

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Arbitration Between:

\_\_\_\_\_

**BOROUGH OF KEYPORT**

“Public Employer,”

- and -

**PBA LOCAL 223**

\_\_\_\_\_

“Union.”

**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2008-092

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Borough:**

Gordon Litwin, Esq.  
Ansell Zaro Grimm & Aaron

**For the PBA:**

Richard Loccke, Esq.  
Loccke, Correia, Schlager,  
Linsky & Bukosky

PBA Local 223 [the “PBA” or “Association”] and the Borough of Keyport [the “Borough”] are parties to a collective bargaining agreement [the “Agreement”] that was in effect until December 31, 2007. After engaging in direct negotiation on January 10, 2008, February 8, 2008 and March 11, 2008, an impasse resulted in the filing of a Petition to Initiate Compulsory Interest Arbitration on May 7, 2008. The PBA set forth eight (8) economic issues and four (4) non-economic issues. The Borough responded to the Petition on June 6, 2008, with nine (9) economic issues and four (4) non-economic issues. I was designated to serve as interest arbitrator by the New Jersey Public Employment Relations Commission [PERC] on June 17, 2008.

Pre-interest arbitration mediation was undertaken resulting in the resolution of a number of issues between the Parties. Three (3) economic issues and four (4) non-economic issues remained unresolved. Formal interest arbitration hearings were conducted on January 26, 2009 and February 17, 2009 in Keyport, New Jersey. Transcripts of the hearings were taken. The Borough and the PBA argued orally and submitted testimonial and documentary evidence into the record. Testimony was received from Joseph Columbo, Vice-President of Health Benefit Services for GR Murray, a division of O’Gorman & Young; Police Officer Ken Marr; Thomas Fallon, Chief Financial Officer for the Borough; Lorene Wright, Business Administrator for the Borough; Donald Norbut, Borough Engineer; and Mayor Robert Bergen. Post hearing briefs were submitted by both parties, the last of which was received on or about May 6, 2009, at which time the record was closed.

The parties, by not mutually selecting an alternate terminal procedure, are subject to the terminal procedure of conventional arbitration, thereby providing the arbitrator with broad authority to render an award of his own construction without being limited to an award, or portion thereof, that reflects the last offers submitted by either party. See, N.J.S.A. 34:13A-16(c)(1).

As required by N.J.S.A. 34:13A-16f(1), each Party submitted a last offer.

They are as follows:

### **FINAL OFFERS OF THE PARTIES**

#### **PBA Local 223**

##### **Economic Issues**

1. Wage Increase – the PBA proposed a five (5%) across-the-board wage increase in each of four (4) consecutive years to follow the term of the preceding contract (J-1) which expired on December 31, 2007.
2. Article IX, Holidays – The PBA proposed one (1) additional holiday.
3. Detective Differential – The PBA proposed a modification of contract Article XXIII regarding Detective compensation. The PBA proposed an increase from three hundred dollars (\$300.00) to five hundred dollars (\$500.00) the annual Detective increase and from six hundred dollars (\$600.00) to seven hundred fifty dollars (\$750.00) the annual stipend for Detective Sergeant.

##### **Non-Economic Issues**

4. Grievance Procedure Modification – the PBA has proposed a modification of Article VIII so as to include coverage for minor discipline under the grievance procedure. Minor discipline is defined as those circumstances where the

penalty is five (5) days of suspension, or equivalent in fine, of any lesser penalty.

5. Personal Leave Procedure – the PBA proposed a modification of Article XI of the contract so as to reduce the difficulty in accessing personal leave. This proposal came in two (2) parts. First, the PBA proposed a modification of paragraphs B, C and D so that the Departmental Designee could approve leave use, in effect, not restricted to the Chief's permission. The second change was to permit personal leave to be used at any time during the year subject only to prior Departmental approval.
6. Leave Donation Program – the PBA has proposed a modification of contract Article XV, Sick Leave, so as to permit voluntary leave donation from one employee to another. Specific language was proposed on this point.
7. Maternity/Paternity Language – the PBA proposed new language be added to the contract which essentially codifies current procedures within the public employer's practices and procedures. Specific language was proposed.

#### **Borough of Keyport**

1. Article XIX - Wages – Employees hired before January 1, 2008 (“Present Employees”):
  - a. Effective January 1, 2008, 2.25% across the board wage increase.
  - b. Effective January 1, 2009, 2.25% across the board wage increase.
  - c. Effective January 1, 2010, 2.25% across the board wage increase.
2. Article XIX - Wages – Employees hired on or after January 1, 2008:
  - a. Effective January 1, 2008, 1.25% wage increase for all step classes, with new step classes added, and 2.25% wage increase for all higher ranks.
  - b. Effective January 1, 2009, 1.25% wage increase for all step classes and 2.25% wage increase for all higher ranks.

- c. Effective January 1, 2010, 1.25% wage increase for all step classes and 2.25% wage increase for all higher ranks.
3. Article IX – Holiday Calendar
    - a. The substitution of President’s Day for the Lincoln and Washington holidays.
    - b. The removal of Election Day for hires on or after January 1, 2008 (“new hires”)
  4. Article XI – Personal Leave: The reduction of personal days from five (5) to:
    - a. four (4) for hires before January 1, 2008 (“present employees”); and
    - b. three (3) for new hires
  5. Article XII – Annual Vacation Leave: a change in annual vacation leave for new hires as follows

<b>2004-2007 Vacation Provision</b>		<b>2008-2010 Vacation Proposal</b>	
<b>Years</b>	<b>Vacation Days</b>	<b>Present Employees</b>	<b>Vacation Days</b>
1-5	12	No Change	
6-10	16		
11-25	19	<b>New Hires</b>	
16-20	22	1-10 years	12 days
Over 20	25	11-20 years	20 days
		21 years and over	22 days

6. Article XV – Sick Leave: For new hires, limit sick leave buy back to three (3) days.
7. Article XX – Longevity Pay: A conversion of the longevity pay from a percentage basis to a flat rate and the elimination of longevity pay for new hires, as detailed below:

<b>2004-2007 Longevity Provisions</b>		<b>2008-2010 Longevity Proposals</b>	
<b>Hires before 1/1/95</b>		<b>Present Employees</b>	
After 5 years of service	1.0%	After 5 years of service	\$1,000
After 10 years of service	3.5%	After 5 years of service	\$3,000
After 15 years of service	3.5%	After 18 years of service	\$6,000
After 20 years of service	6.5%	After 25 years of service	\$7,000
After 25 years of service	7.0%		

<b>Hires on or after 1/1/95</b>	<b>New Hires</b>
After 7 years of service      1.0%	No Longevity Pay
After 10 years of service     3.5%	
After 15 years of service     3.5%	
After 20 years of service     6.5%	
After 25 years of service     7.0%	

8. Article XXVII – Health Insurance: Increased employee contributions and health plan changes, including co-pay increases, as described below:

2004-2007 Health Insurance Provisions	2008-2010 Health Insurance Proposals
<p style="text-align: center;"><b>Employee Contributions</b></p> <p>\$20/pay period for a total of \$520/year</p> <p style="text-align: center;"><b>Plan Description</b></p> <p>Direct Access PPO Plan (BCBSNJ) 100/80 Coinsurance \$5 Co-pay (in network) \$2.55 prescriptions</p>	<p style="text-align: center;"><b>Employee Contributions</b></p> <p>1.50% of salary for Contribution Family coverage 1.25% of salary for Member &amp; Spouse coverage 1.00% of salary for Member &amp; Child coverage 0.85% of salary for Single Employee coverage</p> <p style="text-align: center;"><b>Plan Description</b></p> <p>Direct Access PPO Plan through BCBSNJ 100/90/70 Coinsurance \$20 Doctor Visit / \$30 Specialist \$15 / \$20 prescriptions Employee assistance program addition</p>

*As health insurance costs increase at a rate of approximately 12% a year (1T. 18:6-25), the Borough has searched for ways to continue to maintain its level of coverage to PBA members while absorbing as much of the cost as possible. The proposal will save the Borough approximately \$30,000 for both the 2009-2010 and 2010-2011 policies. (B-70 at 2). Notwithstanding this savings, the Borough's health care costs for PBA members will still increase by nearly \$10,000 over 2008 rates, keeps co-payments and deductibles relatively low and increases PBA member contributions by only \$550 a year. (B-70; B-1 at 8; 2T.33:5-34:6).*

9. Article XIII – Leave of Absence: Vacation benefits provided for in Art. XIII(C) shall only accrue if the subject employee is retiring or separating in "good standing."
10. Article XXXI – Differential Pay: Amend Art. XXXI(B) to clarify the use/ applicability of this benefit (e.g. no differential pay for patrolman if there is a superior officer on duty to provide direct patrol squad supervisory duties) as follows:

“Those employees assigned by the Chief of Police or his representatives or those employees in the capacity of a higher rank, due to but not limited to, absences, sick time, vacation, personal days, disability, schooling, who performs **all of** the duties of a higher rank **and, in the case of a patrolman, provided there is no a superior line officer on duty to provide direct patrol squad supervisory duties**, shall be paid at the effective rate of pay for that rank retroactive to the assignment to that rank.”  
[emphasis in original]

*This proposal is to clarify and/or correct a perceived abuse of the 2004 Agreement as a result of the Borough's promotion of three (3) sergeants to the ranks of Lieutenant and Captain. Following of these promotions, there are fewer Sergeants available to cover shifts and Patrolmen began making claims for differential pay when a Lieutenant, rather than a Sergeant, was on duty during their particular shifts. The presence of a Lieutenant means that there is a superior line officer capable of handling many of the duties of a Sergeant and therefore the senior Patrolman on duty is not performing many of the duties of that rank. Accordingly, Article XXXI(B) should be amended to ensure that the Borough does not pay two officers to do the work of a single officer.*

## **BACKGROUND**

The Borough is a Monmouth County municipality of approximately 1.75 square miles and 10,000 residents. Mayor Bergen testified that the Borough is largely a working class community of lower middle income of roughly seven thousand six hundred (7,600) residents of ethnic diversity. The socio-economic data in the records supports his view.

The PBA represents all Patrolman, Sergeants, Detectives, Lieutenants and Captains employed by the Keyport Police Department. There are eighteen (18) officers in the bargaining unit. Each party offered extensive testimony, documentation and argument concerning the operation of the police department, the socio-economic profile of the Borough, wage comparability in and outside of

law enforcement, cost of living, the financial health of the Borough and the merits and impacts of their respective final offers. Both the PBA and the Borough argue that their respective positions are supported by an application of the statutory criteria under the New Jersey Employer-Employee Relations Act. I have summarized these presentations but an exhaustive analysis of these presentations must give way to a more brief summary.

The PBA argues that the Borough is a busy community with a growth pattern of several years duration. The PBA points to the expanded downtown area, which offers shopping, dining, nightlife and recreational opportunities. Officer Marr's testimony gave examples of the modifications and improvements within the Borough that attract out of town patrons for day trips. According to the PBA's account of the testimony, there has been a large amount of residential building and growth in the downtown area as evidence of redevelopment that will enhance the Borough's finances. Officer Marr believes there to be fifteen (15) consumption licenses within the Borough. He testified that there is an entertainment attraction due to such businesses as the Yacht Club, which has a large membership and holds functions that attract people from other yacht clubs and other jurisdictions, such as Staten Island. Officer Marr also testified that there are two (2) museums in town and a beach park, where residents and tourists gather for community functions and festivals. The beach and boat ramp draws anywhere from fifty (50) to one hundred (100) people on a good weekend



day. The PBA also submitted evidence as to other recreational attractions, such as the Monmouth County Park System and public golf facilities.

Officer Marr testified as to the innovative and evolving new services and equipment that the police department implemented as a result of the growth and nightlife that attracts a transient population to the Borough. Officer Marr testified about Triad Officers, Crime Prevention Officers and DARE Officers. These units provide informational training and services to the public. Officer Marr also testified as to the training that is required as a result of new equipment and programs, such as defibrillators, K-9 unit, school response training to be prepared for a hostage type situation, identification equipment, and mobile data terminals for the patrol units that provides vehicle and driver information.

The PBA submitted a comparison of police activity statistics from 2004 to 2007 to show the productivity of the department and its officers. It shows a 21% increase in incidents, a 6% increase in detective bureau cases and a 56% increase in summonses. The PBA points to evidence showing that these increased activities have resulted in additional revenues in municipal court. A significant part of the PBA's argument is that the Departmental sworn personnel remains at 2004 levels, and with the elimination of a Police Captain position, despite significant increases in police activity and statistical data.

The PBA also attempted to show through the testimony of the Borough's Chief Financial Officer, that the Borough is not a municipality in financial distress. The PBA elicited testimony about municipality improvements such as the waterfront park in front of the bulk head, which was constructed with the assistance of a half million dollars in grant money and the promenade, which cost the Borough a little over a million dollars after receiving state and county funding for the project. Based on the foregoing, the PBA concludes that the department is productive and professional, and well serves the interests and welfare of the public.

The Borough believes the interests and welfare criterion supports the positions it has taken in this proceeding. It cites case law calling attention to the need to focus on the priority to be given to the wages and monetary benefits of public employees within a municipality's budget and plans and that an interest arbitration award cannot simply require the raising of taxes without regard to the impact on the governing body, taxpayers and residents. The Borough cites Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 188 (App. Div. 1993). The Borough argues that interest arbitration awards must not catapult police and fire salaries beyond all other employees and beyond local governments' budgetary constraints. The Borough argues that its proposal is the more reasonable but yet will cost \$652,000 over the next three years resulting in higher taxes and the loss of municipal services and that the PBA's proposal is

\$500,000 more than the Borough's and, if awarded, would have devastating negative impact.

The Borough argues that Keyport has been targeted for reductions in State Aid as an inducement to merge with another municipality and that the PBA's proposal, if awarded, would threaten the Borough's continued existence as an independent entity. Mayor Bergen testified that last year the Borough lost 20% of permanent State aid and one hundred thousand dollars (\$100,000.00) in discretionary aid. The Borough points out that over the last seven (7) years, the municipal tax rate has increased by 72.4% and the total tax rate has increased by 40.5%. The Borough argues that its proposal will result in the maximum increase in property taxes allowable by the levy cap provision of the Local Government Cap Law.

The Borough argues that the 4% limit on increases to the tax levy will not generate enough revenue to fund the PBA's proposal and therefore, other necessities of the taxpayers will be sacrificed even under its own proposal. Such a result, according to the Borough, would be contrary to the public interest and welfare. Mayor Bergen testified that the PBA proposal would result in a loss of services such as the Keyport Senior Center and the Summer Recreation Program. This would cause upset to senior residents or it would require a fee for this service, even though many of its patrons are on fixed incomes. By way of example, Mayor Bergen testified as to a recent situation where the Senior Center

was closed because the furnace broke and the senior citizen patrons were severely concerned because they thought it had closed down permanently due to the rumored budget cuts.

Also, the Borough aspires to provide services such as a skate park, which it believes would combat juvenile delinquency but that this goal would be less attainable due to the PBA's offer on compensation. The Mayor testified that the skate park will cost one hundred eighty thousand (\$180,000.00) to two hundred thousand (\$200,000.00) but would alleviate the current public concern and safety hazard of the youth skateboarding on the streets and at the public buildings. The Borough additionally points out that its need to purchase two (2) new fire trucks, a hook and ladder and two (2) new ambulances will be unattainable due to the costs of the PBA proposal even though the fire department has been requesting new trucks for the last five (5) or six (6) years and even though the current ambulances are over thirty (30) years old. The Mayor testified that neglecting these needs in the fire department would place the Borough in a very dangerous situation. Also indicative of a town in distress, in contrast to the PBA's assertion of prosperity, is the fact that the Borough has had to reduce garbage pick up to one (1) time per week. The Mayor testified that the Borough cannot afford to pay for more frequent garbage collection despite odors that occur during summertime from which he has received resident complaints. The Mayor also said that the Borough desperately needs new hires in the public works department but can't

afford it. Instead, there have been lay offs. The Mayor testified, "It's just getting worse everyday. I've never seen anything like this."

The Mayor testified, contrary to the PBA's assertion of an expanded downtown area, that there are numerous business vacancies and that there has been a decline in the retail market. According to Mayor Bergen, the Borough has no new business growth, no new sales and an inability to generate new revenue. According to Mayor Bergen, restaurant and bar owners have complained that they have experienced a decline in sales and that the increased alcohol and beverage control fees have placed a burden on them.

The Borough contends that the interests and welfare of the public are better served by its proposal and will offer controls on future costs without reducing the overall compensation received by any current PBA member.

The parties have also addressed the criterion that concerns comparability. The PBA asserts that the total compensation program of the Borough's police officers is among the poorest in all of the east central portion of New Jersey. The PBA showed that the PBA police officers work longer work schedules than other departments (at two thousand eighty (2,080) hours per year) yet earned, on average, four thousand one hundred ninety-five dollars (\$4,195.00) less for the year of 2007 within the group of comparables it has submitted. To emphasize this point, the PBA produces the following chart:

**Comparison of 2007 Top Step Base Rates  
Based on PBA Exhibits**

Law Enforcement Agency	2007 Base Pay Rate
Freehold Township	\$90,910
Monmouth Prosecutors	\$113,087
Holmdel	\$83,405
Lakewood	\$85,643
Manasquan	\$82,819
Monroe	\$82,105
Neptune Township	\$87,422
Highland Park	\$87,008
Bradley Beach	\$80,330
Point Pleasant Borough	\$90,693
Point Pleasant Beach	\$83,204
South Amboy	\$85,788
Spotswood	\$83,740
Neptune City	\$79,994
Aberdeen	\$78,335
Woodbridge	\$86,083
Matawan	\$84,132
<b>Average</b>	<b>\$86,176</b>
<b>Keyport Top Patrol Officer</b>	<b>\$81,981</b>
<b>Keyport Top Patrol Officer Compared to Average</b>	<b>(\$4,195) (5.11%)</b>

The PBA submits that more than a 5% adjustment would be required, above and beyond an across the board increase, just to raise salary levels close to other agencies. The PBA also shows that in other jurisdictions base rates have, or will

increase, between an average of 3.8% to an average of 4.0987% during 2008-2011 and offers the following chart to support its point.

**Base Rate Increases**

	2008	2009	2010	2011
Bradley Beach	4.3	4.5		
Holmdel	4.5	4.5		
Lakewood	4			
Manasquan	4.25	4.25		
Monmouth Prosecutors	3.75	3.75		
Highland Park	3.6	3.8	3.9	3.9
Milltown	4	4		
Monroe	4.25	4.25	4.25	
Neptune City	4	4		
Neptune Township	4.5			
Point Pleasant Borough	4	4		
Point Pleasant Beach	4.25	4.25		
Seaside Park		4	4	4
South Amboy	4			
Spotswood	4	4	4	
Woodbridge	4	3.9	3.3	3.5
Matawan	4			
Averages	4.0987%	4.092%	3.89%	3.8%

The PBA further asserts that the longevity plan in Keyport, in comparison to others, is also significantly below average at one thousand nine hundred sixty-one (\$1,961.00) less than the average longevity value with the maximum

longevity reached after 25 years, which is longer than the statutory minimum for receipt of pension. The PBA has offered a chart to support its conclusion.

The PBA also submits that the number of holidays available to PBA officers, at thirteen (13) per year, is less than average of other agencies who average 14.05 holidays. The PBA also showed that certain Keyport Public Works Department employees receive fifteen (15) holidays per year. It further points out that these holidays are reflected in base wages in the salary schedule unlike many departments who keep holiday pay out of the salary schedule, even if such payments are pensionable.

The Detective Differential of the PBA members was shown to be comparatively well below the average with the average annual stipend being one thousand four hundred seventy-six (\$1,476.00) compared to the Borough's stipend of three hundred dollars (\$300.00). The PBA offers a proposal increasing such pay.

The PBA addressed the Borough's proposal of employee contributions towards health insurance showing that, unlike the Borough where contributions already exist, only two (2) of the seventeen (17) comparison agencies are subject to premium sharing. The PBA rejects the Borough's comparison with private sector employees because it claims that there is no comparable private sector job to that of a police officer who performs unique duties, has unique skills and



are subject to and controlled by specific statutory authority. Further, the PBA argues that the inherently hazardous nature of police work is not frequently present in the private sector. The PBA quotes from a previous arbitration award that determined that only slight weight should be given to the standard of comparable private employment in the case of a police officer. See Ridgewood Interest Arbitration Award, Docket No.: IA-94-141, (pages 29-31).

The Borough counters the PBA by showing that the average police officer salary in the Borough compares very favorably with the median earnings of male workers in Keyport. Moreover, when computing additional compensation, PBA members earn substantially more non base compensation and benefits than the average Borough resident.

The Borough offers evidence that the PBA members are the highest paid municipal employees in Keyport. Mayor Bergen testified that the Borough employs just over one hundred (100) employees and that there is a large gap between the PBA salaries and these other employees. According to the Mayor, the other two (2) bargaining units (public works department and clerical department) are waiting for the PBA contract to be resolved before they can resolve their own contracts since the PBA contract comprises such a large portion of the operating budget and because there has been pattern increases in the past.

The Borough also offered the private sector as a comparison and showed that, since 2001, the Bureau of Labor and Statistics showed that the Private Salaries Index averaged an increase of 3.02% while the PBA members have enjoyed annual increases of 4%.

When comparing Keyport to the other municipalities in Monmouth County the Borough points out that Keyport is one of the smallest in terms of geographic area and population with a geographic zone of 1.4 miles excluding water. Business Administrator Wright testified that the average base pay for a Keyport patrolman and for a top pay step patrolman is within the range typically found in Monmouth County. She based this testimony on data from the New Jersey League of Municipality's salary survey and from various ordinances and contracts of municipalities. During cross-examination she acknowledged that she received her information via telephone communications with administrators from other municipalities. Wright used sixteen (16) of the fifty-three (53) towns within Monmouth County for comparison purposes and acknowledged that she did not take holiday fold in or longevity fold in into account.

The parties also addressed the criteria that concern the lawful authority of the employer and the financial impact of changed contract terms on the governing body, its residents and taxpayers.

In assessing the authority of the Borough, the PBA points out that the 2008 Municipal Budget, which sets for the Expenditure Side Cap calculation,

provides for six million two hundred thousand seven hundred sixty-six dollars (\$6,257,766.00) "Allowable Operating Appropriations Within Caps" while the "Total 2008 Operating Appropriations Within Caps" allows for five million six hundred fifty thousand six hundred thirty dollars (\$5,650,630.00). Accordingly, the PBA shows that the Operating Budget as adopted and completed for the year 2008 was over six hundred thousand dollars (\$600,000.00) under Cap on the Appropriations Side.

The PBA next assesses the municipality Tax Levy Cap calculation. This reflects a "Maximum Allowable Amount to be Raised by Taxation" to be five million four hundred sixty thousand three hundred ninety-five dollars (\$5,460,395.00) and the "Amount to be Raised by Taxation for Municipal Purposes" to be five million sixty-four thousand fifty-four dollars (\$5,064,054.00). The PBA therefore reasons that the most recent Budget does not create a problem either under the Tax Levy Cap or the Expenditure Cap since the Budget provides for three hundred ninety-six thousand three hundred forty-one dollars less than the cap of \$5,064,054.00. The PBA points out that the Borough's Chief Financial Officer testified that the total percentage of the tax levy that goes toward municipal functions is only approximately one-third (1/3) of the total tax levy. The PBA also requests consideration of the fact that certain revenues, such as administrative fees for off duty police services and various grant monies that offset overtime costs, are not accounted for in the Budgetary spreadsheets. Furthermore, it points out that investment interest income is not accounted for in

the spreadsheets as anticipated revenues but instead are treated as non-anticipated miscellaneous revenue as a means of achieving surplus.

The PBA concludes that because the Borough revenues exceed that anticipated, that there is an unexpended balance of appropriation reserves, the tax collection rate is well above the 93% State average, that property values have increased since 2005, that the Borough is well below the statutory debt limit and has an excellent cash position, the Borough has the ability to meet the costs required to fund the PBA's proposals.

The Borough disagrees. It asks that the Appropriations Cap be considered in light of the 2004 statutory percentage reduction from 5% to 2.5%. The Borough reasons that its proposed annual wage increases of 2.25%, even with additional measures to offset some of the additional appropriations needed to fund these wage increases, will be difficult to fund. The Mayor testified that, even under its proposal, the Borough is in excess of the tax levy cap by a projected two hundred eighty thousand dollars (\$280,000.00). According to the Mayor, a significant reduction of staff will be the only possible way to reconcile this excess. But the Borough argues that the PBA's proposed annual wage increases of 5%, *without* significant offsets, would require the Borough to significantly reduce its appropriations for other budgetary items and cause it to not address its other budgetary needs. According to the Mayor, over the last

fifteen (15) years, operating expenses and budgets have been cut to the bone and there is no place left to cut.

The Borough submits that the Property Tax Levy Cap was amended in 2007 to prohibit it from adopting a budget that would require more than a 4% increase from the previous year. Also, the Borough points out that property taxes cannot be increased beyond the Levy Cap for purposes of employee wages. Even in raising taxes to the statutory maximum allowable amount, the Borough claims it would still be required to make drastic reductions to its budget in order to meet the PBA proposal. According to Mayor Bergen's testimony, this would likely cause a significant dislocation in the community both in terms of the number of employees and in terms of the level of services that the residents have come to expect.

In considering the financial impact on the governing unit, its residents and taxpayers, the Borough reminds that "A municipality should not have to demonstrate [that] it would be financially crippled before its arguments [concerning financial impact] could be found to be sufficient." Citing, Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 194 (App. Div. 1993). The Borough also points out that findings regarding financial impact must be based upon record evidence and not upon the mere assumption that the employer will somehow find a way to fund the award. Citing, Fox v. Morris County Policemen's Ass'n, 266 N.J. Super. 501, 517 (App. Div. 1993). The

Borough submits evidence of its inability to fund the PBA's proposals, which, by way of differential, exceeds the Borough's proposal by five hundred thousand dollars (\$500,000.00) from 2008 through 2010.

The Borough cites the taxpayer's need for tax relief and not tax increases. It points out that the Borough's tax levy per capita has increased 34.65% over the past four (4) years and that, during the last three (3) years, residents have paid an average of \$435.60 more per year in municipal taxes. The Borough also disputes that the PBA's assertion that its proposal can be funded with surplus funds because the Borough's surplus funds balance diminished by five hundred thirty-four thousand dollars (\$534,000.00) from 2002 to 2008. According to the Borough, as of January 1, 2008, the Borough retained a balance of a mere five thousand eight hundred fifty-seven dollars (\$5,857.00) in the surplus fund. The Borough also reminds that State aid has been drastically reduced by 20% in 2008 and it expects further reductions in 2009 and beyond.

The Mayor testified that the police department's operations comprise 48% of the Borough's operating costs with 97% of that amount attributable to salaries and employee costs. Since such a large portion of the budget is attributed to the police department, the Mayor believes that the Borough cannot survive as an independent entity much longer if wages were increased at the rates proposed by the PBA. The Mayor's testimony also addressed the Borough's borrowing power. He stated that the construction of the police station and facilities and the

waterfront project comprise the significant portion of the Borough's debt and that the Borough can't engage in any more borrowing without a growth in ratable base. According to the Mayor, this has not happened and is not projected to happen. He testified, "I can't borrow more money. We're tapped out."

The Borough also stresses that improvements are needed in its aged infrastructure since the majority of its housing stock is over fifty (50) years old and a majority of its water and sewer infrastructure is at least fifty (50) years old and in need of maintenance and repair. The Mayor testified that the Borough has some of the largest water and sewer bill assessments of any nearby town and that there were five (5) emergency water main breaks just in the prior month. The Mayor also said that "There's probably not a street that doesn't need to be repaved."

Borough Engineer Norbut testified that five (5) emergency water main repairs were the result of the freezing of the soil. According to Norbut, five (5) water main breaks occurring within a month is on the high side with the cost of those repairs being forty-three thousand three hundred (\$43,300.00). Norbut provided detailed testimony about the Borough Engineer's 2009 Capital Improvement Program that is to be implemented over the next ten (10) years will and cost the Borough a projected \$5.2 million dollars. The projects comprising the Capital Improvement Program are indentified as true needs relating to public safety, road improvements, and drainage improvements and, according to

Norbut, "...the Borough has received funding from a number of different agencies for these projects and, therefore, if the Borough did not pursue these projects, they would not gain the benefit of those grant dollars." This Capital Improvement Program will be added to the Borough's debt service, which is projected to increase by \$280,000 in 2010 and then remain at over \$1 million each year through 2014 in order to arrange for permanent financing for projects, including the bulkhead and waterfront promenade, the replacement of a municipal pier, the creation of a waterfront park, various road improvements, and for the construction of the new municipal building.

The Mayor testified about the Borough's proposals that deal with changes to holiday leave and personal leave. He explained that the reduction in these days would assist to reducing costs because of the money that would be saved in paying overtime costs. The Mayor also testified that its proposals that surround health care costs are due to the Borough's inability to continue to absorb higher premiums.

The parties also address the cost of living criterion. The PBA maintains that the Borough's income, resources and tax base are stable and should be given more weight than the cost of living data. The Borough, in contrast, points to the PBA members' annual base salary increases occurring from 2001 through 2007 and argues that, during these years, the annual increases exceeded the Consumer Price Index ["CPI"] average by 33%. The Borough argues that its



proposed 2.25% raise is justified under CPI and adequately accounts for cost of living increases over the relevant years. The Borough also notes that under its proposal, the PBA members would still exceed the CPI because of the compounding effect of the raises given to the PBA from 2001 through 2007.

Each party argues that the continuity and stability of employment criterion supports its own proposals. The PBA again stresses that even if the PBA proposals were awarded, it would still fail to bring its members up to average among their peers. The PBA characterizes the Borough's final offer as essentially a forfeiture of longstanding benefits. Because staffing levels have remained constant despite greater work volume, the PBA asserts that the Borough's position would promote turnover. The Borough disagrees and characterizes its final offer as promoting continuity and stability of employment within the Borough by rewarding PBA members whose terms and conditions of employment would increase during an atmosphere of mass layoffs, wage freezes and furloughs. The Mayor testified that the implementation of the Borough's final offer would not, in his view, have any effect on the stability within the Department. The Borough argues that the PBA proposal, conversely, may jeopardize the longstanding continuity, longevity and stability within the Department, which does not have a history of layoffs. The Mayor testified that he is not sure how the Borough is going to afford even the lesser raises proposed by the Borough, and that Keyport has "[n]o other source for money and no other place to cut."

## DISCUSSION

I am required to make a reasonable determination of the above issues giving due weight to the factors set forth in N.J.S.A. 34:13A-16(g)(1) through (9), that I find relevant to the resolution of these negotiations. These factors are as follows:

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

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

I must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria. N.J.S.A. 34:13A-16d(2). This means that consideration must be given to the reasonableness of each individual issue in dispute in relation to the terms of the entire award since awarding any single change can reasonably impact the resolution of all other issues and on the overall costs of the entire award.

The duration of the contract is in dispute. The PBA has proposed a four (4) year contract through December 31, 2011 while the Borough proposes a three (3) year contract through December 31, 2010. The Borough contends that an agreement expiring on December 31, 2010 is more appropriate because terms for calendar 2011 should be set by financial evidence that would be more certain during the early stages of 2011 when the budget for that year is actually adopted. The PBA disagrees and asserts that there is sufficient record evidence to decide on terms through 2011.

There is some merit to each party's position on duration. On balance, I conclude that a duration extending through 2011 is more consistent with the interests and welfare of the public. It would avoid an immediate return to negotiations and potential continued litigation over issues that are included in this proceeding. It would provide certainty as to the costs that will be required to operate the department for the year 2011 without conjecture as to what those costs might be. I also conclude that an award can be rendered that extends

through 2011 on this record which contains extensive evidence on, among other things, the Borough's finances, pay comparability and health insurance. I have also taken official notice of legislation modifying the tax cap levy when considering contract terms for 2011. The terms of the Award have also been set with weight given to specific proposals governing conditions for new hires going forward, thus allowing the Borough to make cost projections for new hires under known terms. Accordingly, the contract duration shall be from January 1, 2008 through December 31, 2011.

The record reflects that the parties have agreed to one (1) contract modification relating to Article XXV – Mileage. The parties have agreed to modify the mileage reimbursement from twenty-five cents (\$0.25) to fifty-one cents (\$0.51). This agreement shall be received as a stipulation and incorporated and awarded herein effective with the date of the award.

Both parties have proposed changes to Article IX – Holiday Calendar. The PBA proposes one (1) additional holiday while the Borough proposes substituting one President's Day for the Lincoln and Washington holidays and the removal of Election Day for new hires. Both proposals would alter the status quo contained in Article IX. The PBA would add a holiday while the Borough's proposal would eliminate one holiday for existing employees and eliminate an additional holiday for new hires. After considering both proposals, I find that there is insufficient justification to alter the status quo on the issue of paid

holidays. The existing provision is well within current norms and neither party has justified an increase or a decrease to the present benefit level. Accordingly, both proposals are denied.

Both parties also propose changes to Article XI – Personal Leave. The Borough seeks a reduction in the number of personal leave days from five (5) days to four (4) days for present employees and a reduction from five (5) days to three (3) days for new hires. The PBA seeks a procedural modification to Article XI so as to reduce the difficulty it claims its members have in accessing personal leave days. The PBA would change the existing language to allow for the use of personal leave days at any time during the year and subject only to the approval of the Departmental Designee rather than requiring permission from only the Chief of Police.

In my review of the respective proposals regarding personal days, I note that Article XI states that each employee is “entitled” to receive five (5) personal days but that the Chief has the “discretion” as to which days shall be allowed to be taken. Article XI also states that such leave shall be scheduled in advance “except for emergencies.” These terms have been in existence at least since 1997. When Article XI is viewed as a whole, I find insufficient justification has been presented to either reduce the number of personal days for existing employees or to modify the existing language governing the procedures that concern the taking of the days. The Chief may use his discretion to delegate

approval authority to a designee but I will not order that he exercise that discretion. However, I do find merit in the Borough's proposal to provide three (3) rather than five (5) personal days for new hires. For new hires, the benefit level of three (3) days will be more consistent with benefit levels set for other departments on this issue and, for existing employees, they shall continue to receive the mutually agreed upon number that they are "entitled" to under circumstances agreed to more than ten years ago.

The Borough has also proposed changes to Annual Vacation Leave under Article XII and Sick Leave under Article XV for new hires. The changes to annual vacation leave proposed by the Borough would, for new hires only, provide twelve (12) vacation days for the first through tenth (1-10) year on the job; twenty (20) days for eleven through twenty (11-20) years on the job and twenty-two (22) days at the twenty-first (21) year and beyond. The Borough's proposal would preserve benefit levels for existing employees. I do not find the Borough's proposal to be unreasonable. It, as stated, is directed at having fewer paid days off to offset overtime costs because of the fill-in requirements that exist in a small department. The Borough's proposal would still provide substantial vacation benefits for new hires and will assist the Borough in its goal to have full-time officers work a greater number of work days and reduce overtime. The proposed level of vacation benefits will still allow the Borough to remain reasonably competitive in comparison to that which exists in other jurisdictions. Accordingly, I award the Borough's proposal.

The Borough also offers a change to a portion of Article XV – Sick Leave for new hires. Under the Borough’s sick leave proposal, new hires would be limited to three (3) days of sick leave buy back under Article XV, Section B. Under Section B, subsections 1 and 2, and Section C, the parties have developed a comprehensive system directed towards providing incentives for the avoidance of sick leave. In the absence of evidence that this incentive program is not functioning consistent with its intent, the Borough’s proposal is not awarded.

The Borough seeks to amend Article XIII – Leave of Absence. The proposal would limit vacation accrual benefits in Article XIII(C) only to those who retire or separate in “good standing.” This would avoid the payment of those benefits to employees who do not retire or separate from employment in “good standing.” There is logic to the Borough’s proposal and the public interest would be served by not providing vacation accrual benefits to officers who do not retire or separate in “good standing.” I award this proposal but note that it shall be accompanied by language confirming that disputes over eligibility and/or amounts that are claimed to be due and payable be grievable and arbitrable.

The PBA proposes a modification to Article XXIII – Detective Differential.<sup>1</sup> This modification would raise the annual detective stipend from \$300 to \$500 and would raise the annual detective stipend for Detective Sergeant from \$600 to \$750. In my review of this proposal, I note that the salary schedules speak to

---

<sup>1</sup> The contractual reference is actually to “Call In Pay” rather than “Detective Differential.”



annual compensation for those officers who are assigned as detectives. The existing contract terms with respect to detectives show that a rank and file detective is paid at a level that is \$1,213 more than a top step police officer while a Detective Sergeant is paid at the same level as a patrol Sergeant. [See Salary Schedule A-2]. In addition, pursuant to Article XXIII – Call In Pay, the rank and file detective receives a \$300 stipend while a Detective Sergeant receives a \$600 stipend. After review of comparisons of detective stipends and on call payments. I find that the PBA's proposal to provide an enhanced benefit for the on-call requirement to be reasonable and would, in total, represent insignificant additional costs to the Borough. I award the PBA proposal effective January 1, 2010.

The PBA has proposed to add a provision regarding sick leave donation to the sick leave provision in Article XV. It would authorize voluntary leave donation to qualified employees who have exhausted all paid leave, and are experiencing a catastrophic, debilitating, or long term illness or injury requiring an extended absence from work. While there can be little doubt that this program has the potential to serve a noble purpose, the record is insufficient as to what the potential impact of such a program would be on the Borough's police department that employs a small number of police officers. Accordingly, this proposal is not awarded.

The PBA has proposed the addition of language concerning maternity/paternity leave. The language that it proposes is represented to essentially codify current procedures within the public employer's practices and procedures. The Borough contends that the statutory provisions for disability, and the federal provisions for family medical leave are sufficiently adequate to address maternity/paternity leave. The current Agreement is silent with respect to maternity/paternity leave. Although the PBA has represented that its proposal "essentially" would codify current policies and procedures, the record does not reflect that this is so. I award the addition of a maternity/paternity provision that is wholly consistent with state and federal law concerning family medical leave and disability benefits law as well as the inclusion of any existing language contained in the Borough's practices and procedures that govern such leave. I defer the precise contract language implementing this award to the parties.

The PBA has proposed a modification to Article IV, Grievance Procedure to include minor discipline. Minor discipline is defined as those circumstances where the penalty is five (5) day of suspension, or equivalent in fine, of any lesser penalty. In my consideration of this proposal, I note that the legislature has determined that the arbitration of minor disciplinary grievance is a subject of mandatory negotiations. It has also, more recently, adopted legislation providing for the arbitration of major disciplinary actions in non-civil service jurisdictions. These facts establish that public policy favors administrative rather than judicial forums for the review and determination of disciplinary matters for police officers

in the absence of pre-emption. There is no evidence that the Borough's operations would be undermined by allowing for such a review procedure, although I am mindful that not each and every minor disciplinary matter should be subject to arbitration. I award the PBA proposal accompanied by language that would place certain limitations on access to the arbitration procedure. I award the forum of arbitration for minor disciplinary penalties involving suspensions without pay of at least one day or more or fines at a level of at least one day's pay or more. Verbal warnings or verbal reprimands shall not be arbitrable. Written reprimands shall also not be arbitrable except if an employee receives a second written reprimand within a twelve-month period. Accordingly, I award the following:

Effective with the date of this Award, the grievance procedure shall include a new section that will allow for the grieving and/or the arbitration of minor disciplinary grievances subject to the following. Such grievances to be arbitrated shall be for penalties involving suspensions without pay of at least one (1) day or more or fines at a level of at least one (1) day's pay or more. Verbal warnings or verbal reprimands shall not be arbitrable. Written reprimands shall not be arbitrable unless an employee receives a second written reprimand within a twelve month period.

The Borough has made a comprehensive proposal concerning Article XX – Longevity Pay. It proposes to convert longevity pay from a percentage of salary to flat rate dollars for existing employees and to eliminate longevity pay for new hires. Its proposal differentiates between the existing longevity provisions and those that it proposes to be awarded for new employees. The Borough's proposal is reflected in the following chart:

2004-2007 Longevity Provisions	2008-2010 Longevity Proposals
<p style="text-align: center;"><b>Hires before 1/1/95</b></p> <p>After 5 years of service      1.0%</p> <p>After 10 years of service      3.5%</p> <p>After 15 years of service      3.5%</p> <p>After 20 years of service      6.5%</p> <p>After 25 years of service      7.0%</p>	<p style="text-align: center;"><b>Present Employees</b></p> <p>After 5 years of service      \$1,000</p> <p>After 5 years of service      \$3,000</p> <p>After 18 years of service      \$6,000</p> <p>After 25 years of service      \$7,000</p>
<p style="text-align: center;"><b>Hires on or after 1/1/95</b></p> <p>After 7 years of service      1.0%</p> <p>After 10 years of service      3.5%</p> <p>After 15 years of service      3.5%</p> <p>After 20 years of service      6.5%</p> <p>After 25 years of service      7.0%</p>	<p style="text-align: center;"><b>New Hires</b></p> <p>No Longevity Pay</p>

In support of its proposal, the Borough contends that twelve (12) of the twenty-eight (28) municipalities in Monmouth County that it surveyed offers longevity pay on a flat rate basis and that for new hires, the presence of longevity pay is no longer needed as an inducement to either attract or retain police officers. The Borough asserts that by providing longevity pay to existing officers on a flat rate basis will still allow them to enjoy such pay at “customary levels.”

The PBA objects to this proposal asserting that the current plan is significantly below average after comparing the Borough’s benefit with thirteen (13) other municipalities. It formally argues that “Only three (3) towns among all listed have a lesser longevity value than is found in Keyport. The average far exceeds Keyport. The Keyport maximum longevity plan is close to two thousand dollars (\$2,000.00) below average and it would take better than a thirty-four percent (34%) increase just in this benefit alone to catch average. Noteworthy is

the fact that the maximum longevity in Keyport is reached “After 25 Years” which means an Officer would have to stay beyond the statutory minimum’s pension career in order to reach that maximum step.”

I do not award the Borough’s proposal. The existing program is longstanding and is an integral component to the parties’ overall compensation scheme. Within such programs that exist within the County and elsewhere, it ranks well within these comparisons and does not cause overall compensation in Keyport to rise to unreasonable levels that would warrant the alterations and reductions contained in the Borough’s proposals. At 6.5% after twenty (20) years of service and 7% after twenty-five (25) years of service, the existing program is comparable to Hazlet, Eatontown and Middletown. It is higher than others such as Atlantic Highlands and lower than others such as Matawan. The Borough’s longevity proposal, if awarded, coupled with its salary proposals, would significantly and negatively impact on the compensation level of its police officers relative to the comparable jurisdictions submitted by both parties. For these reasons, I do not award the Borough’s proposals.

The Borough proposes to amend Article XXXI(B) to clarify the application of when employees are entitled to differential pay. The proposal is aimed at not providing differential pay to patrolmen if there is a superior officer on duty to provide direct patrol squad supervisory duties. The specific proposal is phrased as follows:

“Those employees assigned by the Chief of Police or his representatives or those employees in the capacity of a higher rank, due to but not limited to, absences, sick time, vacation, personal days, disability, schooling, who performs **all of** the duties of a higher rank **and, in the case of a patrolman, provided there is no superior line officer on duty to provide direct patrol squad supervisory duties**, shall be paid at the effective rate of pay for that rank retroactive to the assignment to that rank.”  
[emphasis in original]

In its final offer, the Borough submits language reflecting the intent of its proposal. That language is as follows:

*This proposal is to clarify and/or correct a perceived abuse of the 2004 Agreement as a result of the Borough's promotion of three (3) sergeants to the ranks of Lieutenant and Captain. Following of these promotions, there are fewer Sergeants available to cover shifts and Patrolmen began making claims for differential pay when a Lieutenant, rather than a Sergeant, was on duty during their particular shifts. The presence of a Lieutenant means that there is a superior line officer capable of handling many of the duties of a Sergeant and therefore the senior Patrolman on duty is not performing many of the duties of that rank. Accordingly, Article XXXI(B) should be amended to ensure that the Borough does not pay two officers to do the work of a single officer.*

The Borough's proposal arises in the context of staffing changes that the Borough has made which have impacted on the staffing levels of its superior officers. These, according to the Borough, have resulted in the "perceived abuse" of Article XXXI(B) that now requires the adoption of its proposal. The record, however, does not contain sufficient evidence, either on costs or on law enforcement operations, that would justify the changes sought by the Borough. If such "perceived abuse" continues to be present, the Borough may pursue such claim in future negotiations without prejudice to its dismissal in this proceeding. Accordingly, I do not award the Borough's proposal.

The Borough has made comprehensive proposals regarding health insurance. Pursuant to the existing Agreement, Article XXVII provides for employee contributions towards the cost of medical insurance benefits. This program commenced in 1993 and was modified in 2004 to provide contributions of \$20 per pay period for an annual total of \$520 for each officer. The Borough now proposes employee contributions of 0.85% of salary for single employee coverage, 1.00% of salary for member and child coverage, 1.25% of salary for member and spousal coverage and 1.50% of salary for contributions toward family coverage. After the close of the record in this proceeding, the Borough's proposal has, in part, been subsequently addressed through legislation, of which I take official notice. The subsequent legislation requires the payment of 1.50% of base salary towards health insurance for public employees in the absence of any other contractual arrangement, effective May 21, 2010.

The Borough also proposes changes in the existing Health Insurance Plan Description to provide for continued coverage in the Direct Access PPO Plan through BCBSNJ and a change from a 100/80 coinsurance to 100/90/70 coinsurance with an increase in doctor visit co-pays (in network) from five (\$5.00) dollars to twenty (\$20.00) dollars per doctor visit and thirty (\$30.00) dollars per specialist visit. Under the Borough's proposal, the prescription co-pays would also increase from \$2/\$5 to \$15/\$20. In addition, an Employee Assistance Program would be included.

The Borough's proposal on health insurance has been rejected by the PBA but its objections are not sufficiently meritorious to require a denial of the Borough's proposal. The record reflects that officers have been contributing towards health insurance since 1993 and, in fact, were among the first such employees to do so. In 2004 the contributions increased. More recently, such contributions have become common throughout law enforcement as evidenced by the many labor agreements that have been submitted into the record. They show various forms of co-payments including by percentage of base salary, percentage of premium cost or, as the parties have done here in the past, by dollar amount per pay period. As previously stated, Article XXVII requires the payment of \$20.00 per pay period for a total of \$520.00 per year per officer.

The Borough's approach to require percentage contributions is consistent with the method employed by the New Jersey Legislature who more recently enacted legislation requiring the payment of 1.5% of base salary towards health insurance effective May 21, 2010.<sup>2</sup> The Borough's proposal is justified by virtue of expanding upon a pre-existing scheme for contributions that were originally agreed upon in 1993 by fixed dollar amount approach. By any reasonable standard, a basis has been established for a higher level of premium contribution. The Borough has shown that there has been a substantial increase in the amount of health insurance premiums it has paid since 1993 while that

---

<sup>2</sup> The legislation would not nullify a lesser contractual arrangement included in an executed contract prior to May 21, 2010 but, in such instance, would apply upon expiration.



fixed dollar amount has remained unchanged since 2004. This has resulted in a smaller employee contribution relative to the percentage of premiums paid by the Borough and the percentage of salary earned by the employees.

Based on the above, I award the Borough's proposal as it pertains to employee contributions towards medical insurance. It shall be incorporated into the Agreement but accompanied by the following language in order to comply with statutory requirements:

The level of employee contribution set forth in Article XXVII shall be inclusive of, rather than in addition to, any statutory obligation towards an employee's requirement to make contributions toward the payment of health insurance. To the extent that the statutory obligation exceeds the awarded amounts of employee contributions towards health insurance, the statutory obligations shall apply and supersede the contractual amounts awarded herein.

The other aspect of the Borough's medical insurance proposal pertains to co-payments. The Borough would maintain the Direct Access PPO Plan BCBSNJ but adjust the amount of co-pays and co-insurance that are provided in the existing plan description. The Borough relies heavily upon documents that reflect a 43.1% increase in its budgeted insurance costs over a four year period (from \$480,000 to \$687,000) and evidence reflecting that half of the appropriation is directed towards maintaining insurance for the PBA. The Borough also relies upon the testimony of health insurance consultant Joseph Columbo whose testimony established that adjustments in co-pays and co-insurance are methods

that allow for the continuation of health insurance coverage while defraying some of the rising costs required to provide the coverage.

The record shows that existing co-payment and co-insurance levels are modest in relation to the \$19,000 per officer cost of maintaining coverage. I have considered the Borough's proposals based upon the evidence on cost that exists with respect to Keyport and also in relation to health insurance terms contained in the many collective negotiations agreements that are in evidence within the County and within the comparables offered by both the Borough and the PBA. After doing so, I award the Borough's proposals with minor modification in the areas of non-specialist doctor visits and in co-payment for generic drug prescriptions. Effective with the date of this Award, I award the co-insurance levels at the 100/90/70 levels proposed by the Borough. I also award an increase in prescription co-payments from \$2/\$5 to \$10/\$20 and co-payments for doctor visits to \$15 per non-specialist doctor visit and \$30 for a specialist. The Borough's proposal to offer an employee assistance program is also awarded.

Both Parties have proposed a wage increase change to Article XIX – Wages. The PBA proposed a 5% increase across the board for each of the four (4) consecutive years commencing January 1, 2008 and extending through December 31, 2011. The Borough has proposed a 2.25% across the board increase for present employees (those hired before January 1, 2008) to be effective on the first of the calendar year for the years 2008, 2009 and 2010. For

employees hired on or after January 1, 2008, the Borough proposes a 1.25% increase for all step classes and a 2.25% increase for all higher ranks to be effective on the first of the calendar year for the years 2008, 2009 and 2010. In my consideration of these proposals I note that I have awarded a contract duration that extends through December 31, 2011 and therefore must render a wage award for 2011.

As is normally the case with a salary impasse, each party has presented substantial evidence in support of the respective salary proposals and arguments asserting that each party's proposal is more consistent with the application of the statutory criteria.

In rendering a reasonable determination of the salary issue, I have found all of the statutory criteria to be relevant, although not all are entitled to equal weight. As is commonly understood, no single factor can be isolated and be dispositive of the terms of an entire award. The interests and welfare of the public must be given the most weight because it is a criterion that embraces many other factors and it recognizes the interrelationship among them. It requires consideration of the financial impact of an award on the governing body and taxpayers as well as the Borough's statutory limitations on appropriations and the tax levy. It also recognizes the fact that the level of budgetary expenses of operating a police department must be balanced with consideration being given to the terms and conditions that are set for law enforcement officers who

perform essential and dangerous functions for the purposes of protecting the public. The public interest is furthered by productivity, efficiency and high morale and would be adversely affected by the setting of terms that would hinder the maintenance of productivity, efficiency and morale. The evidence on comparability is also relevant and must be considered but such evidence must be balanced by financial evidence and the remaining criteria including cost of living, continuity and stability of employment and the overall terms and conditions of employment presently being received under the terms of the existing contract.

The evidence warrants an award on the salary issue that provides for modifications for current officers within the existing salary schedule but also creates a new schedule for new hires to accommodate the Borough's objective to achieve longer-term savings. In lieu of the differentiated raises the Borough has proposed for new hires, I award a new hire schedule that, in fact, would create greater savings. The last such new schedule was negotiated in 1998. The new hire structure will freeze the 2007 Academy step of \$39,973 through 2011 and add a new 7<sup>th</sup> Class step at the 6<sup>th</sup> Class levels that will also remain frozen at 2007 levels through 2011. The steps between the 7<sup>th</sup> Class step and the 1<sup>st</sup> Class step shall be set at equidistant dollar amounts. Going forward, the salary levels for new hires will be less than they would otherwise be for each year of service until the top step is reached after one more year of additional service than is presently required. During the course of movement over the new schedule, the Borough will realize over \$35,000 in savings for each new hire. For current employees, I have awarded increases of 3%, 2.5%, 2.25% and 2%

from 2008 through 2011 but with the deferred effective dates of July 1 for 2008 and 2009, and April 1 for 2010. The 2% increase will be effective on January 1, 2011. The salary schedules, as a result of these modifications shall read as follows:

**Existing Employees**

	7/1/08 3.0%	7/1/09 2.5%	4/1/10 2.25%	1/1/11 2%
Academy	41,172	42,201	43,151	44,014
Patrolman: 6 <sup>th</sup> Class	42,047	43,098	44,068	44,949
5 <sup>th</sup> Class	50,895	52,168	53,342	54,408
4 <sup>th</sup> Class	58,734	60,202	61,557	62,788
3 <sup>rd</sup> Class	66,570	68,234	69,769	71,165
2 <sup>nd</sup> Class	75,002	76,877	78,606	80,178
1 <sup>st</sup> Class	84,440	86,551	88,499	90,269
Detective	85,690	87,832	89,808	91,604
Det. Sgt.	93,540	95,879	98,036	99,997
Sergeant	93,540	95,879	98,036	99,997
Lieutenant	98,653	101,120	103,395	105,463
Captain	103,755	106,349	108,742	110,917

**Employees Hired After Date of Award**

	2010	1/1/11
Academy	39,973	39,973
Patrolman: 7 <sup>th</sup> Class	40,822	40,822
6 <sup>th</sup> Class	48,768	49,063
5 <sup>th</sup> Class	56,714	57,304
4 <sup>th</sup> Class	64,660	65,545
3 <sup>rd</sup> Class	72,606	73,786
2 <sup>nd</sup> Class	80,552	82,027
1 <sup>st</sup> Class	88,499	90,269
Detective	89,808	91,604
Det. Sgt.	98,036	99,997
Sergeant	98,036	99,997
Lieutenant	103,395	105,463
Captain	108,742	110,917

The Borough has established that the PBA's salary proposals would cause adverse financial impact on its budget and endanger its ability to comply with the statutory limitations placed on its ability to appropriate funds and to levy taxes. The testimony of Mayor Bergen and Thomas Fallon, as well as the budget documents, support these conclusions. Calculations reflect that the PBA's proposals would exceed the costs of the Borough's proposal by several hundred thousands of dollars between 2008 and 2010. The Borough has established that it cannot absorb these level of additional costs. The record reflects that the Borough's financial posture has been diminishing sharply over the last few years. Its municipal tax rate increased by 72.4% from 2002 to 2008 and its tax levy per capita by 35% between 2005 and 2008. Between 2002 and 2008, its surplus fund balance decreased by \$534,000 which has affected its ability to hold down the tax rate through a drawdown on its surplus. Documents in evidence reflect that as of January 1, 2001, the Borough had a fund surplus of \$950,338 of which approximately \$100,000 was retained as compared to January 1, 2008 when the fund balance had decreased to \$415,000 of which the Borough only retained \$5,857. The Borough's finances have been further impacted by reductions in state aid. In 2008, the Borough's aid was reduced from \$1.1 million to \$870,000, a reduction of \$230,000 or 20%. During this time, the Borough has shown that its ratable base has not expanded. A chart depicting flat ratable between 2001 and 2008 has been introduced by the Borough and must be viewed in the context of the fact that its appropriations have increased by \$2,956,000 or 51% over the same time period. Testimony and documentation also reflects that the Borough

has had to increase its debt service to help offset the costs of its capital improvement programs.

When the salary issue is examined in light of the above, a reasonable conclusion can be drawn that the Borough's proposal is more responsive to the overall application of the statutory criteria. It has considered the overall terms and conditions of employment currently received and offers persuasive argument that these terms need not be improved anywhere near the levels sought by the PBA in order to maintain terms that are generally comparable to nearby communities who are more in line with the socio-economic profile of the Borough. The record also shows that the continuity and stability of employment of the Borough's police officers has been steady over a lengthy period of time. The terms set by this award, to the extent that can be foreseen, will not alter that fact. The cost of living data for years 2008, 2009 and 2010 is clearly more in line with the terms that have been set by the Award than by the PBA's proposal and this fact will continue in 2011.

The PBA has submitted unrebutted evidence showing that comparability data, among law enforcement comparables, would support an award at levels closer to what it has proposed than what the Borough has proposed. But the comparability data is more reflective of terms that were struck by voluntary settlement and awards prior to financial and economic trends within the Borough and elsewhere that pointed downward at the time that this record was closed. The Borough has effectively argued that these trends may have impacted the

Borough in a sharper manner than elsewhere, thereby limiting its ability to match terms that had been set in other jurisdictions prior to the completion of this record. An award, at a modest level beyond what the Borough has proposed, would be responsive to the comparability data offered by the PBA but at a level of cost that the Borough can fund without the claimed catastrophic impact the Borough has linked to the PBA's proposals.

The Award will require the establishment of a wage rate of 1.0% above what the Borough has proposed (between 2008 and 2011) but the deferred effective dates will offset the additional costs or pay out required by the Award over the first three years with an additional approximate amount of \$16,000 carried into year 2011 when the 2% increase is required. The net annual economic change calculates to approximately \$24,000 in 2008, an additional \$36,000 in 2009, an additional \$50,000 in 2010 and an additional \$42,000 in 2011.<sup>3</sup> While I do not charge the approximately \$23,000 annual cost of employee statutory contributions toward health insurance against the increased costs of the award, I note that these costs do represent a savings toward health insurance costs that would have been chargeable, if awarded, in the absence of the new statutory requirements.

Additional economic considerations not chargeable to net annual change include the new salary schedule for new hires, and the reduction in vacation and

---

<sup>3</sup> These figures have calculated the new annual costs required by the effective date of each percentage increase plus the costs of carrying forward the unrealized cost of the prior years' percentage increase that was deferred into the succeeding year.



personal days for new hires because such costs are speculative in the absence of evidence as to what the number of new hires will be and when the hiring will occur.

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

**AWARD**

1. All proposals by the Borough and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreements shall be carried forward except for those which have been modified by the terms of this Award or by mutual agreement of the parties.

2. **Duration**

The contract duration shall be from January 1, 2008 through December 31, 2011.

3. **Article XXV – Mileage**

The parties have agreed to modify the mileage reimbursement from twenty-five cents (\$0.25) to fifty-one cents (\$0.51). This agreement shall be received as a stipulation and incorporated and awarded herein.

4. **Article XI – Personal Leave**

Employees hired on or after the date of the Award shall receive three (3) Personal Days annually.

5. **Article XXVII – Health Insurance**

Article XXVII – Health Insurance shall be modified, effective immediately or retroactive to May 21, 2010 with respect to employee contributions, consistent with the terms of the Borough's proposal, with minor modifications, as set forth below:

<b><i>Employee Contributions *</i></b>
1.50% of salary for Contribution Family coverage
1.25% of salary for Member & Spouse coverage
1.00% of salary for Member & Child coverage
0.85% of salary for Single Employee coverage

**Plan Description**

Direct Access PPO Plan through BCBSNJ  
100/90/70 Coinsurance  
\$15 Doctor Visit / \$30 Specialist  
\$10 / \$20 prescriptions  
Employee assistance program addition

\* The level of employee contribution set forth in Article XXVII shall be inclusive of, rather than in addition to, any statutory obligation towards an employee's requirement to make contributions toward the payment of health insurance. To the extent that the statutory obligation exceeds the awarded amounts of employee contributions towards health insurance, the statutory obligations shall apply and supersede the contractual amounts awarded herein.

6. **Article XII – Annual Vacation Leave**

Employees hired on or after the date of the award shall receive annual vacation leave in accordance with the following schedule:

***New Hires***

1-10 years	12 days
11-20 years	20 days
21 years and over	22 days

7. **Article XXIII – Detective Differential**

Effective January 1, 2010, the Detective Differential shall be increased from three hundred dollars (\$300.00) to five hundred dollars (\$500.00) and the annual stipend for Detective Sergeant shall be increased from six hundred dollars (\$600.00) to seven hundred fifty dollars (\$750.00).

8. **Article XIII – Leave of Absence**

Vacation benefits provided for in Art. XIII(C) shall only accrue if the subject employee is retiring or separating in "good standing."

I award this proposal but note that it shall be accompanied by language confirming that disputes over eligibility and/or amounts that are claimed to be due and payable be grievable and arbitrable.

9. **Maternity/Paternity Leave**

I award the addition of a maternity/paternity provision that is wholly consistent with state and federal law concerning family medical leave and disability benefits law as well as any existing language contained in the

Borough's practices and procedures that govern such leave which supplement the statutory provision.

10. **Article IV – Grievance Procedure**

Effective with the date of this Award, the grievance procedure shall include a new section that will allow for the grieving and/or the arbitration of minor disciplinary grievances subject to the following. Such grievances to be arbitrated shall be for penalties involving suspensions without pay of at least one (1) day or more or fines at a level of at least one (1) day's pay or more. Verbal warnings or verbal reprimands shall not be arbitrable. Written reprimands shall not be arbitrable unless an employee receives a second written reprimand within a twelve month period.

11. **Article XIX – Wages**

Retroactive to each effective date, each step of the salary schedule shall be increased by 3.0% effective July 1, 2008, 2.5% effective July 1, 2009, 2.25% effective April 1, 2010 and 2.0% effective January 1, 2011. The schedule for existing employees shall read as follows:

**Existing Employees**

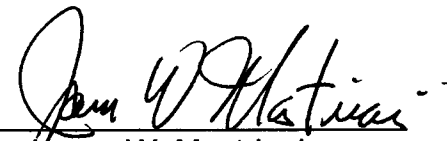
	7/1/08 3.0%	7/1/09 2.5%	4/1/10 2.25%	1/1/11 2%
Academy	41,172	42,201	43,151	44,014
Patrolman: 6 <sup>th</sup> Class	42,047	43,098	44,068	44,949
5 <sup>th</sup> Class	50,895	52,168	53,342	54,408
4 <sup>th</sup> Class	58,734	60,202	61,557	62,788
3 <sup>rd</sup> Class	66,570	68,234	69,769	71,165
2 <sup>nd</sup> Class	75,002	76,877	78,606	80,178
1 <sup>st</sup> Class	84,440	86,551	88,499	90,269
Detective	85,690	87,832	89,808	91,604
Det. Sgt.	93,540	95,879	98,036	99,997
Sergeant	93,540	95,879	98,036	99,997
Lieutenant	98,653	101,120	103,395	105,463
Captain	103,755	106,349	108,742	110,917

There shall be a new salary schedule for employees hired on or after the date of the award:

**Employees Hired After Date of Award**


	2010	1/1/11
Academy	39,973	39,973
Patrolman: 7 <sup>th</sup> Class	40,822	40,822
6 <sup>th</sup> Class	48,768	49,063
5 <sup>th</sup> Class	56,714	57,304
4 <sup>th</sup> Class	64,660	65,545
3 <sup>rd</sup> Class	72,606	73,786
2 <sup>nd</sup> Class	80,552	82,027
1 <sup>st</sup> Class	88,499	90,269
Detective	89,808	91,604
Det. Sgt.	98,036	99,997
Sergeant	98,036	99,997
Lieutenant	103,395	105,463
Captain	108,742	110,917

Dated: October 9, 2010  
Sea Girt, New Jersey

  
 \_\_\_\_\_  
 James W. Mastriani

State of New Jersey        }  
County of Monmouth        } ss:

On this 9<sup>th</sup> day of October, 2010, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

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