borough's Administrative Code, the Old Tappan Police department ("Department") provides police services to the citizens of the Borough.

Pursuant to the New Jersey Employer-Employee relations Act, the police officers employed in the Department are entitled to negotiate collectively concerning the terms and conditions of employment. The PBA serves as the exclusive bargaining representative for all police officers employed by the Borough/Department, other than the Chief of Police.

FINAL OFFERS OF THE PARTIES

Union Final Offer:

Term

5 - year contract from January 1, 2019 through December 31, 2023

Wages

¹ A waiver/extension of the 90day requirement was issued, to this Arbitrator, by PERC, on September 21, 2020 due to and based on Covid-19 pandemic issues.

Salary Guides A-1, A-2, & A-3

4% Across the board salary increases

Salary Guide A-4

5% Across the board salary increase on a five - year, 10 Step Salary Guide

Outside Details

Cancelled details within 1 hours will result in 4 hours of pay for the detail and there will be a 4 - hour minimum per detail.

Special III to be included with Class I and II.

Detective Stipend

Increase to Detective Stipend of \$1000.

Out of Title Pay

Officers performing the duties of a higher rank would be compensated at the rate of pay of that higher rank.

Work Schedule

The PBA wants the 12- hour work schedule included in the contract.

Employer Final Offer:

- (1) A four-year CBA;
- (2) Eliminate the shift differential for new hires;
- (3) Reduce the retiree healthcare coverage to only single coverage;²
- (4) New hires to receive, after retirement, single coverage until eligible for Medicare and no further healthcare coverage;
- (5) Salary increases of 1%-1%, 2%, 2%, 2% (which makes year one 1.5%) for officers who are not on the 2015 step guide;
- (6) 4 hour call out for outside contractor work;
- (7) \$500.00 Detective Stipend increase;

² The Borough further clarified their position as the only change here to retiree health benefits was for new hires. New hires would be limited post retirement to single coverage until Medicare. Current employees would maintain all coverage rights.

- (8) Retirees' healthcare coverage contribution is pursuant with levels set forth by P.L. 2011, c.78; and
- (9) Salary guide for hires after 2015 shall be adjusted as follows:
 - (a) There shall be 11 steps;
 - (b) One time increase of 4% for existing figures for step years Prob. Grade 1-10;
 - (c) The top step of the guide shall be \$117,000.00; and
 - (d) 2% annual salary increase for those officers out of the step guide.

If, however, Arbitrator Winters determines to make changes to or alter the Borough's Final Proposal, by reviewing extrinsic issues raised by the PBA, the Borough proposes the following:

- (1) A three-year CBA;
- (2) Salary guide for hires after 2015 shall be adjusted as follows:
 - (a) Maintain a static salary guide;
 - (b) There shall be 11 steps;
 - (c) The top step of the guide shall be \$115,000.00;
 - (d) One time 2% increase across the step guide; and
 - (e) 2% annual salary increase for those officers out of the step guide;
- (3) Officers are required to work a total of 2080 hours, which will result in a reduction of each officers Kelly days;
- (4) Retirees' healthcare coverage contribution is pursuant with levels set forth by P.L. 2011, c.78;
- (5) New hires and active members to receive, after retirement, single coverage until eligible for Medicare and no further healthcare coverage;
- (6) No healthcare coverage for retirees' past the age of 65, for both active members and new hires;
- (7) Eliminate the shift differential for new hires and active members;
- (8) \$500.00 Detective Stipend increase;
- (9) 2 hour minimum on call outs remains the same;
- (10) Vacation days are capped at 20 days consistent with the Borough Handbook/Policies.
- (11) Personal days are capped at 3 days consistent with the Borough Handbook/Policies.

(12) Bereavement days are capped at 3 days consistent with the Borough Handbook/Policies and can only be used to attend a funeral.

POSTION OF THE PARTIES

POSITION OF THE PBA

The Interest Arbitrator is compelled to follow the statutory criteria listed below. However, the weight given to each of those criteria is determined by the arbitrator. The employer has acknowledged that it is not contesting its ability to pay.

The governing body of the municipality has a duty to manage the affairs of the Borough in a responsible manner. Keeping property taxes down is a significant concern. However, the governing body is also an employer. Being an employer has responsibilities as well. An employer has an affirmative duty to treat the employees fairly and to follow through on the expectations of the employees.

The PBA proposal clearly is designed to maintain stability for the employees. Maintaining as much of the existing collective bargaining agreement as possible will result in a continuity of employment and the expectations of the employees. The employer's proposal creates two classes of employees. Those with a salary that, with reasonable increases, will be comparable to other similarly situated municipalities and a salary guide that keeps the newest employees and future employees far, far below almost every other, if not every, Bergen County law enforcement agency.

The PBA proposal is designed to provide incremental change over five years to keep the Old Tappan officers in line with those officers in other towns and recognize the service and value of all of the officers in the department, not just some of them.

On the other hand, the Borough has seen fit to put forth multiple final offers. The second

of which is incomprehensible. It appears that if the Arbitrator does not give them everything they want in their first proposal, then the second one kicks in and offers essentially nothing. The statute does not permit this. Each side must submit a, meaning one, final offer. Whether this has any bearing on the final determination is up to the Arbitrator, but, for the record, the PBA objects to the submission of the Boroughs Final Offer.

POSITION OF THE BOROUGH

The Borough of Old Tappan (“Borough”) respectfully submits for arbitration the task of establishing fair terms and conditions for employment for Borough employees who are members of the Old Tappan Patrolmen’s Benevolent Association, Local 206 (the “PBA”). For more than a year the Borough has implored the PBA to come to the bargaining table and engage in reasonable dialogue concerning the terms and conditions of employment. After numerous mediation sessions, on August 15, 2019, the Borough believed that the Borough and PBA (collectively referred to herein as the “Parties”), established fair employment terms and memorialized those terms through a Memorandum of Agreement. However, as pen was literally being put to paper, the PBA changed its position 180 degrees and, for the first time, determined and maintained a position that they will not enter an agreement unless the Borough exempts retirees’ from contributing to healthcare coverage. After failed attempts to negotiate the healthcare issue and being placed in such an unenviable position by the PBA, the Borough had no option but to take this decision out of their – and our – hands, by submitting to binding interest arbitration.

As it will be demonstrated *infra*, nothing produced in the record by either party will support the PBA’s position that retiree members of the PBA are exempt and are not required to contribute to healthcare benefits. Rather, the evidence demonstrates that the retired PBA members must shoulder their fair share of healthcare costs under New Jersey law. To allow the retired PBA

members to shirk this responsibility while the other bargaining unit in the Borough has done their fair share is clearly inequitable. For this reason, the Borough respectfully contends that the only reasonable determination that can be made would be to require the retired PBA members to contribute to the cost of their health insurance premium at the rates set forth in *N.J.S.A. 52:14-17.28c*, just as the legislature has required, and other Borough employees have agreed to. Furthermore, the Borough respectfully contends that its Final Proposal in regard to salary increases both in and out of the 2015 step guide are fair and equitable in comparison to other municipalities within the county.

The Parties Negotiation History

The Parties agreed to a collective negotiations agreement (“CNA”) setting forth the terms and conditions of employment for PBA members for the period spanning January 1, 2015 to December 31, 2018 (the “2015 CNA”). During the 2015 CNA, the Parties agreed to implement a schedule change on a one-year trial basis beginning on January 4, 2016, which was memorialized by a Memorandum of Understanding. The Parties then signed an extension to the Memorandum of Understanding, which would extend the schedule change from January 4, 2017 through January 3, 2018 on the same terms and conditions.

Pursuant to the 2015 CNA, PBA members hired on or after January 1, 2015, were to progress on a ten-step static salary scale, with a top step of \$110,906.00. (Appendices “A (1)-(4).) Employees hired after January 1, 2015, were not entitled to receive annual increases until said employees completed their 10th year of service.

The 2015 CNA was written and adopted by the Parties prior to when the Parties were statutorily able to negotiate the healthcare contribution of retired PBA members. Year four of the P.L. 2011, c.78 phase in period took place in 2015 and when the 2015 CNA expired, the issue of

healthcare contribution by retirees' became open for negotiation, although it is clear through both caselaw and the plain reading of P.L. 2011, c.78, that retirees' *must* contribute at levels set forth by the statute. The Parties have yet to enter into a successor CNA to the 2015 CNA, which has led to this arbitration.

The PBA's Salary Expenses

The total sum of salaries for the PBA members in 2019 was \$1,495,715.32. The total sum of salaries for the PBA members in 2020 up until December 31, 2020, is \$1,407,913.12. A PBA member's total annual salary currently includes longevity payments, if eligible; educational credit, if eligible; holiday pay; and shift differential.

Negotiations Following the Expiration of the 2015 CNA

Upon the expiration of the 2015 CNA, the Borough set about attempting to negotiate in good faith with the PBA concerning a successor agreement. The Parties met for negotiation sessions on September 6, 2018, October 15, 2018, November 12, 2018, December 19, 2019, and February 2, 2019. The Parties met for an additional negotiation session on August 15, 2019, which the Borough believed to be successful. The Parties prepared a draft Memorandum of Agreement which set forth the following:

- (1) A four-year CBA;
- (2) Elimination of shift differential for new hires;
- (3) New hires- after retirement-only receive single coverage until eligible for Medicare and no further healthcare coverage;
- (4) Salary increases for officers who are not on the 2015 guide at 1%-1%, 2%, 2% and 2%;
- (5) 4-hour callout for outside contractor work;
- (6) \$500 increase to Detective stipend;

- (7) Salary guide for hires after 2015 shall be adjusted as follows:
- (a) There shall be 11 steps;
 - (b) The guide shall be increased from existing figures for years 1-10 by 4% each year; and
 - (c) The top step of the guide shall be \$117,000.00.

Subsequent to the August 15, 2019 negotiation and the drafting of the Memorandum of Agreement, the Borough was placed under a reasonable impression that the Parties successfully negotiated a successor CNA to the 2015 CNA. However, it was only after the Parties August 15, 2019 negotiation that the PBA insisted that retired PBA members are unwilling to contribute to healthcare coverage. The Borough was unaware that retiree healthcare coverage was even a point of negotiation prior to this. The Borough's position at that time was, and still remains that, retired PBA members are to contribute to healthcare coverage at levels required by P.L. 2011, c.78.

The PBA was unwilling to negotiate retirees' healthcare contribution and maintained a position that the retirees are not required to contribute to their healthcare coverage. With no other issues to be negotiated the Parties submitted to mediation before Public Employment Relations Commission ("PERC") Timothy Averell on June 3, 2020 and June 26, 2020. Unfortunately, the mediation sessions were unsuccessful.

The Borough filed a Petition to Initiate Compulsory Interest Arbitration with PERC on August 13, 2020. bearing docket number IA-2021-001. PERC appointed Marc A. Winters ("Arbitrator Winters"). Arbitrator Winters conducted a mediation session with the Parties on October 20, 2020. With no movement towards settlement, the Parties chose to move forward with the scheduled arbitration.

NOTE: In the closing argument/brief of the Borough, the Borough offers a first and a second final offer conditioned on how this Arbitrator decides and rules for which the PBA objects.

Since the PBA and this Arbitrator were not aware of the Borough's second final offer until receipt and exchange of the closing arguments, this Arbitrator will focus on and adjudicate only the issues contained in the first final offer.

To do otherwise would not only prejudice the PBA but could delay this proceeding while this Arbitrator would then need to request further comment from the parties.

STATUTOR REQUIREMENTS

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

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

- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 *et seq.*).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

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

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

Having reviewed all the Statutory criteria, this Arbitrator, has determined the following to be the most significant criteria to be applied for this decision. That being: The interests and welfare of the public. The interests and welfare of the public grasps and envelops many other factors and recognizes the interconnection and correlation among all of the statutory criteria. Those factors and criteria that interconnect and correlate with the interest and welfare of the public and should be accorded more weight, in this case, are the public sector comparisons, and the financial impact on the governing unit, its residents, and taxpayers.

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

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

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

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

DISCUSSION AND ANALYSIS SECTION - ISSUES IN DISPUTE

Term of the Contract

The PBA proposes a five-year term for the contract. Their reason is that the existing contract expired on December 31, 2018, the parties are already two years into a new contract. A four-year contract will have the parties negotiating in a year and a half. Five years would promote stability and minimize the contentious nature of negotiations between the parties.

Borough believes that the Parties would benefit from a 4-year contract, rather than a 5-year contract as the PBA has proposed, due to the current COVID-19 pandemic and unprecedented uncertainties that could be better easily avoided with a shorter contract.

The contracts submitted by both parties establish a range from 2 years to 6 years with four-year and five-year contracts being within the norm. Although the effective dates, for all most all of those contracts, being that of before the Covid-19 pandemic was upon us.

Although this Arbitrator agrees, under normal circumstances, with the concept that a longer-term contract, such as a five-year contract goes to promote stability and provides the benefit of planning further into the future for all parties.

INCREASE TO STEPS PROB. GRADE 1-10, WHICH CREATES A BASE SALARY FOR PBA MEMBERS THAT IS COMPARABLE TO THE SALARY OF OFFICERS IN SIMILAR DEPARTMENTS.

The Borough maintains a static salary guide, which provides that the base salary of PBA members within step is fixed. The Borough’s Final Proposal includes a one-time four percent (4%) increase for each step starting at Prob. Grade 1 – Patrol Off. 10th. Once a PBA member reaches Patrol Off. 11th, and is considered out of step, that member would receive a two percent (2%) increase per year, pursuant to the Borough’s Final Proposal. In addition, the Borough’s Final Proposal includes that the top step, which is Patrol Off. 11th, shall be set at \$117,000.00. The 2015 CNA set the top step at \$115,000.00. Pursuant to the Borough’s Final Proposal with the one-time 4% increase from step Prob. Grade 1 – Patrol Off. 10th, the base salary levels would be set as follows:

CAPTAIN	\$146,714
LIEUTENANT	\$135,044
SERGEANT	\$126,023
PATROL OFF. 11 TH	\$117,000
PATROL OFF. 10 TH	\$115,342
PATROL OFF. 9 TH	\$106,374
PATROL OFF. 8 TH	\$98,040
PATROL OFF. 7 TH	\$90,358
PATROL OFF. 6 TH	\$82,897
PATROL OFF. 5 TH	\$74,348
PATROL OFF. 4 TH	\$66,382
PATROL OFF. 3 RD	\$58,745
PATROL OFF. 2 ND	\$51,530
PATROL OFF. 1 ST	\$44,808
PROB. GRADE 1	\$38,628

Comparison to other employees in similar municipalities serves to further support the Borough's Final Proposal in regard to salary increase within the 2015 step guide. The Borough has admitted into evidence 4 collective negotiation agreements concerning other police departments salary guides which are represented by either Local PBA 206 or represented by a different PBA. These municipalities include Woodcliff Lake; Westwood; Washington Township; and Carlstadt. In analyzing these municipalities, the Borough's findings are as follows:

Woodcliff Lake

The Borough of Woodcliff Lake has 15 steps within its step guide. In comparing the Borough's step guide to that in Woodcliff Lake, the Borough's Patrol Off. 11th is equivalent to Woodcliff Lakes "Fifth Class." Therefore, an officer in Woodcliff Lake's "Fifth Class" in 2021 would have a base salary of \$100,854.00, whereas an officer employed by the Borough at Patrol Off. 11th would have a greater base salary of \$117,000.00 with an additional 2% increase each year once the officer is out of step. It should also be noted that as of the 2010 census, Woodcliff Lake had a population of 5,730, which is very comparable to the population of the Borough at 5,750, and thus Woodcliff Lake is highly comparable to the Borough.

Westwood

The Borough of Westwood has 15 steps within its step guide. In comparing the Borough's step guide to that in Westwood, the Borough's Patrol Off. 11th is equivalent to Westwood's "Step 11." Therefore, an officer in Westwood's Step 11 in 2020 had a base salary of \$112,503.00, whereas an officer employed by the Borough at Patrol Off. 11th would have a greater base salary of \$117,000.00 with an additional 2% increase each year once the officer is out of step. It also should be noted that as of the 2010 census, Westwood had a population of 10,908. In comparing the populations of the Borough and Westwood, the Borough with a 2010

census population of 5,750, is almost less than half of the population in Westwood. Therefore, given the larger population in Westwood, each taxpayer in Westwood is potentially less burdened by salary increases.

Township of Washington

The Township of Washington has 9 steps within its step guide. In comparing the Borough's step guide to that in the Township of Washington, the Borough's Patrol Off. 11th is equivalent to the Township of Washington's "During 9th Year Post Academy". An officer in the Township of Washington's "During 9th Year Post Academy" in 2021 would have a base salary of \$119,214.00, whereas an officer employed by the Borough at Patrol Off. 11th would be provided a very competitive base salary of \$117,00.00 with an additional 2% increase each year once the officer is out of step. It also should be noted that as of the 2010 census, Washington Township had a population of 9,102. In comparing the populations of the Borough and Washington Township, the Borough with a 2010 census population of 5,750 is less than $\frac{3}{4}$ of the population in Washington Township. Therefore, given the larger population in Washington Township, each taxpayer in Washington Township is potentially less burdened by salary increases, which allows for a slightly higher top step salary rate.

Carlstadt

The Borough of Carlstadt has 10 steps within its step guide. In comparing the Borough's step guide to that in Carlstadt, the Borough's Patrol Off. 11th is equivalent to Carlstadt's "9-10 Years". Therefore, an officer in Carlstadt's "9-10 Years" in 2021 would have a base salary of \$113,824.00, whereas an officer employed by the Borough at Patrol Off. 11th would have a greater base salary of \$117,000.00 with an additional 2% increase each year once the officer is

out of step. It should also be noted that as of the 2010 census, Carlstadt had a population of 6,132, which is very comparable to the population of the Borough at 5,750.

Based on the comparisons it is clear that the Borough’s Final Proposal in regard to salary increase in the 2015 static guide is comparable to that of other municipalities in the same County. Furthermore, the average salary between Woodcliff Lake; Westwood; Washington Township; and Carlstadt at their equivalent step to the Borough’s Patrol. Off. 11th is \$111,598.75. Pursuant to the average, the Borough’s proposed top step base salary of \$117,000.00 is well above the average of those municipalities.

The PBA has admitted into evidence 14 collective negotiation agreements concerning other police departments. These municipalities include Closter; Cresskill; Dumont; Franklin Lakes; Glen Rock; Hillsdale; Montvale; Norwood; Paramus; Park Ridge; Ramsey; Ridgefield Park; Ridgewood; and Westwood. The Borough also submitted Westwood’s CNA, and the Borough’s findings regarding Westwood are discussed. The PBA has submitted CNA’s from municipalities that are not comparable to the Borough. First, the population of most of the municipalities submitted by the PBA are much greater than the Borough. The Borough’s population according to the 2010 census is 5,750. The populations of the municipalities submitted by the PBA according to the 2010 census are as follows:

Municipality	Population
Closter	8,373
Cresskill	8,573
Dumont	17,479
Franklin Lakes	10,590

Glen Rock	11,601
Hillsdale	10,219
Montvale	7,844
Norwood	5,711
Paramus	26,342
Park Ridge	8,645
Ramsey	14,473
Ridgefield Park	12,729
Ridgewood	24,958
Westwood	10,908

Comparison to other CNA’s submitted by the PBA serves to further support the Borough’s Final Proposal in regard to salary increase within the 2015 step guide. As explained, with the exception of Norwood, the CNA’s submitted by the PBA are from municipalities with greater populations than the Borough. It has been the Borough’s position that Arbitrator Winters should only consider municipalities with populations equivalent to the Borough’s when considering the Borough’s Final Proposal. If Arbitrator Winters were to consider the alternative to what the Borough urges, he would realistically only be able to compare the municipalities of Closter, Cresskill, Montvale, Norwood, and Park Ridge. Still, these municipalities, with the exception of Norwood, have a greater population than the Borough and consideration would not allow for an appropriate comparison. Furthermore, Park Ridge is the only municipality with a potential comparable population where officers are represented by Local PBA 206 as is the Borough.

In comparing the Borough's Final Proposal regarding the 2015 step guide to the salary guide of Norwood, which has a lesser population than the Borough, the Borough's Patrol Off. 11th is equivalent to Norwood's "Eleventh Step. An officer in 2021 at Norwood's "Eleventh Step" would have a base salary of \$132,806.00. *Id.* However, even though in 2021 an officer at "Eleventh Step" in Norwood would have a greater base salary than an officer of the Borough in Patrol Off. 11th, an officer in Norwood would not receive a step increase from "Eleventh Step" to "Twelfth Step.". Furthermore, Norwood's salary guide has twenty steps, with the top step being "Twentieth Year.". An officer at Norwood's "Twentieth Year" would receive a base salary of \$141,437.00, however, an officer at "Eleventh Year" would need to increase 9 steps in order to reach "Twentieth Year" and it is the Borough's assumption that it would take approximately 9 years, if not more, to increase 9 steps and reach "Twentieth Year." According to the Borough's Final Proposal, an officer for the Borough at Patrol Off. 11th would receive a base salary of \$117,000.00 with a 2% increase annually afterward. In 9 years, or in 2030, that officer would receive an approximate base salary of \$137,316.23 which is comparable to an officer in Norwood's "Twentieth Year." In addition, in 2032, the base salary of an officer of the Borough who has reached Patrol Off. 11th and then began receiving the 2% annual increase, would have a base salary of \$142,863.80, which is greater than an officer at Norwood's "Twentieth Year." It is the Borough's position that once an officer in Norwood reaches Norwood's top step, the salary of an officer in the Borough would be equivalent to an officer in Norwood. Therefore, the Borough maintains its position that the Borough's Final Proposal in regard to salary increase in the 2015 static guide is comparable to that of other municipalities.

**THE ARBITRATOR MUST CONSIDER THE BOROUGH'S PBA MEMBERS
OVERALL COMPENSATION WHEN REVIEWING THE BOROUGH'S FINAL
PROPOSAL.**

In reviewing the Borough's Final Proposal and supporting documentation, Arbitrator Winters is required to make a "reasonable determination" as to all issues in dispute. *N.J.S.A. 34:13A-16g*. In doing so, Arbitrator Winters must consider "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." *N.J.S.A. 34:13A-16g.(8)*. Based on the Borough's Final Proposal without any changes or alterations by Arbitrator Winters, PBA members are afforded the following:

- Vacations: Maximum 25 working days. Vacations are determined upon length of employment.
- Holidays: 13 paid holidays per year at respective hourly rate.
- Personal: 3 personal leave days per year
- Sick Leave: Eligible to receive full pay and benefits when unable to work due to a verifiable sickness, injury or illness.
- Bereavement: 3 days leave without being charged against vacation or sick leave.
- Medica: The employer will provide and pay for medical insurance coverage. All employees shall contribute towards the cost of providing healthcare as required by law.
- Insurance: Employer will provide so long as insurance is available.
- Pension: Employer shall provide pension and retirement benefits to employees.
- Education: Educational credits shall be paid pursuant to Appendix "D."
- Holiday Pay: Rate differs by year.
- Longevity: In addition to all wages and all payments, each employee hired prior to January 1, 1999 shall be entitled to a longevity payment as set forth in Appendix "B."
- Shift Diff: In 2018 members received 5% of their base salary. New Hires pursuant to the Borough's Final Proposal without any alterations would not be entitled to shift differential payments.
- Uniform: Employer furnishes the required uniforms and agrees to pay an annual uniform cleaning allowance of \$400.00 per year.

The Borough's Final Proposal absent changes or alterations made by Arbitrator Winters would maintain all of the beforementioned terms as included in the 2015 CNA, other than shift differential payments which would be unavailable to new hires. Arbitrator Winters *must* consider the compensation *supra* that each PBA member will be receiving in addition to the 4% increase to the 2015 step guide and 1%-1%, 2%, 2%, 2% (which makes year one 1.5%) increases to officers who are not in the 2015 step guide as in the Borough's Final Proposal. It is clear, that PBA members, both active and new hires, would be receiving more than what is listed on either salary guide as total annual salary.

Overall, the Borough's Final Proposal provides PBA members a very competitive salary with the proposed salary increases of 4% on the 2015 step guide and 1%-1%, 2%, 2%, 2% to officers who are not on the 2015 step guide, in comparison to similarly situated municipalities in Bergen County, both represented and not represented by Local PBA 206. In addition to the salary increases, the Borough's Final Proposal provides PBA members with additional compensation as described, which must be considered by the Arbitrator when comparing the Borough's Final Proposal to CNA's of other municipalities and most significantly, to the PBA's final offer.

THE ARBITRATOR MUST CONSIDER THE COST OF LIVING WHEN REVIEWING THE BOROUGH'S FINAL PROPOSAL.

The Borough introduced into evidence copies of news releases from the Bureau of Labor Statistics, U.S. Department of Labor, dated January 14, 2020 and November 12, 2020. The January 14, 2020 release discussed the December 2019, and more importantly the overall 2019, Consumer Price Index. As stated in the first paragraph of the release, "Over the last 12 months, all items index increased 2.3 percent before seasonal adjustment." On page 3 of the release, the Bureau explained that the index rose at a 1.8 percent average annual rate over the last 10 years.

An even closer look at the release, specifically at Table 4 on page 14, states that the CPI-U for New York-Newark-Jersey City-NY-NJ-PA was increased by 2.2 percent in 2019. By way of comparison, the November 12, 2020 news release stated in the first paragraph, “Over the last 12 months, all the items in index increased 1.2 percent before seasonal adjustment.” A closer look at the release at Table 4 on page 13 states that the CPI-U for New York-Newark-Jersey City-NY-NJ-PA was increased by 1.7 percent from October 2019 – October 2020. The Borough requests that when considering the Borough’s Final Proposal, that Arbitrator Winters consider these increases in comparison to what the Borough is offering. In addition to a one-time 4% increase across the 2015 salary guide and 2% increase per year once an officer reaches the top step and is considered out of step, each PBA member will annually receive additional compensation as mentioned *supra*. A member not in the 2015 step guide, pursuant to the Borough’s Final Proposal would receive salary increases of 1%-1%, 2%, 2%, 2% (which makes year one 1.5%), in addition to additional compensation as mentioned *supra*. Taking into consideration the generous base salary increases in the Borough’s Final Proposal along with additional compensation over a 4-year contract, PBA members will be able to keep pace with the CPI-U. Therefore, an award of the Borough’s Final Proposal is fair and supported by the CPI data from the Bureau of Labor Statistics.

THE MEDIAN SALARY OF THE BOROUGH’S RESIDENTS COMPARED TO THE MEDIAN SALARIES OF OTHER BERGEN COUNTY MUNICIPALITIES FURTHER SUPPORTS THAT THE BOROUGH’S FINAL PROPOSAL SHOULD BE APPROVED BY THE ARBITRATOR.

As it is not statutorily required for the Arbitrator to consider the wealth and median salary of the Borough, this issue, heavily relied upon by the PBA, should not be considered by the Arbitrator. Assuming *arguendo*, however, that the Arbitrator will consider the Borough’s wealth and median salary, the Borough’s response is as follows: The PBA’s Exhibit 7 lists Median

Household Incomes by Place in Bergen County. Pursuant to PBA 7, the median income for the Borough is \$133.8k and the median income for Woodcliff Lake is \$150.9k. The median income for Woodcliff Lake is of importance because Woodcliff Lake, which has a similar total population to the Borough and a higher median household income than the Borough, still maintains a salary guide in which officers in step equivalent to the Borough's Patrol Off. 11th would receive a lesser base salary than an officer in the Borough. Furthermore, of the CNA's produced by the PBA including, Franklin Lakes, Hillsdale, Ramsey and Ridgewood all have higher median incomes than the Borough: The median incomes for those municipalities are as follows:

Municipality	Median Salary in 2014-2018
Franklin Lakes	\$159,883.00
Hillsdale	\$140,694.00
Ramsey	\$144,606.00
Ridgewood	\$168,608.00

Despite not being statutorily required for consideration and wholly irrelevant to this proceeding, it is for the reasons set forth that the Borough's Final Proposal is appropriate in terms of the Borough's wealth and median income of its residents.

THE TERMS OF THE PBA'S FINAL OFFER WOULD CREATE A SUBSTANTIAL HARDSHIP UPON BOROUGH CITIZENS WHICH MUST BE CONSIDERED BY THE ARBITRATOR.

The Borough believes that if Arbitrator Winters were to approve the PBA's final offer, it would create a substantial hardship upon the Borough citizens. First, in regard to the length of a new CNA, pursuant to the Borough's Final Proposal, the Borough believes that the Parties would

benefit from a 4-year contract, rather than a 5-year contract as the PBA has proposed, due to the current COVID-19 pandemic and unprecedented uncertainties that could be better easily avoided with a shorter contract.

Secondly, the PBA's proposal of 4% salary increases across the board for salary guides A-1, A-2, and A-3, would undoubtedly create a hardship on the Borough and its citizens. If the PBA's 4% increase were approved by Arbitrator Winters, the Borough would be forced to pay the officers on the A-1, A-2 and A-3 salary guide a total of \$4,598,000.00. If Arbitrator Winters were to approve the Borough's Final Proposal which provides for a 2% salary increase across the board for salary guides A-1, A-2, and A-3, the Borough would have to pay a total of \$4,412,339.00. The difference between the Borough's proposed increase at 2% and the PBA's proposed increase at 4% is \$185,661.00. Thus, if Arbitrator Winters were to grant the PBA their requested salary increase, the Borough's taxpayers would be forced to cover that remaining \$185,661.00 difference out of their own pockets. Furthermore, as exemplified in PBA 1, for 2018, the Borough appropriated \$2,006,690.00 for police salaries and wages alone. In 2018, the Borough actually expended \$1,967,821.00 on police salaries and wages, leaving a reserve amount of only \$38,869.00. In 2019, the Borough appropriated \$2,059,642.00 for police salaries and wages alone and actually expended \$1,980,877.00. In 2019, the reserve amount was \$78,765.00. It is clear from the Borough's budget that the Borough does not have and is unable to appropriate an extra \$185,661.00 towards police salaries and wages in addition to the \$4,412,339.00 (2% increase) that the Borough has proposed, especially since the reserve amounts for 2018, 2019, and combined were well below that amount. It is only logical for the Borough to predict that in 2021, the Borough alone would be unable to produce any more than what has been produced and reserved in the previous years. The PBA's 4% increase would create

a direct burden on the Borough's taxpayers, which is a point that Arbitrator Winters must consider when reviewing the Borough's Final Proposal in comparison to the PBA's final offer.

PBA's Position on Salaries:

There are two sets of employees to consider when evaluating wage increases. There are those employees hired prior to January 1, 2015 and those hired after.

Officers hired Prior to 1/1/2015

The salary guides in the Appendix of the contract labeled A-1 and A-2 are only applicable to those on the top step and the higher ranks because based on the applicable dates, there are no officers in the lower steps. A four percent (4%) across the board raise each year of the contract would only really be across the board in the A-3 salary guide which still has officers moving through the steps. As discussed below under the salary comparisons, this raise would put the contract on similar footing with other comparable jurisdictions.

Officers hired After 1/1/2

The salary guide for officers hired after January 1, 2015 is vertical and does not provide for raises throughout the term of the contract. It was created while the parties were under the constraints of the two percent (2%) salary cap which has expired. This type of salary guide is outside of the norm and places those employees on this guide at a disadvantage compared to almost every other jurisdiction. The five percent (5%) per year across the board salary increase over five years would make this guide comparable to the other three guides and other jurisdictions. Even with such a raise, those employees will still be significantly below the other guides in the contract and other jurisdictions, but will be much better than what exists now.

Old Tappan can be characterized as a wealthy Bergen County suburb with over six

thousand residents. The median household income is \$134,000 which ranks fourteenth in New Jersey out of five hundred sixty-six municipalities. The residents are highly educated with approximately fifty-five percent (55%) have a bachelor's degree or higher. The state average is approximately thirty-six percent.

The residents of the Borough enjoy the benefits of a full functioning and active police department.

Maintaining a police department with a competitive compensation plan would insure that the Borough attracts the best candidates when hiring new officers. As discussed below in the comparison of jurisdictions, Old Tappan is behind in compensation when compared to similar municipalities. Becoming a training ground for other police departments who pay more competitive wages is not in the best interest of the community.

COMPARISON OF WAGES
(Based upon contracts submitted by the PBA)

<u>Municipality</u>	<u># of steps</u>	<u>top step salary</u>	<u>longevity</u>
Old Tappan	10	\$119,754	No post 1999
Norwood	10	\$132,806	6.5% @ 20 yrs.
Franklin Lakes	11	\$139,806	Built into step guide 5% @ 25 yrs.

Glen Rock	9 11	\$144,944	10% @ 20 yrs.
Ridgewood	13	\$146,343 (2021)	3% at 12 yrs.
Montvale	8	\$160,776	9% at 24 yrs.
Ramsey	10	\$128,706	5% @ 13 yrs. 10% @ 25 yrs.
Cresskill	10	\$137,402 (2023)	12% (.5%/year)
Dumont	9 11	\$125,669 (2021)	12% 9%
Hillsdale	10	\$141,018 (2024)	
Park Ridge	8	\$132,300 (2021)	8%
Westwood	12 15	\$135,512 \$140,815	12% None
Closter	11	\$150,140	8%
Ridgefield Park	17	\$151,159	
Paramus	10	\$153,118	2% @ 10 yrs.

COMPARISON OF CONTRACT ELEMENTS

(Based upon the contracts submitted by the Borough)

<u>Municipality</u>	<u># of Steps</u>	<u>Longevity</u>	<u>Across-the-Board</u>	<u>Length of</u>	<u>Top Step Salary</u>
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			<u>Increases</u>	<u>Contract</u>	
Old Tappan	10	No if hired after 1999	No		\$119,754
Old Tappan DPW	9	No	No	5	N/A
Woodcliff Lake	15	yes if hired prior to 2018	yes	5	\$128,460
Washington Tp.	8 10	10% 5%	yes	4	\$130,979
Park Ridge	9	8%	yes	4 + 1 yr	\$132,300
River Vale	10	yes if hired prior to 2014	yes	4	\$129,986
Westwood	12 15	13% or 12% if hired prior to 2016	yes	2 expires 12/31/20	\$135,512 \$140,814

PBA WAGE PROPOSAL

When determining a fair wage increase, the characteristics of the municipality must be taken into account. This is especially so when comparisons are being made to other employers. Old Tappan is a small suburban Bergen County borough. It is an affluent community with a population of approximately six thousand. It maintains a very low crime rate and is considered one of the safest towns in the State. The Borough is run by a Mayor and six Councilpersons who are responsible for the administration of the Borough affairs. Although Old Tappan is a relatively small community in terms of population, it provides an entire spectrum of services for its residents.

The PBA and the Borough have submitted over twenty other contracts from Bergen

County municipalities for comparison in this case. The PBA's submissions provide a good sample of comparable towns. Some are comparable by income like Franklin Lakes, Ridgewood, and Closter, among others. Other towns are comparable in population like Norwood, Montvale, Cresskill, Park Ridge, and several others. The contracts submitted, by both parties, is not exhaustive, but it is representative of the County. It is undisputed that Bergen County is one of the wealthier Counties, not only in the State, but in the Country. A review of the top patrol salaries reveals that those figures are similar to the median household income across the County. This is important because the employees, the officers, not only work there, but many, if not most of them, live there as well.

A review of the Comparison of Wages (submitted by the PBA) above shows that Old Tappan is among the lowest. This is true even if you add in the five percent (5%) differential pay they receive and that the Borough wants taken away. Also, this is referring to the first three salary guides in the Old Tappan contract (A-1, A-2, & A-3). The salary guide for those hired after 2015 is just embarrassingly low. This will be addressed further below, for purposes of the argument here the top pay in the first three guides is applicable. If you include the five percent (5%) differential, top patrol pay is \$125,742. Only those hired before 1999 still get longevity, so except for a very few individuals and almost no patrolmen, that is the top pay. The other jurisdictions still provide longevity to all or most of the officers, so the top salary goes up dramatically. A four percent (4%) increase per year across the board would put Old Tappan on par with these other towns, not ahead of them. Being at the lower end of the pay scale and only getting the increases proposed by the Borough while health costs continue to rise would basically be keeping the employees static throughout the contract. As Bruce Springsteen says, one step up and two steps back.

Usually the parties submit contracts that are diametrically opposed. However, that is not the case here, most likely because it is impossible to find Bergen County contracts that are so low as to justify the Borough's position of maxing out the last salary guide, A-4, at \$117,000 after eleven years while taking away the differential pay. It should also be noted here of what appears to be a less than forthright maneuver by the Borough to add more steps to the salary guides. In its proposal (the first one), the Borough indicates in number 5 that increases would be given to officers, rather than there being an increase to the salary guide. That would be a severe departure from the norm. Then in number 9 it proposes going to eleven steps and then stating there would be two percent (2%) increases for those officers out of the step guide. This is common phrase used by employers, out of the guide or off the guide. However, this is a false premise. All of the salaries paid to members of the PBA are currently on one of the salary guides depending on their date of hire. No one is off the guide because that would actually create another step. So the Borough is really offering twelve steps, not eleven. How much further backwards can an offer be?

All of the contracts submitted by both parties establish that the PBA proposal for those covered by the first three guides are right in line with other towns. Carlstadt was presumably submitted because of the population similarity. In their eleventh year patrolmen make \$162,402 and most go up to 8% longevity on top of that. If the Borough would be willing to use their pay scale, the PBA would certainly agree to eleven steps. The Borough also submitted Leonia which will pay patrolman at eleven years, \$147,313 in base salary. The contracts that have a higher amount of steps also have salaries that are much higher than what the Borough is proposing here. They are offering \$117,000 that does not increase at eleven years whereas Glen Rock has eleven steps with top pay at \$144,944. Hillsdale has ten steps, but with a top pay of \$141,018. The

comparisons are done with the statutory purpose of trying keep some parity. The offer put forth by the Borough does not even come close to establishing parity. It keeps Old Tappan officers well behind other similar jurisdictions. The first three guides should be given wage increases across-the-board that will keep the salaries competitive and the A-4 guide should be updated to a multi-year guide, also with across-the-board raises.

The other issue is whether any wage increase should be throughout the salary guide or across-the-board. The idea and practice of only increasing wages at the top step because that was the trend when the two percent (2%) salary cap was in effect under Ch. 78. However, even with the 2% constraint, the existing contract between these parties had across-the-board raises. Looking at all of the contracts submitted by both sides, the majority provide for across-the-board increases. This maintains the integrity of the salary guide without creating a bubble step at the top step. There is no reason not to maintain that practice here.

Analysis. Decision & Award

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

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

Second, even with acknowledging that the previous hard cap and chapter 78 contributions may have contributed to a decline in the PBA members compensation and earnings, the PBA members are still well compensated and receive a generous benefit package when compared to other Borough employees and with their external comparables found in Bergen County.

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

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

First, the external comparables:

The Borough and the PBA have provided approximately 21 jurisdictions for comparison purposes. The Boroughs of Carlstadt, Closter, Creskill, Dumont, Franklin Lakes, Glen Rock, Haworth, Hillsdale, Leonia, Montvale, Norwood, Paramus, Park Ridge, Ramsey, Westwood, and Woodcliff Lake; The Villages of Ridgefield Park and Ridgewood; And, the Townships of Washington, Rivervale and Wycoff.

After a thorough review of all the submitted comparables, looking at the charts, documents and evidence provided by the parties as well as all the CNAs provided by the parties, this Arbitrator has determined that the following are more in line and more suited to be considered as comparables for the use in this decision. Particularly those with designations as a Borough, in terms of population, number of steps on their salary guides and even relatively similar square miles.

Old Tappan, population 5,750, salary steps 10, square miles 4.2. Those more closely related being: Carlstadt, population 6,132, salary steps 11, square miles 4.24; Closter, population 8,373, salary steps 11, square miles 3.3; Creskill, population 8,573, salary steps 10, square miles 2.07; Norwood, population 5,711, salary steps 10, square miles 2.73; Woodcliff, population 5,730, salary steps 15, square miles 3.61.

The most comparable being that of Woodcliff Lake, Carlstadt, and Norwood. For example:

The Borough of Woodcliff Lake has 15 steps within its step guide. In comparing the Borough's step guide to that in Woodcliff Lake, the Borough's Patrol Off. 11th is equivalent to Woodcliff Lakes "Fifth Class." Therefore, an officer in Woodcliff Lake's "Fifth Class" in 2021 would have a base salary of \$100,854.00, whereas an officer employed by the Borough at Patrol Off. 11th would have a greater base salary of \$117,000.00 with an additional 2% increase each year once the officer is out of step. It should also be noted that as of the 2010 census, Woodcliff Lake had a population of 5,730, which is very comparable to the population of the Borough at 5,750, and thus Woodcliff Lake is highly comparable to the Borough.

The Borough of Carlstadt has 10 steps within its step guide. In comparing the Borough's step guide to that in Carlstadt, the Borough's Patrol Off. 11th is equivalent to Carlstadt's "9-10 Years". Therefore, an officer in Carlstadt's "9-10 Years" in 2021 would have a base salary of \$113,824.00, whereas an officer employed by the Borough at Patrol Off. 11th would have a greater base salary of \$117,000.00 with an additional 2% increase each year once the officer is out of step. It should also be noted that as of the 2010 census, Carlstadt had a population of 6,132, which is very comparable to the population of the Borough at 5,750.

In comparing the Borough's Final Proposal regarding the 2015 step guide to the salary guide of Norwood, which has a lesser population than the Borough, the Borough's Patrol Off. 11th is equivalent to Norwood's "Eleventh Step." An officer in 2021 at Norwood's "Eleventh Step" would have a base salary of \$132,806.00. However, even though in 2021 an officer at "Eleventh Step" in Norwood would have a greater base salary than an officer of the Borough in Patrol Off. 11th, an officer in Norwood would not receive a step increase from "Eleventh Step" to

“Twelfth Step.” Furthermore, Norwood’s salary guide has twenty steps, with the top step being “Twentieth Year.” An officer at Norwood’s “Twentieth Year” would receive a base salary of \$141,437.00, however, an officer at “Eleventh Year” would need to increase 9 steps in order to reach “Twentieth Year” and it is the Borough’s assumption that it would take approximately 9 years, if not more, to increase 9 steps and reach “Twentieth Year.” According to the Borough’s Final Proposal, an officer for the Borough at Patrol Off. 11th would receive a base salary of \$117,000.00 with a 2% increase annually afterward. In 9 years, or in 2030, that officer would receive an approximate base salary of \$137,316.23 which is comparable to an officer in Norwood’s “Twentieth Year.” In addition, in 2032, the base salary of an officer of the Borough who has reached Patrol Off. 11th and then began receiving the 2% annual increase, would have a base salary of \$142,863.80, which is greater than an officer at Norwood’s “Twentieth Year.”

Additionally, even in comparison to Westwood Borough and Washington Twp., although a larger populated Borough and Township, still more similarly situated to that of Old Tappan.

The Borough of Westwood has 15 steps within its step guide. In comparing the Borough’s step guide to that in Westwood, the Borough’s Patrol Off. 11th is equivalent to Westwood’s “Step 11.” Therefore, an officer in Westwood’s Step 11 in 2020 had a base salary of \$112,503.00, whereas an officer employed by the Borough at Patrol Off. 11th would have a greater base salary of \$117,000.00 with an additional 2% increase each year once the officer is out of step. It also should be noted that as of the 2010 census, Westwood had a population of 10,908. In comparing the populations of the Borough and Westwood, the Borough with a 2010 census population of 5,750, is almost less than half of the population in Westwood. Therefore, given the larger population in Westwood, each taxpayer in Westwood is potentially less burdened by salary increases.

The Township of Washington has 9 steps within its step guide. In comparing the Borough's step guide to that in the Township of Washington, the Borough's Patrol Off. 11th is equivalent to the Township of Washington's "During 9th Year Post Academy". An officer in the Township of Washington's "During 9th Year Post Academy" in 2021 would have a base salary of \$119,214.00, whereas an officer employed by the Borough at Patrol Off. 11th would be provided a very competitive base salary of \$117,00.00 with an additional 2% increase each year once the officer is out of step. It also should be noted that as of the 2010 census, Washington Township had a population of 9,102. In comparing the populations of the Borough and Washington Township, the Borough with a 2010 census population of 5,750 is less than $\frac{3}{4}$ of the population in Washington Township. Therefore, given the larger population in Washington Township, each taxpayer in Washington Township is potentially less burdened by salary increases, which allows for a slightly higher top step salary rate.

The average salary between Woodcliff Lake, Carlstadt, Westwood, and Washington Township at their equivalent step to the Borough's Patrol. Off. 11th is \$111,598.75. The average, of the Borough's proposed top step base salary of \$117,000.00 is well above the average of those municipalities.

Additionally, taking a look at all 21 provided comparables, the majority of those jurisdictions included salary steps 11 to 15.

The Borough's final salary proposal provides for 11 steps with a 4% one-time increase to the steps Prob. Grade 1-10 which creates a base salary for PBA members that is comparable to the salary of officers in similar departments and jurisdictions.

Based on the comparisons above, it is clear the Borough's Final Proposal in regard to salary increase is comparable to that of other municipalities in the same County.

PERC STATS:

PERC's website includes the most recent salary increase analysis for interest arbitration awards for calendar years 2012 through 2017. The average increase for post-2011 2% cases was 1.71% for calendar year 2015, 1.94% for 2016, and 2.05% for 2017.

PERC's website also includes four (4) interest arbitration awards that have been issued for post-2% base salary "Hard Cap" impasses: *Hopewell Tp & PBA Loc 342*, IA-2019-016 (Osborn 2019) *appealed but affirmed* by Commission P.E.R.C. No. 2020-11 (8/15/19), *Bedminster Tp & PBA Loc 366*, IA-2019-017 (Kronick 2019) *appealed but affirmed* by Commission P.E.R.C. No. 2020-10 (8/15/19), *W Windsor Tp & PBA Local 271*, IA-2009-014 (Mastriani 2019), and *Boonton & PBA Loc 212*, IA-2019-021 (Kronick). Each award pertained to a law enforcement unit in a municipality. As to base salary, the arbitrator in *Hopewell* froze the starting salary for 2019 through 2021, increased all other steps on the 2019 guide by 2.2%, increased the top step by 2%, added one (1) step, and froze all other steps in 2020, and for 2021 increased all steps (except starting salary) by 1.8%. Step advancement was provided in each year of the contract. In *Bedminster*, the arbitrator froze the salary guide for 2019 except the top step which was increased by 2%. The arbitrator then awarded across-the-board increases of 2% in 2019, 2% in 2020, and 2% in 2021. Step advancement was provided in each year of the contract. In *W Windsor*, the arbitrator awarded across-the-board increases of 2% in 2019, across-the-board increases of 2% in 2020, across-the-board increases 2.25% in 2021, and across-the-board increases of 2.25% in 2022. Step advancement was provided in each year of the contract. In *Boonton*, the arbitrator awarded across-the-board increases of 2.25% plus a \$1,000 adjustment at the top step in 2019, across-the-board increases of 2.25% plus a \$1,000 adjustment at the top

step in 2020, and across-the-board increases 2.25% plus a \$1,000 adjustment at the top step in 2021. Step advancement was provided in each year of the contract.

After reviewing the above stats, the Award in this matter is well in line with the typical salary increases over the past several years.

COLA AND CPI:

According to the Bureau of Labor Statistics, U.S. Department of Labor, in reports dated January 14, 2020 and November 12, 2020 respectively:

The January 14, 2020 release discussed the overall 2019, Consumer Price Index. Over the last 12 months (2019) all items index increased 2.3 percent before seasonal adjustment. The

CPI-U for New York-Newark-Jersey City-NY-NJ-PA was increased by 2.2 percent in 2019.

The November 12, 2020 release stated over the last 12 months, all the items in index increased 1.2 percent before seasonal adjustment. The CPI-U for New York-Newark-Jersey City-NY-NJ-PA was increased by 1.7 percent from October 2019 – October 2020.

The Award, in this case, in considering the CPI and addressing the factor of cost of living is right in line those statistics. PBA members will be able to keep pace with the CPI-U.

However, after considering this criterion, lesser weight is given than such factors as the Borough's ability to pay, the lack of adverse financial impact, the interests and welfare of the public, and public sector comparability.

OVERALL COMPENSATION:

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:

- Vacations: Maximum 25 working days. Vacations are determined upon length of employment.
- Holidays: 13 paid holidays per year at respective hourly rate.
- Personal: 3 personal leave days per year
- Sick Leave: Eligible to receive full pay and benefits when unable to work due to a verifiable sickness, injury or illness.
- Bereavement: 3 days leave without being charged against vacation or sick leave.
- Medica: The employer will provide and pay for medical insurance coverage. All employees shall contribute towards the cost of providing healthcare as required by law.
- Insurance: Employer will provide so long as insurance is available.
- Pension: Employer shall provide pension and retirement benefits to employees.
- Education: Educational credits shall be paid pursuant to Appendix "D."
- Holiday Pay: Rate differs by year.
- Longevity: In addition to all wages and all payments, each employee hired prior to January 1, 1999 shall be entitled to a longevity payment as set forth in Appendix "B."
- Shift Diff: In 2018 members received 5% of their base salary.
- Uniform: Employer furnishes the required uniforms and agrees to pay an annual uniform cleaning allowance of \$400.00 per year.

Overall compensation presently received by the PBA members, as demonstrated above and in the evidence in the parties exhibits and briefs, shows that the overall compensation received is competitive with that of other County jurisdictions.

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

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

The Borough's Final Proposal provides PBA members a very competitive salary with the proposed salary increases of 4% on the 2015 step guide and 1%-1%, 2%, 2%, 2% to officers who are not on the 2015 step guide, in comparison to similarly situated municipalities within Bergen County.

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

Award:

Salary increases of 1%-1%, effective January 1, and July 1, 2019; 2%, effective January 1, 2020; 2%, effective January 1, 2021; 2% effective January 1, 2022; (which makes year one 1.5%) for officers who are not on the 2015 step guide.

Salary guide for hires after 2015 shall be adjusted as follows:

There shall be 11 steps.

One time increase of 4% for existing figures for step years Prob. Grade 1-10.

The top step of the guide shall be \$117,000.00; and 2% annual salary increase for those officers out of the step guide.

All increases unless otherwise specified will take effect on January 1, 2019.

The cost outs for the salary award is approximately:

2019 -\$1,520,844.54. 2020 - \$1,443,833.54.

2021 - \$1,425,056.09. 2022 - \$1,501,417.03.

Shift Differential

The Borough is proposing to eliminate the shift differential pay for all new hires. The PBA is opposing that proposal.

The Borough's proposal will not be awarded. The Borough has not met its burden of proof to demonstrate the proposed elimination of shift differential for new hires is necessary based on the absence of sufficient evidence. The elimination of shift differential for new hires would create a two-tier benefit for PBA members thus creating a problem with morale which without proper justification is not in the interest or welfare of the public.

Retiree Healthcare

The Borough has proposed that new hires will be limited post retirement to single health insurance coverage until eligible for Medicare and then no further coverage.

The PBA has opposed this proposal and asked that the status quo remain.

In defense of their proposal the Borough argues: New Jersey law dictates that the PBA's healthcare contributions must be consistent with levels set forth at *N.J.S.A. 52:14-17.28c*. PERC rules and regulations speak to identifying "a pattern of salary and benefit changes," among an employer's bargaining units. *N.J.A.C. 19:16-5.14(c)*. PERC has recognized the importance of maintaining a pattern of settlement among bargaining units of the same employer. *County of Union, IA-2001-46, 28 NJPER 459, 461 (2002)*. "[P]attern is an important labor relations concept that is relied on by both labor and management," and "interest arbitrators have traditionally recognized that deviation from the settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units." To that end, the Borough has endeavored to foster a harmonious relationship with all labor units by promoting continuity in the benefits offered employee wide.

The Borough, in addition to the PBA, has one other bargaining unit, the D.P.W. Employees' Association which has their exclusive representative engage in collective negotiations with the Borough concerning terms and conditions of employment. The current collective negotiation agreement for that bargaining unit has been submitted into evidence. The D.P.W. CNA provides that as to the subject of retiree employee healthcare contribution that the retired employee is required to make the appropriate Chapter 78 contribution.

Furthermore, the evidence in the record leads to the unmistakable conclusion that failure to adhere to this pattern of settlement with relation to the PBA will serve to undermine the harmonious work environment the Borough has worked so hard to cultivate, and which the pattern of settlement principle is intended to promote. For instance, the PBA members are by far higher compensated than the D.P.W. employees, with the top step for patrol officers reaching \$117,000.00 pursuant to the Borough's Final Proposal, in base pay alone. Comparatively, top step for the D.W.P. employees caps out at \$87,527.00 for mechanic employees and \$83,622.00 for maintenance employees. It would be an unjust result if a retired patrolman at top step, making a base pay of \$117,000.00 as proposed in the Borough's Final Proposal, was not required to contribute to healthcare, but a retired D.P.W. employee making \$87,527.00 would be required to contribute 26-34% of the cost of his/her premium, depending on the type of coverage. This unjust result will undeniably create discontent among the D.P.W. Employees' Association, thus discouraging future settlements with that unit, which runs directly afoul to PERC's policy considerations.

For these reasons, there is no rational justification that exists to support the PBA's continued refusal to even enter into negotiations as to retired members healthcare contributions. It is both the principle of settlement and the notion of basic fairness that dictate that the retired

PBA members *must* contribute an equitable amount to the healthcare cost, as compared to retired employees of the D.P.W.

Comparison to other employees in similar municipalities only serves to further support the Borough's position that retired PBA members must contribute to healthcare coverage. Collectively the Borough and PBA have submitted 21 collective negotiation agreements concerning other police departments into evidence. The majority of the contracts in evidence contain clauses mandating that retired employees continue making contributions as per P.L. 2011, c. 78. The municipalities submitted by the Borough which contain clauses mandating that retired employees continue making healthcare contributions pursuant to P.L. 2011, c.78 include: (1) Woodcliff Lake; (2) Washington Township; (3) Park Ridge; (4) River Vale; (5) Westwood; (6) Haworth; (7) Leonia; (8) Hillsdale; and (9) Wyckoff. This group includes the municipalities that are represented by Local PBA 206 as is Old Tappan, such as Woodcliff Lake, Washington Township, Park Ridge, River Vale, Westwood, and Haworth. The municipalities submitted by the PBA in which retired employees are required to contribute to healthcare at P.L. 2011, c. 78 levels include: (1) Cresskill; (2) Franklin Lakes; (3) Glenrock; (4) Hillsdale; (5) Norwood; (6) Park Ridge; (7) Ramsey; (8) Ridgewood; (9) Westwood; and (10) Montvale. Not including duplicate submissions, out of the collective negotiation agreements submitted by both the Borough and the PBA, 16 of the 21 CNA's require retired officers to contribute to healthcare at levels set forth by P.L. 2011, c. 78.

Of the 21 CNA's submitted by both the Borough and the PBA, only 5 municipalities do not require retirees to contribute to healthcare coverage at levels pursuant to P.L.2011, c.78. Those municipalities include: (1) Carlstadt; (2) Dumont; (3) Closter; (4) Paramus; and (5) Ridgely Park. With the exception of Carlstadt, those municipalities require retired PBA

members to contribute to healthcare coverage at some level. The municipalities of Closter and Dumont require between a 25% and 30% contribution from retirees for healthcare coverage, while Paramus and Ridgefield Park require retirees to contribute at levels set forth in N.J.S.A. 40A:10-23. It is of importance that four out of the five municipalities that do not require retired PBA members to contribute pursuant to P.L.2011, c.78, still require contribution by the retirees. Furthermore, of the CNA's submitted by the Borough and the PBA, all of the municipalities whose officers are represented by PBA Local 206 require retirees to contribute to healthcare coverage at P.L.2011, c.78 levels. It is clear through both the Borough's and PBA's submissions that a majority of the similarly situated municipalities require retired officers to contribute to healthcare levels set forth by P.L.2011, c.78.

In defense of their position the PBA argues: There is no dispute that retiree contributions are negotiable now that Ch. 78 has sunset. However, the PBA is not proposing putting in a new provision that has never been in the past contracts. The PBA believes the contract should be maintained and that benefits given to former employees be extended to those who believed they would also be receiving them. It is nonsensical that an employee who retired under a previous contract and received paid health benefits would have more money in their pocket than an employee who retires under the Borough's proposal but must then contribute the excessive medical payments while being on a fixed income pension.

It is not unreasonable for employees to have the expectation of receiving the benefits that are stated in their PBA contract. It is understandable that officers taking a new job would review the compensation in a contract. They would review retiree benefits in the contract as well as all of the other benefits. Contracts should be building blocks for the future, not three to five year blips that no one can rely upon. It must be stated that working as a police officer is not like

working in the private sector where people change employers all of the time. The structure of the salary guide and the years of service that are required to receive retiree health benefits make leaving prohibitive after the initial years of employment. Such a valuable benefit cannot be removed with being replaced by the financial equivalent. However, the Borough has not offered any replacement. The Borough has only proposed taking benefits, lowering salaries for new employees and keeping existing employees below the average compensation, way below.

In this decision, this Arbitrator must award the Borough's position that new hires will be limited post retirement to single health insurance coverage until eligible for Medicare and then no further coverage.

This Arbitrator is convinced that the Borough has met its burden of proof to demonstrate that their proposal is necessary and advisable.

The internal and external comparability evidence, provided by the Borough above, is overwhelming and outweighs, in this Arbitrator's mind, any arguments made by the PBA to the contrary. For this Arbitrator to do anything different would not be in the interest and welfare of the public.

However, it is clear from the Borough's proposal and submissions that current PBA members will be grandfathered. Current Officers will maintain all coverage rights.

AWARD:

Effective the date of this decision new hires will be limited post retirement to single health insurance coverage until eligible for Medicare and then no further coverage.

Current PBA members will be grandfathered. Current Officers will maintain all coverage rights.

Detective Stipend

The PBA proposes an increase to the Detective Stipend from one thousand dollars (\$1000.00) to two thousand dollars (\$2000).

The Borough proposes an increase to the Detective Stipend from one thousand dollars (\$1000) to one thousand five hundred dollars (\$1500).

The PBA argues that their proposed modest amount is reasonable. The five hundred dollars, proposed by the Borough, amounts to less than twenty dollars (\$20.00) per pay and would basically be unnoticed by anyone receiving it. The PBA proposal is more reasonable and essentially a *de minimus* cost to the Borough given the fact that only a couple of officers would receive it.

The Borough's Final Proposal calls for a \$500.00 detective stipend increase which is in line, if not more than, detective stipends in other municipalities within the Local PBA 206. Those municipalities include Westwood; Washington Township; and River Vale. Municipalities not within the Local PBA 206 include: Leonia; Carlstadt; Closter; Glenrock; Hillsdale; Norwood; and Ridgewood. Comparison to other municipalities detective stipend's further support the Borough's Final Proposal, in regard to the Detective Stipend annual increase.

The evidence, in this case, is not sufficient to justify the PBA's proposal. However, the evidence, based on the comparables and the overall compensation, is sufficient to justify the Borough's proposal.

Award:

The Detective Stipend will be increased by \$500 to \$1500 effective January 1, 2019.

Outside Details

The PBA and the Borough both have proposed a 4 hour call out for outside contractor work.

The PBA proposal goes into a little more detail on the procedure and is not countered or challenged by the Borough.

The PBA proposes a minimum of four hours of pay at the detail rate for working details for private vendors. In addition, the PBA proposes that any detail cancelled within one hour of the start time of the detail will result in four hours of pay at the detail rate. These minimum pay compensation proposals are consistent with other jurisdictions.

Additionally, the procedure for covering these details go to full time officers before they are offered to Class I and Class II officers. To remain consistent, Class III officers should be included in this procedure.

This Arbitrator does find sufficient justification to award the PBA's proposal as written. These types of procedures go to boost job satisfaction and employee morale and therefore is in the interest and welfare of the public.

Award:

A minimum of four hours of pay at the detail rate for working details for private vendors.

Any detail cancelled within one hour of the start time of the detail will result in four hours of pay at the detail rate.

The procedure for covering these details go to full time officers before they are offered to Class I and Class II officers. To remain consistent, Class III officers will be included in this procedure.

Out of Title Pay

The PBA proposes that officers who perform the work of a supervisor, any rank above

their own rank, should be compensated at the rate of pay of that higher rank. This is a common provision in almost every jurisdiction. Officers should be compensated for the rank in which they are performing duties.

The Borough has not offered a proposal or a rejection of the PBA's proposal.

As such, this Arbitrator does find sufficient justification to Award the PBA's proposal. These types of procedures go to boost job satisfaction and employee morale and therefore is in the interest and welfare of the public.

Award:

Any officers who performs the work of a supervisor, any rank above their own rank, will be compensated at the rate of pay of that higher rank for all hours actually worked in the higher rank.

Work Schedule

The PBA has proposed to have their 12-hour work schedule placed in the CNA. The Borough has not offered a proposal or rejection of the PBA's proposal.

The PBA argues the police department has been operating under a twelve-hour schedule since at least 2016. Every year that agreement is renewed. Putting this provision in the contract would lead to more stability in the workplace. Additionally, the schedule is a negotiable term and condition of employment. All of the negotiable items should be under one agreement, the PBA contract.

Once again, this Arbitrator does find sufficient justification to Award PBA's proposal. These types of procedures/schedules being place into the Agreement does go to boost job satisfaction and employee morale and therefore is in the interest and welfare of the public.

Award:

The 12-hour work schedule currently in effect will be placed into the parties CNA.

APPLICATION OF THE STATUTORY CRITERIA

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

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

Since this Arbitrator is primarily adopting the Borough's salary proposal this Award will not have an adverse impact on the Borough, its taxpayers, and residents and it will not prohibit the Borough from meeting its statutory obligations or cause the Borough to exceed its lawful authority.

This award also meets with the statutory criteria related to internal and external comparables. This Arbitrator has compared the salary and benefits to those of other law enforcement groups in Bergen County and have compared the post-retirement benefits for new hires with that of the Borough's other bargaining unit. As well as taking into consideration the overall compensation presently received.

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

There were no stipulations.

The issue of continuity of employment was not addressed by the parties.

Neither party submitted relative evidence of private sector comparables.

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

AWARD SECTION SUMMARY

1. Term of the Agreement:

Four-year term. Effective January 1, 2019 through December 31, 2022.

2. Salaries:

Salary increases of 1%-1%, effective January 1, and July 1, 2019; 2%, effective January 1, 2020; 2%, effective January 1, 2021; 2% effective January 1, 2022; (which makes year one 1.5%) for officers who are not on the 2015 step guide.

Salary guide for hires after 2015 shall be adjusted as follows:

There shall be 11 steps.

One time increase of 4% for existing figures for step years Prob. Grade 1-10.

The top step of the guide shall be \$117,000.00; and 2% annual salary increase for those officers out of the step guide.

All increases unless otherwise specified will take effect on January 1, 2019.

3. Retiree Healthcare:

Effective the date of this decision new hires will be limited post retirement to single health insurance coverage until eligible for Medicare and then no further coverage.

Current PBA members will be grandfathered. Current Officers will maintain all coverage rights.

4. Detective Stipend:

The Detective Stipend will be increased by \$500 to \$1500 effective January 1, 2019.

5. Outside Detail:

A minimum of four hours of pay at the detail rate for working details for private vendors.

Any detail cancelled within one hour of the start time of the detail will result in four hours of pay at the detail rate.

The procedure for covering these details go to full time officers before they are offered to Class I and Class II officers. To remain consistent, Class III officers should be included in this procedure.

6. Out of Title Pay:

Any officers who performs the work of a supervisor, any rank above their own rank, will be compensated at the rate of pay of that higher rank for all hours actually worked in the higher rank.

7. Work Schedule:

The 12-hour work schedule currently in effect will be placed into the parties CNA.

Marc A. Winters
Interest Arbitrator

February 9, 2021
Seven Fields, Pennsylvania

State of Pennsylvania

County of Butler:

On this day of , 2021, before me personally came and appeared Marc A. Winters to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

6. Out of Title Pay:

Any officers who performs the work of a supervisor, any rank above their own rank, will be compensated at the rate of pay of that higher rank for all hours actually worked in the higher rank.

7. Work Schedule:

The 12-hour work schedule currently in effect will be placed into the parties CNA.

Marc A Winters

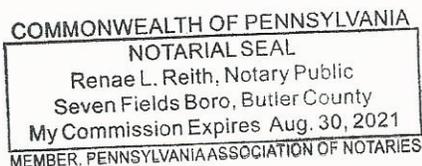
Marc A. Winters
Interest Arbitrator

February 9, 2021
Seven Fields, Pennsylvania

State of Pennsylvania

County of Butler:

On this 9 day of February, 2021, before me personally came and appeared Marc A. Winters to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



Renae L. Reith
Commission Exp. - Aug. 30, 2021