

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the

BOROUGH OF OAKLAND,

“Public Employer,”

and

PBA LOCAL 164,

“Union.”

**INTEREST
ARBITRATION
DECISION & AWARD**

Docket No. IA-2014-044

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

Appearances:

For the Employer:

Matthew J. Giacobbe, Esq.
Cleary Giacobbe

For the Union:

Richard D. Loccke, Esq.
Loccke Correia & Bukosky

On March 31, 2014 the Borough filed a Petition to Initiate Compulsory Interest Arbitration. Thereafter the parties met with a mediator but did not reach a resolution to their impasse. On March 19, 2015, 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 April 14, 2015, I conducted a mediation session with the parties that did not produce a settlement. On April 20, 2015, an interest arbitration hearing was held in Borough Hall at which time the parties were afforded the opportunity to argue orally, examine and cross-examine witnesses and submit documentary evidence into the record. The parties provided post-hearing briefs on or before April 27, 2015, whereupon the record was declared closed.

FINAL OFFERS OF THE PARTIES

The Borough's Final Offer

ARTICLE VI – VACATIONS AND HOLIDAYS

Section A, 2: Add language as follows, "Vacation leave shall be prorated during the last year of employment."

Section B, 2: Add language as follows, "Holiday pay shall be prorated during the last year of employment."

Section B, 3: Amended so as to explicitly exclude and does not apply to instances where the Borough offices are closed due to inclement weather or other reasons beyond the control of the Borough.

ARTICLE VII – SICK LEAVE

Section A, 1: Add language as follows, "Sick leave shall be prorated during the last year of employment."

Section A, 6: Add language as follows, "Terminal leave payment shall be capped at \$15,000 for all officers hired on or after May 22, 2010 (In accordance with N.J.S.A. 11A:6-19.2). All current officers' terminal leave shall be capped at \$15,000 or the value of their time as of May 22, 2010, whichever is greater, (In accordance with N.J.S.A 11A:6-19.2)."

ARTICLE X – INSURANCE

Section D, 1: Add language as follows, "All employees hired on or after January 1, 2015 shall have their retiree medical coverage (including all supplemental coverage) eliminated at age 65/Medicare eligible.

Section D, 2: Add language as follows, "All active employees as of January 1, 2015 and all future employees hired on or after January 1, 2014 shall receive retiree health benefits that are the same medical benefits as provided to current employees."

ARTICLE XII – COMPENSATION

Section A: All wages for current officers hired prior to January 1, 2014 to be compliant with the N.J.S.A. 34:13A-16.7(b), including but not limited to a new salary guide with additional steps and redistribution/return of the 2014 and 2015 step increases which were provided to the current employees.

A new fifteen (15) step equalized salary guide for all new officers hired on or after January 1, 2015.

Section F: Elimination of longevity for all new officers hired on or after January 1, 2015.

ARTICLE XXV – TERM

The term of the agreement shall be from January 1, 2014 through December 31, 2016.

The PBA's Final Offer

1. Term of Agreement – four (4) years – January 1, 2014 through December 31, 2017.
2. Wages.
 - A. For calendar year 2014 the only change in compensation would be the Steps previously paid to bargaining unit members. There would be no other change in the Wage Guide.
 - B. For calendar year 2015 the Steps preceding Top Step Police Officer would remain unchanged and any person entitled to move up a Step in 2015 would receive said Step however delayed six (6) months. Persons at Top Step Police Officer and supervisory positions would receive a two percent (2%) increase effective April 1, 2015.
 - C. For calendar year 2016 the Steps preceding Top Step Police Officer would remain unchanged and any person entitled to move up a Step in 2016 would receive said Step however delayed six (6) months. Persons at Top Step Police Officer and supervisory positions would receive a two percent (2%) increase effective April 1, 2016.
 - D. For calendar year 2017 the Steps preceding Top Step Police Officer would remain unchanged and any person entitled to move up a Step in 2017 would receive said Step however delayed six (6) months. Persons at Top Step Police Officer and supervisory positions would receive a two percent (2%) increase effective April 1, 2017.

BACKGROUND

The Borough is a residential community located in the Northwest section of Bergen County. It is comprised of approximately 8.728 square miles (8.454 square miles of land) and an estimated population of 12,959 residents. Recent statistics indicate that the Borough has a median household income of \$111,390, and a median family income of \$114,973.

PBA Local No. 164 represents the Department's Patrol Officers, Sergeants, Lieutenants and Captains.¹ The parties' prior Agreement was effective from January 1, 2011 through December 31, 2013. [Ex. J-1].

There were 24 bargaining unit members in 2013. The parties stipulated that the amount expended for total base salary for 2013 as including salary, holiday pay, detective differential and holiday pay to be \$2,740,442.90. [See Ex. B-22].

A substantial amount of evidence was presented during the proceedings. I thoroughly reviewed that information. Given 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.

¹ None of the bargaining unit members on the roster for 2013 had the rank of Captain. [See Ex. T-21].

The Borough's Position²

POINT I

A REVIEW OF THE COMPETING FINAL OFFERS DEMONSTRATES THAT THE BOROUGH'S FINAL OFFER IS MORE REASONABLE UNDER THE STATUTORY CRITERIA OF THE INTEREST ARBITRATION ACT AND IN FACT OFFERS THE MAXIMUM AWARD PERMITTED BY LAW AND FACTORS THE INTERESTS OF THE TAX PAYERS.

An interest arbitrator's task is to take the competing final offers of the parties and craft an appropriate award based upon the statutorily enumerated factors in the Interest Arbitration Act. While some of these factors may receive greater weight than others (or upon review of the evidence, no weight at all,) the arbitrator must at least consider each factor in his award. Further, Section 2 of P.L. 2010, c. 105 amended the interest arbitration law. N.J.S.A. 34:13a-16.7 which 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

² The Borough's position was taken from pages 14-58 of its Brief.

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.

For the purposes of this interest arbitration, the Borough submitted, and the Union agreed, that the Borough paid to its PBA members, \$2,740,442.90 in the final year of the previously expired contract; 2013. See B-21. Thus, \$2,740,442.90 is 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 collection negotiation agreement subject to arbitration[.]" Therefore, two percent (2%) of \$2,740,442.90 amounts to \$54,808.86. Thus, the Arbitrator may award no more than a total three (3) year award worth \$164,426.58 based upon the Borough's final offer asking for a three (3) year term. See B-22.

Additionally what must be noted by the Arbitrator is that all step and longevity increments have been paid by the Borough of Oakland to the PBA members in 2014 as well as all step and longevity increments that were due on January 1, 2015 at the PBA's request. In 2014, the Borough paid out \$62,033 in step and longevity increments to the PBA members. See B-22 and B-24. Thereafter, in 2015, on January 1, 2015, the Borough paid out \$20,889 in step and longevity increments to the PBA members. See B-22 and B-24. Moreover, the

Borough will again have to pay \$19,693 on July 1, 2015 for step and longevity increments and an additional \$37,547 in step and longevity increments in 2016. See B-22 and B-24. Over a term of three (3) years, the Borough will be paying a total of \$140,162 in step and longevity increments under the present salary guide structure, which will leave the Arbitrator with a total of \$24,264.58 to award without exceeding the statutory maximum amount. Accordingly, the only issue to be decided is how the \$24,264.58 should be divided amongst the PBA officers. The PBA has failed to provide any proofs and/or a cost out to justify its final offer as fair and reasonable.

The Borough offers the following suggested salary guide for the current employees which includes 0% increase in 2014 with all step and longevity movements, 0% increase in 2015 with all step and longevity movements, and 0.81% in 2016 with all step and longevity movements.

	Base Year	0%	0%	0.81%
	2013	2014	2015	2016
A	38,225	38,225	38,225	38,535
1	46,360	46,360	46,360	46,736
2	54,495	54,495	54,495	54,936
3	62,629	62,629	62,629	63,136
4	70,763	70,763	70,763	71,336
5	78,899	78,899	78,899	79,538

6	87,033	87,033	87,033	87,738
7	95,167	95,167	95,167	95,938
8	103,302	103,302	103,302	104,139
9	116,492	116,492	116,492	117,436
Sgt.	124,310	124,310	124,310	125,317
Lt.	131,230	131,230	131,230	132,293

This suggested salary guide takes into account that the Borough of Oakland has previously paid all of the 2014 step and longevity movement as well as the January 1, 2015 step and longevity movement. By awarding anything different, the Borough will be faced with the onerous task of recouping the step and longevity increment compensation already paid to the PBA members and reallocating it pursuant to the Arbitrator's award. Further, this guide takes into account the current bubble step in the salary guide. It should be noted that the progression from Step 8 to Step 9 for patrol officers is an increase of \$13,190! Should the Arbitrator provide an award that only increases the top step as suggested by the PBA; the Arbitrator is essentially creating a serious step disparity which financially affects the Borough when officers progress through the salary guide. Any increases to the salary guide should be done equally between all the steps.

In the Matter of Interest Arbitration between the Township of Fairfield and West Essex PBA Local 81, IA-2010-090, Arbitrator Robert M. Glasson details the

economic issues that New Jersey municipalities are facing. Arbitrator Glasson notes that the current state of the economy must be taken into consideration when issuing an arbitration opinion. Arbitrator Glasson provides:

It is undisputed that a public employer's ability to maintain revenue level's in 2010 and beyond has been severely diminished. The Tax Levy Cap in 2011 is 2%. Also, the Appropriations Cap has been reduced from 3.5% annually to 2.5% annually. This will severely limit the ability of a public employer to maintain the current level of services if salary increases continue to exceed increases in the CPI by up to 2% annually. Salary increases at 2008 and 2009 levels will only further reduce a public employer's ability to maintain the current level of services and will result in layoffs and/or furloughs. It is well established that many police and fire departments throughout the State have experienced massive layoffs, demotions and furloughs. We have also seen the parties working together to avoid layoffs and/or demotions by agreeing to postpone or modify certain economic benefits.

In prior years, the economy was much stronger than it is currently. We have experienced one of the worst recessions since the 1930's with high unemployment; a massive deficit in the State budget; hundreds of millions of dollars in reduced State Aid to municipalities; and tens of thousands of municipal, county and state employees being laid off or furloughed...Municipalities are experiencing a record number of tax appeals with significant potential loss of tax revenues and increased costs to defend such appeals, thereby undermining the tax base. Moreover, pension costs are at an all-time high with many municipalities contributing 25% or more of a police officer's salary to PFRS. The above events must be factored into the analysis of what weight to give the statutory criteria.

See Page 48-49.

As noted by Arbitrator Glasson above, the economy is still emerging from a deep recession and continues to be marked by high unemployment, low inflation, a depressed housing market and reduced non-tax revenues. This coincides with the fact that the taxpayers are financially stressed and more concerned with the Borough's spending and delivering public services at a reasonable cost. It should also be noted that in In the Matter of Interest Arbitration between the County of Union and FOP Lodge 103 (Sheriff's Superiors Officers), Docket No. IA-2010-118, dated January 11, 2012, Interest Arbitrator Timothy Hundley observed that "nothing in either the new legislations or the interest arbitration statute entitles employees to salary adjustments that balance out the new statutorily mandated contributions." Id. at 68.

The Borough further requests the Arbitrator to take notice of the two (2) new police officers hired in 2014 for purposes of a new salary guide as well as the other economic proposals requested by the Borough. Although the two (2) new officers are not considered for purposes of determining the maximum allowable award pursuant to the New Milford case (Borough of New Milford and PBA Local 83, Docket IA-2012-008, P.E.R.C. No. 2012-53, April 9, 2012), these officers still affect the Borough's finances as they progress through the salary guide and are afforded the myriad of benefits of the collective negotiations agreement.

A. The Borough's Final Offer is More Reasonable When Compared with the Wages, Salaries and Conditions of Employment of the Employees Involved in the Arbitration Proceedings and the Wages, Salaries, Hours and Conditions of

Employment of the Other Employees Performing the Same or Similar Services and with Other Employees Generally.

This factor requires the Arbitrator to make a comparison of the wages, salaries and conditions of employment of the Borough of Oakland police officers with the other employees of the Borough and other police officers in comparable jurisdictions. The evidence presented shows that the Borough's offer is far more reasonable when compared to what Bergen County police officers in other municipalities are receiving. Moreover, the Borough's offer will achieve economic and fiscal stability for the Borough in light of the 2.0% hard tax cap levy imposed in 2011, the fiscal/economic crisis of the State of New Jersey, increases to salaries and wages, increases in tax appeals, decreases/stagnation in State Aid and decreases in other miscellaneous revenues. See Certification of Donna M. Mollineaux, Exhibit B-123.

1. The Borough's Offer is More Reasonable When Compared to Public Employment in the Same or Similar Jurisdictions.

There have been vast changes to the comparability factor in interest arbitration. **An arbitrator can no longer assume that a police officer is per se entitled to a higher percentage increase than non-uniformed employees.** Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994).

The arbitrator must compare the benefits received by Borough of Oakland police officers to those in comparable jurisdictions as well as the Borough of Oakland non-uniform employees. In comparing all fringe benefits, Borough of Oakland affords benefits which exceed and/or are similar to the

Bergen County average. Borough of Oakland police officers receive three (3) personal days per year which is equivalent to the Bergen County average. See B-93. Additionally, police officers receive fifteen (15) sick days, which exceeds the County average of 14.1. See Exhibit 91. The call-in time minimum payment for police officers in the Borough is also on par with the County average. See B-99. The uniform allowance received by the PBA members is \$1200 per year compared to the county average of \$900 per year. See B-89. The Borough affords its PBA members fourteen (14) holidays (holiday pay is rolled into the base salary) which is comparable to the 13.3 holidays afforded in the County. See B-4 and B-91. Further, the Borough offers its officers up to four (4) bereavement days, compared to the County average of 3.4 days.³ See B-97. In addition, the longevity percentages to which officers are entitled far exceed County averages. For example, the Borough's longevity policy affords PBA members 8% of base salary for 13 through 17 years of service compared to the averages of 3.7% to 6% in all other Bergen County municipalities. See B-4 and B-103. Additionally, the Borough's longevity policy affords PBA members 10% of base salary for 18 to 22 years of service compared to the averages of 6% to 8.4% in all other Bergen County municipalities. See B-4 and B-103.

Officers can receive up to six (6) days if the funeral is more than one hundred fifty (150) miles from the Borough. See B-97

(a) Salaries

A common benchmark measure of comparing police officers is by review of the salaries. Upon comparison of the Bergen County municipalities' patrol officers, the salaries for patrol officers in the Borough of Oakland are comparable to the County averages without any roll in. However, it must be noted that Oakland police officers have their longevity, holiday pay and uniform allowance rolled into their base pay each year.

	2013	2014	2015	2016
Step 1 County Average	\$44,235	\$44,719	\$45,157	\$46,883
Step 1 County Low	\$29,189	\$29,773	\$30,666	\$38,978
Oakland Step 1	\$47,089 Hired Before 2007 \$46,360 Hired After 2007			
Maximum Patrol County Average	\$115,943	\$118,291	\$120,525	\$123,904
Maximum Patrol County Low	\$100,744	\$102,759	\$104,814	\$106,910
Oakland Maximum Step	\$116,492			
Sergeant County Average	\$123,368	\$125,691	\$128,348	\$131,968
Sergeant County Low	\$108,905	\$111,091	\$112,114	\$121,772
Oakland Sergeant	\$124,310			

Lieutenant County Average	\$131,433	\$133,959	\$137,791	\$140,945
Lieutenant County Low	\$112,854	\$115,111	\$118,565	\$128,647
Oakland Lieutenant	\$131,230			

See B-105, B-107, B-109, B-111.

Clearly, the Borough of Oakland provides a very competitive salary for police officers. The officers' salaries without any roll in of longevity, uniform allowance or holiday pay is comparable to the County averages and thousands of dollars more than the County low. If the Borough's proposed increases are implemented, it is clear that the Borough's offer keeps the salaries at a comparable level with the entire County.

While offering a competitive salary, the Borough requires the need to implement additional salary steps in order to stabilize the Borough's finances and avoid future crisis, while still affording a competitive salary for new hires. Previously, as evidenced by the Certification of Donna M. Mollineaux, the Borough was using its surplus as revenue in the budget to provide tax relief to its taxpayers. See Exhibit B-123, Paragraph 7. This practice created a financial crisis. In 2006, the Borough depleted its surplus and there was no reserve to offset the tax relief. Id. The Borough had to dramatically increase taxes by 14% in 2006, (the largest increase in the past twenty (20) years) and continue to increase taxes through 2015. Id. Since the 2006 surplus crisis, the Borough has

implemented a long standing practice of creating reserves in order to ensure long term tax stabilization. Id. Thus, the reserves are used for tax appeals, accumulated leave payments, and unforeseen emergencies. Id.

In order to continue the Borough's long standing practice of tax and financial stabilization, the Borough is seeking the implementation of a new salary guide with five (5) additional steps for new hires and the removal of longevity payments for new hires. See B-1. The additional steps and removal of longevity payments will ensure future fiscal stability and tax stabilization while still providing each new hire a competitive salary. Moreover, the additional step movements and removal of longevity will not affect any current police officers, only new hires. Additionally, the implementation of additional steps and removal of longevity has become a common trend within the County of Bergen.

Borough of River Edge:

Added 13 additional steps for new hires.

Township of Lyndhurst:

Added 2 additional steps for new hires.

Borough of Edgewater:

Added 1 additional step for new hires.

Borough of Haworth:

Added 2 additional steps for new hires.

Borough of Park Ridge:

Added 1 additional step for new hires.

Borough of Fair Lawn:

Added 2 additional steps for new hires.

Borough of Midland Park:

Added 4 additional steps for new hires.

Borough of Norwood:

Added 14 additional steps for new hires.

Borough of Wallington:

Added 1 additional step for new hires.

Borough of Emerson:

Added 5 additional steps for new hires.

Township of Wyckoff:

Added 2 additional steps for new hires.

Borough of Lodi:

Added 2 additional steps for new hires.

Borough of Old Tappan:

Added 3 additional steps for new hires.

Borough of Little Ferry:

Added 2 additional steps for new hires.

Borough of Dumont:

Added 2 additional steps for new hires.

City of Hackensack:

Added 3 additional steps for new hires.

Village of Ridgewood:

Added 1 additional step for new hires.

Borough of Maywood:

Added 2 additional steps for new hires.

Borough of Elmwood Park:

Added 3 additional steps for new hires.

Borough of Franklin Lakes:

Added 3 additional steps for new hires.

Borough of Cresskill:

Added 3 additional steps for new hires.

Borough of Allendale:

Added 1 additional step for new hires.

Borough of Glen Rock:

Added 2 additional steps for new hires.

Borough of Hasbrouck Heights:

Added 2 additional steps for new hires.

Borough of HoHoKus:

Added 1 additional step for new hires.

Borough of Oradell:

Added 2 additional steps for new hires.

Borough of Cliffside:

Added 2 additional steps for new hires.

Borough of Leonia:

Added 4 additional steps for new hires.

Township of Rivervale:

Added 2 additional steps for new hires.

Township of Saddle Brook:

Added 2 additional steps for new hires.

Township of South Hackensack:

Added 2 additional steps for new hires.

Borough of Waldwick:

Added 3 additional steps for new hires.

Borough of Woodridge:

Added 3 additional steps for new hires.

See B-124.

Based upon a review of the above, there is a consistent trend in Bergen County to increase the amount of salary steps for new hires. Thus, by granting the Borough's final offer for an additional five (5) steps in the salary guide for

new hires, the salaries of the Borough of Oakland police officers will stay comparable with the Bergen County averages as well as create financial stability for the Borough and be consistent with the County trend in increasing total steps for new hires. As such, the Arbitrator should award the Borough's final offer.

(b) Elimination of longevity for new hires.

In the Matter of Interest Arbitration between the County of Union and FOP Lodge 103, IA-2010-118, Arbitrator Hundley noted that PERC issued a directive that arbitrators must consider evidence of settlements between the employer and other negotiations units, as well as claims that those settlements constitute a pattern. See *Union Cty.*, P.E.R.C. No. 2003-33, 28 NJPER 459, (¶133169 2002) and *Union Cty.*, P.E.R.C. No. 2003-87, 29 NJPER 250 (¶175 2003). Further, arbitrators must fully articulate the rationale for any decisions to deviate from an internal settlement pattern. *Union Cty.*, P.E.R.C. No. 2003-33; *Union Cty.*, P.E.R.C. No. 2003-87. The principle underlying these decisions is that maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. Id.

Internal comparisons of the Borough of Oakland's non-uniformed bargaining unit's benefits and non-union employee's benefits support the Borough's longevity proposal for new police hires. The PBA is the only unit in the Borough whose new hires are still afforded longevity. The Borough has

eliminated longevity benefits for new hires from all other bargaining units (white collar and blue collar) as well as for all non bargaining unit employees. See Exhibits B-83, B-84, B-85. Specifically, the Blue and White Collar units agreed to eliminate longevity for all new hires in their respective contracts. See B-84 and B-85. Additionally, non-union employees receive the same benefits as those in the White Collar collective negotiations agreement. Thus, longevity has been eliminated for non-union employees as well. See B-83.

An analysis of the longevity benefits in the County of Bergen also shows an ever increasing trend toward the elimination of longevity benefits for new hires. Specifically, In the Matter of Interest Arbitration between Borough of Tenafly and PBA Local 376, Docket No. IA-2013-018, dated May 6, 2013, Arbitrator Gifford took notice that the following municipalities have eliminated longevity benefits for new hires:

Ramsey
River Edge
Norwood
Ho-ho-kus
Saddle River
Franklin Lakes
Hackensack
New Milford
Rochelle Park
Wallington
Old Tappan

Based upon this growing trend in the County of Bergen, Arbitrator Gifford ruled to eliminate longevity benefits in the Borough of Tenafly for new hires. See In the

Matter of Interest Arbitration between Borough of Tenafly and PBA Local 376,
Docket No. IA-2013-018, dated May 6, 2013.

The Borough also seeks to remove longevity benefits for new hires as longevity imposes significant costs which increase with every salary increase. This is because longevity benefits are based on a percentage of base pay; thus every salary increase brings a corresponding increase in longevity benefits. In 2013, for example, the Borough paid \$207,050.30 in longevity payments to PBA members, \$212,196.00 in 2014 and \$216,936.00 in 2015. See Certification of Donna M. Mollineaux, Paragraph 12. The Borough cannot continue to sustain these ever-increasing payments nor should the Oakland taxpayers. There has been an increase in the amount raised by municipal taxes every year since 2004, an average of 6.36% per year. See Certification of Donna M. Mollineaux, Paragraph 5. Continuing to provide longevity for new hires will result in financial instability for the future of the Borough. Accordingly, the Arbitrator should eliminate longevity for new hires to maintain the established internal pattern among the Borough's employees, to ensure fiscal stability and to promote harmonious labor relations between the Borough, its employees and their respective unions.

(c) Proration of Sick Leave, Vacation Time and Holidays

The Borough also seeks to prorate vacation leave, sick leave and holiday pay for PBA members during their last year of employment in order to continue to create financial stability for the Borough. PBA members are the highest

compensated employees in the Borough. The salary and wage costs of the police department uniformed officers exceed any other department. See Certification of Donna M. Mollineaux, Paragraph 11. In fact, Police salary and wage costs for 2013 were \$3,649,625.00; 50% of the Borough's budget. Id at Paragraph 12. The average PBA members pensionable annual salary was \$130,570.83! Id. at Paragraph 11. This amount does not include any additional compensation for overtime and/or outside duty. Id. at Paragraph 11.

In addition to their generous salaries, PBA members also receive their full allotment of vacation time, sick time and holiday pay at the beginning of each year. See B-4. The time only accrues on a monthly basis during the first year of employment. See B-4. Thus, officers receive their full allotment of leave benefits whether or not they work a full year.

By way of example, under the current agreement, an officer who retires with twenty-four (24) years of service would be entitled to thirty (30) days vacation pay and fourteen (14) days holiday pay at his/her full straight time salary, as well as fifteen (15) sick days at 50% of his straight time salary. As such, the employee would be entitled to almost two (2) months of compensation upon retiring from the Borough whether he/she works one (1) month in the final year or the full twelve (12) months. Accordingly, the current agreement entitles PBA members to what amounts to a windfall of public funds upon retirement. As illustrated by the example above, if an officer retires at the beginning of the year, this compensation is completely unearned. Furthermore, in 2014, the

Borough had \$882,277.00 of unrecorded liabilities for the accumulated uncompensated absences for all Borough employees. See Certification of Donna M. Mollineaux, Paragraph 9. Of that amount, \$570,953.00 was for PBA members. Id at Paragraph 9.

The Borough does not seek to eliminate payments to employees in their final year of employment, but to ensure that they are compensated only for time they have rightfully worked and accrued. Simply put, given the Borough's present financial condition, it can no longer afford payments for time that has not been earned. Additionally, it is unfair to the taxpayers of the Borough of Oakland that public funds are being paid to PBA members for a full year of leave time when such members did not work the entire year. Accordingly, the arbitrator should prorate vacation time, sick time and holiday pay during a PBA members final year of employment.

(d) Cap on Payout of Sick Leave

The Borough seeks to cap sick leave payouts for all PBA members hired on or after May 22, 2010 at \$15,000 at the time of retirement. See B-1. The Agreement currently provides:

Terminal Payment: Upon death or retirement each Officer shall be compensated by payment of his unused sick leave at the rate of fifty percent (50%) of his current straight time salary.

See Exhibit B-4. The New Jersey legislature has recognized the need to control terminal leave costs. In fact, N.J.S.A. 11A:6-19.2 provides:

Notwithstanding any law, rule or regulation to the contrary, a political subdivision of the State, or an agency, authority or instrumentality thereof, that has adopted the provisions of Title 11A of the New Jersey Statutes, **shall not pay supplemental compensation to any officer or employee for accumulated unused sick leave in an amount in excess of \$15,000. Supplemental compensation shall be payable only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement.** This provision shall apply only to officers and employees who commence service with the political subdivision of the State, or the agency, authority or instrumentality thereof, on or after the effective date of P.L.2010, c. 3. [May 22, 2010] This section shall not be construed to affect the terms in any collective negotiations agreement with a relevant provision in force on that effective date.

Emphasis added.

Thus, the statute expressly provides that an officer hired after May 22, 2010 cannot be paid in excess of \$15,000 for accumulated, unused sick leave. In Council of New Jersey State College Locals v. State Board of Higher Education, 91 N.J. 18, 30 (1982), the Supreme Court found that for a regulation or statute to preempt negotiations, it "must fix a term and condition of employment, and it must so provide expressly, specifically and comprehensively." Moreover, if the regulation sets a minimum or maximum term or condition of employment, then negotiation will be confined within those limits. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978).

Based upon statutory precepts set forth in N.J.S.A. 11A:6-19.2, an employer cannot afford employees hired after May 22, 2010 compensation greater than \$15,000 for accumulated unused sick leave until the date of retirement. The

statute clearly preempts any negotiation on these terms and conditions of employment. Accordingly, the Agreement **must** be revised to conform to current law.

In addition, the Borough also seeks to cap sick leave payouts for employees hired prior to May 22, 2010 at \$15,000 or the value of their time as of May 22, 2010 whichever is greater. See B-4. This is in accord with the current legislative trend to limit payouts of accrued, but unused sick leave by public employees. The Legislature is considering several bills aimed at limiting payment for accrued but unused sick leave for current public employees. Such bills include, Senate No. 906, Assembly No. 1179, and Assembly No. 2489. See B-117, B-118, B-120, B-121, B-122. Furthermore, In the Matter of Interest Arbitration between Borough of Tenafly and PBA Local 376, Docket No. IA-2013-018, dated May 6, 2013, Arbitrator Gifford concluded that there is a legislative focus on limiting payments for accrued, but unused sick time therefore demonstrating the reasonableness of the Borough's proposal to eliminate terminal leave benefits for new hires. See Pg. 111. As set forth in the Borough's final offer, the Borough is only seeking to cap terminal and not totally eliminate it like in Tenafly.

As previously discussed above, as of 2014, the Borough presently has \$570,953.00 in unrecorded liabilities due to the PBA members for accumulated compensated absences. See Certification of Donna M. Mollineaux, Paragraph 9. Given the excessive amount of unused leave time owed to PBA members as a result of the current agreement along with the legislative trending capping

terminal leave payouts, it is reasonable for the Borough to curb sick leave payouts for those employees hired prior to May 22, 2010. Such an award by the arbitrator, would prevent the Borough from having to seek further relief from the taxpayers, help to ensure the Borough's fiscal stability and would result in more equitable payouts for PBA members.

(e) Retiree Medical Coverage

The Borough seeks to eliminate retiree medical coverage (including all supplemental coverage) at age 65 or once the retiree becomes Medicare eligible for all new hires. Additionally, the Borough seeks to amend the Agreement to provide that all active employees as of January 1, 2015 and all employees hired on or after January 1, 2015 shall, upon retirement, receive the same medical benefits as those provided to current employees.

The Borough simply does not have the funds to keep pace with the rising cost of health insurance. The Borough does not participate in the State Health Benefits Plan, but rather participates in the B-Med. A report issued by UHY Advisors on October 29, 2013, found that the actual accrued liability of the plan for retirees was \$15,746,616. See B-86. UHY Advisors also concluded that the plan had no assets to offset the actual accrued liability. Id. This report assumed that upon attaining age 65 Medicare would become the primary payor of medical benefits, picking up 66.7% of combined medical/prescription drug costs, and that the plan would pay the remainder. Thus, even assuming that Medicare will pay for 66% of health benefit costs for retirees after 65, the

Borough still has a liability over \$15,000,000. As such, it is imperative for the fiscal stability of the Borough that retiree medical coverage be eliminated at age 65 for all new hires.

Additionally, in order to control the ever-increasing cost of health care, health benefits for retirees should be the same as those for current employees. Despite the fact that employees are contributing to cost of health benefits, the overall cost of health benefits for the Borough will remain increasing without the Borough being afforded the ability to modify retiree's health benefits to be the same as current employees. The Borough is only afforded a savings when it negotiates a new plan for current and prospective employees and is forced to keep retirees on their ever increasing plans without any ability to curtail the costs. By keeping benefits the same for both active employees and retirees, the Borough can ensure that the cost of retiree medical benefits does not spiral out of control.

(f) Duration of Contract

The Borough of Oakland seeks a three-year contract, which would cover January 1, 2014 through December 31, 2016, while the PBA proposes a four-year contract. The PBA's proposal for a four-year contract should be denied as the PBA is seeking to escape the current statutory requirement for a 2% cap on the arbitrator's award for the next successor agreement. Similarly, the Arbitrator in Borough of Spotswood and PBA Local 225, Docket No. 2011-048, May 23, 2011

denied the PBA's duration of the agreement proposal. In rejecting the PBA's proposal, the Arbitrator found,

... the PBA asks that there be an Agreement imposed for a four-year period specifically to avoid the need to be involved in negotiations during a period when the State law, an expression of the legislature to control costs of police and fire contracts would be no longer in effect. Clearly a matter of self-interest without any regard for the interest and welfare of the residents of Spotswood.

As in Spotswood, the PBA is seeking to avoid any future interest arbitration being subject to the 2% Hard Cap and thus the PBA's proposal should be denied.

Moreover, it must be noted that without the Borough's health benefits proposals being granted, insurance will be a major issue for the next round of negotiations. Specifically, in 2018, the Cadillac tax (excise tax) under the Affordable Care Act will become effective. Specifically, by assessing a permanent annual tax on high-cost benefits through an employer-sponsored group health plan. The tax is going to be 40% of the cost of plans that exceed predetermined statutory threshold amounts. Therefore, without the Borough's health benefits proposals being awarded by the Arbitrator, a three-year duration is essential in order to allow the Borough enough time to return to the bargaining table to negotiate over this major health benefit issue prior to any excise tax becoming effective.

POINT II
**THE BOROUGH'S FINAL OFFER IS MORE REASONABLE IN
TERMS OF FINANCIAL IMPACT ON THE GOVERNING UNIT,
ITS RESIDENTS AND ITS TAXPAYERS.**

A. The “Financial Impact” Criterion.

The “financial impact” criteria, N.J.S.A. 34:13A-16(g)(6), requires the arbitrator to “consider the financial impact of his award on the municipality, its residents and its taxpayers, whether wealthy or poor.” Hillsdale, 263 N.J. Super. at 194. The considerations under this factor “do not equate with a municipality’s ability to pay.” Hillsdale, 137 N.J. at 86. This criterion encompasses a far more searching and critical analysis than simply whether a local government has the ability to pay an award. It does not require the local government to prove that it would suffer financial difficulties as a result of an award. Id. Put differently, a local government “should not have to demonstrate it would “be financially crippled before its arguments could be found to be sufficient.” Id. at 194.

The New Jersey Supreme Court emphasized that “it is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of the public interest arbitration award.” Id. (quoting Hillsdale, 263 N.J. Super. at 188). Moreover, the municipality does not carry the burden of proving its financial inability to meet the union’s final offer. Id. In addition, the correct application of this criteria does not require an employer to provide that it would suffer a “substantially detrimental result,” or that the financial difficulties would be created or worsened. Hillsdale, 263 N.J. Super. at 194. Rather, the effect that the award will have on other employees and the employer’s overall budget must be considered by the Arbitrator. Hillsdale, 137 N.J. at 86.

The Borough's economic offer considers the financial impact on the governing unit, its residents and taxpayers because it takes into account the State and Nation's bleak economic condition and perhaps the greatest economic turmoil seen in years. See B-44, B-46 and B-47. Further, the economic offer includes the internal pattern settlement agreed to by the non-police union bargaining units and non-union employees for the elimination of longevity for new hires. The final offer also caps terminal leave payments pursuant the law and the current legislative trend. The Borough's final offer also takes into consideration the payout of unearned accrued leave time and necessary changes to the health benefits in order to create a cost savings and financial stability for the Borough and its tax-payers.

Likewise, the state of the economy certainly impacts upon the Borough's ability to provide a fair economic offer, while continuing to maintain the fiscal stability necessary to operate and ensure the Borough's long term tax stabilization continues. The effect of granting an economic benefit in excess of the Borough's proposal will negatively impact on the Borough's establish long term tax stabilization plan. See Certification of Donna M. Mollineaux. Moreover, the Borough is now limited on its ability to increase its tax rate. It should be noted that the Borough is subject to a 2% hard tax cap levy pursuant to N.J.S.A. 40A:4-45.45 et seq.

The Borough's offer represents a fair balance between reasonable salary increases in the face of an unstable economy in the State, the ever increasing

health benefits, decreases/stagnation in State aid, and ensures the financial stability of the Borough without overwhelming already strapped taxpayers.

B. The Fiscal Problems Facing the Borough.

As summarized below, the exhibits presented at the hearing and financial certification of the Borough's CFO, Donna M. Mollineaux demonstrate that the Borough is confronting a number of difficult fiscal problems and financial challenges:

(1). Reduction in State Aid:

The Borough of Oakland's fiscal stability has suffered from the continual reduction in State aid. The Borough's State aid has been reduced by over \$500,000 since 2004. See Certification of Donna M. Mollineaux, paragraph 6. In 2004, the State Aid was \$1,824,519 and in 2014 the State aid was \$1,312,169. Id.

(2). Increases in Borough Costs:

The Union fails to take notice that the cost of the employees' salaries for the Borough since 2004 have been increasing at an average rate of 4.25% each year. See Certification of Donna M. Mollineaux, paragraph 10. In 2004, the salaries and wages for the Borough were \$5,051,922 and have increased to \$7,419,325 in 2015. Id. Further, the Borough has paid out a substantial amount in overtime and longevity to the PBA members:

<u>Overtime</u>	<u>Longevity</u>
\$282,870.06 in 2013	\$207,050.30 in 2013
\$238,738.14 in 2014	\$212,196.00 in 2014

\$76,963.10 To date in 2015 \$216,936.00 in 2015

Id. at paragraph 12.

Additionally, the Borough is currently facing possible losses in tax appeals equal to \$429,400 in 2013, \$287,862 in 2014, and 394,552 in 2015. Id. at paragraph 8.

Meanwhile, the Borough's offer takes into consideration the financial crisis experienced by its residents and taxpayers. The taxpayers of the Borough have been forced to pay a continual increase in taxes since 2006.

Percentage Increase in Municipal Taxes over the Previous Year

2015-1.67%
2014-1.0%
2013-0.5%
2012- -0.25%
2011-1.20%
2010-3.57%
2009-4.83%
2008-8.40%
2007-9.69%
2006-13.95%

Id. at paragraph 6.

The Borough has established the practice of limiting the use of its surplus for tax relief to a sustainable level only. Id. at paragraph 7. The Borough has been able to create a reserve to ensure long term tax stabilization and utilize its surplus for

tax appeals, accumulated leave payments, and unforeseen emergencies. Id. The Borough is currently facing thousands of dollars in tax appeals, \$882,277.00 for employees' accumulated uncompensated absences. Id. at 7 and 8.

Adopting the PBA's proposal would be unreasonable in light of the dire condition of the economy, the Borough's long term economic stability, and the fiscal health of its taxpayers. Despite its financial challenges, the Borough presented a final offer which contained a reasonable wage increase that also ensures fiscal stability and a competitive edge with other Bergen County municipalities. As such, the Borough's final offer is reasonable and should be adopted by the Arbitrator.

POINT III

THE BOROUGH'S FINAL OFFER IS MORE REASONABLE IN TERMS OF COST OF LIVING

The arbitrator is required to consider the cost of living in rendering his award. N.J.S.A. 34:13A-16(g)(7). In Hillsdale, the Appellate Division faulted the Hillsdale Arbitrator for failing to "consider or discuss the disparity between policy salary increases and the consumer price index." Hillsdale, supra., 263 N.J.Super. at 195. In addition, N.J.S.A. 34:13A-16(g)(8) requires the arbitrator to consider "other factors...ordinarily or traditionally considered in the determination of wages." Certainly, the cost of living must be considered one of those factors.

The Cost of Living statistics are promulgated by the United States Bureau of Labor Statistics and are measured using a measurement system known as the Consumer Price Index ("CPI"). The interest arbitrator must consider the CPI in

determining whether the Borough or the PBA has proposed the more reasonable economic package. The Consumer Price Index ("CPI") tracks the cost of goods and services in various geographic areas and labor markets and measures a wage earners purchasing power.

The CPI currently utilizes the period between 1982 and 1984 as the base year. Therefore, the cost of goods and services during those years is given a value of 100. The cost of the same goods and services is then calculated for each following year, establishing an "index" for easy comparisons of purchasing power. The index currently shows a minor increase in the costs of goods and services. See B-20. The foregoing CPI demonstrates that the PBA will not suffer any detriment to their standard of living. See B-20. Accordingly, the Borough's final offer is reasonable and should be implemented.

POINT IV

THE BOROUGH'S FINAL OFFER IS MORE REASONABLE IN TERMS OF THE INTERESTS AND WELFARE OF THE PUBLIC

A. The "Interests and Welfare of the Public" Element.

The arbitrator must consider the "interests and welfare of the public" in determining his award. N.J.S.A. 34:13A-16(g)(1); Hillsdale PBA, 137 N.J. at 83. In the Appellate Division's decision in the Hillsdale matter, the Court found that the public interest factor "focuses in part on the priority to be given to the wages and monetary benefits of public employees within a municipality's budget and plans." Hillsdale, 263 N.J.Super. at 188. "It 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. That would also conflict with other enumerated factors and render them hollow." Id.

The New Jersey Supreme Court emphasized that "the public is a silent party" to the interest arbitration process, and that "an award runs the risk of being found deficient if it does not expressly consider" the public interest. Hillsdale, 137 N.J. at 82-83. "Indeed, the Arbitration Act expressly requires the arbitrator to consider the public interest and public welfare." Id.

Arbitrators historically understood this criterion as requiring that public safety employees be well compensated. However, the Appellate Division directed that this criterion be interpreted differently, holding that it "focuses in part on the priority to be given to wages and monetary benefits of public employees within a public employer's budget and plans." Hillsdale, 263 N.J. Super. at 188. In other words, an interest arbitrator is required to balance the expense borne by the taxpaying public with the need to ensure that the necessary services are provided. Thus, the Borough's offer should be considered reasonable and accepted.

B. The Interests of the Public Require the Adoption of the Borough's Final Offer.

In the present matter, the Borough's offer is clearly more supportive of the public's interest and welfare than the PBA proposal. The final offer of the Borough will accomplish several important public policy goals while still affording the PBA a respectable wage increase. First, it will enable the Borough to maintain its fiscal stability, while managing the risk and volatility of the current

economy. Additionally, the offer will ensure that the Borough's police officers, who are statutorily entitled to the interest arbitration process, do not receive far superior wages and benefits than civilian employees, who do not enjoy such benefits. Most importantly, the Borough's final offer ensures the continuation of the Borough's internal pattern of removing longevity for new hires.

The PBA will continue to enjoy its competitive edge with the Borough's final offer. The Borough's final offer clearly takes the best interests and welfare of the public into account, while the PBA's offer blindly ignores the weak economy, decreases/stagnation in State aid, decreases in non-tax revenues, the financial situations of the taxpayers, and a remarkably high unemployment rate that has not been seen in years.

POINT V

THE BOROUGH'S FINAL OFFER IS MORE REASONABLE IN TERMS OF THE LAWFUL AUTHORITY OF THE EMPLOYER.

The Appellate Division in Hillsdale interpreted the "lawful authority of the employer" criterion to refer to the Local Government Cap Law. Hillsdale, 263 N.J. Super. at 193. The Supreme Court agreed, stating, "Given the existence of financial constraints and budget caps... an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget." Hillsdale, 137 N.J. at 86. In Hillsdale, the Appellate Division required the arbitrator to consider the impact of the award on other budget items. Hillsdale, 263 N.J. Super. at 194. When applying the lawful authority of the employer criterion, the Arbitrator must address the Borough's budget cap situation, as well

as the statutory requirement that the Borough prepare a balanced budget each year.

In the present matter, the Borough provided evidence to support its position that its final offer is more reasonable in light of the lawful authority of the employer. The Borough is clearly trying to sustain a collective negotiations agreement that provides some fiscal stability and long term tax stabilization whereas most municipalities are resorting to layoffs, furloughs, and salary freezes.

A. The Lawful Authority of the Employer and the Statutory Restrictions Imposed Upon the Borough Require Its Final Offer to be Awarded.

N.J.S.A. 34:13A-16(g)(5) requires the arbitrator to consider the "lawful authority of the employer," and specifically references P.L. 1976, c. 68, which is codified at N.J.S.A. 40A:4-45.1 et seq. The aforementioned statute is commonly known as the "Local Government Cap Law," and states, "it is hereby declared to be the policy of the Legislature 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 New Jersey Legislature established a second tax levy cap established by section 10 of P.L. 2007, c. 62, which is now codified at N.J.S.A. 4-45.45. As part of this legislation, the Interest Arbitration Act was also amended to include a ninth and final criteria for the arbitrator's consideration, "the statutory restrictions imposed upon the employer," which specifically includes "the limitations imposed upon the employer by section 10 of P.L. 2007, c.62." N.J.S.A. 34:13A-16(g)(9).

Section 10 of P.L. 2007, c.62 originally established a tax levy cap of 4% above the previous year's tax levy. However, on July 13, 2010, Governor Christie signed into law P.L. 2010, c. 44 in order to cut the allowable tax levy increase to 2%. Moreover, the Borough will have a difficult time generating the necessary money without taking measures to comply with the 2.0% hard tax levy if the Borough's final offer is not accepted. In sum, the PBA's offer is neither fair, equitable nor realistic under the statutory restrictions imposed by the Local Budget Law, and must be rejected in favor of the Borough's proposal.

POINT VI

THE BOROUGH'S FINAL OFFER IS MORE REASONABLE IN TERMS OF THE OVERALL COMPENSATION AND ALL OTHER ECONOMIC BENEFITS RECEIVED.

The Arbitrator must consider the overall compensation received by the Borough of Oakland police officers. See N.J.S.A. 34:14A-6(g)(3). Along with their base salary, the Borough of Oakland police officers are afforded, inter alia, the following benefits: court appearances paid at overtime rates; vacation leave; sick days; comprehensive medical insurance benefits; call in pay; holiday pay; longevity, and personal leave. See B-4. Moreover, each police officer of the Borough of Oakland is enrolled in the Police and Fireman's Retirement System, which permits a police officer to retire after twenty (20) years of service at 50% of final compensation or twenty-five (25) years of service at 65% of final compensation. See N.J.S.A. 43:16A-11.1. The police officers of the Borough of

Oakland are more adequately compensated than the majority of the State's private sector employees and public sector.

Therefore, only minimal increases should be required to maintain the PBA's strong overall compensation and benefits compared to other workers. The Borough's offer is more reasonable and should be awarded.

POINT VII

THE BOROUGH'S FINAL OFFER IS REASONABLE IN TERMS OF THE CONTINUITY AND STABILITY OF EMPLOYMENT

The "stability and continuity of employment" criteria relates to employment issues such as layoffs, give backs, and salary freezes. Hillsdale, 263 N.J.Super. at 195. Specifically, the Appellate Division stated that arbitrators are required to consider facts such as salary structure, unemployment rates, employee turnover and the "virtual absence of unemployment among police." Fox, 266 N.J.Super at 519.

Borough of Oakland police officers have never been laid off or put on furlough. The absence of any layoffs, furloughs, and downsizing is in complete and utter contrast to the current economic climate in the nation and in many municipalities within the State of New Jersey. Municipal employees and State employees have been experiencing mass layoffs, job cuts, furloughs, and salary freezes. New Jersey has the 17th highest unemployment rate in the country. See B-44, B-45 B-47, B-52, B-56, B-57. Large scale job cuts have been taking place in both public employment and the private sector. Private employers have

instituted large scale job cuts which make headlines frequently, while the Borough of Oakland police officers enjoy job security without any threat to job loss, furlough, or downsizing.

The New Jersey Appellate Division noted that there is a "virtual absence of unemployment among police." Fox, 266 N.J.Super. at 519. Likewise, police officers are not affected by the trend towards downsizing or furloughs. Additionally, police services are not subject to privatization like other public sector services. Simply put, Borough of Oakland police officers are secure in their employment without any concern for layoffs or downsizing even during such dire economic times.

Moreover, the exhibits provided by the Borough, specifically B-21, shows that the continuity and stability of employment in the unit is strong. There is no evidence of turnover and, based on the annual salaries of the police officers in 2013, seventeen (17) of the twenty-one (21) police officers currently still on the force are receiving salaries in excess of \$100,000 per year. See B-21.

Thus, based on the above, it appears that most if not all unit members are receiving top pay, thereby indicating they have been with the Borough of Oakland for many years. Further, the 2013 annual salary for police officers demonstrates that the unit members are well compensated and there is no evidence of turnover. The Borough of Oakland police officers are well paid compared to New Jersey's private sectors workers, where the average 2013 salary was \$59,026. See B-17. The private sector annual wages reflect those

wages received by the tax payers of the Borough of Oakland. As such, the Borough of Oakland police officers remain and will continue to enjoy continuity and stability of employment. Thus, the Borough's offer is more reasonable.

CONCLUSION

The Borough's final offer is fair, reasonable, well-balanced and provides an intelligent approach for future financial stability. As the Borough has shown, its proposals will keep the Borough of Oakland police officers' salaries competitive with or better than the County averages of other officers while providing far superior fringe and salary benefits. Moreover, the Borough's final offer ensures the continued practice of pattern with the other bargaining groups and non-bargaining employees. Thus, it is respectfully requested that the Borough's final offer be implemented by the Arbitrator and the PBA's final offer be rejected in its entirety.

The PBA's Position⁴

STANDARD OF REVIEW

Under clear statutory standards and under clear case law substantial portions of the Employer's position are not awardable.

The Employer has failed to provide any evidence upon which one could cost the impact of numerous changes sought to be awarded. There was no effort to explain the impact of said changes or the cost of the modifications. The second problem with the Employer's presentation is that the nature of the presentation is such that there is only speculative argument, not one which would support any finding in this matter. As such the Arbitrator is being requested by the Employer to speculate as to what may or may not occur in the future, who will be affected, how many persons will be affected, what the cost might be at that time, *etc.* These are fatal flaws in the awardability of the Employer's position on the noted subjects.

The Interest Arbitration statute is specific in the obligation placed upon the proofs to be submitted to an Arbitrator and the Arbitrator's analysis of said proofs. While the employee organizations provided specific costs of the Last Offer Package bringing the total cost of the package inside of the so-called "Hard Cap", N.J.S.A. 34:13A-16.7a. The Employer did not so comply. The statutory mandate under the Interest Arbitration Act requires that the parties submit "...estimates of the financial impact of their last offer on the taxpayers of

⁴ The PBA's position was taken from pages 2-33 of its Brief.

the local unit to the arbitrator with the submission of their last offer." N.J.S.A. 34:13A-16f(3). One cannot determine how many persons would be affected, when an effect might take place, whether a new hire would occur or would even complete the Academy, would make it through probation, stay on the Police force for an entire career, and ultimately retire within the bargaining unit. The final date of retirement of course is speculative as well. Without this essential data the various issues submitted and enumerated above cannot be awarded in this case.

With due respect to the Arbitrator, an analysis cannot be made consistent with statute of these various points based on the data, or more accurately lack thereof, in this proceeding. The Interest Arbitration Act at subsection g requires "...that in every interest arbitration proceeding the parties shall introduce evidence regarding the factors set forth in paragraph (6) of the subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award." It may be noted that subsection (6) requires extensive detailed analysis affectively mandating cost analysis and impact in various methods. All of which are impossible based upon the material in the record as of this date and made part of the Employer's case. Simply stated, there is nothing in the record that can support any form of analysis on the enumerated points, much less an award on same.

The standard of review of an Interest Arbitration Award has been the subject of substantial precedent. In the case of Hillsdale PBA Local 207 v.

Borough of Hillsdale, 137 N.J. 71 (1994), the Supreme Court of New Jersey spoke to the issue of Arbitrator review. The Court provided the following guidance in the case at page 82.

...section 16g lists eight factors that arbitrators must consider in making that choice. In general, the relevance of a factor depends on the disputed issues and the evidence presented. The arbitrator should determine which factors are relevant, weigh them, and explain the award in writing. N.J.S.A. 34:13A-16f(5); N.J.A.C. 19:16-5.9. In brief, the arbitrator's opinion should be a reasoned explanation for the decision.

Later in the proceeding the Court gave direction and insight as to the method of analysis of Interest Arbitration Awards:

We believe we come closer to satisfying the legislative intent by requiring arbitrators to identify and weigh the relevant factors and to explain why the remaining facts are irrelevant. A reasoned explanation along those lines should satisfy the requirement for a decision based on "those factors" that are "judged relevant." Also, such an explanation should satisfy the requirement that the arbitrator "give due weight" to each factor. Anything less could contravene the Act's provision for vacating an award "for failure to apply the factors specified in subsection g" N.J.S.A. 34:13A-16f(5). In sum, an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant. (*Ibid*, p.84).

In a recent decision the Public Employment Relations Commission also clearly stated, after analysis, the parameters of future cost increases regarding new hires when considering an arbitration award. After an extensive discussion the Commission held as follows:

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 affect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act. Borough of New Milford, PERC No. 2012-53, p.15.

This standard has been applied elsewhere on numerous occasions such as the Borough of Ramsey, PERC No. 2012-60, where it stated at page 9 the following:

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 workforce.

All of these clear Supreme Court and Public Employment Relations Commission admonitions have been followed in numerous other cases and are effectively the legal standard for analysis in New Jersey as to Interest Arbitration Awards.

One may note almost parenthetically that all of this clear law of New Jersey and the setting of the bar as to proofs required to support the issuance of an Award on an issue are in addition to the longstanding concept in arbitration that the burden of proof on any modification, addition or deletion sought by any party carries with it the obligation of said party going forward with proofs upon which an Award can be made.

This setting of the legal standard and argument with respect to admissibility and Arbitrability of the noted points is made at the outset of this Brief so as to set the standard for analysis as one moves forward. The Associations do

not suggest that many of the issues the Employer seeks are foreclosed from negotiation in direct bargaining. The employee organization herein does not disagree that one can negotiate many points however the standard of Interest Arbitration under the New Jersey Statutes and the Supreme Court ruling is significantly different. As the parties are in formal litigation at this point the appropriate standard as advanced is appropriate and mandatory.

Several of the Employer proposals, specifically Article X, Insurance with respect to future hires, Article XII with respect to future hires and Articles VI and VII provide additional unique problems. With respect to the Article VI and VII changes referenced are several things to be "pro-rated during the last year of employment". The initial issue is with respect to what is the "last year of employment". An Officer statutorily qualified to retire with more than twenty-five (25) years of service may on short notice elect to submit papers to the Pension Board. The problem would exist for example where an Employee may have taken all of his/her vacation leave in the early part of the year, just before retirement. The statutorily committed short notice of retirement would create what is essentially an impossibility of function under these Proposals. The Employer's Proposal with respect to holidays and an alteration of proration leaves one wondering, the holidays are already prorated as they are folded into base pay. If a retiring Officer leaves at mid-year then said Officer perforce has received one-half ($\frac{1}{2}$) of the holiday payment as of that point. Holidays are folded-in and equally paid throughout the year, therefore at any point in

retirement there is a prorated value of said annual holidays paid. This is in essence a non-issue.

If on the other hand the Employer is seeking to modify the method of payment of holidays then it would likely run afoul of clear case law recognized by the Public Employment Relations Commission in the City of Camden and IAFF Local 788, Docket No.: IA-2014-018 (P.E.R.C. No. 2014-95, June 26, 2014) Interest Arbitration case as an alteration of overtime and FLSA standards. The Arbitrator who ruled on an issue that altered overtime compensation had said Award vacated and remanded for correction on that point.

POSITIONS OF THE PARTIES

The Arbitrator is specifically requested to focus particular attention on statutory criteria g(3) of the Arbitration Act in this State. Subsection g of the Act provides the specific criteria under which an Arbitrator shall base an Award. The lead paragraph of the statutory criteria provides as follows:

g. 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 or panel of arbitrators 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.

Of particular note and relevance in this case is the statutory criteria under subsection g identified as (3) which provides for an analysis as follows:

(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. [emphasis added]

In the immediate past, and during the preceding contract, new statutory mandates have created significant reductions in compensation for bargaining unit employees of the PBA. Specific impact are in the area of increased pension contribution of an additional one and one-half percent (1.5%) of additional pension payments and significantly a State mandated co-payment of insurance premiums. In Oakland the Police Officers have deducted from their pay for family plan Nine Thousand Five Hundred Sixty-One Dollars (\$9,561.00). This amount was stipulated at hearing and will undoubtedly grow year-to-year. Thus, a Patrolman with a family medical plan by virtue of this statutory modification as well as the increase in the same Employee's required pension contribution has had his base pay reduced by Eleven Thousand Three Hundred Eight Dollars (\$11,308.00). Before any arbitration commences, base pay has been reduced by Eleven Thousand Three Hundred Eight Dollars (\$11,308.00). This amount, of course, is higher for a Sergeant or a Lieutenant. Of these monies deduction Nine Thousand Five Hundred Sixty-One Dollars (\$9,561.00) is withheld

from payroll by the public employer and is kept, here, by the Borough of Oakland. The additional one and one-half percent (1.5%) of base goes to pension contribution. It is acknowledged that these are statutorily mandated deductions however it is also clear that the Borough is receiving these monies from the Employees' earnings and the use of same by the public employer is unrestricted by statute. In effect, this is a windfall to the Employer.

It is understood that this Arbitrator cannot rule upon the medical deduction or increased pension deduction. However, the Interest Arbitration Act's criteria provides for an evaluation of "overall compensation" as provided in the quoted sections of the Act above. In this case the Oakland Borough Patrol Officer has already suffered a reduction in compensation of Eleven Thousand Three Hundred Eight Dollars (\$11,308.00). Two percent (2%) of a Top Step Patrolman's base pay is Two Thousand Three Hundred Twenty-Nine Dollars (\$2,329.00). Thus, this Patrol Officer is guaranteed, even with a maximum two percent (2%) increase in base pay that may be awarded, a guaranteed reduction in pay of Seven Thousand Two Hundred Thirty-One Dollars (\$7,231.00).

There is a statutorily created impossibility of getting a wage increase for the bargaining unit personnel in this case. The interaction of noted statutes guarantees a reduction in pay. The PBA in its presentation is only seeking to reduce and limit the losses. The absolute most that this Arbitrator can increase the base wages is offset by other statutory mandates to the degree that a loss of pay is assured. This is true retrograde bargaining.

It is clear that this Employer is not satisfied with the extraction of deduction Nine Thousand Five Hundred Sixty-One Dollars (\$9,561.00) on a family plan co-payment and in fact it is seeking even more from the bargaining unit. In these most difficult times of the two percent (2%) so called "Hard Cap" the Employer appears to be on a mission to dismantle contract benefits that were negotiated and paid for through bilateral collective bargaining over decades of experience.

LAST OFFER POSITIONS

The PBA in this case has presented a single issue for the Arbitrator's consideration, base wage. The PBA's Position acknowledges the harsh restrictions of the two percent (2%) "Hard Cap" and provides for increases in modest amounts over three (3) years. The PBA calculations were discussed at hearing and are based upon proofs in evidence. The total Step increases over the three (3) years of the contract are as follows:

2014 - \$61,637

2015 - \$40,240

2016 - \$28,978

The preceding year's (2013) base was agreed upon at Two Million Seven Hundred Forty Thousand Four Hundred Forty-Two Dollars (\$2,740,442.00). The impact of the 2014 Steps is therefore 2.2%. This amount has been paid by the

public employer and the PBA is seeking no other increase to base rate for calendar year 2014. The total cost of the PBA Package therefore for 2014 is 2.2%

In 2015 the PBA has proposed Step Movement however those entitled to same would have the Steps delayed by six (6) months. The Forty Thousand Two Hundred Forty Dollar (\$40,240.00) total cost of Steps has a value of 1.4% which, when delayed by six (6) months has a value of seven-tenths of one percent (0.7%). The PBA has also proposed increases for the Top Patrol pay rate and supervisory rates only of two percent (2%) effective April 1 of 2015. The total therefore for the second contract year is 2.2%.

In the third contract year, 2016, the cost of Step Movement, again delayed by six (6) months, is 0.26% new money with a delayed two percent (2%) for persons at the Top Step and supervisory rates, again valued at 1.5%. This is a total of 1.76%. In the fourth year proposed Police Officers Daniel Kern, Donald Harvey and Joseph Noury will already have reached maximum in 2016. They will not have additional Step Movement. Therefore there is a single qualified person (on staff as of December 31, 2013), Stephen Broek in the Steps. Officer Stephen Broek was hired in January of 2010 and therefore will be completing Step Seven going into Step Eight in 2017. He will be the only qualifying Officer making a Step move at that time. On the most recent pay scale the value of this Step move is Eight Thousand One Hundred Thirty-Five Dollars (\$8,135.00). Therefore the only Step cost attributable and calculable in this proceeding with respect to 2017 is Eight Thousand One Hundred Thirty-Five Dollars (\$8,135.00) which has a

value of 0.14%. Combined with a delayed start two percent (2%) for Senior Officer and supervisor, again 1.5%, there is a total cost of new monies in the amount of 1.64%. The total new money increases over the course of this contract are sequentially 2.2%, 2.2%, 1.76% and 1.6% for a total of 7.8%. 7.8% divided over a four (4) year contract is an average of 1.95%.

It cannot escape one's attention that, in addition to the non-arbitrable items proposed by the Employer, there is no offer on wages to any Police Officer at Top Step or supervisor. The Employer is apparently proposing a wage freeze and providing for only Step money for new people.

A key distinction and essential fault in the Employer's costing out package is that it includes Officer Luis Gaviria and Michael Griffin in its employment tables. Both of these individuals were hired after December 31, 2013. Gaviria was hired February 13, 2014 and Griffin was hired August 28, 2014. Neither of these Officers cost nor Step Movement impacts are to be calculated under the clear ruling in the Borough of New Milford case, previously cited. These two (2) individuals are included in several of the Wage Charts and various calculations, included in the Employer's Evidentiary Book.

An analysis of the Employer's Last Offer Position starts with the fact that the Employer provides for absolutely no increase in base wage for any Top Step Police Officer, Sergeant or Lieutenant over the term proposed. Apparently the Employer believes that the majority of its Police Officers deserve only a wage

freeze for three (3) years. Coupled with a wage freeze is a proposal to limit vacation leave by proration during the last year of employment.

The Employer's proposal with respect to prorating vacation in the last year of employment demonstrates a fundamental misunderstanding of how vacations are earned and made available to Officers under the contract. The contract at Article IV (page 10) provides for vacations which must be earned before they are taken. The analysis starts with the first year and continues thereafter. In the first year of employment the Officer is entitled to "1 working day for each completed month through December 31st". In other words, one must work during several months of the initial year of employment in order to later have access to vacations of one (1) per month so earned. This continues in future years. In effect, each year's vacation entitlement is based upon completion of the preceding year. Moving forward to the last year of employment, number twenty-five (25) or thereafter, whatever vacation is used is the amount earned in the preceding year. In the last year of employment the Officer, under clear contract language and practice has full access to a full year's vacation entitlement because said Officer earned said vacation entitlement and it was vested as a result of the preceding year's completion.

The issue of holiday pay proration has already been discussed earlier in this Brief. Holidays are folded-in and therefore are paid fractionally in even amount with each pay. There is no block of holidays taken at any time during the year. They are by definition, prorated. Once again the Proposal does not

reflect any understanding of how the system works within the Oakland Compensation Program.

The Proposal to exclude equal time off for Police Officers when Borough Offices are closed is not awardable in this case. In the first instance, this is a subject in control of management. There is no statute that controls the closing of a Municipal Building. It is when an the Employer, in its judgment and wisdom, decides to close the Municipal Building and release employees, as the practice has long existed, that Police Officers get a like time off. Notably the Police Officer does not get that day off but gets some time to be used at another point in the future. For example, if there is blizzard that management feels is of such magnitude that it closes Borough Hall then the Police Officer gets time in the future to use. What management is missing in its Proposal is an understanding that during that blizzard that was so severe as to close Town Hall the Policeman is out working. Whenever the Municipal Building is closed it is a working day (Monday through Friday). It is only on working days that the subject arises with respect to Borough Hall. A Police Officer's "weekend" may occur at any time during the week due to the variations in schedule of days of service and days off. The equitable result and longstanding practice on this subject has been a part of the overall compensation plan in Oakland for many years. Other than the fact that the Employer just does not like it, there are no proofs submitted on which an award on this subject could be based. In addition, this is not awardable as it cannot be costed out. How many blizzards will occur next

year? How many times will management decide to close Borough Hall next year or the year after? How many hours, if any, will Police Officers receive under this longstanding contractual provision? This is not subject to be analyzed or being costed out. It is not awardable.

The Proposals with respect to Sick Leave are just a taking of longstanding benefits. No justification is offered. In the first instance, the Employer's Proposal cannot be quantified. A Police Officer who has enjoyed good health may have a hundred or more sick days late in one's career. What does proration mean? Does this Proposal refer to the fifteen (15) days of sick made available to either be used or banked during the course of each year (see contract Article VII, page 13, Paragraph A1). What could this Proposal possibly mean if a Police Officer in their twenty-fifth (25th) or later years of service has banked one hundred fifty (150) days and is out some number of days in said last year. What sort of calculation is intended here? If one has a significant number of days accumulated, whether one uses five (5) or ten (10) or all fifteen (15) days in the last year has no impact as they are going to be reduced by contractual formula anyway. Finally, this again is something which cannot be costed out. It is just a taking.

The Article X, Insurance, Proposals of the Employer (modified at hearing to be effective for Employees hired after January 1, 2015) cannot be calculated or awarded. This point has been argued earlier in this Brief. It only applies to

people who have not yet been hired. The New Milford standard clearly excludes any calculation or awardability on this point.

The Article XII Proposal regarding compensation again falls into this amorphous category. It is only to be effective for 2015 hires and thereafter. No one is in that category. All the questions remain as to who will be hired, when they will be hired, *etc.* and of course there is no analysis at all, anywhere in the Employer's proofs, regarding what Fifteen (15) Steps may mean. There is insufficient evidence upon which an award can be rendered on this topic.

In sum, the PBA has presented a cogent package, calculable with precision for the Arbitrator's consideration over a four (4) year term. The Employer, to the contrary, has offered a wage freeze to all but a few people in Steps, provided no base rate changes over three (3) years for Top Step Officers or supervisors and has just taken some random shots at longstanding elements of compensation that had been long term components of overall compensation.

INTEREST AND WELFARE OF THE PUBLIC

The interest and welfare of the public in the Borough of Oakland are well protected by the professional and productive Oakland Police Department. Notwithstanding the fact that the workforce has shrunk in its sworn numbers over recent years and notwithstanding the fact that activity levels have increased, the Oakland Police Department provides the highest level of public service. In

virtually every area of measurable law enforcement activity Oakland ranks above average among all other towns in the County of Bergen. The Employer's own exhibits (63 through 72) establish high levels of activity in such areas as burglary, larceny, motor vehicle theft, arson, aggravated assault and in violent and non-violent crime generally. Oakland is also a major crossroad of major roads and heavily travelled County roads. No question was ever raised with respect to professionalism of this Department.

COMPARABILITY

A review of overall compensation within the Borough of Oakland reflects that there are no special benefits or privileges available to the Oakland Police Officer that stands out among said Officers' peers. The Employer's *Tab*s 88 through 104 reflect the average positioning of the Oakland Officer among said Officer's peers with respect to all benefits. If there are exceptions they are negative to the Oakland standing in the comparison.

It is important to note that the Oakland Police Officer works two thousand eighty (2,080) hours per year on an unadjusted Work Chart. Many Municipal Police Departments in Bergen County work schedules that generate less annual hours. The four-two (4-2) work chart, five/two - five/three (5/2-5/3) work schedule, and the six-three (6-3) chart, found in many towns about the County all generate nineteen hundred forty-six (1,946) annual hours. This differential of

one hundred thirty-four (134) hours is the equivalent of 16.75 days of work per year or, divided by the Oakland Work Schedule is worth 6.4%. Therefore to compare any other town that has a short work chart such as most of the towns in the Pascack Valley, many of the towns in South Bergen, and others, one would have to use a factor of 6.4% just to bring an adjustment into comparison with Oakland.

With respect to a key issue in this case, base pay, the PBA's Position is well supported by the proofs introduced by both the PBA and the Employer. The PBA has presented a wage increase in each of four (4) years. Those four (4) years, 2014 through 2017, are all supported by contracts placed in evidence by the PBA but actually exceed the amount sought by the PBA in this case.

CHART NO. 1

PBA EXHIBITS – BASE RATE CHANGES

	2014	2015	2016	2017
Bergen County Police	1.5	1.5	1.5	1.5
Elmwood Park		1.95	1.95	1.95
Glen Rock		1.76	1	
Hasbrouck Heights	2.0	2.0	2.0	2.0
Ho-Ho-Kus		2.0	2.0	2.0
Midland Park		2.0	1.5	1.5
North Caldwell		2.0	2.5	2.5
Ridgewood	3.25(2/1.25)	2.5(2/0.5)		
Saddle Brook	2.0	2.0	2.0	
Verona		3.3	3.2	

Wallington	1.65	1.65		
West Caldwell			3.0	2.0
Wood-Ridge		4.75(2.5/2.25)	3.0	3.0
AVERAGES	2.08%	2.28%	2.37%	2.06%

Chart No. 1 establishes an average pay raise that exceeds that which is sought by the PBA in this case. It must be kept in mind that the base rate changes are for Top Step Patrolmen in these various towns and it must be safely assumed that all towns have somebody in the Steps. Oakland, it is likely, has a smaller percentage in Steps than most. In any event, if one takes arbitral notice that some people in Steps are common occurrences in towns, then balance is achieved. The numbers that present average increases in each year sought by the PBA in this case are above that sought by the bargaining unit.

Interestingly the Employer's own exhibits support the PBA Position. The Employer cannot support its own position with its own evidence. **Chart No. 2** below is based upon exhibits placed into evidence by the Employer. The column on the far left identifies the specific Exhibit number in the Employer's Evidence Book.

CHART NO. 2

EMPLOYER EXHIBITS - BASE WAGE INCREASES

Employer Exhibit No.		2014	2015	2016	2017
34	Elk Township	1	1.5	2	
36	West Deptford	0	2	2	2
37	Woodbury	2	2	2	2
33	Hamilton	1.5	2		
38	Vineland	2.4			
74	Madison	1	1	1	2
75	Ridgefield Park	2.25			
76	River Edge	2			
77	Wayne	2	2	2	2
78	Old Bridge	2.5	2		
80	Harding	1.95	1.95	1.95	
	AVERAGES	1.69%	1.81%	1.83%	2%

The Employer's own exhibits support the PBA Position. The Employer is not able to show any justification for a wage freeze for all Police Officers at Top Step or above. The Employer in its proofs even go as far away as such places as Elk Township, Deptford and Woodbury, well over a hundred (≥ 100) miles away from Oakland and it still cannot make a case to support its position. Random news articles are supplied, apparently in an attempt to create some sort of empirical argument. An article about Closter is provided but it is from 2010 (*Exhibit 28*). We are told about Firefighters in Trenton in 2013 (*Exhibit 29*). Ocean County experience is brought before the Arbitrator (*Exhibit 32*). Even the supposed giving up of longevity in certain places such as Ridgefield Park (*Exhibit 75*) really is not a giving up of longevity but just an increasing of the number of steps to

twenty-four (24). Further, the Borough brings up the *Tenafly* decision (*Exhibit 81*) which remains on appeal and said appeal has recently been accepted by the Supreme Court of New Jersey. That is not the end of this case, it is still under appeal. Additionally and again illustrating the Employer's lack of understanding of Oakland Police Department operations provides a Captain Salary Schedule (*Exhibit 112*). While the Captain's position exists in the Oakland contract there is no Captain. The position has been left open for an extended period. What has really happened is that the work done by the Captain in prior years has been downloaded to Lieutenants and Sergeants. This is another example of additional workload being provided to mid-level supervisors who must now not only do more of their own work but have less opportunity to pass decision making or responsibility upwards.

STIPULATIONS OF THE PARTIES

The parties stipulated at hearing that the Employer raised no issue with respect to its ability to pay up to the statutory permitted levels. The Employer also stipulated at hearing that medical cost for full family plan at present which results in a Nine Thousand Five Hundred Sixty-One Dollar (\$9,561.00) deduction from pay pursuant to Chapter 78. The other agreements between the parties were procedural in nature and not likely to have a significant impact on this matter.

FINANCIAL IMPACT ON THE BARGAINING UNIT AND TAXPAYERS

The ability to pay has been stipulated in this proceeding. There is no economic argument

The statute does require the Arbitrator to consider the Cap Laws affecting the municipalities, however here there is absolutely no problem with the Cap nor any issue with respect to the funding of this award per stipulation and per Budget analysis. The 2015 proposed Budget was introduced into evidence as *Exhibit 87* and the Arbitrator's attention is respectfully drawn to *Sheet 3b* which contains the Cap calculations. There are two (2) Caps analyzed at this page, the Appropriation Cap and the Tax Levy Cap for 2015. On the left side of the page at the bottom is a line entitled "Maximum Appropriations Within Caps" showing a formula maximum of Fifteen Million Seven Hundred Eighteen Thousand One Hundred Ninety Dollars (\$15,718,190.00). The line under that line is "Total Appropriations within Caps" and shows a number of Fourteen Million Five Hundred Eighty Thousand Eight Hundred Fifty Dollars (\$14,580,850.00), the amount utilized in composing this Budget. The difference is the amount under Cap. The last line on the left side of the page "Amount Under The Appropriations Cap" which is One Million One Hundred Thirty-Seven Thousand Three Hundred Forty Dollars (\$1,137,340.00). Two (2) points are made. First, with over \$1.13 Million Dollars under Cap, clearly there is no Appropriation Cap pressure. Second, this sum does not go away but carries forward as a "Cap

Bank" into next year. Undoubtedly there will be no Appropriation Cap pressure next year as well.

The computation for the Tax Levy Cap is on the right hand side of *Sheet 3b*. Once again at the bottom of the page on the right is a line captioned "Maximum Allowable Amount to be Raised by Taxation" in the amount of Thirteen Million Seven Hundred Eleven Thousand Two Hundred Fifty-One Dollars (\$13,711,251.00). The next line down "Amount to be Raised by Taxation for Municipal Purposes" shows the amount that this Budget requires by taxation as composed. The amount is Thirteen Million Five Hundred Nine Thousand Three Hundred Thirty-Three Dollars (\$13,509,333.00). The final line on the right hand side of the *Sheet* is the amount that this municipality is under the Tax Levy Cap. The amount which the town is under the Tax Levy Cap is Two Hundred One Thousand Nine Hundred Eighteen Dollars (\$201,918.00). Once again, this amount does not simply go away but rather rolls forward into a Cap Bank for the subsequent years' flexibility. Oakland has no Cap problem.

Further analysis of the Municipal Budget is difficult as the town has elected not to provide *Sheet 39* of the Budget. This omission was the subject of an exchange at hearing. The exhibit in evidence goes up to page 38 and then skips to page 40. A form of excuse was offered, however the fact remains that this purported Budget is in fact incomplete.

The Borough's failure to provide information on key issues of financial analysis continues with respect to the Annual Financial Statement. The statutory

mandate found at N.J.S.A. 40A:5-12 provides that the Annual Financial Statement shall be filed no later than February 10 of the Budget year. As of the hearing date, April 20, 2015, the Municipality maintains that it still has not prepared the Annual Financial Statement due in February of 2015. Perhaps this town is paying the statutory fine as provided in the statute. In any event, full analysis is not able to be done with such omissions as found within the Borough of Oakland's finance.

THE COST OF LIVING

The Arbitrator respectfully is requested to take arbitral notice that the cost of living, while not a large number, does exist and is growing at a slow pace. Even the Employer's own exhibit (20) PBA acknowledges upward movement in the Consumer Price Index. Once again, the Employer's own Position of wage freeze for Police personnel at Top Step and all supervisors is not supported. The Employer's own proofs undercut its own position.

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

A review of this case consistent with criteria g8 under the Act provides support for the PBA Position. The reference in the criteria to private sector standards is significant. The concepts of "area standards" and "industry rates" are to be considered. The PBA has made its case both on its own proofs and the Employer's proofs as to average increases in the area. The Employer in its proofs cannot support its own position. Much of the material in the Employer's notebooks is made up of outdated news articles and legislation was proposed at various points over recent years, none of which passed and none of which is law.

The Employer's comparisons are inaccurate even to the issue of wages. The base wage reflected in the Salary Chart and the Oakland PBA contract includes holidays. The holidays were folded-in by mutual agreement in a prior negotiation many years past. The value of the holidays is 5.38% (fourteen (14) holidays' times eight (8) hours divided by two thousand eighty (2,080) annual hours). If one is to make any comparison between the base pay in Oakland the base pay in other municipalities then the Oakland 5.38% value of included holidays must be backed out. The Employers does not do that. A change of 5.38% drops Oakland down significantly on any comparison sheet. Further, as earlier noted, many of the Bergen County communities work significantly fewer hours than are worked by the Oakland Police Officer. The so-called "Work Charts" of four-two (4-2), five/two - five/three (5/2-5/3) and the six-three (6-3) all generate 6.4% less service time per year. The Employer's comparison brings

none of this to the fore. The Oakland Police Officer is paid within average parameters and has no exceptional benefits. The work obligation is the maximum work obligation of any Police Department in the County. Nobody works more than two thousand eighty (2,080) hours. Many work less.

These are very bad times for public employees. Pension contributions have been statutorily increased. Medical contributions towards premiums have been mandated which did not exist in prior years. The negative impact of more than Eleven Thousand Dollars ($\geq \$11,000.00$) to the Oakland Police Officer has been earlier calculated and explained in this Brief. The wage increases sought by the PBA in this case will not result in a real increase in compensation but rather will only reduce the losses. This is retrograde bargaining. The highest award that the PBA can hope to receive in this process will do little more than slightly reduce the losses statutorily mandated. While the Arbitrator may not be able to address the issues of pension and health care premium contribution, the statutory criteria of *g (3)* under the Interest Arbitration Act certainly provide an opportunity for such consideration of gross impact. These are not the times for the Employer to be taking wholesale shots at the longstanding negotiated benefits existing in the contract. Every provision of that contract is the result of collective bargaining, a *quid pro quo*, over many years of negotiations. There is no justification in the record for any negative change. Statutorily most of the Employer's positions cannot be awarded. That point has been made and briefed earlier in this Summation. It is respectfully requested that the Arbitrator

provide a reasonable wage increase consistent with the Last Offer Position taken by the PBA in this proceeding.

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. 105.⁵ 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:

⁵ The PBA contends that the 2% cap should be compounded annually. I reject this argument because it is inconsistent with the law that was in effect at the time that the interest arbitration petition was filed.

- 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), Borough of Tenafly & PBA Local 376, PERC Dkt. No. IA-2013-018 (May 2013), Township of Mahwah & PBA Local 143, PERC Dkt. No. IA-2013-022 (May 2013), Borough of Mantoloking & PBA Local, PERC Dkt. No. IA-2013-022 (January 2014) and continue to do so with respect to this matter.

PERC clarified New Milford in City of Atlantic City & PBA Local 24, PERC Dkt. No. IA-2013-016, P.E.R.C. No. 2013-82:

In New Milford, we acknowledged that parties may not always agree on base salary information and calculations. In those circumstances, the arbitrator must make a determination based on the evidence presented. * * *

Thus, we ... direct ... all public employers in interest arbitration, to provide arbitrators with the required base salary information and calculation. Such information must include, at a minimum, in an acceptable and legible format, the following information:

1. A list of all unit members, their base salary step in the last year of the expired agreement, and their anniversary date of hire;
2. Costs of increments and the specific date on which they are paid;
3. Costs of any other base salary items (longevity, educational costs etc.) and the specific date on which they are paid; and
4. The total cost of all base salary items for the last year of the expired agreement. [footnote omitted].

We further clarify that the above information must be included for officers who retire in the last year of the expired agreement. For such officers, the information should be prorated for what was actually paid for the base salary items. Our guide in New Milford for avoiding speculation for retirements was applicable to future retirements only.

The parties agree that the pensionable base salary for 2013 consisted of salary, holiday pay, detective differential and longevity. [See Ex. B-21]. The parties agree that the amount expended on total pensionable base salary for 2013 is \$2,740,442.90. Based upon this figure, the annual 2% Hard Cap under the statute is \$54,809. There were three (3) retirements in 2013 – Brian Coghlan, Robert J. De Boer, and Robert C. O’Keefe. The Department did not hire any new officers in 2013. Therefore, there are twenty-one (21) bargaining unit members on the roster as of December 31, 2013.

Interests and Welfare of the Public

As I expressed in recent interest arbitration awards, 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." Borough of Mantoloking & PBA Local, PERC Dkt. No. IA-2013-022 (January 2014), Township of Mahwah & PBA Local 143, PERC Dkt. No. IA-2013-022 (May 2013), Borough of Tenafly & PBA Local 376, PERC Dkt. No. IA-2013-018 (May 2013) and Ocean Cty. Sheriff & PBA Local 379A (Superiors), IA-2013-002 (October 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 Borough's ability to pay, the lack of adverse impact, the interests and welfare of the public, and public sector comparability were given greater weight than other factors such as the cost of living and private sector comparability. 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. The Borough does not claim an inability to pay up to the statutory permitted levels. The increases I award herein do not exceed the maximum allowable amount permitted over a period of three (3) years. I conclude that this Award will not have an adverse impact upon the Borough, its taxpayers and residents, 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. There continues to be an absence of evidence to support a deviation from giving greater weight to public sector comparisons.

Public Employment in General/In the Same or Similar Jurisdictions

With respect to public employment, the PBA and the Borough presented comparisons of this bargaining unit to law enforcement units in other jurisdictions

throughout Bergen County and New Jersey. The Borough also drew internal comparisons between this bargaining unit and its non-union employees, represented blue collar employees and represented white collar employees. [See Exs. B-63, B-64 & B-65]. The external and internal public sector comparisons are deserving of greater weight than any private sector comparisons.

The most recent salary increase analysis for interest arbitration on PERC's website shows that the average increase for awards that were subject to the 2% annual base salary increase cap was 1.89% from January 1, 2013 through December 31, 2013, and 1.70% from January 1, 2014 through September 30, 2014. Over the same time periods, reported voluntary settlements for 2% cap cases averaged 2.13% and 1.12%. I considered this information in rendering the final award.

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. These comparisons were considered and weighed along with all of the other statutory factors.

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. I conclude that the evidence does not require full implementation of either party's final offer. This Award will serve the interests and welfare of the public given that the total base salary calculations will not exceed the Hard Cap, the additional monies added to the existing salary guide represent less than 1% of an upward adjustment to the step guide for existing employees in the third year of the contract, and the modifications for new hires will improve the Borough's ability to manage its operations within statutory limitations.

Stipulations of the Parties

1. The Borough's ability to pay up to the statutory permitted levels is not a factor in this matter.
2. An officer at top pay or above with full family medical coverage currently contributes \$9,561 towards the cost of that coverage.

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
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
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
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
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
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
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
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
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
2013	1.6	2.0	1.5	1.1	1.4	1.8	2.0	1.5	1.2	1.0	1.2	1.5	1.5
2014	1.6	1.1	1.5	2.0	2.1	2.1	2.0	1.7	1.7	1.7	1.3	0.8	1.6
2015	-0.1	0.0	-0.1										

I considered this criterion but give it little weight as it does not have an impact on the increases awarded herein that will not exceed the Hard Cap over a period of three (3) years.

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. I conclude that this Award will have less of a negative impact upon the Department than the Borough's proposals had they been awarded in their

entirety. The modifications awarded herein are consistent with the recent trends.

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

Awarded Modifications/Proposals

Term of Agreement

The Borough proposes a term of three (3) years – January 1, 2014 through December 31, 2016. The Union proposes a term of four (4) years – January 1, 2014 through December 31, 2017. I award a term of three (3) years – January 1, 2014 through December 31, 2016 in order to provide labor-management stability over that period of time.

Salary/Salary Guide/Cost Analysis

There were 24 bargaining unit members in 2013. Three (3) of those members retired in 2013. There were no new hires in 2013. The parties stipulated that the amount expended for total pensionable base salary for 2013 as including salary, longevity, detective pay and holiday pay to be \$2,740,442.90.

My calculations are based upon the Borough's representations as to how step and longevity movement take place in 2014, 2015 and 2016 only for the officers on the Department's roster as of December 31, 2013. [Exs. B-21, B-23, B-24, B-25]. For those officers, the total base salary as of December 31, 2013 has been calculated to be \$2,669,607.

Appendices A and A-1 of the expired Agreement includes annual base wages for Patrol Officers, Sergeants, Lieutenants and Captain. Set forth below are the annual base wages for 2013:

(Employees Hired Before July 1, 2007)

Academy/Probation (6 Months)	\$ 37,671
Step 1	\$ 47,089
Step 2	\$ 56,507
Step 3	\$ 64,748
Step 4	\$ 72,988
Step 5	\$ 81,229
Step 6	\$ 89,470
Step 7	\$ 97,710
Step 8	\$116,492
Sergeant	\$124,310
Lieutenant	\$131,230
Captain	\$139,048

(Employees Hired After July 1, 2007)

Academy/Probation (12 Months)	\$ 38,225
Step 1	\$ 46,360
Step 2	\$ 54,495
Step 3	\$ 62,629
Step 4	\$ 70,763
Step 5	\$ 78,899
Step 6	\$ 87,033
Step 7	\$ 95,167
Step 8	\$103,302

Step 9	\$116,492
Sergeant	\$124,310
Lieutenant	\$131,230
Captain	\$139,048

Article VI.B includes the method of calculating holiday pay. Article XII.D includes a detective differential. Appendix B includes a longevity pay schedule:

<u>Years of Service</u>	<u>Percentage of Base Salary</u>
Start of 8 th through 12 th year	4% of base salary
Start of 13 th through 17 th year	8% of base salary
Start of 18 th through 22 nd year	10% of base salary
Start of 23 rd year and thereafter	12% of base salary

The annual Hard Cap is \$54,809. Applying the Hard Cap to this case, and having considered all of the statutory criteria, I award the following. The salary guide as structured in 2013 shall be frozen for the duration of the 2014 and 2015. Effective January 1, 2016, the steps shall be upwardly adjusted by 0.81%. Advancement on steps and longevity for current employees each year shall continue in accordance with the 2011-2013 Agreement. Given there were three (3) retirements and no new hires in 2013, there were 21 bargaining unit members as of December 31, 2013. Township Exhibit 25 [Ex. B-25] demonstrates how officers move through the salary guide and advance with respect to longevity.⁶

⁶ As is required by New Milford, the Borough's new hires in 2014 (Gaviria – 2/14 and Griffin – 9/14) did not factor into my analysis.

In accordance with PERC's standards, by utilizing the same complement of officers employed by the Borough as of December 31, 2013 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 annual base salary, holiday pay, detective differential and longevity as follows:

		Total <u>Base Salary</u>	Increase from <u>Prior Year</u>
Base Year	2013	\$ 2,669,607	
	2014	\$ 2,734,265	\$ 64,658
	2015	\$ 2,775,269	\$ 41,005
	2016	\$ 2,834,269	\$ 58,755
		Total Increase	\$164,418

All compensation is effective and retroactive to January 1, 2014.

New Hires

With respect to new hires, the external public sector comparisons demonstrate a trend towards the adding of steps to the salary guide as well as the reduction and/or elimination of longevity. The internal comparisons show that longevity has been eliminated for new hires. [See Exs. B-83, B-84 & B-85]. Having considered the entire record, I award the following modifications for officers hired on or after January 1, 2015:

1. Effective January 1, 2015, two (2) steps shall be added to the salary guide and the steps shall be equalized:

	<u>2015</u>
Acad/Prob (12Mos)	\$ 38,225
1	\$ 45,340
2	\$ 52,455
3	\$ 59,571
4	\$ 66,686
5	\$ 73,801
6	\$ 80,916
7	\$ 88,031
8	\$ 95,146
9	\$ 102,262
10	\$ 109,377
11	\$ 116,492
Sgt.	\$ 124,310
Lt.	\$ 131,230
Capt.	\$ 139,048

2. Effective January 1, 2016, the salary guide for officers hired on or after January 1, 2015 shall be upwardly adjusted by 0.81%:

	<u>2016</u>
Acad/Prob (12 Mos)	\$ 38,535
1	\$ 45,708
2	\$ 52,881
3	\$ 60,053
4	\$ 67,226
5	\$ 74,399
6	\$ 81,572
7	\$ 88,745
8	\$ 95,918
9	\$ 103,090
10	\$ 110,263
11	\$ 117,436
Sgt.	\$ 125,317
Lt.	\$ 132,293
Capt.	\$ 140,147

3. Appendix B shall be modified to reflect that longevity shall be eliminated for employees hired on or after January 1, 2015.

Sick Leave

The evidence supports awarding the following modification to Article

VII.A.6:

Section A, 6: Add language as follows, "Terminal leave payment shall be capped at \$15,000 for all officers hired on or after May 22, 2010 (In accordance with N.J.S.A. 11A:6-19.2)."

Other 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 weighed the statutory factors as more fully discussed above 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, 2014 through December 31, 2016.
2. Salary/Salary Guide/Longevity. The salary guides for current employees shall be frozen as they existed in 2013 for 2014 and 2015, with an upward adjustment of 0.81% in 2016. Advancement on steps and longevity pay shall continue in accordance with the 2011-2013 Agreement. All compensation is effective and retroactive to January 1, 2014.
3. New Hires. I award the following modifications for officers hired on or after January 1, 2015:

1. Effective January 1, 2015, two (2) steps shall be added to the salary guide and the steps shall be equalized:

	<u>2015</u>
Acad/Prob (12Mos)	\$ 38,225
1	\$ 45,340
2	\$ 52,455
3	\$ 59,571
4	\$ 66,686
5	\$ 73,801
6	\$ 80,916
7	\$ 88,031
8	\$ 95,146
9	\$ 102,262
10	\$ 109,377
11	\$ 116,492
Sgt.	\$ 124,310
Lt.	\$ 131,230
Capt.	\$ 139,048

2. Effective January 1, 2016, the salary guide for officers hired on or after January 1, 2015 shall be upwardly adjusted by 0.81%:

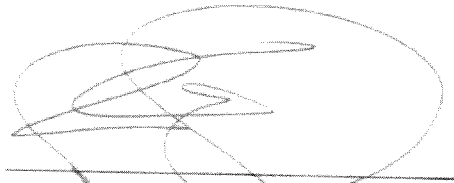
	<u>2016</u>
Acad/Prob (12 Mos)	\$ 38,535
1	\$ 45,708
2	\$ 52,881
3	\$ 60,053
4	\$ 67,226
5	\$ 74,399
6	\$ 81,572
7	\$ 88,745
8	\$ 95,918
9	\$ 103,090
10	\$ 110,263
11	\$ 117,436
Sgt.	\$ 125,317
Lt.	\$ 132,293
Capt.	\$ 140,147

3. Appendix B shall be modified to reflect that longevity pay shall be eliminated for employees hired on or after January 1, 2015.
4. Sick Leave. Article VII.A.6 shall be modified to include:

"Terminal leave payment shall be capped at \$15,000 for all officers hired on or after May 22, 2010 (In accordance with N.J.S.A. 11A:6-19.2)."
5. 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 4, 2015
Sea Girt, New Jersey



Robert C. Gifford

State of New Jersey }
County of Monmouth }ss:

On this 4th day of May, 2015, 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 Public
May 10 2015