

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between :
:
TOWN OF BOONTON : **INTEREST ARBITRATION**
"the Town or Employer" : **DECISION**
: **AND**
and : **AWARD**
:
PBA LOCAL 212 : Docket No: IA-2009-056
"the PBA or Union" :

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE TOWN:

Matthew Giacobbe, Esq.

FOR THE PBA:

Richard D. Loccke, Esq.
Locke, Correia, Schlager, Limsy & Bukosky

The parties did not agree on an alternate terminal procedure. Accordingly, the terminal procedure is conventional arbitration. I am required by N.J.S.A. 34:13A-16d(2) to “separately determine whether the net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria in subsection g. of this section.”

Statutory Criteria

The statute requires the arbitrator to:

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 factor.

(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 condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 c. 34:13A-16.2); provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator’s consideration.

- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or municipality, the arbitrator or panel of arbitrators shall take into account to the extent the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such 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)

PBA's Last Offer

1. **Term of Agreement:** January 1, 2009 to December 31, 2013.

2. **Salary:**

The PBA proposes an across-the-board salary increase of 4.5% on January 1 in 2009, 2010, 2011, 2012 and 2013.

3. **Overtime:**

The PBA proposes that the Overtime Article (Contract page 6) at Paragraph A be modified so as to provide that overtime be defined as all work beyond the regular work day or any work on a regular day off as defined by the annually posted schedule.

4. **Uniform and Maintenance Allowance:**

The PBA proposes that all employees be covered by the \$975 annual clothing allowance and the current tiering be eliminated.

5. **Calculation of Service Time:**

The PBA proposes that benefit entitlements shall utilize the standards set forth in the New Jersey Police and Fire Retirement statutes and case law. Creditable pension time would therefore be the basis of any benefit calculation.

6. **Grievance Procedure:**

The PBA proposes the addition of language from N.J.S.A. 13A-5.3 of the PERC statute by utilizing the definition of grievance therein. The PBA also proposes the modification of the arbitral agency to PERC. These Proposals were listed as Items 7A and B on the Original Proposal Sheet and were tentatively okayed during the course of mediation.

7. **Compensation for Private Contract:**

The PBA proposes that the current practice of paying off duty contract services amounts continued to be paid through the Employer's payroll process and that this procedure be included in the CBA.

8. **Fully Bargained Provisions:**

The PBA proposes the deletion of this Article.

Town's Last Offer

1. **Term of Agreement:** January 1, 2009 to December 31, 2012.

2. **Salary:**
 - a. Effective January 1, 2009, all steps on the current salary schedule shall be increased by 2.75%. There shall be no retroactive payment for 2009.
 - b. Effective July 1, 2009, all new hires shall be hired pursuant to a new salary schedule which will include two (2) additional steps.
 - c. Effective January 2, 2010, all steps on the current salary schedule shall be increased by 2.75%.
 - d. Effective January 2, 2011, all steps on the current salary schedule shall be increased by 2.75%.

3. **Health Care Contribution/OPT Out:**
 - a. Effective May 22, 2010 employees shall contribute one and one-half (1.5%) of pensionable base salary towards health care. This contribution shall be deducted from the employee's regular pay and subject to the Employer's Section 125 Plan for tax purposes only.
 - b. Effective as soon as practicable, the Town shall implement a health care "opt out" program. Employees that "opt out" shall receive 25% of the cost of the premium. The parties shall mutually develop appropriate procedures for the administration of this program.

4. **Medical Insurance:**

Paragraph B shall be modified by deleting the phrase "after twenty-five (25) years of service" and adding the phrase "twenty-five (25) years of pensionable service credit as defined by PFRS." This shall be effective January 1, 2009.

PARTIES' POSITIONS

PBA POSITION

The following are the PBA's arguments and contentions in support of the statutory criteria:

Interests and Welfare of the Public

The Town of Boonton is a 2.4 square mile community lying in the Eastern part of Morris County. The population is just over 8,600. While this is not a large town in land area, it is, by its geographic position, a busy and prosperous community. The town is served principally by U.S. Route 202 and Interstate 287, both of which pass through the municipality. New Jersey Transit has a main line and station in town which provides access to area rail service. The large downtown area and shopping facilities bring many people into the town. The amount of traveling public, just in vehicles, was quantified at hearing by using New Jersey Department of Transportation statistics. At one intersection the average weekday travel was 48,677 vehicles. (P-3). Clearly, these are not all local vehicles. P-5 shows there is a run of average 24-hour volume of traffic flow over a period of years from 1993 to 2009 at various local intersections within the town. This is notable because it illustrates the upward trend in the flow of traffic. In other words, the workload of persons passing through or visiting the Town of Boonton on a regular basis has been increasing for many years. The trends are clear.

Due largely to the nature of police work within the region, inter-municipal school district students moving through the various towns and into Boonton and also the numerous attractions within the town, including many celebrations, park activities both local and county and other attractions noted in the *Power Point*, the Boonton Police Officer frequently works with other law enforcement agencies. For example, the Boonton Police Officers work

with the New Jersey State Police on a regular basis due to the Interstate Route 287 passing through town. Often the first car on the scene is a Boonton car and Boonton gets the calls if no Troopers are in the area or a first responder has greater accessibility from Boonton. The Boonton Police Department has a DRE, Drug Recognition Expert, who has area responsibility and uses the Officer's special training to assist other jurisdictions. One Department member is currently assigned at a State level New Jersey Gang Investigation effort. The Town of Boonton High School receives students from Lincoln Park and juvenile issues are handled on an inter-municipal basis. Inter-municipal issues include traffic management, juvenile issues and investigative matters. State Police are utilized for CBS issues, AFIS/Weapons, Forensics and Analysis, and Northstar - helicopter emergency facilities. Morris County Crime Scene facilities are utilized and there is interaction with the Morris County Prosecutor's Office. These inter-agency contacts and regular working relationships are a product of modern law enforcement and in addition establish an appropriate universe of comparison for a review of comparisons in compensation and benefits.

The day-to-day activities of the Boonton Police Department require a great variety of calls both in volume and in nature. The calls for service exceeded 13,400 in the one year alone. There were 257 motor vehicle accidents, 339 persons arrested as well as all of these other varying activities performed on a regular basis.

The Employer's own exhibits support the high level of activity within Boonton and indicate an urban/suburban municipality (one of only 39 towns in the County of Morris). (E-27). The population density in the Town of Boonton is one of the highest in the 39 municipalities in Morris County. (E-26). Boonton ranks number 6 out of 39 in population density.

According to the Employer's exhibits the Town of Boonton crime rate percentage is well above average within Morris County, 14 of 39 municipalities. (E-63). The Employer's exhibit on Crime Index totals shows Boonton to be number 20 out of 39 towns in Morris County. (E-61). Perhaps most importantly, the Violent Crime rate per 1,000 population ranks Boonton 6th out of 39 towns in Morris County. (E-64). According to the PBA, Boonton is a busy law enforcement community.

The number of sworn Police Officers in Boonton has diminished through attrition in recent years. E-66 shows 26 sworn Officers in 2008. It has gotten worse. There are now only 21 sworn Officers. The PBA submits that this is an extremely busy Police Department with inter-municipal workload obligations, Interstate roadways passing through Town, and the officers are doing it all with less sworn personnel than they had only two years ago. The Department's successful handling of all of this is a tribute to their professionalism, productivity and work ethic.

Through testimony at hearing it was clearly established that there is an exceptional *esprit de corps* within the Department, a genuine respect for the citizens and the traveling public, and a position of esteem enjoyed by the Police Officers in the eyes of their peers in other jurisdictions and the public generally. The Town of Boonton Police Department is a model of professionalism and productivity.

Comparison of the Wages, Salaries, Hours and Conditions of Employment

Notwithstanding the exceptional performance and success in work productivity, and further notwithstanding the significant reduction in the number of sworn Officers performing an ever increasing workload, the Boonton police officers are not well paid. The compensation program in Boonton is among the poorest in the entire region. The PBA asserts that comparisons with the complete contracts of various regional Police Agencies

clearly establish that Boonton police officers are last in the most recent wage and benefit comparisons. The base wage for a Boonton Police Officer is the lowest of all comparable jurisdictions as shown by the following chart:

CHART 1

COMPARISON OF 2008 MAXIMUM WAGE FOR TOP STEP PATROL OFFICER

2008 Maximum

Bloomingtondale	\$87,192
Byram Township	\$87,008
Denville	\$90,228
East Hanover	\$92,981
Florham Park	\$89,491
Kinnelon	\$86,396
Lincoln Park	\$98,943
Mendham Borough	\$89,733
Mendham Township	\$90,174
Montville	\$87,391
Morris Township	\$90,059
Mountain Lakes	\$83,260
Parsippany-Troy Hills	\$85,587
Riverdale	\$84,422
Rockaway	\$85,686
Wayne	\$108,629
West Milford	\$90,494
Chatham Borough	\$90,898
Fairfield	\$84,927
Glen Rock	\$100,984
Hanover	\$85,963
Morris Plains	\$91,035

West Caldwell	\$87,320
Average	\$88,383
Boonton Patrol Officer	\$76,744
Town of Boonton Police Officer Compared to Average	(\$11,639) (15.2%)

The PBA submits that the data in the above chart confirms that Boonton police officers ranked last of all comparables. It would take over a \$11,000 increase just to catch average. It would take more than a 15% increase just to catch average in 2008. This is of course more than the PBA is seeking at hearing. However, it puts in perspective the extreme low comparative wage position of a Boonton Police Officer.

The PBA contends that there are no offsets to the low wages in Boonton. One benefit, common to most Police Departments, is longevity. While longevity does exist in Boonton, the longevity benefit is among the lowest of all agencies' contracts. Chart 2 compares the longevity benefits using 2008 as the base year for calculation.

CHART 2

COMPARISON OF 2008 LONGEVITY BENEFITS

	2008 Benefit	Formula
Bloomingtondale	\$6,539	7.5% @ 20 th Year
Byram Township	\$6,960	8% @ 25 th Year
Denville	\$3,487	25 Year Flat Dollar
East Hanover	\$11,622	12.5% @ 24 th Year
Florham Park	\$2,180	25 th Year Flat Dollar
Harding Township	\$2,275	16 th Year Flat Dollar
Kinnelon	\$800	@ 23 rd Year
Parsippany-Troy Hills	\$8,558	10% @ 15 th Year
Riverdale	\$8,442	10% @ 24 th Year

Rockaway	\$2,650	Flat Dollar @ 20 th Year
Wayne	\$13,035	12% @ 23 rd Year
West Milford	\$9,049	10% @ 20 th Year
Fairfield	\$8,492	10% @ 24 th Year
Glen Rock	\$2,220	@ 24 th Year
Cedar Grove	\$8,890	10% @ 25 th Year
West Caldwell	\$8,732	10% @ 24 th Year
Average	\$6,492	Average Maximum Longevity Benefit
Boonton	\$1,500	
Town of Boonton Compared to Average	(\$4,992) (33.2%)	

The PBA notes that longevity in Boonton is among the lowest and ranks significantly below average, nearly \$5,000 below average. The longevity benefits comparison is further reflective of the impact of a wage change in Boonton. In most towns, as noted on Chart 2, the longevity calculation is based on a percentage longevity program. In the Town of Boonton it is a flat dollar program. Any wage change in the other towns with a longevity program based on percentage would have a resultant increase in the longevity value when the base rate goes up. Not so in Boonton. In Boonton the relative value of the longevity benefit actually shrinks against the base wage value when wages increase. A further impact of the longevity benefit is that it does not grow over time and therefore does not have a positive impact on the ultimate pension. Pension benefits in other towns are greater by virtue of the more valuable longevity plan and said value will enhance over the years where there is a percentage calculation. In summary, the poor longevity program in Boonton is a multiple negative impact factor in compensation comparison.

The PBA submits the following information to show that wage rates have been increasing over the years since 2008:

CHART 3
BASE SALARY RATE INCREASES

	2009	2010	2011	2012
Bloomingtondale	6 (3/3)	6 (3/3)		
Byram Township	4 (2/2)	4 (2/2)	4 (2/2)	4 (2/2)
Denville	4			
East Hanover	4	4	4	
Florham Park	4	4		
Harding Township	3.75	3.75	3.75	4.1
Kinnelon	4	4		
Lincoln Park	5.5	4	4	4
Mendham Boro	4	4		
Mendham Township	5.2	3.5		
Montville		4	4	4
Morris Township	3.9			
Mountain Lakes	4	3.95		
Parsippany-Troy Hills	4.25			
Riverdale	4	4	4	11.7
Rockaway Township	4			
Wayne	4.45	4.2		
West Milford	4.9	4	4	
Chatham Boro	4	3.9	4.1	
Glen Rock	3.9	3.9		
Morris Plains	4	4		
Pequannock		4	4	4
Cedar Grove		3.8	4	4.2
West Caldwell	4 (2/2)	4 (2/2)	4 (2/2)	
AVERAGE	4.279%	4.05%	4.00%	5.14%

The PBA asserts that the calculations on Chart 3 establish strong support for its salary proposal as the average of the four years is in line with its proposed salary increases. However, the PBA argues that since the Boonton average salary is well below comparable salaries of other police officers, the above average rate increases are supportive of an increase that is much higher than the PBA's proposal. For example, if one takes the shortfall from average (See Chart 1) of 15.2% and adds it together with the 2009, 2010, 2011 and 2012 calculations set forth on Chart 3, there is a total percentage value of 32.7%. Therefore, over a period of 4 years, the average increase required for a Town of Boonton Police Officer to catch and maintain just average is 8.2%. Clearly, this is more than the PBA has sought in this proceeding. The calculation does illustrate however the magnitude of the shortfall and the extremely poor wages and benefits paid to the Town of Boonton Police Officer.

Perhaps the most striking evidence of this public employer's lack of pay equity is its own internal settlements with other bargaining units as compared to its salary proposal in this matter. The Town has reached agreement with 2 bargaining units. P-12, Tab 34 is the CBA between the Town and the Boonton Association of Street and Water Employees. The wage increases which were voluntarily agreed upon are 4.25% in 2009; 4% in 2010 and 2011; and 3.75% in 2012 and 2013. P-12, Tab 35 is the CBA between the Town and Morris Council 6. The wage increases which this voluntarily agreed upon are also 4.25% in 2009; 4% in 2010 and 2011; and 3.75% in 2012 and 2013. The PBA submits that this is the internal pattern of settlement that the Town has established with its other employees which is well below its salary proposal in this matter.

The PBA points out that the system of calculating overtime in the Boonton Police Department is unparalleled. The PBA notes that the overtime provisions in the CBA require multiple calculations and the absolute minimal opportunity to earn overtime as may be set

under the FLSA. No other Police contract in evidence has this type of barrier to earning overtime. Every other contract in evidence provides overtime after a regular work day or on a regular day off. In Boonton, adjustments and delay periods frustrate extra earning opportunities, even when the Employer orders extra work performed. One must acknowledge that Police work does not always begin and end on a certain hour predicted. It is often fluid where an Officer, for example, returning to the Station near the end of his/her tour encounters a motor vehicle accident. The Officer cannot go home because accident procedures and follow-ups must be done. Any number of calls may result in extra duty beyond the normal work day. Special circumstances, here particularly noted because the force is down staffed, must be accommodated. It is the nature of the work. If a special need or a need for extra Officers occurs on what otherwise would be a day off on the schedule, the Officer does not have a choice because the public service must be performed. Because of this challenged Overtime Article however, overtime compensation is not always earned. The concept of earning overtime is not, in perspective, to be overlooked here. These are extremely poorly paid Police personnel and an opportunity to make an extra dollar is not only welcomed, but in most cases essential. A fluid work schedule, one where an Employer may move work obligations about without incurring overtime, is an anathema to an Officer trying to earn an extra dollar, perhaps at secondary employment. Any Officer in any jurisdiction might have child care or elder care obligations as well as simply other plans made. Here, there is no offsetting overtime to be earned unless all of these formula elements are in place.

Overtime is not worked until more than 171 hours of service are performed in a 28-day work period as is required pursuant to Section A.1 of the Overtime Article in the CBA. Straight time is the only compensation for work up to 171 hours. The PBA seeks a provision that “work beyond the normal scheduled work day or work on a Department scheduled

regular day off, as is defined by the annual posted schedule” would equate to overtime. According to the PBA, this is the practice and procedure in other towns and is the common method of calculation of overtime for police officers. In Boonton, time taken off, such as vacations, do not count in the overtime formula and therefore result in additional straight time hours during a 28-day work period.

The PBA is seeking that which virtually every other police officer is receiving. Overtime should be paid beyond the scheduled work day or on scheduled days off.

The PBA seeks a change in the current calculation of uniform allowance. The PBA contends that the language in the CBA regarding uniforms has many caveats, conditions and stagings. The PBA is seeking to have that which is already in the contract for 2008 — \$975.00 for clothing allowance — simply stated as the allowance without all of the other provisions and conditions. The PBA is not seeking more than is already set forth. The PBA is only seeking a uniform method of payment of the allowance. The PBA seeks a simple statement of the amount in the future contract to replace that language which exists in Paragraph A of the Uniform Article.

The PBA seeks a change to make the calculation of service time consistent with the Police and Fire Pension statutes. This “creditable pension time” would be consistent with New Jersey law for many other purposes. Currently, the Town does not recognize, for compensation purposes, the prior service time that an Officer had prior to joining the Boonton Police Department. For example, if an Employee had 2 years of service in Town X and then joins Boonton, they are carried as a new employee with no credit for prior service. One must take into consideration the fact that the reason, or at least among the reasons that Boonton hired this officer is that they were already pre-trained, Academy certified, and experienced. This is a very valuable set of credentials. In order to complete

a Police Academy there is an approximate 6- month period in which the officer cannot do any police work but must be at the Academy full-time. Further, while in the Academy, the officer is drawing compensation and benefits. By hiring a previously trained officer, Boonton is able to avoid this one-half year cost together with benefits and the obvious possibility that the officer may not complete the Academy. None of that risk is faced by Boonton when it hires an Officer already trained and certified. There is also the matter of on-the-job training and experience. All of these advantages inure to Boonton by hiring said officer. All the PBA is seeking is a recognition of that value by crediting the officer with total service time consistent with that standard which the New Jersey Police and Fire Pension System already calculates time. If it is valid for New Jersey State Pension Program purposes, should it not also be applicable to the Town of Boonton? The PBA seeks a single statement that pension standards are utilized when calculating service time for all purposes.

The PBA contends that the Town's review of other wage settlements and references to PERC salary data more accurately support an award of the PBA's last offer on salary and other economic issues.

Private Sector Comparisons

At hearing, and in the Employer's proofs, various arguments were advanced with respect to private sector comparisons. It is respectfully suggested that the best comparisons are made with law enforcement units in the public sector community. The PBA contends that these comparisons should not be given great weight since there are significant differences between public law enforcement and all other job titles.

The PBA argued persuasively and extensively that private sector comparisons should not be considered controlling since there is no comparable private sector job compared to that of a police officer. (PBA Brief at 22-26). On page 27 of its brief, the PBA notes that

these types of issues were considered in the decision by arbitrator William Weinberg in the Village of Ridgewood case:

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

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

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (**Section g, (2), (a)**) of the statute may be divided into (1) comparison within the same jurisdiction, the direct Employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such as contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (*Ridgewood*, Docket No.: IA-94-141, pages 29-31).

Stipulations of the Parties

The only stipulations in this case were procedural in nature. As such, it is not likely that this criteria will have any significant impact on the substantive issues involved in this Award.

**Lawful Authority and the Financial Impact
on the Governing Unit, its Residents and Taxpayers**

The PBA asserts that an award of its salary proposals will not have an adverse financial impact on the Town. This factor generally references the “Cap Law” which is a limitation on spending consistent with certain statutory formula based upon certain classifications of municipal expenditures. The application and calculation of the Cap Law is set forth in each Municipal Budget. A review of this case consistent with the criteria g5, g6 and g9 under the Act establishes absolutely no reason why the full proposal of the PBA in this case cannot be funded. While the PBA is not maintaining that Boonton is an extremely wealthy municipality, it is a municipality that is fiscally sound and not in fiscal stress. The Town has a total taxable value of land and improvements of approximately \$1.3 Billion Dollars. (See Abstract of Ratables, P-27, page 2). The tax rate is well below average at \$2.02) (See P-27, page 3). One measure of the tax burden on the taxpayer is the percentage of current collections. The PBA placed in evidence the most recent certified Official Statement of the Town as *Exhibit P-26*. Notably the Employer introduced the same exhibit and noted it on the Employer’s Sheet as *E-14*. These exhibits at page A-10 recite the Town’s Certified Statement as to tax collection rates as follows:

Tax Levy and Tax Collection

<u>Year</u>	<u>Tax Levy</u>	<u>Current Year Collection</u>		<u>Delinquent Taxes Collected</u>	<u>Total Collection Year of Levy</u>	
		<u>Amount</u>	<u>Percent</u>		<u>Amount</u>	<u>Percent</u>
2006	\$21,167,980	\$20,836,683	98.43%	\$310,189	\$21,146,872	99.90%
2005	\$18,794,485	\$18,476,296	98.31%	\$258,223	\$18,734,519	99.68%
2004	\$17,500,726	\$17,235,814	98.49%	\$233,850	\$17,469,664	99.83%
2003	\$16,016,960	\$15,771,859	98.25%	\$252,649	\$16,024,508	100.05%
2002	\$15,381,244	\$15,121,049	96.31%	\$831,437	\$15,952,486	103.71%

The PBA submits that there is a clear pattern here. There is an extremely high level of tax collection reflected on the Municipality's Chart. To bring the numbers up to date, the 2010 Levy showed a current collection rate of 98.10% (*P-20*, Sheet 22, Line 13). For the 2009 Tax Year, the current collections were 98.63% (*P-21*, Sheet 22, Line 13). This extremely high level of tax collection is reflective of a minimal impact and burden on the taxpayers within this Municipality.

An additional note with respect to the fiscal health of this municipality is a review of the Annual Debt Statement for the year 2009 (*P-16*). While the debt ceiling under law is 3.5% of the equalized value, in the Town of Boonton the debt load is only 0.49%. This is less than one-seventh (1/7) of the permitted Debt Load. While the PBA is not suggesting that borrowing take place to fund an award, this is a clear barometer of strength and health.

Reviewing the most recent Budget document in evidence (*P-18*), the Date Sheet Form for 2009, some observations establishing fiscal health and Town policies are made clear. In the first instance, the Cap calculations, reflected on Sheet 3-B and 3-C respectively show that both the statutory requirements of the Appropriation Cap and the Levy Cap were met. Both show a significant flexibility within the Cap limitation. In fact, the Appropriation Cap was calculated at \$8,588,624 but only \$8,257,138 was used in the Budget preparation. The resultant difference is that \$331,485 will go forward into the subsequent year under "Cap Banking". The Town has done a good job of managing the Appropriations and Levy Cap.

The PBA notes the following impact. There were twelve sworn officers in the bargaining unit at the time of hearing. One was on detached status and was not performing service and one was still in the Academy awaiting Certification. Assuming both returned to the job in future years, the total staff would be 12 sworn non-supervisory officers in the unit. For consistency purposes the PBA will assume all persons are at the Top Step Pay of

\$76,744, although several young officers are not near that rate. By using the assumption, there is no cost to either party that can be attributed to step movement.

Assuming all 12 bargaining unit members stay on the job and receive maximum pay, then the total bargaining unit base rate cost is \$920,928. 1% of base wage change has an impact of \$9,209. One must acknowledge that these are overstated numbers for the reasons mentioned in the above paragraph. The *per annum* proposal of the PBA is for a 4.5% increase which, using the one percent value as calculated above, has a cost of \$41,440. The Arbitrator's attention is respectfully invited back to the Longevity Chart (Chart 2) wherein the impact of a modest, in fact, extremely low, flat dollar longevity plan was analyzed. Here that same analysis again comes into play. There is no roll-out of extended cost resulting from a base rate increase on longevity. The longevity benefit, such as it is, is not effected by base rate change. In many cases, the increased rate does not even affect the overtime rate. Under the bizarre Town of Boonton formula utilized for overtime, many traditional opportunities for overtime in fact do not result in additional compensation over base rate.

Reviewing the Town of Boonton Municipal Budget for 2009 (*P-18*) one notes at Sheet 4 that the anticipated surplus is increased by 5.4%. This hardly bespeaks a town in any sort of fiscal distress. The amount anticipated by the Municipal Court Fines and Costs for 2008 was \$200,000. The amount actually brought in was \$249,629. The most recent Budget again only anticipated \$200,000 in 2009. To put these numbers in perspective, the amount of money brought in by the Police Department efforts through the Municipal Court in the most recent year preceding the hearing \$249,629, if divided by the cost of the bargaining unit's annual first year wage proposal \$41,440, would result in 7.15 percentage points. In effect, the entire wage increase, nearly doubled would be paid for just out of the money this Police Department brings into the Municipal Court.

The PBA notes that under the line captioned “Interest on Investments and Deposits” the Town has elected to leave the line blank. One might assume that there was no money received from interest from investments and deposits. This is incorrect as the Town carries “Interest Earnings” on two separate lines on the Annual Financial Statement (*P-21*) at Sheet 20 captioned “Schedule of Miscellaneous Revenues Not Anticipated.” The Town apparently anticipates nothing and then is surprised when it receives something. That something is calculable for 2009 on page 20 of this document. The first line captioned “Interest Earnings” shows the sum of \$48,393 and the last line on the page also captioned “Interest Earnings” shows another \$27,883. The total amount of Interest Earnings “Not Anticipated” by the Town and not included on Sheet 4 of the Budget represents enough money to equal an 8.28% raise for the PBA. In other words, the amount “Not Anticipated” and not added in the space provided in the State Budget form is enough to pay the entire PBA wage pack almost twice over.

Another important measure of the impact of the PBA’s position is the impact on the Total Levy. The PBA notes that the total Tax Collection is \$27,266,356. The entire cost of the bargaining unit base rate is \$920,928. The entire bargaining unit base rate cost is 0.033% of the Levy. Taken another way, if this percentage of the total Levy is compared to the taxes paid on a hypothetical \$6,000 residential tax bill results in the entire Police bargaining unit costing said hypothetical taxpayer \$202 per year for all base wages in this bargaining unit. Further review of the Budget documents shows that this public employer has allocated for 2009 some interesting rate increases. The following examples are noted:

Title	Percent	Sheet No.
Administration S&W	4.6%	12
Municipal Clerk S&W	8.0%	12
Financial Administration S&W	5.3%	12

Collections of Taxes S&W	4.2%	13
Assessment of Taxes S&W	4.25%	13
Municipal Court S&W	9.1%	14
Planning Board S&W	4.4%	15
Emergency Management S&W	4.25%	15A
Road Repair S&W	22.7%	15B
Administration of Public Assistance S&W	4.2%	15C

Clearly there is a pattern here of wage allocations far exceeding on average the amount sought by the PBA. This is, of course, to be taken together with the higher rates of increase already negotiated on a voluntary basis with the other two bargaining units in Town. The pattern is clear, everyone is getting a respectable wage increase except the Police. Why this municipality is taking an adverse position to a shrinking Police Department and an increasing work environment can only be left to conjecture.

Some additional observations may be made with respect to the Budget documents in evidence, almost all of which were submitted under different evidentiary numbers by both parties:

RESULTS OF OPERATIONS (AFS Sheet)

YEAR	AMOUNT
2009	\$2,171,173
2008	\$1,962,602

The Results of Operations is an extremely important chart in as much that it clearly indicates the ability to regenerate surplus. The Town of Boonton without a doubt has this ability.

- **BUDGET REVENUES** (AFS Sheet 17)

YEAR	ANTICIPATED	REALIZED	EXCESS
2009	\$11,128,519	\$12,782,156	\$1,353,637
2008	\$10,724,628	\$11,947,207	\$1,222,579

The Budget Revenues are a component of the Results of Operations and the same scenario would apply as indicated above for the Results of Operations, the Town has the ability to generate revenue, which goes back into surplus.

UNEXPENDED BALANCE OF APPROPRIATION RESERVES
(AFS Sheet 19)

YEAR CANCELLED	FROM/YEAR	AMOUNT
2009	2008	\$550,554
2008	2007	\$530,966

The Town continues to have excess budget appropriations. This affords them a certain amount of budget flexibility. Any agency would have negative numbers if there were serious financial problems.

CURRENT FUND BALANCE (2009 Report of Audit, Page 33)

YEAR	BALANCE 12/31	UTILIZED	PERCENT
2009	\$2,402,489	\$1,950,000	81.1%
2008	\$2,181,315	\$1,950,000	89.3%
2007	\$2,068,713	\$1,850,000	88.4%
2006	\$1,952,266	\$1,727,250	88.5%
2005	\$2,110,127	\$1,893,700	89.7%
2004	\$2,618,951	\$2,122,335	81.0%
2003	\$2,992,765	\$2,126,335	71.0%
2002	\$3,787,819	\$2,383,850	62.9%

The Town continues to maintain a substantial Fund Balance and utilized above 80% to reduce the Tax Levy.

● **Tax Rates** (2009 Report of Audit, Page 19)

YEAR	MUNICIPAL	COUNTY	SCHOOL	TOTAL
2009	0.559	0.234	1.23	2.023
2008	0.522	0.243	1.145	1.910
2007	1.081	0.524	2.415	4.020
2006	0.974	0.508	2.228	3.710
2005	0.859	0.467	1.984	3.310
2004	0.779	0.440	1.881	3.100
2003	0.670	0.394	1.816	2.880
2002	0.669	0.367	1.754	2.790
2001	0.636	0.342	1.702	2.680
2000	0.633	0.331	1.686	2.670

* Revaluation effective in 2008

The tax rate has for all practical purposes remained flat, nominal increases that are recommended by rating agencies are considered sound financing.

TAX LEVY (2009 Report of Audit, Page 19)

YEAR	LEVY	COLLECTION RATE
2009	\$26,151,127	98.36%
2008	\$24,830,740	98.10%
2007	\$23,079,511	98.25%
2006	\$21,167,980	98.43%
2005	\$18,476,296	98.30%
2004	\$17,500,726	98.48%
2003	\$16,016,960	98.46%
2002	\$15,381,244	98.30%

Although the dollar amount of the Tax Levy has increased, this again goes back to the fact the tax rate has remained flat and the tax collection is almost perfect above 98%.

DEBT SERVICE (2009 Report of Audit)

EQUALIZED VALUATION BASIS	DECEMBER 31	\$1,295,726,014
EQUALIZED VALUE	3.5%	\$45,350,410
NET DEBT	0.49%	\$6,378,905
REMAINING BORROWING POWER		\$38,971,505

The Town of Boonton is well below the statutory debt limit and has more than sufficient borrowing power remaining. This is a clear indication of a sound financial condition.

- **CASH BALANCES** (AFS Sheet 9)

FUND	BALANCE AS OF 12/31
CURRENT FUND	\$4,401,417
CAPITAL FUND	\$1,345,791
TRUST FUND	N/A

As indicated in the preceding Chart the Town has an excellent cash position.

- **MISCELLANEOUS REVENUE NOT ANTICIPATED** (AFS Sheet 20)

The Town realized \$194,396.92 in Unanticipated Revenue. This goes directly to the Fund Balance.

Based upon the clear evidentiary record in this case, often based on identical exhibits submitted by both parties, this is not a municipality with any sort of fiscal distress. The PBA maintains that the Town can afford a reasonable wage increase consistent with the criteria under the Act.

Continuity and Stability of Employment

The PBA submits that an analysis of this criterion suggests reliance on the private sector concepts of “prevailing rate” and “area standards.” The PBA submits that both concepts strongly support an award of its last offer. The PBA contends that the Borough has

the ability to fund its salary proposals. Neither of these standards are met by the wage history in this municipality. The Town's position perpetuates the inequities in these categories and in fact has the result of dropping Boonton police officers further behind. The PBA submits that its own proposal does little more than preserve the shortfall. An award of the full PBA package will not even catch average or even maintain the same shortfall relative positioning to average. An award of the full PBA economic package will do little more than lessen the continuing shortfall from average. The Employer's position accelerates it. This shortfall from average is further exacerbated by the flat dollar longevity, which is only seen in a minimal number of other agencies, and the bizarre overtime system which severely negatively impacts the gross earnings of the officer.

Other Issues

The PBA has proposed three other issues which may be considered as "non-economic." The first is the grievance procedure language which has an overly narrow definition and one which is inconsistent with the definition set forth in the Public Employment Relations Act at N.J.S.A. 34:13A-5.3. The PBA is seeking to have the statutory definition of grievance placed into the contract in lieu of the current definition on page 15, paragraph A. Further, the PBA is seeking to have the arbitral agency changed from the New Jersey State Board of Mediation to the New Jersey Public Employment Relations Commission. The facilities of the State Board of Mediation have been reduced in the recent past and PERC is a better choice for both parties. The choice of PERC as the administrator of grievance arbitration would be cost effective and time effective for both parties.

The second non-economic issue seeks modification of the language regarding compensation for private contracts. The request is that the current practice of paying an off-duty contract service amount be continued to pay through the Employer's payroll process and

to have said procedures specifically stated in the contract. Of key importance is the fact that this is a codification of current practice and does not require any expenditure by the Employer. It is nothing more than a codification. PBA testimony at hearing clearly established that this is the current practice. The Town did not contest this at hearing and acknowledged this to be the case.

The final non-economic point addresses the fully bargained provision language in the CBA. The PBA seeks to eliminate Paragraph A which provides as follows: "This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues and shall govern all wages, rights, and responsibilities of the parties which were or could have been the subject of negotiations." The PBA submits that this language is contrary to the Public Employment Relations Act which provides at N.J.S.A. 34:13A-5.3 in pertinent part the following:

"Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with a majority representative before they are established."

There is a statutory mandate to negotiate under certain circumstances and the current contract language absolves a party from negotiating under any circumstance. This is a conflict that cannot continue. Rather than file litigation before PERC, the PBA has brought this matter in an effort to resolve it equitably. The Town did not take a position on this issue at hearing. At a minimum, the PBA seeks language stating that this Article is subject to the provisions of N.J.S.A. 34:13A-5.3.

Based upon the testimony and evidence introduced at hearing, and further based upon the arguments advanced in its brief, the PBA requests that its last offer be awarded.

TOWN'S POSITION

The following are the Town's arguments and contentions in support of the statutory criteria:

Comparison of the Wages, Salaries, Hours and Conditions of Employment

This factor requires the Arbitrator to make a comparison of the wages, salaries and conditions of employment of Boonton police officers with other police officers in comparable jurisdictions, and private sector employees in general. The evidence presented clearly shows that Boonton police officers receive compensation and benefits which are superior and/or comparable to patrol officers in Morris County. Additionally, the evidence presented also shows that the Town's offer is more reasonable in comparison to what Morris County police officers and police officers in other counties are receiving. Moreover, the Town's offer will achieve economic and fiscal stability for the Town due to the 2.0% hard tax cap levy in 2011, the fiscal/economic crisis of the State of New Jersey, increases to medical benefits and pension contributions on behalf of its police officers, decreases in State Aid, and lack of a surplus to rely upon.

Public Employment in General.

In comparison to other police employees, Boonton police officers are well-compensated. In addition, it is common for interest arbitration awards to contain wage freezes. For example, in Township of East Orange and East Orange FOP Lodge No. 111, IA-2001-51 (Arbitrator James W. Mastriani), the arbitrator's award included a wage freeze in the first and third years of the seven-year agreement. Other recent public sector settlements in New Jersey demonstrate that the Town's proposal is more in line with the increase provided to public sector employees within New Jersey and the state of the economy. An example of this trend of wage freezes and/or lower salaries was enunciated in the recent

decision in Borough of Bergenfield and Policemen's Benevolent Association Local No. 309, IA-2009-011 (Arbitrator J.J. Pierson). In that proceeding, Arbitrator Pierson opined that in the interests and welfare of the public, the police officers were awarded a 2.5% salary increase for each of the four years of the contract. Furthermore, in the *Township of Berkeley Heights*, the parties agreed to lower salaries in the interests and welfare of the public. The contract provides 0% in 2009, 0% in 2010, 3.0% in 2011, 3.0% in 2012, and 3.0% in 2013.

In addition to *Berkeley Heights*, an additional trend has begun with salary awards below 3% in response to the economic climate, the State's new 2% hard tax cap levy, and increases in healthcare costs and pension contributions. In County of Essex and Essex County Sheriffs Officers, PBA Local 83, IA-2008-098, Arbitrator Weisblatt awarded salary increases of 2.85% effective January 1, 2008; 2.75% effective September 1, 2009; and 2.5% effective July 1, 2010. In Borough of Rutherford and Rutherford Borough PBA Local 300, IA-2008-075, Arbitrator Mastriani awarded salary increases of 2.25% effective October 1, 2008; 2.75% effective July 1, 2009; 2.7% effective July 1, 2010; 1.5% effective January 1, 2011; 1.5% effective July 1, 2011; 1.5% effective January 1, 2012; and 1.5% effective July 1, 2012. In Asbury Park and PBA Local 6, IA-2008-069, Arbitrator Mastriani awarded salary increases of 2.5% effective October 1, 2008; 2.5% effective July 1, 2009; and 2.5% effective July 1, 2010 2.5%.

The Town maintains that Boonton police officers continue to receive comparable salaries with other police officers throughout the state. The Town's offer will continue this trend. The PBA did not produce sufficient evidence to justify its 4.5% wage increase per year for five years along with the other multitude of benefits it seeks to maintain and/or increase in this interest arbitration alongside the bleak economic climate. Accordingly, the Town's proposal is far more reasonable and should be adopted.

**Public Employment in the Same
or Similar Comparable Jurisdictions**

The arbitrator must compare the benefits received by Boonton police officers to those in comparable jurisdictions. In comparing all fringe benefits, the Town of Boonton offers similar benefits or exceeds the Morris County average. Moreover, it must be noted that Boonton is one of the smaller municipalities in Morris County. Boonton police officers hired prior to 2003 receive a \$975 annual uniform allowance which exceeds the County average of \$584. (E-70 and E-71). Further, any officers hired after January 2003 are provided \$425 which is below the County average. (E-4).

Uniform Allowance

Town	Uniform Allowance
Boonton Township	0
Butler	\$1,200
Chatham Borough	0
Chatham Township	0
Chester Township	0
Chester Borough	\$750
Denville	\$675
East Hanover	0
Florham Park	0
Harding	\$785
Hanover	\$750
Jefferson Township	\$1,200
Kinnelon	\$700
Lincoln Park	0
Long Hill	\$700 detectives only
Madison	\$650
Mendham Borough	0
Mendham Township	\$438
Montville	\$1,300
Morris Township	\$450
Morristown	\$975
Mount Arlington	\$650
Mount Olive	\$1,230
Mountain Lakes	\$625
Netcong	\$625
Parsippany	0
Pequannock	0
Randolph	\$575 plain clothes officers only

Riverdale	\$850
Rockaway Borough	\$700
Rockaway Township	\$625
Roxbury	\$700
Washington Township	\$924
Wharton	\$1,750

Average	\$584
Boonton	\$975

The 104 hours (13 days) of annual holiday pay afforded to Boonton police officers is comparable to the County average. (E-77).

Holidays

Town	Personal Days
Boonton Township	13 days per year
Butler	15
Chatham Borough	108 hours
Chatham Township	13 days per year
Chester Township	0
Chester Borough	0
Denville	96 hours per year
East Hanover	14 days per year
Florham Park	12 days per year
Harding	14 days per year
Hanover	13 days per year
Jefferson Township	14 days per year
Kinnelon	12 days per year
Lincoln Park	14 days per year
Long Hill	108 hours per year
Madison	0
Mendham Borough	12 days per year
Mendham Township	13 days per year
Montville	13 days per year
Morris Township	12 days per year
Morristown	13 days per year
Mount Arlington	0
Mount Olive	14 days per year
Mountain Lakes	13 days per year
Netcong	13 days per year
Parsippany	14 days per year
Pequannock	7 days per year
Randolph	13 days per year
Riverdale	11 days per year

Rockaway Borough	13 days per year
Rockaway Township	16 days per year
Roxbury	15 days per year
Washington Township	12 days per year
Wharton	0

Holidays

Average	13 days per year
High	16 days per year
Low	0 days per year
Boonton	104 hours

Moreover, Boonton's longevity benefit is comparable to the County average based on Boonton's small department and population size. (E-83).

Longevity

<i>Completion of years</i>	<i>6 years</i>	<i>11 years</i>	<i>16 years</i>	<i>21 years</i>
Average	\$795.45	\$1112	\$1524.63	\$1821.54
High	\$1700	\$2082	\$2921	\$3487
Low	\$300	\$400	\$500	\$600
Boonton	\$300	\$450	\$1000	\$1500

Additionally, Boonton police officers receive vacation leave which far exceeds the County average. (E-81).

Vacation Leave

	<i>5 years</i>	<i>10 years</i>	<i>15 years</i>	<i>20 years</i>
Average	13.22 days	17.48 days	21.11 days	24.41 days
High	16 days	25 days	26.8 days	33.5 days
Low	10 days	12 days	15 days	15 days
Boonton	120 hours	160 hours	200 hours	

A common benchmark measure of comparison is maximum salary. The Town submits that a comparison of maximum salaries in Morris County shows that its proposed 2.75% annual salary increases will maintain the maximum salaries at a comparable level.

Maximum Base Salary

<u>Town</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Boonton Township		87050	90315
Butler	85709	89137	92703
Chatham Borough	85664		
Chatham Township	88263	92263	
Chester Township	91923	95640	98987
Chester Borough	77022	83704	86633
Denville	86765	90426	
East Hanover	92981	96700	100568
Florham Park			
Harding		96277	99887
Hanover	85963		
Jefferson Township	88358		
Kinnelon	86396	89851	93446
Lincoln Park	98943	104461	108639
Long Hill	87383		
Madison	78395	82207	
Mendham Borough	89733	93322	97055
Mendham Township	90714	94889	98210
Montville		90887	94523
Morris Township	90059	93571	
Morristown	83476	87024	
Mount Arlington	77018	86037	88619
Mount Olive	81916	84988	90125
Mountain Lakes	83260	86590	90011
Netcong	75050	78489	82040
Parsippany	85587	89224	
Pequannock		94447	98224
Randolph	86547	90009	93609
Riverdale	84422	87779	91270
Rockaway Borough		84668	87843
Rockaway Township	85686	89113	
Roxbury			
Washington Township	85941		
Wharton	86157	89603	93187

The Town submits the following benefits exceed the County average:

Bereavement Days

Average	2.94 days per year
High	5 days per year
Low	0 days per year
Boonton	3

Court Time Minimum

Average	2.32 hours
High	4 hours
Low	0 hours
Boonton	3 hours

Call in Time Minimum

Average	2.76 hours
High	4 hours
Low	0 hours
Boonton	4 hours

The Town contends that the comparability and overall compensation exhibits submitted at the interest arbitration clearly demonstrate the reasonableness of its position. Additionally, in 2008, the US Bureau of Labor Statistics issued a report that the mean annual salary for police patrol officers was \$75,400. (E-43). Moreover, the Town submitted evidence showing that the overall compensation and benefits provided to its police officers are equal to or exceed the averages provided throughout Morris County. The comparability and overall compensation exhibits support the Town's final offer.

**Lawful Authority and the Financial Impact
on the Governing Unit, its Residents and Taxpayers**

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 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 criterion 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 Town’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. The state of the economy certainly impacts upon the Town’s ability to provide a fair economic offer, while continuing to maintain fiscal stability to operate. The effect of granting an economic benefit in excess

of the Town's proposal will negatively impact on the Town's ability to minimize possible future tax rate increases for the Town's taxpayers. Moreover, the Town is limited in its ability to increase its tax rate. It should be noted the Town is subject to a 2% hard tax cap levy pursuant to N.J.S.A. 40A:4-45.45 et seq.

The Town maintains that its offer represents a fair balance between reasonable salary increases in the face of an unstable economy in the state, the ever increasing health benefits and pension costs, decreases in State Aid, lack of surplus, and ensuring the financial stability of the Town, without overwhelming already strapped taxpayers.

The Fiscal Problems Facing the Town

As summarized below, the exhibits presented at the hearing and financial certification of Terry McCue demonstrate that the Town is confronting a number of difficult fiscal problems and financial challenges:

1. **Increases in Health Care Costs:** The costs related to employee health care continue to rise at an excessive rate. In 2009, health care costs for the Town were \$1,253,143, an increase of \$219,709. This is a 21% increase. In 2009 the cost of health benefits for the PBA members was \$116,951. In 2010, the cost is projected to be \$152,246 which is an increase of \$35,295. See Certification of Terry McCue. Moreover, in 2011, the New Jersey State Health Benefits Program rates are going to increase an additional 12.1%. (Exhibit F).
2. **Increase to Pension Contributions:** The costs related to pension contributions for police officers are continually increasing. Currently, the Town of Boonton has paid the following pension contributions to the P.F.R.S.; \$424,903 in 2009 and in 2010 the contribution has increased to \$439,775. See Certification of Terry McCue. Further, the 2009 current fund portion of the pension contribution for PERS was \$68,883 compared to \$80,345 for 2010. See Certification of Terry McCue. Additionally, the New Jersey State League of Municipalities provided correspondence which stated that the costs associated with increased pension payments should be part of the collective bargaining process. Therefore, any increases in salary will further increase the costs of pensions beyond the figures stated above. (E-50).

3. **Tax Appeals:** In 2009, the Town of Boonton has lost more than \$92,404 in tax appeals. The Town expects the tax appeals in 2010 to be at least \$118,000. See Certification of Terry McCue.
4. **Decrease in Town's Water Utility:** The Town has experienced fiscal problems with the water utility. The fund balance as of December 31, 2010 is \$281,940. Additionally, water rates have been increased by 33% for the 2010 budget and 27% for 2009. Moreover, additional water rents of \$330,786 have been anticipated in the 2010 revenues to supplement the water rents of \$1,505,000 and miscellaneous revenues of \$20,000 to balance the budget. The Water Utility will be in a deficit if the additional revenue is not realized. The solution to the deficit can only be solved through taxation or increasing the rates substantially. See Certification of Terry McCue.
5. **Reduction in State Aid and Water Utility Surplus:** The Town of Boonton has suffered fiscal instability from the continual reduction in State Aid. The Town's State Aid has been reduced by \$557,537 since 2007. In 2007 the State Aid was \$1,464,504 and in 2010 the anticipated State Aid is \$906,967. Further, the Water Utility Surplus has been depleted by \$500,000, in order to support the tax rates in the Town. Thus, currently the water utility surplus is zero. See Certification of Terry McCue.

The increases in costs and shortfalls in revenues are due to the economic climate of the State and Nation and not due to any budget mismanagement by the Town. The increased costs of health care and pension contributions are wholly outside the control of the Town and its Governing Body. The Town is currently attempting to stabilize its finances by seeking reasonable salary increases and a health benefit contribution.

The PBA has not introduced any expert report or financial certification in response to the certification from the Town Administrator. Thus, any assertions made by the PBA regarding the finances of the Town must be rejected. The Town is facing serious economic issues regarding the ever-increasing costs of health insurance and pension contributions, in conjunction with lost revenue, surplus and State Aid. Additionally, the PBA's proposal can only be construed as harmful to the taxpayers of the Town of Boonton by simply ignoring the economic crisis and expecting the taxpayers to pay more.

Unemployment in the state of New Jersey has reached new highs; in July 2000 the state unemployment was 3.6% and in February 2009 the unemployment rate reached 9.8%. (E-35). Moreover, job losses are averaging between 311,000 and 645,000 per month. (E-39). The taxpayers of the Town are suffering from the economic crisis while the PBA members continue to enjoy the job security of their employment with the Town.

Meanwhile, the Town's offer takes into consideration the financial impact of its residents and taxpayers. The Town Administrator stated in the financial certification that the Town is struggling financially. The Town has had to reduce the operating expenses of most departments for 2010 by a minimum of 10% in order to meet the state required tax levy cap. Further, the Town's financials reflect a cash surplus of \$2.3 million at December 31, 2009. However, \$2.05 million of that surplus has been used to balance the 2010 budget. Moreover, in 2009 the overtime exceeded the budget of \$100,000 by an additional \$91,518. This excess in overtime in 2009 was paid for in part by the 4% projected increase in police salaries for the 2009 budget. Thus, depleting the 4% projected increase. (See Certification of Terry McCue).

Adopting the PBA's proposal would be unreasonable in light of the delicate condition of the economy and the Town. Despite its financial challenges, the Town presented a final offer which contained a reasonable wage increase and would ensure fiscal stability. As such, the Town's final offer is reasonable and should be adopted by the arbitrator.

Health Care Contributions

As previously stated, the Town along with all the municipalities within the State is facing ever increasing costs for health care. The increased cost of providing these benefits can no longer be considered only an employer obligation. The time has come for all employees to contribute toward their health insurance. Police officers are no exceptions.

In an effort to reduce the amount the Town expends in health care it is seeking a contribution of 1.5% of pensionable base salary toward healthcare from the bargaining unit. The Town contends that comparability with other jurisdictions, as well as other Town employees and the private sector support its proposal.

The PBA claims that the contribution proposed by the Town is unreasonable. However, the current trend within the local government arena is that more and more municipalities are requiring not only civilian employees to contribute to health care, but police and fire personnel. The Town submitted an extensive list of recent settlements and awards showing that police officers either have agreed or have been required to contribute to health insurance premiums. (E-88).

Furthermore, the Town has provided several exhibits which show the alarming rate at which health insurance costs are escalating. (E-17, 46, 53-59). These exhibits show the trend in rising health care costs for employers. The Town is merely seeking an affordable and fair option, while not adversely affecting the quality of healthcare benefits its employees currently receive.

To deny a health care contribution because the Town has a stable budget is wholly inappropriate. In Borough of Ramsey and PBA Local 155, Docket No.: IA-2007-081 the arbitrator ruled:

The fact that the Borough can maintain a stable budget without achieving a particular cost saving proposal is insufficient reason to deny a proposal. The awarding of the Borough's health insurance proposal is not based solely on its financial abilities or inabilities. Although the Borough did receive savings in 2004 of approximately \$67,500 when it moved to a fully paid PPO, the record reflects steady increases since that time and a current cost of more than \$22,000 for a family pan. The Borough, under N.J.S.A. 34:13A-16(g)(1), may properly offer proposals designed to offset cost increases in the absence of budgetary crises, especially when they are supported, as here, by other statutory criteria.

As in Ramsey, the Town of Boonton's proposal for health care contributions should not be denied on reasons of a stable budget. Moreover, the taxpayers of the Town of Boonton are paying toward their healthcare.

Recently, Governor Christie signed into law P.L. 2010, c.2, which states, in pertinent part, that as of May 21, 2010, or on the expiration of any applicable labor agreements in force on that date, all local government employees must contribute a minimum of 1.5% of current base salary toward the cost of their health benefits. This contribution is required of all employees who are members of any state or locally administered retirement system, regardless of whether the local unit participates in the State Health Benefits Plan.

Notably, P.L. 2010, c.2 is only a minimum and does not put a cap on the health insurance contribution. Thus, the arbitrator should include the Town's 1.5% health care contribution by the PBA members as inclusive with the 1.5% health care contribution mandated by the State. The Town notes that I stated in a recent award that "the increased cost of providing health and prescription drug benefits cannot be considered only as an employer obligation but also must be viewed as a continuing fringe benefit that is more costly to provide ... [t]his is a significant cost which must be recognized by employees as a significant benefit." (E-88). Moreover, I further noted seventy-seven arbitral settlements and awards in which health care prescription drug modifications were included, including many with equal or higher co-pays than proposed by the Town here. (E-88).

For all the aforementioned reasons, the Town maintains that its health care proposals are both fair and reasonable, and are in the "interests and welfare of the public," N.J.S.A. 34:13A-16(g)(1), and should therefore be awarded.

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.”

The interest arbitrator must consider the CPI in determining whether the Town or the PBA has proposed the more reasonable economic package. In February 2010, the CPI increased at an annual rate of 2.1%. (E-44). This shows that the PBA will not suffer any detriment to their standard of living. The Town’s reasonable offer will still continue to increase the disparity in purchasing power between the PBA and the average Morris County consumer. One must keep in mind the state of the economy, state of unemployment and the multitude of wage freezes and layoffs being experienced throughout not only New Jersey but this country. The Town’s wage offer should be implemented and is reasonable.

Interests and Welfare of the Public

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 should 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 Town’s offer should be considered reasonable and accepted.

The Town asserts that its offer is clearly more supportive of the interests and welfare of the public. The final offer of the Town will accomplish several important public policy goals. First, it will enable the Town to maintain its fiscal stability, while managing the risk and volatility of the current economy. Moreover, it will provide the opportunity for the Town to continue to offer insurance coverage to its employees while confronting the ever-increasing costs for such insurance coverage. Additionally, the offer will ensure that the Town’s police officers, who are statutorily entitled to the interest arbitration process, do not receive far superior wages and benefits to civilian employees, who do not enjoy the benefits.

The PBA will continue to enjoy its competitive edge with the Town's final offer. The Town's final offer clearly takes the best interests and welfare of the public into account, while the PBA blindly ignores the failing economy, increases in health care costs, pension contributions increases, decreases in State Aid, lack of surplus, and a remarkably high unemployment rate that has not been seen in years.

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: "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. In applying the lawful authority of the employer criterion, the Arbitrator must address the Town's budget CAP situation, as well as the statutory requirement that the Town prepare a balanced budget each year.

The Town submits that the evidence it provided in support of its final offer is more reasonable in light of the lawful authority of the employer. As noted above, the Town is facing increases to insurance costs, pension contributions, losses to revenues and the failing economy. The Town is clearly trying to sustain its fiscal stability whereas most municipalities are resorting to layoffs, furloughs, and salary freezes.

The PBA's proposals will negatively impact the fiscal stability of the budget by failing to address the insurance increases and loss of revenue and surplus. The Town asserts that its offer is more reasonable and should be implemented.

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%. The Town has provided a certification by the Administrator Terry McCue which provides that with any additional salary increases, the Town will have a very difficult time generating the necessary money without taking drastic measures such as laying off employees and reducing salaries due to complying with the 2.0% hard tax levy. See Certification of Terry McCue.

The Town contends that the PBA’s offer is neither fair, equitable nor realistic under the statutory restrictions imposed by the Local Budget Law, and must be rejected.

Overall Compensation

The Arbitrator must consider the overall compensation received by the Boonton police officers. See N.J.S.A. 34:14A-6(g)(3). Along with their base salary, the Boonton police officers are afforded the following benefits, but not limited to: court appearances paid at overtime rates with a three (3) hour minimum; up to two hundred (200) hours of vacation leave; sick days; comprehensive medical insurance benefits; educational incentive payments; call in paid with a four (4) hour minimum; one hundred and four hours (104) of holiday pay; a clothing allowance and longevity payments up to \$1,500. These benefits are either comparable to or superior to their County of Morris counterparts. Moreover, each police officer of the Town of Boonton 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 Town of Boonton receive greater compensation than the majority of the state private sector employees.

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

Continuity and Stability of Employment

The "continuity and stability of employment" criterion 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.

The Boonton Police Department has eleven members. No Boonton police officer has ever 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 16th highest unemployment rate in the country. (T-36). Large scale job cuts have been taking place in both public employment and private employment. Private employers have instituted large scale job cuts which make headlines frequently, while the Boonton police officers enjoy a secure and stable employment without any threat to job loss or furlough.

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, Boonton police officers are secure in their employment without any concern of layoffs or downsizing even during such dire economic times. Boonton police officers will continue to enjoy continuity and stability of employment. Along with its salary and health benefit proposals, the Town includes other economic and non-economic items in its fair and final offer. These proposals are reasonable and fair based upon the exhibits provided at the arbitration hearing.

The Town asserts that its final offer is fair, reasonable, well-balanced and provides an intelligent approach for future financial stability. The Town’s proposals will keep Boonton police officers on par with the County average while still providing additional fringe benefits above the County average. It is respectfully requested that the Town’s final offer be implemented by the arbitrator in its entirety.

Discussion

The parties presented testimony and 185 documentary exhibits totaling thousands of pages in support of their last offers. I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the criteria.

I will set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and arguments regarding the statutory criteria primarily to its own last offer and to the last offer of the other party. I will not do so because, in this conventional proceeding, the terms of the award will be the reference point rather than the parties' last offers. Conventional arbitration is a more flexible process which grants the arbitrator broad authority to fashion the terms of an award based on the evidence without the constraint of selecting any aspect of a final offer submitted by the parties. The prior statute required the selection of the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or

condition of employment bears the burden of showing a need for such change. I shall apply this principle to all new proposals. The following are the terms of my award:

1. I shall award a four-year agreement. The duration of the new four-year agreement shall be January 1, 2009 to December 31, 2012.
2. I shall award the following changes and increases to the salary schedule:
 - (a) Effective January 1, 2009, all steps on Schedule A-1 shall be increased by 3.25%.
 - (b) Effective January 1, 2010, all steps on Schedule A-1 shall be increased by 3.0%.
 - (c) Effective January 1, 2011, all steps on Schedule A-1 shall be increased by 2.0%.
 - (d) Effective January 1, 2012, all steps on Schedules A-1 and A-2 shall be increased by 2.0%.
 - (e) Effective January 1, 2011, all new hires will be hired pursuant to a new salary schedule (Schedule A-2) which will include two (2) additional steps. Step 1 shall be \$36,278. All other steps will be equalized between Step 1 and the maximum step of \$83,248. Schedule B shall be increased by 2% effective January 1, 2012.
 - (f) All salary increases are fully retroactive to the above effective dates.
3. Effective January 1, 2011, the statutory obligation to contribute one and one-half (1.5%) of pensionable base salary toward health care pursuant to P.L. 2010, c. 2 shall be made a contractual obligation. This contribution shall be deducted from the employee's regular pay and subject to the Employer's Section 125 Plan for tax purposes only.
4. Paragraph B in the *Medical Insurance* article shall be modified by deleting the phrase "after twenty-five (25) years of service" and adding the phrase "twenty-five (25) years of pensionable service credit as defined by PFRS." This shall be effective January 1, 2011.
5. The *Grievance Procedure* article shall be modified as follows:
 - (a) Paragraph A in the *Grievance Procedure* article shall be deleted and replaced with the following language:

- A. For purposes of this Agreement, the term “grievance” means any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any Employee(s) covered by this Agreement.
 - (b) Step 5 of Paragraph B in the *Grievance Procedure* article shall be amended to provide that binding arbitration shall be conducted pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission.
- 6. Effective August 1, 2011, the *Overtime* article shall be amended to provide that all vacation leave shall be recognized as creditable hours for overtime.
 - 7. All other proposals of the Town and the PBA are denied.

Cost of Salary Proposals

The current bargaining unit (at the close of the record) includes 11 patrol officers. The total base pay salary (including longevity and holiday pay) in 2008 is \$795,495. The salary cost-out shall be calculated on a base salary of \$788,875. I excluded the dollar-based longevity costs since the longevity payments are not automatically increased by the annual salary increases. The following calculations do not assume any resignations, retirements, promotions or additional new hires. Changes since the close of the hearing are not relevant since the parties’ salary proposals are based on the same complement of officers. The calculations of the parties’ last offers do not include incremental step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. Neither party included the incremental costs in their last offers. Historically, incremental costs have not been factored in by the parties. These incremental costs fluctuate depending on the amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer’s average salary costs down because senior officers are replaced by entry level officers making about 30% of the maximum step officer’s salary.

Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. Calculation of the parties' last offers for 2009, 2010, 2011 and 2012 do not include the cost of increments.

Cost of PBA's Salary Proposal

The PBA proposed a 4.5% across-the-board increase to be effective January 1, 2009. The cost of the PBA proposal (excluding increments) in 2009 is \$35,500. The total cost of the PBA's proposed salary increase in 2009 is \$824,375.

The PBA proposed a 4.5% across-the-board increase to be effective January 1, 2010. The cost of the PBA proposal (excluding increments) in 2010 is \$37,097. The total cost of the PBA's proposed salary increase in 2009 is \$861,472.

The PBA proposed a 4.5% across-the-board increase to be effective January 1, 2011. The cost of the PBA proposal (excluding increments) in 2011 is \$38,766. The total cost of the PBA's proposed salary increase in 2009 is \$900,238.

The PBA proposed a 4.5% across-the-board increase to be effective January 1, 2012. The cost of the PBA proposal (excluding increments) in 2012 is \$40,510. The total cost of the PBA's proposed salary increase in 2009 is \$940,748.

Cost of Town's Salary Proposal

The Town proposed a 2.75% across-the-board increase in 2009 with no payment until January 1, 2010. There is no additional cost to the Town in 2009. The total cost of the Town's proposed salary increase in 2009 is \$788,875.

The Town proposed a 2.75% across-the-board increase to be effective January 2, 2010. The cost of the Town's proposal (excluding increments) in 2010 is \$43,985. The total cost of the Town's proposed salary increase in 2010 is \$832,860.

The Town proposed a 2.75% across-the-board increase to be effective January 2, 2011. The cost of the Town's proposal (excluding increments) in 2011 is \$22,903. The total cost of the Town's proposed salary increase in 2011 is \$855,763.

Cost of Awarded Salary Increases

I awarded a 3.25% across-the-board salary increase effective January 1, 2009. The cost of the 3.25% salary increase is \$25,638. The new base salary in 2009 is \$814,513.

I awarded a 3.0% across-the-board salary increase effective January 1, 2010. The cost of the 3.25% salary increase is \$24,435. The new base salary in 2010 is \$838,948.

I awarded a 2.0% across-the-board salary increase effective January 1, 2011. The cost of the 2.0% salary increase is \$16,778. The new base salary in 2011 is \$855,726.

I awarded a 2.0% across-the-board salary increase effective January 1, 2012. The cost of the 2.0% salary increase is \$17,114. The new base salary in 2012 is \$872,840.

The cost of the awarded salary increases in 2011 brings the aggregate salary in 2011 to \$855,726. This is nearly identical to the Town's aggregate total salary of \$855,763 in 2011. The aggregate cost of the awarded salary increases through 2011 are nearly \$45,000 below the aggregate salary proposal of the PBA through 2011. The actual cost of the awarded salary increases through 2011, while arriving at a nearly identical base salary as the Town's, cost more because I made the 2009 salary increases effective January 1, 2009. The Town's 2009 salary proposal provided no payments in 2009 as it was not effective until January 1, 2010. The Town's salary proposal is effectively 5.5% effective January 1, 2010 with no salary increase in 2009. This means that the cost of the award is higher than the cost of Town's salary proposal in actual payout over the 2009-2011 period. The awarded salary increases cost the Town 3.25% in 2009, an additional 3.0% in 2010 which generates a payout

of 6.25% and 2.0% in 2011 which generates a payout of 8.25%. The Town's salary proposal cost the Town 0.0% in 2009; 5.5% in 2010 and 8.25% in 2011. Thus the awarded salary increases costs the Town 3.25% more in 2009 (the Towns offered 0.0% in 2009) and 0.75% more in 2010. The cost is nearly identical in 2011.

I awarded a 2.0% across-the-board salary increase effective January 1, 2011. The cost of the 2.0% salary increase is \$16,778. The Town did not make a salary proposal for 2012. I awarded an additional year to provide a two-year period of stability without the need for additional collective negotiations and possibly interest arbitration. While the PBA requested a five-year contract, I am reluctant to bind the parties through 2013 given the current economic and budgetary difficulties.

I note that the cost to the Town of the awarded salary increases are off-set by the health care premium contributions which allows the Towns to deduct 1.5% of base salary toward the cost of medical insurance benefits effective May 21, 2010 and which I made a contractual obligation effective January 1, 2011. This reduces the Town's base salary costs in 2010 by 0.9% and the full 1.5% in 2011. The Town may realize additional savings in 2012 and thereafter from the implementation of a new salary schedule in 2011.

Interests and Welfare of the Public

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the Township

to exceed its authority under the CAP law. The award can be funded without the Township exceeding its spending authority.

The interests and welfare of the public require the arbitrator to balance many considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Police Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Police Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony." (In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

I shall now discuss the issues with respect to the interests and welfare of the public factor.

Term of Agreement

I shall award a four-year agreement effective January 1, 2009 to December 31, 2012. The PBA sought a five-year agreement and the Town sought a three-year agreement. Given the uncertain economic conditions, I find that a four-year agreement is appropriate. A three-year agreement would require the parties to commence negotiations for a new agreement in less than a year. A four-year agreement is also consistent with comparable agreements whereas a five-year agreement is much less common.

Salary/Health Care Contributions

The major issues in this matter are salary and health care contributions. While I am required to evaluate the merits of the disputed issues individually, I am guided by criterion N.J.S.A. 34:13A-16 (g) (8) that directs the consideration of factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. An element that must be considered is the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under all of the criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award and the requirement to balance all of the major components included in the award.

Health Care Contributions/Opt Out

The Town proposed the following regarding base salary contributions toward the cost of medical insurance benefits and an “Opt Out” program:

- a. Effective May 22, 2010 employees shall contribute one and one-half (1.5%) of pensionable base salary toward health care. This contribution shall be deducted from the employee’s regular pay and subject to the Employer’s Section 125 Plan for tax purposes only.
- b. Effective as soon as practicable, the Town shall implement a health care “opt out” program. Employees that “opt out” shall receive 25% of the cost of the premium. The parties shall mutually develop appropriate procedures for the administration of this program.

Salary and health care are often linked in bargaining. Modifications on health care influence the level of salary increases. Concessions are often made to insure the continuation of the level of benefits and the continuation of the existing network of doctors and hospitals. The total cost of a settlement for an employer includes the increased cost of a negotiated salary increase and the increased cost of employee fringe benefits. It is undisputed that the cost of health insurance coverage is a significant component of employee benefits exceeded only by the cost of pension contributions. The health insurance costs in this bargaining unit total nearly \$150,000 in 2010. This could increase to nearly \$200,000 if the five officers currently receiving single coverage move to a family plan which costs an additional \$10,000 annually. The costs of these health insurance benefits are rising at a much higher rate than inflation and salary increases. Health insurance is a costly fringe benefit that must be considered as part of the cost of employment and part of the overall wage and fringe benefit package of an employee.

The Town proposes that I recognize and make contractual the requirements of P.L. 2010, c. 2 which requires that an employer deduct 1.5% of an employee’s base salary toward the cost of medical insurance benefits. This is a statutory obligation that the Town is required to implement. The record indicates that the Town implemented the 1.5% of pensionable base

salary contribution effective May 22, 2010. I shall make this a contractual requirement effective January 1, 2011. I want to be very clear on this. Under no circumstances, will the employees be required to pay more than 1.5% employees of pensionable base salary toward health care. This contribution shall be deducted from the employee's regular pay and be subject to the Employer's Section 125 Plan for tax purposes only. In addition, the Town shall implement a health care "opt out" program. Employees that "opt out" shall receive 25% of the cost of the premium. The parties shall mutually develop appropriate procedures for the administration of this program. This shall be effective January 1, 2011.

The award of the 1.5% contribution, while consistent with the statutory obligation under P.L. 2010, c. 2, is also in line with the significant pattern of negotiated and arbitrated agreements that include premium cost sharing provisions and other cost containment agreements. In an award issued in January 2010, I showed this state-wide pattern by detailing the large number of voluntary agreements and awards providing for premium sharing and cost containment in support of an award of the employer's health care cost sharing proposal. (*Township of Lakewood & PBA Local 71*, PERC Docket No. IA-2009-049, at 46-54, January 10, 2010).

Salary

I awarded a 3.25% annual salary increase effective January 1, 2009, a 3.0% salary increase effective January 1, 2010 followed by 2.0% annual salary increases effective January 1, 2011 and January 1, 2012. PERC has recognized that arriving at an economic award is not a "precise mathematical process" and given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves judgement and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (29214 1998).

I have awarded the above salary increases for several reasons. I awarded a “front-loaded” salary increase in recognition of both the dramatic change in the state-wide pattern of settlement and the even more dramatic change in the economic climate which now exists. The salary component in the award is consistent with the Towns’s proposed 2.75% annual increases in 2009, 2010 and 2011. The aggregate cost of the Towns’s salary proposal is 8.25% over three years. The aggregate cost of the awarded salary increases is 8.25% over three years. This aggregate cost is reduced by a full 1.5% in 2011, which is the first full year that the Town will realize the savings from the 1.5% pensionable base salary contribution. This reduces the aggregate cost to the Town to 6.75% over three years for an average annual cost of 2.25%. The 2.0% increase in 2012 reduces the average annual cost to 2.18%.

Effective January 1, 2011, all new hires will be hired pursuant to a new salary schedule (A-2) which will include two (2) additional steps. The Academy Step shall be \$36,278. All other steps will be equalized between Step 1 and the maximum step of \$83,248. Schedule A-2 shall be increased by 2% effective January 1, 2012.

The new salary guide will result in future savings to the Town of nearly \$50,000 in cumulative earnings as each new officer progresses through the steps of the salary schedule to maximum. The cumulative salary savings generated by a new salary schedule also benefits the bargaining unit as a whole. Salary schedules that allow accelerated movement to the maximum step will eventually undermine the ability of the parties to negotiate salaries for maximum step police officers since a significant expenditure of available funds will be needed to pay less experienced officers high salaries. As maximum salaries have increased significantly in the last 15-20 years, it follows that additional steps must be added to ensure that experienced officers continue to receive competitive salary increases. Ignoring this issue will create serious problems for the parties in future negotiations. This is becoming

increasingly important as resources decline and the costs of annual increments become a bigger part of the funds available for salary increases.

The modifications to the salary schedule will give the Town considerable future savings which will offset the cost of senior police officer salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department. These changes will not impact on the Town's ability to recruit and retain police officers since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for all police officers.

The PBA argues in favor of 4.5% annual increases citing comparability data showing average salary increases above 4.0% annually and asserting that officers in Boonton are deserving of higher increases since they are below the average maximum patrol salary for officers in other Morris County communities. Comparability data is deserving of considerable weight in negotiations and arbitration. Comparability data must be measured against and balanced with the other statutory criteria. In past years, comparability data was measured against annual cost-of-living increases which was consistent with the average annual salary increases. In other words, when the CPI was between 3.5% and 4%, the average salary increases were between 3.5% and 4%. In 2007, the CPI was 3.7% and the average increase in PERC reported awards and voluntary settlements was 3.77% and 3.97%. However, the CPI has declined dramatically in recent years and there has not been an equivalent decline in the average salary increases. The CPI was 1.6% in 2008 and 2.3% in 2009 and the average increase in PERC reported voluntary settlements and awards in 2008 and 2009 ranged from 3.6% to 3.92%. Obviously, the salary increases lagged behind the changes in the CPI. This commonly occurs since comparability data is derived from multiple year contracts whereas the CPI is measured on a monthly and annual basis.

The most recent cost of living data shows that the increase in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), for New York-Northern New Jersey increased by 1.3% for the year ending on December 1, 2010. (BLS News Release, December 15, 2010). Thus, the average increase in the CPI during the last three years is less than 2%. This dramatic decline in the CPI must be given considerable weight. I note that this dramatic decline in the CPI has seen significant decline in the most recent PERC salary data. The average increase in PERC reported awards and voluntary settlements for the period January 1, 2010 through October 15, 2010 is 2.5% annually. This is nearly 1.5% below the average of the PERC reported settlements and awards in recent years.

This decline in salary increases in 2010 is a recognition of not only the decline in the CPI but it is also a recognition of the decline in the ability of a public employer to fund salary increases at prior levels. It is undisputed that a public employer's ability to maintain revenue levels 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. Every day there is more news of police and fire departments throughout the State experiencing 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 are now experiencing one of the worst recessions since the 1930s with high unemployment; a massive

deficit in the State budget in the current Fiscal Year; a potential multiple billion dollar deficit in the State budget in the next Fiscal Year; 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. Furloughed employees effectively receive a salary reduction of up to 5% when furloughed. State employees are experiencing not only furloughs but wage freezes as well. 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 Town's cost for pension contributions in 2009 was more than \$200,000. The above events must be factored into the analysis of what weight to give to the statutory criteria.

In summary, I find that the comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and recent declining salary increases. Comparability data from prior years cannot be given as much weight as more current salary, cost-of-living and budget data. I have awarded salary increases that recognize the significant decline in the cost-of-living, acknowledged the Town's (and other public employers) reduced ability to fund salary increases at prior levels, and noted the substantial decline in average salary increases in 2010.

Other Issues

I shall now address the other issues. A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. I shall apply that principle in my analysis of each issue in dispute. Thus, any decision to award or deny any individual issue must be balanced with

consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award.

Medical Insurance

The Town and the PBA stipulated to the following modification in Paragraph B in the *Medical Insurance* article:

Paragraph B in the *Medical Insurance* article shall be modified by deleting the phrase “after twenty-five (25) years of service” and adding the phrase “twenty-five (25) years of pensionable service credit as defined by PFRS.” This shall be effective January 1, 2011.

I shall incorporate the parties’ Stipulated Agreement in the award. This shall be effective on January 1, 2011.

Grievance Procedure

The PBA proposes the addition of language from N.J.S.A. 13A-5.3 of the PERC statute by utilizing the definition of grievance therein. The PBA also proposes the modification of the arbitral agency to PERC. The changes proposed by the PBA are reasonable. The Town is not opposed to these changes which are procedural. These changes shall be effective January 1, 2011. Accordingly, the *Grievance Procedure* article shall be modified as follows:

- (a) The definition in Paragraph A in the *Grievance Procedure* article shall be deleted and replaced with the following language:

For purposes of this Agreement, the term “grievance” means any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any Employee(s) covered by this Agreement.

- (b) Step 5 of Paragraph B in the *Grievance Procedure* article shall be amended to provide that binding arbitration shall be conducted pursuant to the rules and regulations of the Public Employment Relations Commission.

Overtime

The PBA proposes that Paragraph A in the *Overtime* article be modified to provide that overtime be defined as all work beyond the regular work day or any work on a regular day off as defined by the annually posted schedule. The Town is opposed to any change in the current definition of overtime.

The PBA contends that the overtime provisions in the CBA require multiple calculations and the absolute minimal opportunity to earn overtime as may be set under the FLSA and that no other contract in evidence has this type of barrier to earning overtime. According to the PBA, all of the contracts in evidence provide overtime after a regular work day or on a regular day off. The PBA contends that the language of the *Overtime* article reduces an officer's eligibility for overtime.

The PBA notes that an officer is not eligible for overtime until the officer has worked more than 171 hours in a 28-day work period as required by Section A.1 of the *Overtime* article in the CBA. Straight time is the only compensation for work up to 171 hours. The PBA seeks a provision that "work beyond the normal scheduled work day or work on a Department-scheduled regular day off, as is defined by the annual posted schedule" would equate to overtime. The PBA points out that time taken off, such as vacation, is not credited resulting in additional straight time hours in the 28-day, 171 hour work period.

The PBA is essentially seeking the deletion of the requirement in Paragraph A.1 that an officer must work 171 hours in a 28-day period before receiving compensation at the overtime rate. The 28-day cycle with 171 hours is designed to accommodate fluctuations in hours worked in certain work schedules. Thus, if an officer works a 4/4 schedule, such officer would exceed the normal 8-hour daily work hours and/or the 40-hour weekly work schedule and be eligible for overtime. The officer may be scheduled to work a 12-hour shift

and be eligible for 4 hours daily overtime or work 48 hours in a 7-day work week and be eligible for 8 hours of overtime. The purpose of a 28-day cycle with 171 hours is to avoid having to pay overtime on certain work schedules including but not limited to the 4-4 schedule. This is often the trade-off when the parties agree to change work schedules. By calculating the hours over a 28-eight day cycle, the hours of work are equalized and overtime costs are reduced.

The second part of this issue relates to the exclusions from time worked. Apparently, all time off is excluded and not credited as part of the 171 work hours during the 28-day work cycle including sick leave and vacations. Virtually all contracts credit vacation time as hours worked in calculating eligibility for overtime during a 28-day work cycle. Many contracts also credit sick leave but there is a trend toward excluding sick leave in situations where sick leave is abused causing an increase in overtime costs.

I see no basis to grant the PBA's full proposal. The record does not reveal the bargaining history regarding the current work schedule and the overtime provisions. It is likely that the current overtime provisions are the result of a prior agreement to a new work schedule which the PBA sought in prior negotiations and the 28-day work cycle and the 171 work hours was part of that agreement. In any event, the PBA agreed to this provision in prior negotiations and has not met its burden to justify a major change in the current provisions. I find that the PBA has not met its burden to justify its full proposal. However, I shall award a modification in the definition of what is considered to be creditable time.

Accordingly, effective in the first full 28-day work cycle in 2011, Article A.1 in the *Overtime* article shall be modified to include vacation time as creditable time for calculating work in a 28-day work cycle. This is the norm in virtually all contracts in the State.

Compensation by Private Contract

The PBA seeks modification of the language regarding compensation for off-duty contract services. The PBA seeks that the current practice of paying off-duty contract services through the Town's payroll process be continued and that the specific procedures of this practice be included in the contract. The PBA submits that this is nothing more than a codification of the current practice and does not require any expenditure by the Town.

The record does not include specific procedures regarding compensation for off-duty contract services. The PBA represents that the Town did not contest this at the hearing. I remand the finalization of this issue back to the parties. I shall not retain jurisdiction, meaning that it shall be considered as denied if there is no mutual agreement.

Uniform and Maintenance Allowance

The PBA proposes that all employees be covered by the \$975 annual clothing allowance and the current tiering be eliminated. The PBA contends that the language in the CBA regarding uniforms has many provisions and conditions. The PBA submits that it is not seeking to increase the \$975 for clothing allowance. The PBA seeks a simple statement of the \$975 allowance without all of the other provisions and conditions.

The PBA submits that it seeks only to simply the language in the contract and that such change will not impact on the cost of this benefit. I encourage the Town to work with the PBA if the matter is confined to "cleaning up" the current language. I remand this issue back to the parties. I shall not retain jurisdiction, meaning that it shall be considered as denied if there is no mutual agreement.

*Comparison of The Wages, Salaries, Hours
and Conditions of Employment*

Comparisons of the wages, salaries, hours and conditions of employment of the Town's police officers are to be made with other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar jurisdictions.

It is well established that there are no easily identified private sector police officers who perform services similar to those performed by the Town's police officers. Neither party submitted salary data on this sub-factor since none exists. A police officer position is a uniquely public sector position that does not lend itself to private sector comparisons.

I agree with the analysis of Arbitrator Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement. (Award at 18). There is no data in the record to evaluate the comparison to other employees performing the same or similar services in private employment. I have given this sub-factor no weight. The second part of this sub-factor requires a comparison with other employees generally in private employment. Neither party emphasized private employment comparisons.

I take arbitral notice that the awarded salary increases which average 2.56% annually, are higher than average salary increases in private employment in 2010. I conclude that the awarded salary increases, while higher than private employment salary increases in general, are acceptable when measured against the totality of the terms of the award. This sub-factor, is not entitled to significant weight.

The next comparison is with public employment in general. Neither party submitted any salary data on public employment in general. I have served as a mediator, fact-finder and interest arbitrator (binding fact-finding) in many cases involving other public sector

employees; i.e., school district employees and non-police municipal and county employees. A review of recent salary data shows that average salary increases are declining and the average annual salary increases in public employment in general are consistent with the awarded salary increases. This sub-factor is supportive of the awarded salary increases.

I shall now address the third sub-factor which includes several elements. The first element is internal comparability with other Town employees. As to comparability with other Town bargaining units, it is undisputed that the salary increases for other Town employees exceed the awarded salary increases by 1% in 2009 and 0.75% in 2010. While these settlements are somewhat higher than the awarded salary increases of 3.25% in 2009 and 3.0% in 2010, I note that the salaries of the other employees, particularly the members of the "white collar" unit are significantly less than the salaries received by the Town's police officers. Thus, the annual total dollar salary increases generated by the lower annual percentage increases in the police unit far exceed the annual total dollars generated by the higher annual percentage salary increases in the "white collar" unit. I find that this sub-factor is fully supportive of the awarded salary increases in 2009 and 2010 and not supportive of the salary increases awarded in 2011 and 2012. I note that the Town's contracts with its non-police employees were executed in early 2009 when such settlements were more common. Thus, I have given less weight to the comparability data for 2011 and 2012 that resulted from negotiations held more than two years ago.

I provided an analysis of the third sub-factor, comparison to the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with employees performing the same services in public employment, namely, comparisons to other police officers in similar jurisdictions in my discussion of *Salary* on pages 57-61. I found that the comparability data garnered from settlements reached in prior

years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and declining salary increases. I have awarded salary increases that recognize the significant decline in the cost-of-living, acknowledge the Town's (and other public employers) reduced ability to fund salary increases at prior levels, and the substantial decline in average salary increases in 2010.

Lawful Authority of the Employer

Three of the statutory criteria, N.J.S.A 34:12A-16g(1), (5) and (9), refer to the lawful authority of the employer. These factors, among other things, require the arbitrator to consider the limitations imposed on the Town by the CAP law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

More specifically, g(1) refers to the original 1976 Cap law; g(5) refers to the lawful authority of employer and cites the 1976 Cap law; and g(9) refers to the recently amended Tax Levy Cap law which limits tax levy increases from year-to-year. The significant change in the Levy Cap is the reduction of the Levy Cap from 4% annually to 2% annually. The Appropriations Cap has also been reduced from 3.5% to 2.5%. It is well established that arbitrators must recognize and respect the statutory limits which have been placed on public employers. The Town of Boonton and all other municipalities in the State face constraints on their ability to increase appropriations and their ability to raise taxes. The expenditure or appropriations cap applies to the total current expense portion of the budget and not to any particular line item within the budget.

The aggregate cost of the Town's salary proposal is 8.25% over three years. The aggregate cost of the awarded salary increases is 8.25% over three years. This aggregate cost is reduced by a full 1.5% in 2011, which is the first full year that the Town will realize the savings from the 1.5% pensionable base salary contribution to health care premiums. This reduces the aggregate cost to the Town to 6.75% over three years for an average annual cost of 2.25%. The 2.0% increase in 2012 reduces the average annual cost to 2.18%.

Finally, I awarded a new salary schedule for new hires to be effective January 1, 2011. This new salary guide will result in future savings to the Town of nearly \$50,000 in cumulative earnings as each new officer progresses through the steps of the salary schedule to maximum. While the Town will not realize these savings immediately, the new salary schedule will benefit both the PBA and Town as more funds will be available to pay senior officer salaries.

There is absolutely no evidence in the record to show that the terms of the awarded salary increases or any other aspect of this award will cause the Town to approach the limits of its financial authority or to breach the constraints imposed by the three statutory criteria, N.J.S.A. 34:12A-16g(1), (5) and (9), in funding the salary increases I have awarded.

**Financial Impact on the Governing Unit,
its Residents and Taxpayers**

The above discussion under the *lawful authority* is applicable to the *financial impact* factor and need not be repeated. For all of the reasons cited above, I conclude that there is no evidence that the terms of my award will require the Town to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not directly impacted by this proceeding nor is there any evidence that the terms of this award will impact on the Township's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

Based on the evidence in the record, I conclude that the financial impact of the award will not adversely affect the governing unit, its residents and its taxpayers.

Cost of Living

Arbitrators must consider changes in the cost of living. The most recent cost of living data shows that the increase in the Consumer Price Index (“CPI”), as published by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”), for New York-Northern New Jersey increased by 1.3% for the year ending on December 1, 2010. (BLS News Release, December 15, 2010).

In 2007, the CPI was 3.7% and the average increase in PERC reported awards and voluntary settlements was 3.77% and 3.97%. However, the CPI was 1.6% in 2008 and 2.3% in 2009. Thus, the average increase in the CPI during the last three years is less than 2%. This dramatic decline in the CPI must be given considerable weight. I note that this dramatic decline in the CPI has also seen a significant decline in the average salary increases as reported by PERC. The average increase in PERC reported awards and voluntary settlements for the period January 1, 2010 through October 15, 2010 is 2.5% annually. This is nearly 1.5% below the average of the PERC reported settlements and awards in recent years.

I find that the awarded salary increases and the total cost of the award, after factoring in all components including the savings described above, are above the 2.3% increase in the CPI in 2009. The Town’s salary offer is also above the CPI data in 2009 and the PBA’s salary offer is considerably above the CPI data in 2009. The awarded salary increase and the Town’s salary are both above the CPI in 2010. The 2.0% salary increases in 2011 and 2012 are more in line with the current trend of low inflation.

I conclude that the awarded base salary increases, while higher than the increases in the cost of living, provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Town's police officers. I have given this sub-factor considerable weight and find that in a period of sustained low inflation, the sharp reduction in the CPI must trump comparability data that lags behind the economic current economic and budgetary data and legislative mandates.

Continuity and Stability of Employment

The terms of my Award will maintain the continuity and stability of employment for the Town's police officers. The salary award in this matter will not jeopardize employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Town to continue to recruit and retain qualified police officers.

This factor was given considerable weight in the awarding of a new salary schedule for new hires. The cumulative salary savings generated by Schedule A-1 to the Town also benefits the bargaining unit as a whole. The modifications to the salary schedule will give the Town considerable future savings which will offset the cost of senior police officer salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department. These changes will not impact on the Town's ability to recruit and retain police officers since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for all police officers.

I have also emphasized this sub-factor in arriving at the awarded salary increases. I have structured the salary increases to reduce the impact in 2011 and 2012. The continuity and stability of employment of thousands of police officers and fire officers are in jeopardy

because of recent announcements of layoffs and demotions of police officers and fire officers throughout the State. The 2% annual salary increases in 2011 and 2012 will hopefully obviate the need for layoffs and/or demotions caused by budget shortfalls.

I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

Overall Compensation

A review of this factor requires consideration of 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.” I have considered the overall compensation received by the Town’s police officers and find that the terms of my Award will maintain existing levels.

This factor was given considerable weight in my analysis of the Town’s health care proposals.

Stipulations

The Town and the PBA stipulated at the hearing to certain modifications in Paragraph B in the *Medical Insurance* article.

Summary

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have also determined the total net economic annual changes for each year of the agreement and concluded that those changes are reasonable under the statutory criteria.

In summary, I found that the comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and recent declining salary increases. Comparability data from prior years cannot be given as much weight as more current salary, cost-of-living and budget data. I have awarded salary increases that recognize the significant decline in the cost-of-living and the substantial decline in average salary increases in 2010. I have acknowledged the Town's (and other public employers) reduced ability to fund salary increases at prior levels.

Accordingly, I hereby issue the following award:

AWARD

1. **Term of Agreement**

There shall be a four-year agreement effective January 1, 2009 through December 31, 2012.

2. **Health Care Contribution**

Effective , January 1, 2011, the statutory obligation to contribute one and one-half (1.5%) of pensionable base salary toward health care pursuant to P.L. 2010, c. 2 shall be made a contractual obligation. This contribution shall be deducted from the employee's regular pay and subject to the Employer's Section 125 Plan for tax purposes only.

3. **Salary & Salary Schedule**

I shall award the following changes and increases to the salary schedule:

- (a) Effective January 1, 2009, all steps on Schedule A-1 shall be increased by 3.25%.
- (b) Effective January 1, 2010, all steps on Schedule A-1 shall be increased by 3.0%.
- (c) Effective January 1, 2011, all steps on Schedule A-1 shall be increased by 2.0%.
- (d) Effective January 1, 2012, all steps on Schedules A-1 and A-2 shall be increased by 2.0%.
- (e) Effective January 1, 2011, all new hires will be hired pursuant to a new salary schedule (Schedule A-2) which will include two (2) additional steps. Step 1 shall be \$36,278. All other steps will be equalized between Step 1 and the maximum step of \$83,248. Schedule B shall be increased by 2% effective January 1, 2012.
- (f) Schedules A-1 and A-2 are attached. All salary increases are fully retroactive to the above effective dates.

4. **Medical Insurance**

Paragraph B in the *Medical Insurance* article shall be modified by deleting the phrase "after twenty-five (25) years of service" and adding the phrase "twenty-five (25) years of pensionable service credit as defined by PFRS." This shall be effective January 1, 2011.

5. **Grievance Procedure**

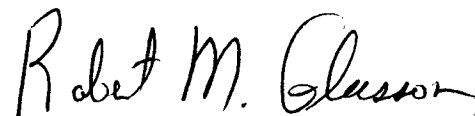
The *Grievance Procedure* article shall be modified as follows:

- (a) Paragraph A in the *Grievance Procedure* article shall be deleted and replaced with the following language:
 - A. For purposes of this Agreement, the term “grievance” means any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any Employee(s) covered by this Agreement.
 - (b) Step 5 of Paragraph B in the *Grievance Procedure* article shall be amended to provide that binding arbitration shall be conducted pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission.

6. **Overtime**

Effective August 1, 2011, the *Overtime* article shall be amended to provide that all vacation leave shall be recognized as creditable hours for overtime.

7. All other proposals of the Town and the PBA are denied. All provisions of the 2006-2008 CBA shall be carried forward except for those provisions modified by the terms of this Award.

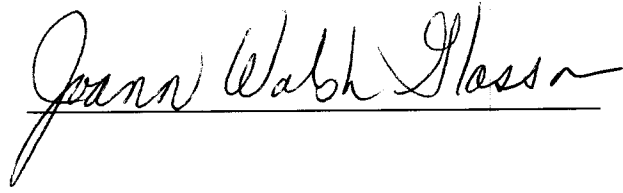


ROBERT M. GLASSON
ARBITRATOR

Dated: December 23, 2010
Pennington, NJ

STATE OF NEW JERSEY) ss.:
COUNTY OF MERCER)

On this 23rd day of December 2010, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

A handwritten signature in cursive script that reads "Joann Walsh Glasson". The signature is written in black ink and is positioned above a solid horizontal line.

JOANN WALSH GLASSON
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 12/11/2011

Salary Schedule A-1

	<u>1/1/2009</u>	<u>1/1/2010</u>	<u>1/1/2011</u>	<u>1/1/2012</u>
Step 1	\$34,531	\$35,567	\$36,278	\$37,004
Step 2	\$41,984	\$43,243	\$44,108	\$44,990
Step 3	\$49,432	\$50,915	\$51,933	\$52,972
Step 4	\$56,884	\$58,590	\$59,762	\$60,957
Step 5	\$64,335	\$66,265	\$67,590	\$68,942
Step 6	\$71,786	\$73,939	\$75,418	\$76,926
Step 7	\$79,238	\$81,615	\$83,247	\$84,912

Salary Schedule A-2

(Applicable to employees hired on or after /1/2011)

	<u>1/1/2011</u>	<u>1/1/2012</u>
Step 1	\$36,278	\$37,004
Step 2	\$42,149	\$42,992
Step 3	\$48,020	\$48,980
Step 4	\$53,891	\$54,969
Step 5	\$59,762	\$60,957
Step 6	\$65,633	\$66,946
Step 7	\$71,504	\$72,934
Step 8	\$77,375	\$78,923
Step 9	\$83,247	\$84,912