

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

TOWNSHIP OF HOPEWELL

-and-

Docket No. IA-2017-002

HOPEWELL TOWNSHIP POLICE BENEVOLENT ASSOCIATION

Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the Employer:

Genova Burns, LLC

(By: Brian Kronick, of counsel)

For the PBA:

Loccke, Correia, & Bukosky

(By: Richard Loccke, of counsel)

Witnesses:

Ptl. John Ferner, PBA Local 342 President

Robert Maguire, Integrity Consulting Group

Elaine Cruickshank-Borgos, Township CFO

Paul Pogorzelski, Township Administrator

Also Present at The Hearing:

Dominick Fannele, Insurance Consultant

Ptl. Robert Voorhees, PBA Local 342

Joseph Giordano, SOA President

Kevin Koveloski, SOA

Nicole Leitner, Genova Burns, LLC

INTEREST ARBITRATION AWARD

BACKGROUND

On August 3, 2016, the Township of Hopewell filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over its successor collective negotiations agreements with the Police Benevolent Association ('PBA'). The previous agreement expired on December 31, 2015.

On August 5, 2016, I was appointed to serve as interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e) (1). This statutory provision requires that an award be issued within 90 days of my appointment. By letter of August 11, I scheduled a mediation session for September 27, 2016 and directed each party to submit a Final Offer no later than September 19 in accordance with N.J.S.A. 34:13A-16(f) (1). On September 19, the Township submitted its Final Offer. The same date, I granted a two-day extension of time to the PBA to file its Final Offer. The PBA did so on September 20. Subsequently, the Township objected to the late submission of the PBA's Final Offer and moved to have it stricken from the record. This motion was denied on the record at hearing.

On October 4, 2016, I conducted an interest arbitration hearing at the Township's Municipal offices. The Township and PBA each submitted documentary evidence and testimony. A stenographic record was made of the hearing, the transcript of which was produced on October 7. The Township submitted lists

of unit employees for 2015, together with their dates of hire and their total base pay paid for 2015. The PBA stipulated to the accuracy of this list and to base-year costs. Post-hearing summations were filed by October 17, 2016.

PROCEDURAL ISSUES

Final Offers

By letter of August 11, I directed each party to submit a Final Offer no later than September 19. On September 19, the Township submitted its Final Offer. The same date, I granted a two-day extension of time to the PBA to file its Final Offer. The PBA did so on September 20. The Township objected to the late submission of the PBA's Final Offer and moved to have it stricken from the record.

N.J.S.A. 34:13A-16(f)(1) provides,

f. (1) At a time prescribed by the commission, the parties shall submit to the arbitrator their final offers on each economic and non-economic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to subsection d. of this section. (emphasis added).

N.J.A.C. 19:16-5.7 (g), Conduct of the Arbitration Proceeding, provides in relevant part,

(g) . . . At least two days before the hearing, the parties shall submit to the arbitrator and to each other their final offers on each economic and noneconomic issue in dispute. The parties must also submit written estimates of the financial impact of their respective last offers on the taxpayers as part of their final offer submissions. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence. . . (emphasis added).

In addition, subsection 19:10-2.1 (c), provides,

(c) Regarding extensions of time, the commission or officer having authority to dispose of the matter, may, for good cause shown, extend any time prescribed in these rules.

Under this last rule section, as the “officer having authority to dispose of the matter”, I have the authority to grant extensions of time for submissions, especially when it is not beyond the two-day limit as set forth in subsection 19:16-5.7 (g).

Here the Union was granted an extension and filed one day after the Township. It’s submission on September 20 was two full weeks prior to the interest arbitration hearing. Therefore, there being no showing of prejudice to the Township, I denied the Township’s motion at hearing to strike the Union’s Final Offer from the record.

Post-Hearing Submission of Additional Exhibit

The hearing concluded in this matter on October 4, and a briefing period was established. Briefs were due close-of-business October 17. On October 17, but prior to the briefing deadline, the Township submitted an additional exhibit and requested that it be included in evidence. The PBA objected to this submission and argued that the hearing record was already closed and its brief already filed. By letter of October 18, I advised the parties that I intended to permit the Township to supplement its factual record with the additional exhibit which is a Memorandum of Agreement for a successor contract with CWA covering white-collar employees and signed by the parties on October 17. Finding that the additional exhibit was

not available before that date, and was potentially relevant to the Township's position on several issues in dispute here, I admitted the exhibit into the record. However, to avoid any possible prejudice to the Union's ability to respond, I provided the PBA with a four-day opportunity to address the issue in a supplemental brief. The PBA subsequently advised me that it would rely on its original brief and declined to file a supplement.

FINAL OFFER OF THE TOWNSHIP¹

The Township submitted the following Final Offer:

Term of Agreement:

Three years, commencing January 1, 2016 through December 31, 2018. Dates in the expired Agreement shall be changed as necessary.

Article 13, Salary:

(Page 28) Paragraph A: Amend Appendix A to provide that all rates will be frozen on the guide as of December 31, 2015. Amend Appendix A to provide for frozen 2015 rates and to reflect the following:

A) Effective and retroactive to January 1, 2016: 2 % across the board salary increase to base pay, inclusive of all pensionable compensation (longevity, stipend), with movement on guide, if any.

B) Effective and retroactive to January 1, 2017: 2% across the board salary increase to base pay, inclusive of all pensionable compensation (longevity, stipend), with movement on guide, if any.

¹ At hearing the Township modified its final offer to delete a proposal that would delimitate future sick leave banks.

C) Effective and retroactive to January 1, 2018: 2% across the board increase, inclusive of all pensionable compensation (longevity, stipend), with movement on guide, if any.

Paragraph B: Amend to add a paragraph that provides for a salary guide pursuant to Appendix A at rates as of December 31, 2015.

Amend dates in the expired agreement to comport with the terms of the new agreement.

Longevity

(Page 28/29): Longevity shall be grandfathered for existing employees, but eliminated for new hires.

Add a subparagraph 4 to provide as follows:

Effective January 1, 2017, new employees shall not be entitled to longevity.

Amend the dates in the expired agreement to comport with the terms of the new agreement.

Article 9, Insurance Protection:

The Township proposes to reform the language in paragraph A² (“Medical Insurance”) as follows³:

As of the date of the execution of this Agreement by the parties, the Township shall provide major medical, hospitalization, life

² Bracketed language indicates the proposed deletion; underlining indicates proposed new language.

³ The Township’s original offer to the SOA submitted on September 19, erroneously referred to the deletion or modification of certain sentences in the Medical Insurance section of the existing contract. On October 18, the Township submitted “clarification” for both Final Offers. I accepted the township’s clarification for the SOA Final Offer because I considered the clarification necessary so that the Township’s Final Offer to the SOA could be put into the context of this record. However, I simultaneously disallowed the Township’s proposed clarification to its Final Offer for the PBA unit.

insurance protection, dental and vision care. [The Township will pay the full premium for each full-time employee, and where appropriate, for family plan insurance coverage.] Notwithstanding the sunset and during the term of this agreement, Employees shall continue to pay contributions toward health care premiums as provided in Public Laws 2011, Chapter 78. The present carrier is Blue Cross and Blue Shield of New Jersey.

[The Township reserves the right to [may] change [the source of medical benefits provision so long as so long as the source substituted is equal to or superior to the current coverage] health insurance benefit carriers at its discretion provided such change will provide substantially the same level of benefits for bargaining unit employees.

The Township will provide at least forty-five (45) days' notice to the employees of any change in carrier.

[The Association and the Township agree that members will receive medical services within the Insurance Carriers of Blue Cross/Blue Shield of New Jersey (provided that the scope of the network is wide spread both in geographical area and service area, e.g. orthopedics, pediatrics, chiropractic, etc.; under Blue Select "Preferred Provider Organization" and/or Horizon Direct Access (HDA). Employees who use participating medical providers in the Blue Cross/Blue Shield network will have expenses paid at the usual customary and reasonable limit established by the medical benefits carrier after any co-payment has been satisfied. Employees who use non-participating medical providers will have claims paid up to the usual customary and reasonable limit established by the medical benefits carrier after any deductible has been satisfied. There shall be a co-payment for doctor's visits (HDA and PPO) of fifteen dollars (\$15).]

All full-time employees shall receive medical, hospitalization and prescription coverage through the employer. The base plan provided by the Township shall be the Direct Access 20/30 Plan (the "Base Plan"). Existing employees may elect to enroll in the current Horizon Blue Cross-Blue Shield PPO Plan (PPO 15), or Horizon Direct Access 15 Plan⁴; however, any cost in excess of the Base Plan premium shall be paid by the employee. The Township shall pay the full premium for each full-time employee, and where appropriate, for dependent insurance coverage, subject to employee

⁴ The above recited language was included in the Township's revised Final Offer submitted on October 18.

contributions pursuant to Public Laws 2011, Chapter 78, and any employee contribution towards the payment of the additional premium for premiums in excess of the Base Plan. Effective January 1, 2017, all new employees shall be enrolled in the Direct Access 20/30 Plan. Each full-time employee shall pay a portion of the medical premium as directed by P.L. 2011 c.78, and where appropriate for dependent insurance coverage.

Paragraph C, Prescription Drug Insurance:

[The Township shall provide a Prescription Drug Plan for each full-time employee, and where appropriate, dependents with a co-payment provision of seven dollars and fifty cents (\$7.50) for generic and fifteen dollars (\$15) for brand name drugs. The mail order co-payment shall remain the same. Each full-time employee shall pay a portion of the applicable premium as directed by P.L. 2011 c.78, and where appropriate for dependent insurance coverage.]

The Township will provide for each regular full-time employee fully paid medical insurance, subject to employee contributions pursuant to Public Laws 2011, Chapter 78, and any employee contribution towards the payment of the additional premium for premiums in excess of the Base Plan, including a prescription drug plan with a \$5/\$10 retail store co-pay (generic/brand name) and with a \$3/\$3 mail order co-pay (generic/brand name); Direct Access 20/30 will be \$10 generic/\$25 brand name. There will be no formulary. Office visit co-pays shall be \$10 for employees in the EPO plan and PPO plan, and \$20 primary care/\$30 specialist for Direct Access 20/30.⁵ The 20/30 Plan shall be the Base Plan and any prescription costs between the Base Plan and the PPO and EPO plan shall be paid by the employee.

Paragraph G, Waiver of Medical Benefits:

The Township proposes to delete this entire subsection as follows:

[Unless otherwise required by applicable law, any employee who is

⁵ This sentence appears to refer to medical insurance rather than prescription are and shall be considered in my analysis of the medical insurance. In addition, it appears that the Township erroneously referred to the current plans as PPO 10 and EPO which is inconsistent with the record evidence. The actual existing plans available to employees in this bargaining unit are the PPO 15 Plan and the Direct Access 15 Plan.

eligible for health care coverage and elects to waive the coverage by the Township, shall receive an annual amount (to be paid on per pay basis) which shall not exceed 25% or \$5,000, whichever is less of the amount saved by the Township. (N.J.S.A. 40A:10-17.1). An employee who waives coverage shall be permitted to resume coverage under the terms and conditions as applied to initial coverage if the employee ceases to be covered through the employee's spouse for any reason, including, but not limited to, the retirement or death of the spouse or divorce.]

FINAL OFFER OF THE PBA⁶

The PBA proposes a two (2) year contract with a term of January 1, 2016 through December 31, 2017.

Article 13, Salary:

The PBA proposes the following wage increase:

- A. Effective January 1, 2016 – One percent (1%) at the top pay step for Patrol Officer only.
- B. Effective January 1, 2017 – Two percent (2%) at the top step Patrol Officer only.
- C. Guide rates of pay remain unchanged during the contract term.
- D. During calendar year 2016 normal step movement occurs for the five (5) affected officers (two (2) officers advance in April and three (3) officers advance in September).
- E. For 2017 the persons affected shall advance however the advance on the step shall be delayed for three (3) months. Therefore, those officers who would otherwise advance in April of 2017 will advance in

⁶ At the opening of the hearing, the PBA modified the wording of its Final Offer slightly and added an additional proposal concerning health insurance. The wording appearing below under Article 9 includes the modified proposals. In addition, the PBA modified its salary proposal to add greater specificity. Originally, the PBA's Final Offer proposed a 2% "all in" increase for all bargaining unit employees, to include longevity increases and increments with the remaining available funds going to across-the-board increases. The above language includes the modified proposal. The PBA also withdrew its proposal for acting out of title pay.

July of 2017 and those who would have advanced under prior practice in September of 2017 will advance in December of 2017. The rates on advancing to those steps would be prospective.

Article 9, Medical Insurance:

The PBA proposes that an Insurance Design Committee be established with members of both the PBA and the Employer's designees for the purposes of reviewing all insurance options and cost savings as well as possible improved coverages. The Committee would meet on a regular basis, not less than monthly, and make written proposals for change for consideration by both the governing body and the PBA's principal. The cost of any specialist or expert brought before the Committee would be the obligation of the party calling same. It is anticipated that the Committee will have a recommendation not later than the first half of calendar year 2017 so that the parties will be able to negotiate with said recommendation as part of their collective bargaining for a successor contract.

Article 18, Uniform and Equipment Replacement:

The PBA proposes a one-hundred fifty-dollar per calendar year (\$150/yr.) increase in the clothing allowance for each year of the contract.

STIPULATIONS OF THE PARTIES

The parties entered the following stipulations into the arbitration hearing record:

1. The parties stipulated that increments paid to PBA members that salary guide movement for those eligible patrolmen occurs on the employee's anniversary date.

- 2 . Increases to longevity as employees reach service benchmarks as provided in Article 13, are implemented on the employee's anniversary date of service.
- 3 . The Township stipulates that the respective salary proposals of an average of 2% annually, inclusive of increments and longevity increases, would comply with the interest arbitration cap and would not exceed the tax levy cap or the appropriations cap.
- 4 . The PBA stipulates to the accuracy of the employer's list of employees together with their base salaries as listed in J-1. Further, both parties stipulate to the accuracy of the cost calculations completed by the arbitrator and submitted into evidence as J-1.

BACKGROUND FACTS

Demographics:

The Township of Hopewell is located in Mercer County, New Jersey and is approximately 45 minutes from Philadelphia and 75 minutes from New York City.

The Township has access to Interstate 95, State Routes 31 and 29 and County Route 518. It is currently home to 18,311 residents. Major employers in the Township are the Bank of America – Merrill Lynch, Bristol Myers Squibb, Janssen Pharmaceuticals, Trap Rock Industries, and the Capital Health Medical Center. (E-33)

The Township has public school students in kindergarten (K) through grade twelve (12) whom attend the Hopewell Valley Regional School District, a comprehensive regional public school district serving students from Hopewell

Borough, Hopewell Township and Pennington Borough. Its public school system serves 3,640 students. (E-33)

The following charts illustrate demographic data for the Township: (E-71; 75; 79)

U.S. Census Hopewell Township, Mercer County, and New Jersey ⁷			
	Hopewell Township	Mercer County	New Jersey
Population Estimates, Jul 1, 2015	18,606	371,398	8,958,013
Housing Units, Apr 1, 2010	6,551	143,169	3,553,562
Owner-Occupied Housing Unit Rate, 2010-2014	94.5%	65.1%	65.0%
Median Value of Owner-Occupied Housing Units, 2010-2014	446,900	280,400	319,900
Households, 2010-2014	6,672	131,475	3,188,498

The following chart depicts Hopewell Township's American Community Survey median family income data for the years 2010 through 2014: (E-71)

American Community Survey (2014)⁸	
Hopewell Township, NJ	
Families	5,333
Less than \$10,000	55
\$10,000 to \$14,999	35
\$15,000 to \$24,999	0
\$25,000 to \$34,999	71
\$35,000 to \$49,999	188
\$50,000 to \$74,999	459
\$75,000 to \$99,999	574
\$100,000 to \$149,999	1,065
\$150,000 to \$199,999	906
\$200,000 or more	1,980

⁷ Source of data is the U.S. Census Quick Facts.

⁸ Source of data is the Army Community Survey (ACS) 5-Year Estimates (2010-2014).

Median Family Income	159,390
Per Capita Income	68,933
Percentage of Families & People Whose Income in the Past 12 Months is Below the Poverty Level	0
Income & Benefits (in 2014 Inflation- Adjusted Dollars)	
Total Households	6,672
Less than \$10,000	187
\$10,000 to \$14,999	72
\$15,000 to \$24,999	157
\$25,000 to \$34,999	154
\$35,000 to \$49,999	260
\$50,000 to \$74,999	605
\$75,000 to \$99,999	744
\$100,000 to \$149,999	1,258
\$150,000 to \$199,999	1,045
\$200,000 or more	2,190
Median Household Income	144,539

Hopewell Township's wealth levels are nearly double the County, State and National averages. The next chart illustrates the Town's wealth and income levels as compared to the other three averages: (E-33)

Wealth and Income ⁹			
	Median HH Income	Median Fam Income	Per Capita Income
Township	145,924	159,519	61,903
County	71,217	88,694	36,016
State	71,180	86,779	35,768
United States	55,762	64,293	27,915

⁹ Source of data is the 2010 Census.

Crime Statistics:

Based on the Uniform Crime Reporting system, in the last full year reported, the 2015 statistics below reflect the following sampled levels of activity for the Police Department:

- Call for Service – 23,704
- Arrests – 350
- Summonses – 5,233
- Impaired Driving – 52 Arrests
- Ordinance Violation – 2,679

Township's Economic Standing:

The Township maintains a strong and diverse tax base, of which the Township's top 10 Taxpayers represent 18.16% of its total tax base. Current year tax collections have remained strong at 99.12%; averaging 98.91% over the past five years. The Township's unemployment rate has consistently remained below at 2.9% compared to the County's rate of 4.8%, the State's rate of 5.6% and the National rate of 5.3%.

Budget Analysis

Elaine Borgos, Township Chief Financial Officer, testified that the Township Committee has a desire to reduce spending and reduce taxes. The Committee is looking at large cost drivers, such as "employee benefits", in the municipal budget. (1T-131) Pogorzelski attested that the Township is responsible for looking in the future at its six-year capital plans. Moreover, Pogorzelski affirmed that any

prudent financial planning is foremost to the Township as it preserves its AAA bond rating. He testified that all aspects of the Township's borrowing weigh greatly on its AAA bond rating; which demonstrates why it is essential to save Township resources. (1T-163)

A comparison of Township budgets from years 2012 through 2016 is provided below (E-33):

Comparison of Budgets (2012-2016)					
Anticipated Revenues	2012	2013	2014	2015	2016
Fund Balance	1,915,811	1,415,811	1,615,811	2,265,811	2,068,558
Miscellaneous Revenues	4,752,016	6,035,335	5,014,165	7,220,702	4,925,184
Receipts from Delinquent Taxes	1,210,000	915,516	700,000	775,000	670,000
Amount to be Raised by Taxation	12,211,510	12,749,536	13,633,685	14,353,928	14,395,093
Total Revenue	20,089,338	21,116,198	20,963,661	24,615,442	22,058,835
Appropriations	2012	2013	2014	2015	2016
General Appropriations	12,236,639	12,646,396	12,628,106	13,040,997	12,680,017
Operations	946,194	897,402	1,001,872	1,131,512	788,980
Deferred Charges & Statutory Expend	1,690,140	2,428,570	1,754,310	1,763,108	1,807,799
Capital Improvement fund	198,864	160,479	155,319	729,093	229,032
Municipal Debt Service	3,167,994	3,582,014	3,964,596	6,461,365	5,328,958
Local School District Purposes	500,000	0	0	0	0
Reserve for Uncollected Taxes	1,349,507	1,401,338	1,459,458	1,489,367	1,224,050
Total Appropriations	20,089,338	21,116,199	20,963,661	24,615,442	22,058,835

Hopewell Township's Tax Levy Cap and Appropriations Cap for years 2012 through 2016 is provided below (E-33):

Tax Levy Cap	2012	2013	2014	2015	2016
Under Cap (Bankable)	552,555	0	441,507	897,858	705,144
Cap Bank Utilized in Current Year	0	0	0	0	0
Cumulative Year-end Cap Bank	2,238,434	1,450,413	994,062	1,339,365	2,044,509
Appropriations Cap					
Under Cap (Bankable)	930,893	272,679	842,468	851,586	1,716,784

Cap Bank Utilized in Current Year	0	0	0	0	0
Cumulative Year-end Cap Bank	2,958,050	1,203,572	1,115,148	1,694,054	2,568,370

Tax rates and the total Tax Levy for the Township from years 2012 through 2016 is shown below (E-33):

Year	Municipal	Municipal Open Space	Regional School	County	Fire District	Total	Total Tax Levy
2016	0.364	0.030	1.548	0.686	0.085	2.628	105,586,389
2015	0.362	0.030	1.523	0.661	0.079	2.576	103,892,266
2014	0.342	0.030	1.481	0.670	0.077	2.523	100,965,562
2013	0.318	0.030	1.452	0.642	0.074	2.442	98,518,159
2012	0.301	0.030	1.409	0.619	0.066	2.359	97,379,395

Tax levy collections have remained strong for the Township since 2011, currently at 99.13% in 2015. From 2011 through 2014, the Township's tax collection rate was at its lowest at 98.42%. (E-33)

Hopewell Township has a low debt burden with rapid repayment of its General Capital outstanding debt. Net debt in 2015 was at 1.22% and has remained below 1.5% (less than half of the level permitted by the State) over the past 5 years. In 2015, the Township's average equalized valuation was at \$4,030,350,464 with a net debt of \$49,229,105 or 1.22%. Remaining borrowing power for the Township was \$91,833,161. The Township has a rapid repayment rate on its outstanding debt which ensures that 72% of its principal is paid over the next 10 years; 100% paid in less than 20 years. (E-33)

Structure of the Department:

The Department's organizational structure consists of a Chief of Police, an Office of Emergency Management, a Patrol Operations Office and a Detective/Administrative Office. Within Patrol Operations are an A, B, C, and D Squad and the Traffic Unit Office. In addition, the Police Department has an Internal Affairs Office, a Communications Office (911 dispatchers) and a Detective Bureau Juvenile, consisting of a Records and Discovery Office. (E-5)

STATUTORY CRITERIA

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

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

however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

- (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public

moneys have been designated by the governing body in its proposed local budget.

- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

In addition, N.J.S.A. 34:13A-16.7(b) provides:

An Arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate money value of the award over the term of the collective negotiation agreement in unequal annual percentages (emphasis added).

In arriving at the terms of this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. It is widely acknowledged that in most interest arbitration proceedings, no single factor can be determinative when fashioning the terms of an award.

In addition, I note that N.J.S.A. 34:13A-16g (8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages,

benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying the proposed change. Another consideration is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. I am also required to determine the total net economic cost of the terms required by the Award.

In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria.

Among the other factors that interrelate and require the greatest scrutiny in this proceeding are the financial impact of the award on the Employer's budget and the taxpayers [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)]; the stipulations of the parties; and the comparison of wages, other compensation and benefits of the Township's police officers to other Township employees and municipal police officers in the County.

DISCUSSION

Term of the Agreement:

The PBA seeks a two-year contract commencing January 1, 2016 through December 31, 2017. The Township seeks a three-year contract commencing January 1, 2016 through December 31, 2018.

The PBA argues that it proposes a two-year agreement because the Interest Arbitration Act includes a sunset provision of key elements at the end of 2017. The Union anticipates that there will be numerous changes in the Interest Arbitration Statute which will affect the employees' rights beyond 2017. Second, the Union notes that its proposed alternative to the Township's change in medical insurance plan is the creation of a "Plan Design Committee" together with a timeline for that Committee to explore alternative forms of coverage and make recommendations to the governing body. The PBA notes that a two-year agreement will give the Committee a chance to accomplish its goals and get the parties back to the negotiations table by the end of 2017. This will permit the Township to have the opportunity to re-examine the health care coverage plans sooner rather than later.

The Township contends that a three-year agreement will provide a longer period of stability as well as an economic predictability for the Township's budgetary process. The Township notes that it is already nearing the end of the first year of any new agreement and a contract expiring in 2017 would only mean that the parties would have to return to the table next fall. In addition, the Township notes that traditionally, its collective agreements with all of its bargaining units, both police and three civilian units, have contemporaneous expiration dates. Moreover, its agreements with all units have traditionally been for a three-year period.

Township Administrator/Engineer Paul Pogorzelski, testified that he had two

issues with the proposed two-year contract. First, he stated that the Township and all of the Township's bargaining representatives have worked hard over the past several rounds of bargaining to have all contracts terminate coincident with one another. He stated that presently the Township has the flexibility to holistically look at the fiscal position of Hopewell and can structure its offers accordingly to the other contracts that are terminating at the same time. Secondly, Pogorzelski attested that a two-year contract would expire soon and the Township would have to start the negotiation process again in just a few months. (1T-154-155).

I award a three-year contract. Having modified the Union's proposal to submit the health benefit plans to a design committee in a limited period of time, I am not persuaded that a two-year agreement would be in the interest of the parties or the taxpayers. Negotiations are time-consuming and costly. They also tend to distract from the Employer's organizational mission. A longer contract will insure that the parties will not have to return to the bargaining table in 2017 to start the process again. A three-year contract is also consistent with the Township's intent to again have all of its labor agreements expire contemporaneously in 2018. This creates a level playing field in which all of the Township's bargaining units are competing for the same Township resources simultaneously and it permits the Employer to better project its financial obligations for a longer period. Weighing these reasons against the Union's desire to be able to possibly escape the 2% arbitration cap when Chapter 105 expires, I

find in favor of a contract that extends through 2018. I award a three-year contract covering the period January 1, 2016 through December 31, 2018.

Article 13, Salaries:

The PBA seeks the following wage increase:

- A. Effective January 1, 2016 – One percent (1%) at the top pay step for Patrol Officer only.
- B. Effective January 1, 2017 – Two percent (2%) at the top step Patrol Officer only.
- C. Guide rates of pay remain unchanged during the contract term.
- D. During calendar year 2016 normal step movement occurs for the five (5) affected officers (two (2) officers advance in April and three (3) officers advance in September).
- E. For 2017 the persons affected shall advance however the advance on the step shall be delayed for three (3) months. Therefore, those officers who would otherwise advance in April of 2017 will advance in July of 2017 and those who would have advanced under prior practice in September of 2017 will advance in December of 2017. The rates on advancing to those steps would be prospective.

It also seeks to continue the payment of step increases and increases in longevity as employees reach new benchmarks of service length. Further, it seeks to maintain the existing longevity plan.

The Township offers a 2% across-the-board base pay salary increase for each year of the new contract, inclusive of all pensionable compensation (increments and increases in longevity). The Township stipulated that these increases would not cause the township to exceed either its Tax Levy Cap or its Appropriation Cap.

The existing PBA collective agreement provides the salary guides and criteria for step movement at Article 13 as follows:

Below are the stated annual wage increases for each employee subject to the terms of this agreement. Step movement for Officers hired prior to January 1, 2013 shall be in accordance with the "6 Step Chart set forth on Exhibit A annexed hereto. Step movement for all Officers hired after January 1, 2013 shall be in accordance with the "12 Step Chart" set forth on Exhibit A annexed hereto. Employees at the top step shall be compensated the amounts stated for step 6 in 2013, 2014 and 2015.

6-STEP CHART

Step	2013	2014	2015
1	54,785	56,018	57,278
2	63,774	65,209	66,677
3	72,764	74,401	76,075
4	81,786	83,626	85,507
5	90,743	92,785	94,873
6	99,732	101,975	104,270

12-STEP CHART

Step	2013	2014	2015
1	48,448	49,538	50,652
2	54,785	56,018	57,278
3	58,248	59,558	60,898
4	63,774	65,209	66,677
5	67,080	68,589	70,132
6	72,764	74,401	76,075
7	75,912	77,620	79,366
8	81,786	83,626	85,507
9	84,746	86,652	88,602
10	90,743	92,785	94,873
11	93,578	95,683	97,836
12	99,732	101,975	104,270

In 2015, total salaries for Township patrol officers in Hopewell Township was \$2,264,367, while the total 2015 salaries for sergeants was \$481,972, for a combined total of \$2,746,339. This represents approximately 38% of the Townships total budgeted salary and wages for 2016. (E-17, sheet 3b(1), page 17). The Union points out that total salaries for the police officers and sergeants combined only amounts to approximately 2.58% of the township's total tax levy of \$106,156,844. It is apparent that the proposed 2% salary increases will have a minimal impact on the taxpayers of Hopewell.

For the PBA bargaining unit, the parties have stipulated that the total base pay paid for base year 2015 was \$2,264,367. Calculating the 2% hard cap on that base, and allowing for compounding from year to year yields a total cap amount of \$138,597 over the term of a three-year contract.

The parties have agreed upon a 2% "all in" increase in each year of the successor agreement. The concept of "all in" refers to the inclusion of increment costs and longevity increase costs as within the total 2% annual award. I note that the Interest Arbitration Statue permits the uneven distribution of costs over the life of the agreement. It also permits the compounding of 2% in each year of the agreement over the year before.

The PBA unit consisted of 24 patrolmen in 2015. Of that total, 19 officers are maxed out at top step 12 of the salary guide at \$104,270; five officers are still progressing through the steps.

In 2016, three patrolmen will reach a new benchmark in service length entitling them to a \$500 increase each in their longevity amounts; in 2017, four officers will reach benchmarks in service length entitling them to a \$500 increase each in longevity; and in 2018, three officers will reach a service length benchmark also entitling them to a \$500 increase each in longevity. Thus, the total cost of longevity increases in the life of the agreement is \$5,000.¹⁰ The PBA proposal would award all patrolmen at the top step of the salary guide a 1% increase in 2016 and a 2% increase in 2017, each effective January 1. The PBA further proposes officers still advancing through the step guide would only be entitled to an increment pro-rated as follows:

During calendar year 2016, normal step movement for the five affected officers (two officers advance in April and three officers advance in September).

For 2017, step movement shall be delayed by three months. Therefore, those officers who would otherwise advance in April of 2017 will advance in July of 2017 and those who would have advanced under prior practice in September of 2017 will advance in December of 2017. The rates on advancing to those steps would be prospective.

¹⁰ Exhibit J-1 is the list of employees together with their base pay and preliminary calculations prepared by me in anticipation of the arbitration hearing. Notwithstanding that the parties stipulated to the accuracy of the calculations reported in J-1, I have discovered that the calculation included longevity increase for officers Maccaquana and Mirra of \$1,000 each in 2016; these two officers are not actually entitled to longevity payments during the life of the 2016 – 2018 contract. Further calculations in this Award take the correction of this error into account.

The Union asserts that this distribution of increases is allowable under the 2% cap.

Since I have awarded a three-year agreement, the PBA proposal as to the distribution of the 2% must be modified to accommodate the additional contract year. I award the following:

2016:

All patrolmen at the top step of the salary guide in 2015 shall receive a 1% increase effective and retroactive to January 1, 2016. Patrolmen still advancing through the salary guide shall receive their normal increments on their anniversary dates. All patrolmen who are eligible for an increase in longevity as they reach benchmarks of service pursuant to Article 13 shall have their longevity so increased.

2017:

All patrolmen at the top step of the salary guide in 2016 shall receive a 2% increase effective January 1, 2017. Patrolmen still advancing through the salary guide shall receive their normal increments on their anniversary dates. All patrolmen who are eligible for an increase in longevity as they reach benchmarks of service pursuant to Article 13 shall have their longevity so increased.

2018:

All patrolmen at the top step of the salary guide in 2017 shall receive a 2% increase effective July 1, 2018. Patrolmen still advancing through the salary guide shall receive their normal increments three months after their anniversary dates,

the amount of which shall be prospective. All patrolmen who are eligible for an increase in longevity as they reach benchmarks of service pursuant to Article 13 shall have their longevity so increased.

This award is consistent with the 2% hard cap mandated by the Interest Arbitration statute, and gives recognition to the parties' stipulations concerning salary increases. As previously noted, this award averages slightly less than 2% a year and is therefore within the Employer's tax levy cap limits and the appropriations cap. It is also in the public interest in that it provides a reasonable salary adjustment to the police officers of Hopewell Township.

COST OF THE AWARD

Year	ATB	Prior Year Increment Carryover	Pro-rated Increment	Longevity	Total
2016	19,811	0	12,035	1,500	33,346
2017	40,019	10,383	10,556	2,000	62,958
2018	20,410	13,691	6,565	1,500	42,166
Totals	80,240	24,075	29,155	5,000	138,470

It should be noted that the costs of increment payments have been pro-rated to the employee's anniversary date in each year, thus necessitating the tracking of prior year increment carryover costs.

Longevity:

The Township proposes to grandfather longevity for all existing employees, and eliminate the benefit for employees hired after January 1, 2017. The PBA objects to this proposal and seeks to maintain the existing longevity benefit for all

unit employees.

Article 13, Section C, "Longevity", of the existing PBA contract provides as follows:

Effective January 1, 2008, the longevity pay plan for the PBA shall provide the following:

1. Employees having ten (10) to fifteen (15) years of service with the Township of Hopewell shall receive an annual longevity payment of One Thousand Dollars (\$1,000.00), which shall be added to the Employee's base pay and which shall be payable *via* the payroll biweekly system. Salary adjustments shall be calculated on the Employee's base pay, exclusive of longevity pay.
2. Employees having fifteen (15) to twenty (20) years of service with the Township of Hopewell shall receive an annual longevity payment of One Thousand Five Hundred Dollars (\$1,500.00), which shall be added to the Employee's base pay which shall be payable *via* the payroll bi-weekly system. Salary adjustments shall be calculated on the Employee's base pay, exclusive of longevity pay.
3. Employees having twenty (20) or more years of service with the Township of Hopewell shall receive a flat longevity payment of Two Thousand Dollars (\$2,000.00), which shall be added to the Employee's base pay and which shall be payable *via* the payroll biweekly system. Salary adjustments shall be calculated on the Employee's base pay, exclusive of longevity pay.

The Township argues that its rationale for seeking to eliminate the longevity benefit for new hires is tied to the "Best Practices Questionnaire" required to be completed by New Jersey State Department of Community Affairs (DCA).

DCA's Local Finance Notice 2016-13, CY 2016/SFY 2017 Best Practices Inventory, E-81A, provides the following:

The State's fiscal year 2017 Appropriations Act (P.L. 2016, c.10) requires the Division of Local Government Services ('Division') to determine whether some portion of a municipality's CMPTRA and ETR aid will be withheld¹¹ based on the results of a Best Practices Inventory ('Inventory') to be completed by each municipality. The inventory encourages municipalities to embrace practices that promote financial accountability, sound management and transparency. The Local Finance Notice provides guidance on how the Division will implement this statutory requirement.

Borgos testified that in 2015, the State's Best Practice Inventory consisted of 50 questions which focused on the manner of "best practice(s)" in which its municipalities should be operating. She explained that, in most cases, there were four potential answers to the questions: yes, no, not applicable, or prospectively. Borgos stated that if one answered yes, prospectively or not applicable, one would receive full credit; and if one answered no, one would not receive credit. Overall, the municipality had to score at least 80% credit to receive its full amount of State aid at the end of the year. (1T-117-118)

State aid for the Township in 2016 was anticipated at \$1,601,563 for the Energy Receipts Tax; along with \$32,594 for the Garden State Trust Fund, for an overall total of \$1,634,157 in State Aid for 2016. Identical amounts were budgeted for and realized by the Township in the 2015 budget year. (E-17, Sheet 5)

The Best Practices Inventory for CY2016/SFY2017 consists of 30 questions. Prospective answers are no longer permitted. The only permissible answers are

¹¹ The LFN also states that as in previous years, the maximum amount of aid that is subject to withholding is the full amount of the final aid payment.

“Yes”, “No”, and, for a limited number of questions, “N/A” (not applicable).

Municipalities must receive positive credit on a minimum of 22 questions in order to avoid withholding of aid. (U-81A). The guidance goes on to provide,

Given the introduction of several new questions and the reduced overall number of questions, the Division reserves the right to determine withholding percentages upon receiving all completed CY2016 Best Practices Inventories.

The worksheet is segmented into the following categories: (E-81)

- General Management
- Finance and Audit
- Procurement
- Budget Preparation and Presentation
- Personnel
- Health Insurance

There were no questions on the 2015 DCA survey which pertained to longevity. However, the 2016 survey included the following questions concerning longevity (E-81):

28. Has your municipality adopted an ordinance, resolution, regulation or written policy eliminating longevity awards, bonuses or payments for non-union employees?

29. For any employees covered by a collective bargaining agreement, has your municipality eliminated all longevity awards, bonuses or payments for employees hired on or after a specified date, and refrained from increasing any longevity awards, bonuses or payments for employees hired before a specified date? The answer to this question can be “N/A” if such provisions were imposed by an arbitrator in binding arbitration but the municipality is seeking to eliminate such a contractual obligation through collective bargaining. If answering “N/A”, the municipality must identify under “comments” each such provision imposed by an arbitrator, along with the status of the collective bargaining negotiations to eliminate such a provision.

The Township argues that the elimination of longevity for new hires will enable it to answer “yes” to question 29, thus improving its overall score on the DCA questionnaire, which in turn will reduce the risk that its State funding will be reduced or eliminated.

Further, the Township has already enacted an ordinance eliminating longevity pay for new hires among unrepresented employees after January 1, 2017.

According to Pogorzelski, the Township has made the same proposal with regard to longevity benefits to all of its other collective negotiations units. Moreover, the Township also emphasizes that on October 17, 2016 it completed negotiations with CWA representing the Township’s white-collar employees. The signed Memorandum of Agreement with CWA included the elimination of longevity for new hires in that unit. The Township contends that these facts form the basis of a pattern of settlement among all Township employees and that I am bound by case law to follow the pattern of settlement.

The Township also notes that interest arbitrators are more and more frequently eliminating longevity for new hires among municipal police units, finding that such elimination is in the interest of the taxpayers. The PBA notes that at this point, Hopewell’s employees in all represented units continue to receive longevity benefits.

I find that there is insufficient justification to award the elimination of

longevity for new hires. First, as to the DCA best practices questionnaire, I note that even if I were to award that proposal, the Township still cannot respond “yes” to question #29 unless it successfully negotiates the longevity elimination for new hires in its three civilian units. Moreover, the DCA permits the Township to answer “N/A” to the question if the provision was imposed by an interest arbitrator.

Second, the Township is correct that a pattern of settlement among other employees of the same jurisdiction is a strong justification for an arbitrator to follow the pattern. County of Union, P.E.R.C. No. 2003-87, 29 NJPER 250,253 (¶175, 2003). An internal pattern of settlement properly focuses on the terms of economic improvement offered in a given round of negotiations. See, Somerset County Sheriff's Office v. FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008); Union County Sheriff, Docket No. IA-2012-037 (Osborn, 6/11/12); County of Passaic, PERC No. 2010-42 and PERC No. 2011-36. See also, County of Essex and PBA Local No. 157, Docket No. IA-87-45, pages 17-8 (Scheinman, 1989). Here, however, there is no pattern of settlement dictating the longevity elimination. Except for the unrepresented Township employees, which had their longevity for new hires eliminated by Township ordinance, all other Township employees still enjoy this benefit. In fact, employees in the CWA unit, the AFSCME unit, and the Dispatchers Association all

have longevity plans similar to the police, and all have three tiers -- \$1,000, \$1,500 and \$2,000. Even the recently signed MoA with CWA covering certain civilian employees is still contingent upon ratification by the membership and approval by the governing body.

Third, a closer look at the employees' existing longevity plan reveals that this plan is comparatively modest when compared to longevity benefits for other municipal police officers in Mercer County.

Municipality	Longevity Plan
East Windsor Tp.	60 - 108 mos = 4.5%; 109 -168 mos = 5.5%; 169-228 mos = 6.5%; 229 - 288 mos = 7.5%; 289 and over = 8.0%
Ewing Tp.	5 yrs. = 2.5%; 10 yrs. = 3.5%; 15 yrs. = 4.5%; 20 yrs. = 5.5%; 24 yrs. = 6.5%
Hamilton Tp.	5 yrs. = 6.0% Sgt, 5.25% = Lt, 4.75% = Cpt; 10 yrs. = 6.25% Sgt, 5.5% Lt, 5.0% = Cpt; 15 yrs. = 6.5% Sgt, 5.75% = Lt, 5.25% = Cpt; 20 yrs. = 7.0% Sgt, 6.25% = Lt, 5.50% = Cpt; 24 yrs. = 7.25% Sgt, 6.50% Lt, 5.75% = Cpt
Hightstown Boro	5 yrs. = \$850; 10 yrs. = \$1,800; 15 yrs. = \$2,600; 20 yrs. = \$3,500; 24 yrs. = \$4,400
Hopewell Tp.	10-15 yrs. = \$1,000; 15-20 yrs. = \$1,500; 20 or more = \$2,000
Lawrence Tp.	8 yrs = \$1,500; 12 yrs = \$2,100; 16 yrs = \$3,000; 20 yrs = \$3,900; 24 yrs = \$5,100; 28 yrs = \$5,500
Pennington Boro	No Longevity
Princeton Boro & Tp.	5 yrs = 1%; 8 yrs = 2%; 10 yrs = 3%; 15 yrs = 4%; 20 yrs = 5%; 24 yrs = 6%
Robbinsville Tp.	No Longevity
West Windsor Tp.	6 - 10 yrs = \$1,011; 11 - 14 yrs = \$1,516; 15 - 19 yrs = \$2,021; 20 - 24 yrs = \$2,526; 25 yrs = \$3,032

As seen from this chart, Hopewell's longevity plan is already lower than the longevity plan of any municipality in Mercer County that has a longevity plan. Further longevity is expressed in flat dollars (as opposed to a percentage of base pay), and remains a constant value unless the parties negotiate increases to it.

In addition, where arbitrators have awarded the elimination of longevity for

new hires, it has been in combination with an examination of the employees' salaries and other benefits, and has taken into account the employer's financial position. Typically, where the parties negotiate longevity out of the contract, it is a product of a give and take -- where the Union may agree to give backs, such concessions usually involve a trade-off for other terms and conditions of employment. That is not the case here. Further, this is not a situation where the employer finds itself in dire financial straits and in need of relief. In fact, the entire longevity package for the PBA unit is only \$24,000 annually or .0001% of the Township's budget (\$22,058,835). Any cost savings and the impact on the taxpayer is *de minimis*. In considering the employees' existing terms and conditions of employment, the comparable longevity benefit in other Township contracts, the longevity enjoyed by other municipal employees in Mercer County, and the impact on the taxpayers, I find that the Township has not sufficiently justified its proposal to eliminate longevity for new hires. This proposal is not awarded.

Article 9, Health Insurance:

Police currently enjoy a choice of plans between Horizon Direct 15 plan and Horizon PPO 15 plan. Each of these plans has a \$15 co-pay for office visits. In this matter, the Township seeks to impose a base plan, Horizon Direct Access 20/30 plan. The Township does not seek to eliminate the existing plans but proposes that officers would be permitted to "buy up" to either of the existing plans by

paying the premium difference between the base plan (20/30) and the more expensive plan.

The primary reason the Township seeks to implement this change is that the 2017 premium rates for the existing medical plans are projected to increase by 25.6%. In addition, the Township argues that several questions on the DCA's Best Practices Inventory for 2016, relate to health benefit and prescription insurance. The Township's inability to answer these questions affirmatively will reduce its overall score and put State aid at risk. Further, the Township contends that it has already committed to changing to the 20/30 plan for its unrepresented employees on January 1, 2017, and it has successfully negotiated the plan change with CWA, representing the Township's white-collar workers.

The Union strenuously objects to the Township's proposed change in health benefit plans. It notes that the proposed 20/30 plan has a co-pay of \$20 for office visits and \$30 for specialists -- a significant increase from the current \$15 for all office visits. The Union also argues that overall the 20/30 plan affords the employees lesser benefits at a greater expense. It notes that deductibles are higher, co-pays are higher, emergency room visits are more costly and maximum out-of-pocket expenses are higher. The Union notes that its members have already incurred significant increases to the cost of their health care by the recent full implementation of Chapter 78. The Union proposes instead, that I award the creation of a "Plan Design Committee" to review all of the options and make

recommendations to the governing body.

DCA Best Practices Inventory Questionnaire:

Borgos testified that the 2015 DCA survey included the following questions concerning medical and leave time benefits:

36. Does your municipality conduct a monthly review of health benefit covered lives itemized on health insurance invoices to determine that health insurance invoices do not include employees, former employees, spouses or dependents who should no longer be receiving coverage?

37. Municipalities frequently contract with or designate insurance brokers to secure healthcare coverage from insurance carriers. Brokers are typically paid by third-party administrators (TPA's) hired to collect, review and pay healthcare bills. The municipality pays the TPA, who in turn pays the broker. Broker fees are often directly related to the amount of insurance premiums or fees paid by the municipality {i.e. the higher the premium, the larger the broker's commission}. Thus, the municipality-broker-TPA arrangement is vulnerable to abuse because brokers could face conflicting incentives in seeking lower-cost insurance alternatives. If your municipality contracts with or otherwise designates an insurance broker, is the structure for broker payments set at a flat-fee rather than on a commission basis (so as to mitigate the risk of brokers recommending more expensive insurance coverage to earn higher fees)?

38. The State Health Benefits Program {SHBP} offers medical, prescription and dental coverage options for more than 850,000 participants, including employees, dependents and retirees. All plans have substantial networks of healthcare providers, and provide services nationwide. 62% of municipalities, and 33% of counties, within New Jersey participate in SHBP. If your municipality has non-SHBP coverage, as your collective bargaining agreements come up for renegotiation, do your municipality's negotiation proposals seek contract provisions allowing its employees to be switched to SHBP or another non-SHBP plan of lesser cost?

49. Does your municipality have a transitional duty program (light duty) to encourage employees out on workers' compensation to return to work?

50. The State Workers Compensation Law provides that, when an employee receives a work-related injury producing a temporary disability, the employee is entitled to wage continuation equal to 70% of the employee's weekly wages, subject to a maximum compensation as determined by the Commissioner of Labor. Does your municipality limit benefits for work-related injuries to the above statutory benefit? The answer to this question can be "prospective" if such a provision was imposed by an arbitrator in binding arbitration but the municipality is seeking to eliminate such a contractual obligation.

A sample of worksheet questions for CY2016 is provided below: (U-81A)

23. Is your municipality collecting at least the amount set forth by the Chapter 78 Grid for health benefit contributions (or 1.5% of base salary, whichever is greater) for all officers and employees?

The Township is concerned with the DCA's emphasis on controlling health care costs, as evidenced by the number of questions involving health care on the survey. A municipality's inability to answer the questions affirmatively and to receive a sufficiently high score could put State aid at risk.

Cost of Medical Coverage:

Borgos testified that the Township Committee has a desire to reduce spending and reduce taxes. The Committee is looking at large cost drivers, such as "employee benefits", in the municipal budget. (1T-131)

The Township currently has a contract for insurance brokerage services with

Robert Maguire of Integrity Consulting Group. The contract provides for a flat brokerage fee of approximately \$32,000¹², regardless of the cost of insurance premiums or whether any savings are realized.

The Township received initial 2017 renewal rates for its current medical plans, PPO 15 Copay, Direct Access 15 Copay. Horizon projected a 25.6% increase in the cost of the present plans. As a result, Pogorzelski requested Maguire to look into alternative plans that might produce some cost savings to the Township. Maguire recommended that the Township consider the Horizon 20/30 plan and possibly New Jersey State Health Benefits Plan (SHBP) as alternatives to the present plans. Comparisons of premium costs for medical benefits are shown in Employer's exhibit E-120 as follows:

Township of Hopewell				
Horizon Initial Renewal Rates Versus Initial January 1, 2017 SHBP Rates*				
	Current BCBSNJ Medical Rates 1/1/2016	Initial BCBSNJ Medical Rates 1/1/2017*	Direct Access 20/30 1/1/2017*	SHBP 1/1/2017*
PPO \$15 Copay				
Single	684.55	859.52	790.97	
Employee + Child(ren)	1,383.35	1,736.93	1,592.95	1,351.41
Two Adult	1,593.38	2,000.65	1,760.58	1,509.95
Family	2,153.19	2,703.65	2,379.50	2,106.39
Annual Premium**	475,747.00	597,349.00		469,747.00
Direct Access \$15 Copay				
Single	645.98	811.07		754.98
Employee + Child(ren)	1,301.20	1,633.79		1,351.41
Two Adult	1,438.13	1,805.72		1,509.95

¹² Maguire testified that there are no brokerage fees for the SHBP (1T-111).

Family	1,943.41	2,440.15		2,106.39
Annual Premium**	269,457.00	338,331.00		290,908.00
PPO \$10 Copay - Annual Prem	1,067,017.00	1,339,746.00		1,103,236.00
Direct Access \$10 Copay - Annual Prem	295,993.00	371,649.00		334,035.00
Retiree PPO \$5 Copay - Annual Prem	90,372.00	113,472.00		95,139.00
Total Medical Annual Premium	2,198,586.00	2,760,547.00	2,504,377.00	2,293,065.00
Dollar Increase		561,961.00	305,791.00	94,479.00
Percentage Increase		25.6%	13.9%	4.3%
* Note: SHBP and Horizon BCBSNJ 2017 renewal rates are preliminary.				
** "Annual Premium" amounts are based on all insurance plans for the Township. (Total 126 Ees)				

Maguire explained that except for those lines labeled “Annual Premium” in the chart above, all other figures represent a per employee monthly cost for the coverage listed. Because the Township’s civilian employees are in a PPO \$10 co-pay plan, those costs are listed separately in the chart. However, the “Total Medical Annual Premium” line includes costs for all employees under the existing plans, the 20/30 plan and the SHBP.

As can be seen by the chart above, if the Township stayed with the existing Direct 15 plan, Township-wide medical premium costs would increase by 25.6% (\$561,961). If the Township migrates to the 20/30 plan as a base plan, costs will increase by 13.9% (\$305,791). However, if the Township were to elect the SHBP, costs would only increase by 4.3% (\$94,479).

In addition, Employer exhibit E-120 also provides the prescription drug premium cost comparisons for the current plans, the 20/30 plan and SHBP, as follows:

Township of Hopewell				
Horizon Initial RX Renewal Rates Versus Initial January 1, 2017 SHBP Rates*				
	Current BCBSNJ RX Rates 1/1/2016	Initial BCBSNJ Medical Rates 1/1/2017*	Direct Access 20/30 1/1/2017*	SHBP 1/1/2017*
\$7.50/\$15 Retail;\$3 Mail Order				
Single	200.41	260.09		
Employee + Child(ren)	337.32	437.77		
Two Adult	461.12	598.44		
Family	623.15	808.72		
\$10 Generic/\$25 Brand/1x Mail Order				
Single			223.74	
Employee + Child(ren)			376.57	
Two Adult			514.81	
Family			695.67	
\$3 Generic/\$10 Brand Retail; \$5 Generic/\$15 Brand Mail Order				
Single				196.59
Employee + Child(ren)				351.90
Two Adult				393.18
Family				548.49
Total RX Annual Premium	662,956	860,385	716,773	578,048
Dollar Increase		197,429	53,817	(84,908)
Percentage Increase		29.8%	8.1%	-12.8%
* Note: SHBP and Horizon BCBSNJ 2017 renewal rates are preliminary.				
** "Annual Premium" amounts are based on all insurance plans for the Township. (Total 126 Ees)				

For 2017, the initial Horizon BCBSNJ Access 15 Copay Rx rates will increase by \$197,430 or 29.8% over the 2016 rates; whereas, the Horizon BCBSNJ Direct Access 20/30 negotiated rates equate to an increase of \$53,817 or 8.1% over the current

BCBSNJ Rx rates. Moreover, the SHBP initial Rx rates for 2017 would reduce prescription premium costs by \$84,908 or 12.8% decrease over the current plan. (E-120) In summary then, I am compelled to note the combined cost changes for medical and prescription premiums if the Township migrated to the SHBP would only be \$9,571 -- a mere .003% increase.¹³

Chapter 78 Contributions

The employees in this bargaining unit are currently in Tier 4 of the Chapter 78 mandated employee contribution rates. Since the salaries of the current compliment of patrolmen range between \$57,278 through \$104,270, their current contributions for family coverage, for instance, range between 14% and 32% of coverage premiums. At top pay, a patrol officer is currently paying \$10,661 for the PPO 15 Plan or \$9,856 for the Direct Access 15 Plan, for family coverage. A comparison of employee contributions of these plans to the Direct Access 20/30 Plan is illustrated as follows:

Annual Medical & Prescription Employee Contributions				
Family Coverage January 1, 2016 through Dec 31, 2016				
Sal Range	Year 4	PPO \$15 Copay	Direct Access \$15 Copay	Direct Access \$20/\$30
less than 25,000	3%	999.48	923.96	875.11
25,000-29,999	4%	1,332.64	1,231.95	1,166.81
0,000-34,999	5%	1,665.80	1,539.94	1,458.52

¹³ For 2017, the New Jersey State Health Benefits Commission SHBP – Local Government Group is recommending an overall SHBP medical/RX premium rate decrease of 0.1% for active employees.

35,000-39,999	6%	1,998.96	1,847.92	1,750.22
40,000-44,999	7%	2,332.13	2,155.91	2,041.92
45,000-49,999	9%	2,998.45	2,771.88	2,625.33
50,000-54,999	12%	3,997.93	3,695.85	3,500.44
55,000-59,999	14%	4,664.25	4,311.82	4,083.84
60,000-64,999	17%	5,663.73	5,235.78	4,958.95
65,000-69,999	19%	6,300.06	5,851.76	5,542.36
70,000-74,999	22%	7,329.54	6,775.72	6,417.47
75,000-79,999	23%	7,662.70	7,083.71	6,709.17
80,000-84,999	24%	7,995.86	7391.69	7,000.88
85,000-89,999	26%	8,662.18	8,007.67	7,584.28
90,000-94,999	28%	9,328.50	8,623.64	8,167.69
95,000-99,999	29%	9,661.66	8,931.63	8,459.39
100,000-109,999	32%	10,661.15	9,855.59	9,334.50
110,000 and over	35%	11,660.63	10,779.55	10,209.61
Monthly Rate	Family	2,776.34	2,566.56	2,430.86

Here, it should be noted that these contribution rates are based upon the current premiums, not those projected increased premiums for 2017. In essence, by switching to the 20/30 plan, the employee contributions at the top pay rate for family coverage for instance, would be reduced by either \$1,327 or \$521 depending upon which plan the employee is enrolled.

The following charts depict the PBA's total employee and Employer contributions for medical, RX, and dental coverage as of October, 2016 (E-129):¹⁴

PBA Local 342 Chapter 78 Employee Contributions									
Individual Employee Costs - Current Plan									
	Annual Med	Annual RX	Annual Dental	Annual Health	Employee Contrib	Township Cost	# Eee	Total Employee Contrib	Total Township Contrib
35	16,600.20	4,047.84	1,031.40	21,679.44	7,587.80	14,091.64	1	7,587.80	14,091.64
35	8,214.60	2,404.92	328.68	10,948.20	3,831.87	7,116.33	2	7,663.74	14,232.66

¹⁴ 2017 rates were not projected.

35	19,120.56	5,533.44	732.72	25,386.72	8,885.35	16,501.37	1	8,885.35	16,501.37
32	25,838.28	7,477.80	732.72	34,048.80	10,895.62	23,153.18	1	10,895.62	23,153.18
32	25,838.28	7,477.80	871.80	34,187.88	10,940.12	23,247.76	9	98,461.08	209,229.84
32	15,614.40	4,047.84	871.80	20,534.04	6,570.89	13,963.15	1	6,570.89	13,963.15
32	23,320.92	7,477.80	871.80	31,670.52	10,134.57	21,535.95	1	10,134.57	21,535.95
32	25,838.28	7,477.80	1,031.40	34,347.48	10,991.19	23,356.29	2	21,982.38	46,712.58
27	8,214.60	2,404.92	328.68	10,948.20	3,120.23	7,827.97	2	6,240.46	15,655.94
17	17,257.56	5,533.44	732.72	23,523.72	4,312.68	19,211.04	1	4,312.68	19,211.04
14	23,320.92	7,477.80	871.80	31,670.52	4,750.58	26,919.94	2	9,501.16	53,839.88
							23	192,235.73	448,127.23
* Medical premiums as of October 2016 billing									

In comparison, the proposed 20/30 plan premium rates for the PBA's unit bargaining members are as follows: (E-129)

Proposed 20/30 Plan									
%	Annual Med	Annual RX	Annual Dental	Annual Health	Employee Contrib	Township Cost	# Eee	Total Employee Contrib	Total Township Contrib
35	7,557.12	2,068.80	328.68	9,955.20	3,484.32	6,470.88	2	6,968.64	12,941.76
35	15,224.04	3,481.92	1,031.40	19,737.36	6,908.08	12,829.28	1	6,908.08	12,829.28
35	16,826.16	4,760.16	732.72	22,319.04	7,811.66	14,507.38	1	7,811.66	14,507.38
32	15,224.04	3,481.92	871.80	19,577.76	6,264.88	13,312.88	1	6,264.88	13,312.88
32	22,737.84	6,432.48	732.72	29,903.04	9,568.97	20,334.07	1	9,568.97	20,334.07
32	22,737.84	6,432.48	871.80	30,042.12	9,613.48	20,428.64	10	96,134.80	204,286.40
32	22,737.84	6,432.48	1,031.40	30,201.72	9,664.55	20,537.17	2	19,329.10	41,074.34
27	7,557.12	2,068.80	328.68	9,955.20	2,687.90	7,267.30	2	5,375.80	14,534.60
17	16,826.16	4,760.16	732.72	22,319.04	3,794.24	18,524.80	1	3,794.24	18,524.80
14	22,737.84	6,432.48	871.80	30,042.12	4,205.90	25,836.22	2	8,411.80	51,672.44
							23	170,567.97	404,017.95

In summary, the savings specific to the PBA bargaining unit by migrating to the 20/30 plan would be \$21,668 for the employees collectively, and \$44,109 for the Employer. It must be noted however, that these savings are based upon the premium costs for 2016 versus the 20/30 plan costs, not factoring in the 2017 cost increases.

Township exhibit E-124 provides a medical and prescription drug benefit overview for calendar year 2016 for the following three plans for the members of this bargaining unit in the chart below: Horizon PPO 15; Horizon Direct Access 15; and the proposed Horizon Direct Access 20/30:

Township of Hopewell - Simplified Benefit Overview						
Active Employees Only - Medical & Prescription Drug Plans - Eff January 1, 2016						
	PPO \$15 Copay		Direct Access \$15 Copay		Proposed Direct Access \$20/\$30	
	In-Net	Out-of-Net	In-Net	Out-of-Net	In-Net	Out-of-Net
Referral Required	No		No		No	
Individual Deductible	\$200		None	\$200	None	\$500
Family Deductible	\$600		None	\$400	None	\$1,000
Max. Out of Pocket Single	\$5,000		\$4,000		\$5,000	
Max. Out of Pocket Family	\$10,000		\$8,000		\$10,000	
Lifetime Benefit Max.	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
PCP Office Copay	\$15	80% after ded	\$15	60% after ded	\$20	60% after ded
Specialist Office copay	\$15	80% after ded	\$15	60% after ded	\$30	60% after ded
Inpatient Hospital copay	100%	80% after ded	100%	60% after ded	100%	60% after ded
Outpatient Surgery Copay	100%	80% after ded	100%	60% after ded	100%	60% after ded
Emergency Rm. Copay	100% after \$25 Copay		100% after \$25 Copay		100% after \$100 Copay	
Routine/Preventive Care	100%	80% No ded	100%	60% No ded	100%	60% after ded
	Medical Rates		Medical Rates		Medical Rates	
Employee	\$684.55		\$645.96		\$629.81	
Employee & Children	\$1,383.35		\$1,301.20		\$1,268.67	
Employee & Spouse	\$1,593.38		\$1,438.13		\$1,402.18	
Family	2,153.19		1,943.41		1,894.82	
	Horizon Prescription Drug		Horizon Prescription Drug		Horizon Prescription Drug	
Generic Copay – Retail	\$7.50		\$7.50		\$10	
Brand Copay – Retail	\$15		\$15		\$25	
Generic Copay - Mail Order	\$3		\$3		\$10	
Brand Copay - Mail Order	\$3		\$3		\$25	

	Prescription Drug Rates	Prescription Drug Rates	Prescription Drug Rates
Employee	\$200.41	\$200.41	\$172.40
Employee & Children	\$337.32	\$337.32	\$290.16
Employee & Spouse	\$461.12	\$461.12	\$396.68
Family	\$623.15	\$623.15	\$536.04
	Combined Med/RX Rates	Combined Med/RX Rates	Combined Med/RX Rates
Employee	\$10,620 (6)	\$10,156 (0)	\$9,627
Employee & Children	\$20,648 (1)	\$19,662 (1)	\$18,706
Employee & Spouse	\$24,654 (1)	\$22,791 (2)	\$21,586
Family	\$33,316 (12)	\$30,799 (8)	\$29,170

Note: The numbers in parenthesis for the “Med/Rx Rates” are the numbers of employees in each category.

In comparing the actual benefits between the existing plans and the 20/30 plan, the individual and family deductibles are doubled. The maximum “out-of-pocket expenses” increase from the Direct 15 plan to the 20/30 plan. Co-payments for primary care office visits increased from \$15 to \$20 and co-payments for specialist office visits increased from \$15 to \$30. Co-payments for emergency room visits quadrupled from \$25 to \$100. In addition, out-of-network payments decreased in every category from 80% to 60% if the employees were previously in the PPO 15 plan.

On the plus side, Maguire testified that the Horizon network for the existing plans is identical to the network participating in the 20/30 plan. Therefore, employees should have no difficulty keeping their existing practitioners. Also, like the existing plans, no referrals are required in the 20/30 plan. Further, if the patient remains within the network, the individual family deductibles go from

\$200/\$400 to \$0 in the 20/30 plan.

Employees are currently paying \$7.50 for generic prescriptions and \$10 for brand name with a \$3 co-pay for all mail orders. Under the 20/30 plan, prescription costs would increase for in-store prescriptions to \$15 generic and \$25 brand name with a \$3 co-pay by mail for generic and a \$25 co-pay for brand name.

Buying Up to Traditional Plan

Under the Township’s proposal employees would be enrolled in the 20/30 plan or could use the “buy-up” option to obtain the PPO 15 plan or Direct Access \$15 plan. The employee’s Chapter 78 contribution would be based upon the Direct Access 20/30 plan; however, the employee would also pay the incremental cost difference between the 20/30 plan and the PPO 15 plan premiums. (1T- 59)

The monthly cost to an employee enrolled in family coverage to buy-up to the existing plan they have today would be \$324.15 (\$2,703.65 - \$2,379.50), or \$3,889.80 annually. This is in addition to the employees’ Chapter 78 contribution.

Comparables:

A comparison between existing health benefit plans for comparable police departments located within Mercer County, is provided as follows: (E-95 through E-105)

Municipality	Medical/RX Plan
East Windsor Tp.	State Health Benefits Plan
Ewing Tp.	State Health Benefits Plan
Hamilton Tp.	OAPOS - Open Access POS
Hightstown Boro	State Health Benefits Plan

Hopewell Tp.	Horizon Blue Card PPO 15 & Direct Access 15
Lawrence Tp.	State Health Benefits Plan
Pennington Boro	State Health Benefits Plan
Princeton Boro & Tp.	State Health Benefits Plan
Robbinsville Tp.	AmericaHealth PPO 20/300
West Windsor Tp.	Horizon BC/BS Direct Access, PPO or HMO

As can be seen by the chart above, six of the ten municipalities in Mercer County use State Health Benefits Plan to provide medical coverage for its employees. This is comparable to the state-wide average: DCA reports that 62% of New Jersey's municipalities are enrolled in State Health Benefit Plan.

While the Town argues that it has already negotiated with CWA to change to the 20/30 plan, as previously noted, this MoA has not yet been ratified by either party. Therefore, only the unrepresented employees in the Township are currently slated to go into the 20/30 plan in 2017.

I am not persuaded to award the Township's proposal to create the Horizon Direct Access 20/30 plan as the base plan for unit employees' healthcare and prescription coverage. First, I agree with the Township that, given the steeply spiraling cost of maintaining the current plans, it is not in the public interest to continue to maintain these plans for Township employees. If the current plans are left in place, the overall health care costs for Township employees will increase from \$2,198,586 to \$2,760,547 for a cost increase of \$561,961, placing an undue burden on the Employer's budget, and ultimately on the taxpayers. Conversely,

maintaining the present plans is also not in the interest of the police bargaining units. As premium costs increase, so too will employee contributions increase; patrolmen at top pay are already paying between \$10,661 and \$9,856 in Chapter 78 contributions. Maintaining the existing plan would cause the employee contribution for family coverage to rise to \$13,921.50 at the projected 2017 increased premium rates. Indeed, the 25.6% increase in the existing Horizon plan premiums will result in a concomitant increase in employee healthcare contributions of \$2,729 for the PPO 15 Plan and \$2,523 for the Direct Access 15 Plan. In fact, increases at these levels will more than eat up all of the employees' 2017 salary increases. This will not improve employee morale.

On the other hand, I am not persuaded that the proposed Horizon 20/30 plan is necessarily the option that would be in the best interest of the Township, the employees or the public interest. The proposed 20/30 plan appears to be more costly to employees in several ways in that deductibles are higher, per visit co-pays are higher, emergency room visits are 400% higher than the current plan and maximum out-of-pocket expenses are higher. In addition, the modified prescription component of the 20/30 plan, is more costly to employees, as co-pays will rise from the current levels of \$7.50/\$10 to \$10/\$25 for in-store prescriptions, while the cost for brand name prescriptions by mail will increase from \$3 to \$25.

A comparison of the prescription premium cost between the present plan,

the 20/30 plan and the SHBP reveals that while the 20/30 plan has a lower premium price tag than the existing programs, it is still more costly than the SHBP. In comparing costs for all Township employees, the 20/30 plan would have an aggregate cost to the taxpayers of \$716,773 (a 8.1% increase over the current premium costs), while the SHBP would cost \$578,048 -- a potential savings of \$138,725 over the prescription costs of the 20/30 plan. Moreover, if the Township enrolled its employees in SHBP, it would no longer have to incur the cost of the insurance brokerage fee which would result in a savings of approximately \$32,000. While no plan benefit specifications have been provided for the SHBP, I note that the record indicates that 62% of New Jersey municipalities are enrolled in SHBP, as are a majority of the municipalities in Mercer County.

Moreover, the DCA Best Practices Questionnaire includes questions that suggest DCA encourages participation in SHBP. Enrollment in SHBP would perhaps permit the Township to secure a greater number of credits on the questionnaire and reduce the likelihood that State aid would be cut. This is also in the public interest.

Given the significant savings that might be obtained from the SHBP, I am at a loss to understand why the Township would prefer the 20/30 plan and reject the SHBP. I therefore award a modified version of the Union's proposal for the formation of a Plan Design Committee, as follows:

I direct that a Plan Design Study Committee, composed of labor and management representatives, be formed to study health care plan alternatives, including but not limited to the State Healthcare Plan and the Horizon 20/30 plan. Each party shall bear the cost of any outside consultants retained by that party. If the parties are unable to agree upon alternative plans within a period of sixty days, then I will impose a plan from among those offered by the parties. I will issue a ruling on health care plans, if necessary, within 45 days of that parties' notice of their failure to agree on a plan.¹⁵ Such agreed upon or awarded new plan will be included in the parties' 2016-2018 contract and will be implemented as soon as practicable.

This award will provide the parties with an opportunity to do a more in-depth analysis of alternative plans than this arbitration would permit. It is in the interest of both parties to seek out the best alternatives.¹⁶ It is also in the public's interest that the Township find alternative plans that will control costs -- a benefit to the taxpayers -- and yet will allow its workforce to maintain good health.

* * *

The Township also seeks to modify the language of Article 9, Section A, as follows:

¹⁵ See, Byram Township, P.E.R.C. No. 2013-72, 39 NJPER 477 (¶151 2013).

¹⁶ It is not clear from the record whether migrating to a new plan and/or carrier would require the cooperation of the civilian employees' representatives.

[The Township reserves the right to [may] change [the source of medical benefits provision so long as so long as the source substituted is equal to or superior to the current coverage] health insurance benefit carriers at its discretion provided such change will provide substantially the same level of benefits for bargaining unit employees.

The Township has not provided sufficient justification that this language modification should be awarded. This proposal is denied.

Coverage Waivers:

The Township proposes to eliminate Article 9, section G from the contract. This section provides for payments to employees for the waiver of Township-provided medical benefits. Article 9. G., provides as follows:

Unless otherwise set forth by applicable law, any employee who is eligible for health care coverage and elects to waive the coverage by the Township, shall receive an annual amount (to be paid on per pay basis) which shall not exceed 25% or \$5,000, whichever is less, of the amount saved by the Township (N.J.S.A. 40A:10-17.1). An employee who waives coverage shall be permitted to resume coverage under the terms and conditions as applied to initial coverage if the employee ceases to be covered through the employee's souse for any reason, including, but not limited to, the retirement or death of the spouse or divorce.

The Township contends that the above provision is non-negotiable because it is preempted by statute. Therefore, the Township seeks to remove this provision from the contract. The Township argues that while the waiver of health benefits is in the public's interest and welfare, the inclusion of a non-negotiable term of employment in a collective negotiations agreement is not. The Union has not conceded the Employer's claim that the matter is entirely preempted by statute. Health benefit waiver payments are controlled by N.J.S.A. 40A:10-17.1 which provides,

Notwithstanding the provisions of any other law to the contrary, a county, municipality or any contracting unit as defined in section 2 of

P.L. 1971, c 198 (C:40A11.2) which enters into a contract providing group health care benefits to its employees pursuant to N.J.S.A 40A:10-16 et seq., may allow any employee who is eligible for other health care coverage to waive coverage under the county's, municipality's or contracting unit's plan to which the employee is entitled by virtue of employment with the county, municipality or contracting unit. The waiver shall be in the such form as the county, municipality or contracting unit shall prescribe and shall be filed with the county, municipality or contracting unit. In consideration of filing such a waiver, a county, municipality or contracting unit may pay to the employee annually an amount, to be established in the sole discretion of the county, municipality, or contracting unit, which shall not exceed 25% or \$5,000, whichever is less, of the amount saved by the county, municipality or contracting unit, because of the employee's waiver of coverage. An employee who waives coverage may be permitted to resume coverage under the same terms and conditions as applied to initial coverage if the employee ceases to be covered through the employee's spouse for any reason, including but not limited to the retirement or death of the spouse or divorce. . . The decision of a county, municipality or contracting unit to allow its employee to waive coverage and the amount of consideration to be paid therefor shall not be subject to the collective negotiations process (emphasis added).

It appears that this statutory provision, and particularly the last sentence of the language, gives the employer sole discretion to decide whether to offer employees a waiver of coverage in exchange for a waiver payment, and if so, to determine the amount of the payment, subject to the statutory caps. It also specifically prohibits the parties from negotiating over the decision to permit waivers and the amount of the waiver payment. However, nothing in the statute pre-empts negotiations over the form of payment. Here the parties' existing contract language provides the form and timing of the payment and states that payment shall be included in regular pay checks.

In Cumberland County Prosecutor, Docket No. IA-2012-28 and IA-2012-29 (5/14/12), Arbitrator Mastriani recommended modified contract language to A similar opt-out provision recognizing the Employer's statutory right to permit health benefit waivers and to set the amount of the waiver payment. The modified language also required the Employer to provide employees with thirty days' notice of any change to the program.¹⁷

The Township also notes that it recently concluded negotiations with CWA for a successor agreement covering certain of the Township's civilian employees. That settlement, which is memorialized in a Memorandum of Agreement (MoA) dated October 17, 2016, includes a provision for the elimination of the coverage waiver language in the CWA agreement. However, as previously noted, that MoA is subject to ratification by both the Union membership and the Township governing body and therefore, the document does not constitute a final agreement.

In considering the parties' arguments, I find that part of the existing provision is pre-empted by N.J.S.A. 40A:10-17.1 but is not entirely statutorily pre-empted.

Further, I find that the Township's argument as to a possible pattern of settlement concerning the elimination of the health benefit waiver language is not persuasive since the MoA with CWA is still contingent upon membership ratification and governing body approval.

¹⁷ The Employer appealed the arbitrator's award. However, in Cumberland County Prosecutor, P.E.R.C. No. 2012-66, 39 NJPER 32 (¶10 2012), the Commission found that the appeal was moot because the Employer decided not to implement an opt-out program.

I award the following:

The parties recognize that the Township has the right, pursuant to N.J.S.A. 40A:10-17.1, to determine, in its sole discretion, whether to permit employees to waive health benefit coverage, and to determine the amount of payment to be made to such employees, provided that the amount does not exceed 25% of the coverage waived or \$5,000, whichever is less. If the Employer offers waiver compensation to PBA unit employees, such payments shall be made to the employee on a per pay basis.

Article 18, "Uniform and Equipment Maintenance and Replacement:

The PBA proposes a one hundred and fifty-dollar (\$150) increase in each calendar year on the clothing allowance. The Union argues that this increase is necessary because the existing allowance does not adequately cover the employees' cost of updating their uniforms regularly. The Township contends that the Union has not sustained its burden to justify any increase in the clothing allowance.

The existing contract provides at Article 18 as follows:

All initial uniform issue as set forth in General Order 22 dated January 28, 1981, and updated to current standards, is hereby incorporated and made a part of this Agreement as Appendix B. Payment of the clothing allowance shall be on or before June 1 of each year. Those patrol officers assigned to detective duty shall be subject to replacement cost of one hundred and fifty dollars (\$150) per year for the term of this agreement. Effective January 1, 2010, an annual uniform allowance of nine hundred and twenty-five dollars (\$925) shall be paid per annum, per employee. All cleaning, maintenance and repair of uniforms and equipment shall be supplied by the Township at no expense to the employee.

Damaged Uniform-Equipment

All articles of uniforms which become damaged and unwearable as a result of an accident occurring while the officer is performing assigned police duty, shall be replaced at direct Township expense, following an inspection and approval by the Chief of Police, as may be needed or required during a given budget year.

Special Equipment

The following items of equipment, shall be replaceable at all times at the direct expense of the Township, i.e. leather equipment, badges, name plates, collar letters, patches, raincoats and boots, firearm, nightsticks, flashlights, hand cuffs, uniform hip, and Mackinaw jackets.

Appendix B, "Initial Uniform Issue", is provided as follows:

Appendix B			
Initial Uniform Issue for Each Patrolman			
Item	Qty	Item	Qty
LIS Shirts	7	Cap Badge	1
SIS Shirts	7	Pocket Badge	1
Turtle Neck shirt	2	Sam Brown Belt	1
Trousers	4	Holster	1
Ties	4	Off Duty Holster	1
Police Cap	1	Pistol Magazines	3
Winter Cap	1	Spare Magazine Holder	1
Shoes (Blk. Plain)	1	Mace with Case	1
Winter Mackinaw	1	Cuff Carrier	1
Coat - All Weather	1	Hand Cuffs	1
Patches	16	Firearm	1
Hand Held Radio	1	PR 24 with Holder	1
Name Plate	1	Flashlight	1
Breast Badge	1	Body Armor	1

In addition, Article 19 of the PBA agreement provides Township reimbursement to Detectives for general wear and tear for the use of their personal clothing in the performance of Township business. Detectives receive an annual clothing allowance of \$950.

Patrolman John Ferner, PBA President, has been employed with the Hopewell Township's Police Department for 20 years. Ferner testified that the uniform of the day is set by the Department and that the purchase of said uniform must meet the Department's requirements and specifications criteria. Ferner purchases his uniforms and equipment at Samzie's Uniform Supply in Ewing. To Ferner's knowledge, most of the officers in the Department purchase their uniforms from Samzie's Uniforms. Ferner acknowledged that based on his personal experience, Samzie's prices were consistent and competitive with other stores. (1T-15-16)

Ferner testified that there are two required uniforms; one for summer and one for winter; and day and night uniforms. Ferner explained that there is a Class A uniform which is the day uniform and a Class B uniform which is the night uniform. There is a winter and summer uniform for both the Class A and Class B uniform. Ferner testified that the summer uniforms are worn by the officers commencing April 1 of the calendar year through September 30 of the calendar year. Winter uniforms are worn from October 1 through March 31 of the calendar year. Ferner stated that the sergeants have a prerogative to switch uniforms depending on the temperature of the day. Moreover, detectives are also required to maintain a Class A and Class B uniform. (1T-17-19; 25)

Pogorzelski testified that his only concern with the clothing allowance

proposal is that the Township does not know if the allowance is being spent on clothing. According to Pogorzelski, the Township's contract with AFSCME includes a tool allowance and unit members are required to provide receipts for tools purchased to demonstrate that they are using the Township's money for the stated purpose (1T-155-156).¹⁸ Ferner testified that U-3 reflects a basic issue for the Department and is a 2016 estimated price list from Samzie's Uniforms.

Samzie's Uniforms	
Item	Price
Roundtop Hat	62.00
Watch Cap w/Emblem	12.83
Navy Trouser w/FB Stripe	110.58
Hem on Trouser	4.56
L/S Shirt	55.56
Hopewell-L	4.00
S/S Shirt	47.83
Hopewell-L	4.00
Tneck	22.23
HTPD Direct	6.50
Trouser w/FB Stripe	51.30
L/S Shirt	57.70
Hopewell-L	4.00
Cloth Badge	3.50
Nametape	5.00
S/S Shirt	47.66
Hopewell-L	4.00
Cloth Badge	3.50
Nametape	5.00
Danner Boot	289.00
Total	800.75

¹⁸ However, the Township has not proposed this modification to either the SOA and PBA contract.

Ferner testified that the Township provides the initial uniform issued to each officer (1T-27). He stated that the Township initially provides seven shirts for each officer, of which about five are used. Ferner stated that he did not have any receipts with him for the number of shirts that were purchased as replacements for the Department each year, but that he did know that he personally purchased two pairs of Class A pants last year at \$110 or \$220 total; in addition, he purchased boots for \$289 (1T-30-31).

The following chart depicts other comparable County municipal police departments' uniform allowance:

Municipality	Yearly Uniform Allowance
East Windsor Tp.	1,386
Ewing Tp.	1,075
Hamilton Tp.	600
Hightstown Boro	0
Hopewell Tp.	950
Lawrence Tp.	1,600
Pennington Boro	0
Princeton Boro & Tp.	1,900
Robbinsville Tp.	0
Trenton	1,525
West Windsor Tp.	850
Average Allowance	899

The PBA argues that the clothing allowance increase is necessary to enable sergeants to purchase enough replacement clothing and gear throughout the year to replace uniform components that are worn out. However, treating Ferner's purchases last year as a typical example of annual purchases for all PBA and SOA

members, it is evident that the purchases do not exceed the present uniform allowance provided by the contract. Even if an officer were to make replacement purchases for 4 shirts and 4 trousers (double what Ferner purchases) and boots every year, the allowance would still be sufficient to cover the cost of purchases.¹⁹

Further, it is noted that the employees' uniform allowance is not intended to reimburse officers for cleaning and maintenance of uniforms, as the contract provides for the Township to clean and repair uniforms. And, the Township also replaces clothing damaged in the line of duty. Finally, the uniform allowance provided to Hopewell's officers is slightly above the average uniform allowance for other municipal police in Mercer County.²⁰

In light of the above, I am not persuaded that an increase to the clothing allowance is warranted at this time. Awarding such an increase would not be in the public interest.

AWARD SUMMARY

Duration:

Three-year agreement covering the period January 1, 2016 through December 31, 2018.

¹⁹ 4 Trousers, 442 (4 x 110.58); 2 Long sleeved shirts, 111 (2 X 55.56); 2 short sleeved shirts, 95 (2 x 47.83); 1 pr. Danner boots, 289. Total \$937.

²⁰ Comparisons with other municipal police contracts as far as uniform allowances go is not particularly meaningful because the allowance may cover maintenance costs. Additionally, in those municipalities where officers do not have a contractual clothing allowance, this may be because the parties have agreed to roll such an allowance into base pay rather than paying it as a separate allowance.

Salaries:**2016:**

All patrolmen at the top step of the salary guide in 2015 shall receive a 1% increase effective and retroactive to January 1, 2016. Patrolmen still advancing through the salary guide shall receive their normal increments on their anniversary dates. All patrolmen who are eligible for an increase in longevity as they reach benchmarks of service pursuant to Article 13 shall have their longevity so increased.

2017:

All patrolmen at the top step of the salary guide in 2016 shall receive a 2% increase effective January 1, 2017. Patrolmen still advancing through the salary guide shall receive their normal increments on their anniversary dates. All patrolmen who are eligible for an increase in longevity as they reach benchmarks of service pursuant to Article 13 shall have their longevity so increased.

2018:

All patrolmen at the top step of the salary guide in 2017 shall receive a 2% increase effective July 1, 2018. Patrolmen still advancing through the salary guide shall receive their normal increments three months after their anniversary dates, the amount of which shall be prospective. All patrolmen who are eligible for an increase in longevity as they reach benchmarks of service pursuant to Article 13 shall have their longevity so increased.

Health Insurance:

I direct that a Plan Design Study Committee, composed of labor and management representatives, be formed to study health care plan alternatives, including but not limited to the State Healthcare Plan and the Horizon 20/30 plan. Each party shall bear the cost of any outside consultants retained by that party. If the parties are unable to agree upon alternative plans within a period of sixty days, then I will impose a plan from among those offered by the parties. I will issue a ruling on health care plans, if necessary, within 45 days of that parties' notice of their failure

to agree on a plan. Such agreed upon or awarded new plan will be included in the parties' 2016-2018 contract and will be implemented as soon as practicable.

Waiver of Medical Benefits:

Modify the provisions of Article 9, Section G, as follows:

The parties recognize that the Township has the right, pursuant to N.J.S.A. 40A:10-17.1, to determine, in its sole discretion, whether to permit employees to waive health benefit coverage, and to determine the amount of payment to be made to such employees, provided that the amount does not exceed 25% of the coverage waived or \$5,000, whichever is less. If the Employer offers waiver compensation to PBA unit employees, such payments shall be made to the employee on a per pay basis.

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

Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making the award. My Award also explains how the statutory criteria factored into my final determination.

Susan W Osborn

Susan Wood Osborn
Interest Arbitrator

Dated: November 3, 2016
Trenton, New Jersey

On this 3rd day of November, 2016, before me personally came and appeared Susan Wood Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.