

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

TOWN OF GUTTENBERG

“Public Employer”

and

PBA LOCAL 88

“Union”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2009-017

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Town:

Karen M. Murray, Esq.
The Murray Law Firm

For the PBA:

Eric B. Levine, Esq.
Lindabury, McCormick & Estabrook

The Town of Guttenberg [the "Town"] and PBA Local 88 [the "PBA"] reached an impasse in negotiations resulting in the PBA's filing a petition to initiate compulsory interest arbitration. I was designated to serve as interest arbitrator and conducted informal mediation sessions with the parties on November 18, December 23, 2008 and January 7, 2009. Despite the good faith efforts of the parties, a voluntary agreement could not be reached. Thereafter, interest arbitration hearings were held on July 23, 2009 and March 2, 2010. At hearings each party presented testimony, argued orally and submitted documentary evidence into the record. Financial reports and certifications were submitted by Vincent Buono, Chief Financial Officer for the Town and Raphael J. Caprio, PhD., who is an expert in municipal finance. Post-hearing briefs and reply briefs were filed by both parties, the last of which was received on or about September 9, 2010. Absent an agreement to utilize an alternative terminal procedure, the procedure of conventional arbitration was utilized.

As required by statute, each party submitted a last offer on the disputed issues. The respective offers are as follows:

FINAL OFFERS OF THE PARTIES

PBA Local 88

1. **Term**: Five (5) years – 7/1/08 through 6/30/13
2. **Salary increase**: 5% per year across the board.

Increase Sgt's differential to 16.5%

3. **Overtime**: modify section A.1. to provide thirty minute minimum for officers working one to sixteen minutes, and one hour minimum for officers working seventeen minutes to one hour.
4. **Overtime, Section 3**: incorporate current payment practice into contract language (weekly payments)
5. **Overtime, Section 2**: delete second sentence of current language
6. **Overtime, Section B** – increase off-duty pay to \$75.00/hour and increase payment to \$6 for Town.

Increase off duty assignments worked on weekends to \$95.00/hour.

7. **Overtime, Section C** – modify to reflect that any senior police officer working at the desk or on the road as a supervisory officer shall receive the next higher rate of pay for the tour.
8. **Vacation: Section B** - delete second sentence of this provision.

Add 1 vacation day for each year of contract (increase of 5 days over a 5 year contract)

9. **Senior Officer's Differential**

Establish a Senior Officer's differential to be included in base salary for officers with twelve or more years of service at 5% per year.

10. **Clothing allowance**: increase as follows: \$850 in year 1; \$1,000 in year 2; \$1,150 in year 3; \$1,300 in year 4; and \$1,500 in year 5.
11. **Article XII: Health Insurance**: modify to reflect that the Town will provide at least sixty (60) days notice of intent to change insurance carrier and shall provide the PBA the opportunity to review all information about new carrier before any change is implemented.

12. **PBA Release Time**: modify to reflect that the PBA President and Executive Board shall be granted release time to conduct union business, attend union meetings and hearings involving PBA members, and to attend local, county, and State meetings. The PBA President and Executive Board shall provide not less than twenty-four (24) hours written notice of any request for release time.
13. **Convention Leave** – The Town agrees to provide time off without loss of pay consistent with N.J.S.A. 40A:14-177 for up to no more than ten percent (10%) of the membership of PBA Local 88 selected by the membership of PBA Local 88 to attend state or national conventions.
14. **Holiday pay** – roll holiday pay into base salary
15. **Shift swaps** – allow unlimited shift swapping so long as no overtime results from the proposed swap(s).

Town of Guttenberg

1. **Term**: Five years (7/1/08 – 6/30/13)
2. **Wage Increase**:

July 1, 2008 to June 30, 2009 – 3.5%
July 1, 2009 to June 30, 2010 – 3.0%
July 1, 2010 to June 30, 2011 – 0.0%
July 1, 2011 to June 30, 2012 – 2.5%
July 1, 2012 to June 30, 2013 – 2.5%
3. Effective July 2, 2008, the salary steps for police officers shall be based on the attached schedule provided however that no officer on staff as of the date of the execution of this Agreement shall have his or her salary reduced nor shall they be required to make any reimbursement to the Town for payment made prior to the execution of this Agreement. (Exception – overpayments excluded).
4. **Initial Hires**:

Effective July 1, 2009, add two (2) new steps at bottom of guide:

\$35,000.00 Initial hire

\$40,000.00 After one (1) full work year

* Note: These steps shall not receive any additional increases.

5. **Payment of Retro Money:**

Retro payment due for July 1, 2008 to July 1, 2010 to be paid in three equal installments as follows:

June 2010
November 2010
July 2011

6. **Paychecks:** Checks to be bi-weekly (every two weeks) beginning July 2010.

7. **Superiors:**

Members of the force holding the rank of Police Lieutenant or Police Captain shall no longer be represented by the Bargaining Unit representing Police Officers and/or Police Sergeants.

8. **Article VIII – Hours and Overtime:**

1st paragraph – Rewrite to reflect current schedule

§B – Delete and substitute:

All work outside of an Officer's regularly scheduled police duties shall be regulated and assigned by the Director or his/her designee and covered for liability purposes as "police work." The off-duty rate for outside contractors shall be \$50.00/hour, with \$45 paid to the Officer and \$5.00 paid to the Town.

9. **Article IX – Vacation Scheduling:**

Effective June 1, 2010, no more than one (1) member of the force of the rank of Police Officer or Sergeant shall be permitted to schedule vacation time off per tour, provided however that each member of the force shall be guaranteed, except in the case of emergency, the opportunity to schedule up to two work weeks of vacation between the dates of June 1 and September 15.

§A. Delete and substitute:

Vacation accrual and use shall be on a calendar year. The use of any vacation time shall be subject to the approval of the Director of Public Safety, which approval shall be reasonably exercised.

§B. Delete 2nd sentence:

§E.2. Add: All vacation requests shall be reviewed for approval according to the need of each squad.

Add §F.

In the event from §B a patrolman works less than a full calendar year, his/her vacation shall be prorated. If a patrolman works less than half his/her regularly scheduled work days in any month, he/she shall not accrue any vacation for that month.

10. **Article X – Holidays:**

No Officer shall be granted holiday leave for Mischief Night, Halloween, and July 4th.

11. **Article XI – Sick Leave and Bereavement Leave - §A.5:**

Delete and substitute:

All employees covered by this Agreement shall be granted a leave of absence with pay, up to a maximum of one (1) year, for an officer who is ill, injured or disabled, provided the Town's doctor shall certify to such illness, injury or disability. Such leave shall be approved in increments no greater than three months at a time and each request shall require medical certification from the Town's Doctor.

12. **Article XII – Health Insurance:**

Prescription Co-Pay – Effective July 1, 2010, prescription co-pay to be increased as follows:

Generic – no change

Brand – increase from \$5 to \$10

Preferred – increase from \$5 to \$25

Health insurance premium – effective July 1, 2010, any increase in health insurance premiums over the base amount of June 30, 2010 shall be split as follows: 75% paid by Town, 25% paid by employee.

Note: All proposals agreed upon during negotiations remain agreed upon. See Town's proposals 8, 10, 11, 12, 13, 14 and 15.

BACKGROUND

The Town of Guttenberg is located in Hudson County with close proximity to North Bergen, West New York, Weehawken and New York City. It has unique characteristics. Although its total area is only 0.2 square miles, it has a population of 11,000 residents making it the second smallest Hudson County municipality behind East Newark. The population density of 56,000 residents per square mile makes it the most densely populated municipality in the United States of America. The Town's population grew substantially between 1980 and 2000 (7,340 to 10,807) but between 2000 and 2007, it has decreased by almost 2% and is expected to remain constant in the foreseeable future. Thirty-six (36%) percent of its employed residents work in New York City. It has a median household income of \$61,277 and a per capita income of \$41,367. Data shows that residential home prices rose rapidly between 2005 and 2007 but have sharply decreased since then due to the overall declines in the real estate market linked to the onset of recession in late 2008 and early 2009.

The Town's primary revenue source is from property taxes. In 2009-2010, there were 2,371 taxable residential units and 321 business or other non-residential taxable units. The average property tax bill in Guttenberg for 2008-2009 was \$8,495.70 and for 2009-2010 was \$8,915.48. The record shows that the property tax bills were expected to remain relatively constant for 2010-2011. Substantial evidence was submitted by both parties concerning the Town's finances and general economic trends. Dr. Caprio's analysis shows that the Town experienced robust ratable development between 2000 and 2008 with equalized total property value rising to \$1.14 billion in 2008 fueled by construction activity increases averaging between \$6 million and \$7 million annually. CFO Buono's analysis does not disagree but he notes that Dr. Caprio's analysis relies heavily on data that extends through 2008 and he notes that the major recession occurring in the fall of 2008 and extending through 2010-2011 caused significant changes in the Town's financial outlook as evidenced by the loss of extraordinary aid between 2008-2009 through 2010-2011, the reduction in the value of new construction permits including zero such permits in 2009-2010, a sharp increase in the number of tax appeals from 9 in 2008-2009 to 110 in 2009-2010, including an extraordinary expense of a \$500,000 tax appeal in 2009-2010 and decreases in the property tax collection rates which Dr. Caprio accurately pointed out had been extremely stable during the decade after 2000.

The police department employs 23 officers, a figure that is down from the previous staffing level of 28 several years ago. In addition, retirements and a

resignation shows a reduction in staffing to 20 police officers, including a Captain who primarily performs administrative functions that direct the Department's operations. The officers work a 4/2 schedule calling for eight (8) hour shifts that rotate on a weekly basis. In 2009, there were 16,700 calls for services.

There are two collective negotiations agreements between the Town and PBA Local 88. One agreement is for rank and file police officers and the other for superior officers that includes the rank of Sergeant, Lieutenant and Captain. This proceeding encompasses both units as the parties, for the purpose of economy, have negotiated jointly and consolidated the issues into a single proceeding. In 2006 the Town ranked 8th out of 12 county municipalities in crime rate per 1,000 residents at 21.9, well below the 27.49 County average. The PBA notes that the number of police officers per 1,000 residents in Guttenberg, was 1.93 which is slightly over half of the Hudson County average of 3.18 police officers per 1,000 residents. The PBA emphasizes that its members have done more with less resources available and have discharged their duties with distinction and efficiency, especially given the urban nature of the municipality and its dense population. It contends that their compensation needs to be properly adjusted to take into account what the PBA seeks as below average levels of benefits and unfavorable comparisons in salary when viewing the average compensation among law enforcement units in Hudson County. Numerous charts and contracts were introduced into evidence from which the PBA offers its comparability arguments. The Town does not challenge the

accuracy of the data but argues that the data does not reflect that its officers are unfavorably compensated.

In addition to the substantial documentary evidence centering mainly on the Town's socio-economic profile and budget/financial evidence, the parties have also submitted extensive comparability data between this department and other law enforcement units, especially those in Hudson County. There are many issues in dispute in this proceeding and they are primarily economic in nature.

Against the foregoing general overview, the parties offer the following arguments in support of their respective positions.

THE PBA's POSITION

The PBA contends police officer compensation should reflect the increases in productivity and efficiency that the department has achieved over the last several years. While the Department is at historically low staffing levels, it claims that the officers have carried out their duties with distinction in a town that has one of the highest population densities in the United States and one of the lowest crime rates in Hudson County. The PBA asserts that the Town has failed to produce any credible evidence to support the many proposals it has made that concern unit composition, vacation scheduling, payment of retroactive monies, or modification of sick leave certification. The PBA also claims that, "the

Town's evidence in support of its financial proposals, is scant and vague, lacking any meaningful analysis and does not even contain a 'cost-out' of the competing economic proposals."

The PBA requests that arbitral notice be taken of the fact that three officers have retired or left the Town's employ since the record closed. The Town now employs 20 rather than 23 officers and the related savings from this turnover has not been factored into the PBA's cost-out of its salary proposal. The PBA argues that the town's salary proposal, which averages 2.3% over five years and freezes new hire salaries for 2 years at reduced levels, barely keeps pace with the cost-of-living, and is well below averages recorded in PERC salary increase analyses, and in the private sector wage data. The PBA relies on the findings of its economic expert, Raphael J. Caprio, Ph.D., that the Town has a tax collection rate averaging 96%; that the per capita cost of government in the Town is among the lowest in the State; that the change in property tax between 2004 and 2008 is below State and County medians; that the equalized tax rate is among the lowest in the Town's State Urban Code peer group; and that the Town's available CAP balance in 2009 exceeded \$122,000.

Officer Carlos Zaldivar testified that morale in the Department is at an all-time low. He asserted that the PBA has been without a contract since 2008; that its leadership has had difficulty resolving disputes with the Town's administration; and that the high rate of turnover in the Town's Police Directors has forced

officers to continually readapt to new management styles. The PBA argues that in considering the interest and welfare of the public under N.J.S.A. 34:13A-16(g)(1), the arbitrator must balance the public's welfare with the need to provide equitable compensation to the officers who protect and serve them. The PBA argues that its offer recognizes the financial stability of the Town, that it acknowledges the work load of its officers, and would bolster their low morale. The PBA adds that its proposal to increase the Senior Officer Differential will help the Town retain experienced officers and reward the increased responsibilities and risks that have been borne by senior staff. The PBA claims that the Town has failed to present credible evidence that its offer is in the public interest and has instead offered vague generalities in Buono's Certification about "incurring significant additional expenses," and "*potentially* increasing taxes."

The PBA argues that its offer is more reasonable under N.J.S.A. 34:13A-16(g)(2) when evaluating comparisons of wages, salaries, hours and conditions of employment. The PBA explains that it fashioned its offer to make salaries and working conditions in Guttenberg competitive with surrounding communities, taking into account internal and external comparability in both the public and private sectors. The PBA states that the most compelling comparison is to other Hudson County police departments which shows that maximum salaries in Guttenberg have consistently lagged behind the County average from 2005 through 2008.

The PBA contends that application of N.J.S.A. 34:13A-16(g)(3) – overall compensation, also favors its last offer. The PBA’s proposals on salary, Senior Officers Differential, Officer in Charge pay, clothing allowance, overtime, off-duty rate, holiday pay, and vacation pay are designed to help the department compete with surrounding communities, retain experienced officers, and improve morale. The Town’s offer, by contrast, would leave the Department in a less competitive position, exacerbate the morale problem, and is not supported by credible evidence. The PBA claims that the Town’s vacation proposal was not raised until after its fair and final offer was submitted and is an attempt to resurrect an issue that was resolved years ago in the PBA’s favor through arbitration. The PBA states that its proposal for a 60-day notice of a change in insurance carrier has no cost to the Town and would provide its officers with stability and an opportunity to plan in the event of a change. The PBA explains that its proposal on convention leave merely attempts to insert the provisions of N.J.S.A. 40A: 14-177 into the contract and has little impact on the Town’s resources. The PBA argues that N.J.S.A. 34:13A-16(g)(5) concerning the lawful authority of the Town is not relevant because it has shown that the Town can fund the PBA’s economic proposal within its CAP.

The PBA claims that Dr. Caprio’s report demonstrates that its offer, “can readily be accommodated by the Town without unduly burdening its taxpayers or requiring the reduction in the delivery of municipal services.” Caprio concludes that the Town can afford to award competitive salaries to the PBA and that its

residents and tax payers would be better served by an award adopting the PBA's offer. In sum, the PBA argues that its proposals should be favored under N.J.S.A. 34:13A-16(g)(6) – financial impact on the governing unit, its residents and taxpayers – because it has established that its offer can be funded without adverse impact on the Town.

The PBA contends that N.J.S.A. 34:13A-16(g)(7) – cost of living – cannot be viewed in a vacuum. The PBA acknowledges that, standing alone, the cost of living criterion favors salaries that are lower than its last offer. However, it notes that the criteria does not require that salary increases be governed by the cost-of-living or that this factor be given predominant weight.

The PBA argues that its offer is more reasonable under N.J.S.A. 34:13A-16(g)(8) because it would improve the continuity and stability of employment of the Town's police officers. It asserts that the PBA's proposals will improve the Town's ability to attract and retain qualified and experienced officers which it will need to do in light of recent and pending retirements. The PBA argues that improving morale is relevant under this criterion, and that its proposal will improve salaries that lag behind surrounding communities.

Finally, the PBA argues that its offer does not affect the Statutory Restrictions Imposed on the Employer by N.J.S.A. 40A-45.45. The PBA once again relies on Dr. Caprio's conclusion that the Town is well below its tax levy

cap limitations. The PBA further notes that CFO Buono's Certification does not refer to any CAP restrictions that would be interfered with by an acceptance of the PBA's economic proposals.

THE TOWN'S POSITION

The Town's primary contentions concern the state of the Town's finances and the budget of the State of New Jersey. The Town urges that the "primary relevant fact [for the Arbitrator to consider] is the dire economic condition of the State of New Jersey, the nation and the world. Because of the State's severe economic condition and budgeting constraints, the Town claims that it is in a worse financial 'ability to pay' situation in 2010, than it was in 2008 and 2009. It asserts that this (economic) crisis is the single most important factor [for] consideration in this proceeding."

The Town argues that current economic conditions could support wage freezes and benefit concessions rather than increases, and that its salary offer of 11.5% over five years must be deemed reasonable and is consistent with recent settlements and awards. The Town's Chief Financial Officer, Vincent Buono, certified that the Town can fund its own offer but that funding the PBA's demands would negatively affect the budget. Among the problems he claims the Town is facing are declining State funding, looming deferred pension payments, a stagnant tax base, escalating tax appeals, and anticipated CAP limitations. The

Town insists that its offer is the best it can do, and that any additional increase “could potentially require raising taxes or cutting other services.”

The Town contends that the arbitration awards and voluntary settlements it introduced into the record demonstrate that its offer is on par with other police departments in the area. The Town emphasizes that its wage offer of 3.5% and 3.0% cumulatively added to the base in the retroactive years of 2008 and 2009 will maintain its officers’ salaries levels that are comparable to their colleagues in surrounding communities. The Town points to awards involving the State of New Jersey and PBA Local 105 units and the City of Harrison, as well as several newspaper editorials critical of the interest arbitration process, as further support for the fairness of its last offer.

The Town argues that the PBA has failed to justify any of its non-wage economic proposals, and that the only economic issue proposed by the PBA that should be addressed is wages. The Town contends, for example, that hearsay testimony given by PBA witness Police Officer Carlos Zaldivar about the Supervising Officers’ differential was not corroborated by evidence the PBA presented relating to the police bargaining units in West New York and North Bergen.

The Town argues that most of the PBA’s exhibits concerning comparability are not relevant because they are out-of-date and therefore “out-of-touch with the

economic climate in New Jersey and Guttenberg in 2010.” The town asserts that the PBA’s evidence concerning comparable salaries in Hudson County municipalities contains 45 exhibits but that only two that show salaries for 2009. The voluntary settlements cited by the PBA that do include 2009 salaries are from municipalities outside of Hudson County. These increases range from 2.5% to 4.25% but the majority of them, according to the Town, are between 3.5% and 3.75% and deviate significantly from the 5% increases sought by the PBA. In sum, the Town contends that the PBA’s comparability evidence, consisting of six large volumes containing information about voluntary settlements and arbitration awards is either irrelevant because of being outdated or actually demonstrate that the Town’s last offer is more reasonable than the PBA’s.

The Town contends that its non-wage, economic proposals are cost-saving measures that should be granted by the Arbitrator. The Town insists that its proposal to create and freeze a new lower hiring step and a lower rate for officers during their second full year of employment, will provide savings to the Town but have no impact on current officers. The Town also contends that it would be unfair to local businesses, which help fund the Town’s tax base, to increase the hourly rate paid to off-duty officers who volunteer for the assignments. Finally, the Town argues that the health insurance co-pays currently paid by its police officers are well below the norm and that the increases it seeks merely raise the co-pays to a more comparable level.

The Town insists that its non-economic proposals all have merit and should be awarded. It seeks flexibility in making payments for retroactive salary increases by proposing three payments over 13 months rather than in one lump sum. The Town also seeks a bi-weekly pay system to save the administrative cost of issuing weekly paychecks. The Town asks that the positions of Captain and Lieutenant be removed from the bargaining unit because the Public Employer-Employee Relations Act prohibits the representation of superior officers in the same collective negotiations unit as the police officers they supervise and direct.

The Town also submits proposals designed to reduce overtime costs. The Town proposes that no more than 1 police officer or sergeant on each tour should be permitted to schedule vacation. Based on concerns for its citizens' safety, the Town proposes to disallow holiday leave for Mischief Night, Halloween and July 4. Finally, the Town seeks to monitor the current 1-year extended sick leave program by dividing it into four, three-month segments, each requiring medical certification. The Town submits that the PBA has offered no logical opposition to its proposals.

DISCUSSION

The Town and the PBA have submitted substantial documentary evidence, testimony and oral and written argument in support of their respective last offers. All submissions have been thoroughly reviewed and considered. 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 interest arbitration proceedings, the party seeking to add to existing terms and conditions of employment has a burden to prove that there is basis for

its proposed change. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. When both parties propose a change on an identical issue, the proposed change must be evaluated in light of the evidence presented and why there should be a modification to the status quo. I have applied these principles to my analysis of the issues in dispute. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the manner in which an individual issue is decided can reasonably impact upon the resolution of other issues. In other words, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be required after assessing the merits of any individual issue within the context of an overall award. These principles are in harmony with the statutory requirement that total net annual economic change be calculated and the clear legislative intent that the overall economic impact of all terms of an award be consistent with making a reasonable determination of all issues.

DURATION

Both parties propose a contract duration of five (5) years - July 1, 2008 through June 30, 2013. I receive these proposals as a stipulation pursuant to N.J.S.A. 34:13A-16(g)(4). The contractual duration of July 1, 2008 through June 30, 2013 is awarded. No other stipulations were received.

ARTICLE VIII – OVERTIME

The PBA proposes several modifications to the parties' overtime provision. The PBA proposes to modify Article VIII, Section A.1. to provide a thirty minute minimum for officers working one to sixteen minutes, and a one hour minimum for officers who work seventeen minutes to one hour of overtime. Currently, no pay is required up to the first 16 minutes, 30 minutes pay is required for 16 to 30 minutes and 1 hour of pay is required for 31 to 60 minutes of overtime. The PBA also proposes to modify Section 3 to incorporate the current payment practice of receiving weekly payments for overtime into the contract language to replace current language that states a two week requirement. The PBA also proposes to delete the second sentence of current language in Section 2 that requires a minimum of four hours pay at time and one half for call-ins but states that such call-in pay is inapplicable if the overtime performed is continuous with an officer's regular tour of duty. The PBA has also proposed to modify Section C to reflect that any senior police officer working at the desk or on the road as a supervisory officer shall receive the next higher rate of pay for the tour. The proposed language would replace existing language stating that "An employee required to work in place of a supervisory officer shall receive the next higher rate of pay of said employee, provided the employee works a full tour." The Town opposes all of these proposals.

The Town proposes to rewrite the first paragraph of Article VIII to reflect the current work schedule and to delete the off-duty language in Article VIII,

Section B and replace it with new language. The existing language in Section B states the following:

On all extra work not budgeted for regular Town police duty, such as special security duty, pool detail, crowd control and the like, the entity seeking extra security shall make proper arrangements for payment, at no less than \$35.00 per hour. Such assignments shall be done by the Town as fully covered and protected "police work." Effective after the date of signing the new Agreement and as soon as reasonable thereafter, the off duty rate shall be set at \$50.00 per hour with \$45.00 paid to the officer and \$5.00 paid to the Town.

The substitute language proposed by the Town states the following:

All work outside of an Officer's regularly scheduled police duties shall be regulated and assigned by the Director or his/her designee and covered for liability purposes as "police work." The off-duty rate for outside contractors shall be \$50.00/hour, with \$45 paid to the Officer and \$5.00 paid to the Town.

The PBA also proposes to modify Section 3.B to increase off-duty pay to \$75.00 per hour and increase payment to \$6 for the Town. The PBA proposes to increase off duty assignments worked on weekends to \$95.00 per hour. Existing payments for all off duty work is \$50.00 per hour with \$45.00 paid to the officer and \$5.00 to the Town.

After thorough consideration of all of the foregoing proposals, I do not award the PBA's proposal to change Article VIII, Section A(1) which sets forth the tiering of overtime payments for assignments that are sixty (60) minutes or less. The existing schedule may require either more or less pay for the actual minutes

that an officer works but there is insufficient evidence of negative impact to warrant a modification to the existing schedule of payments.

The PBA has also proposed that overtime payments be made weekly and asserts that this is the current payment practice. However, Article VIII, Section A(3) expressly states that “overtime shall be paid every two weeks.” Given the fact that this Award provides for salary payment on a bi-weekly basis, there is no justification to alter the current language stating that overtime shall be paid every two weeks.¹ To do otherwise would cause unnecessary administrative burdens and costs on the Town without any appreciable benefit to the officers.

The PBA also proposes to require a minimum call-in of four (4) hours pay at time and one-half when an overtime assignment is continuous with the regular tour of duty. Under the existing language, set forth at Article VIII, Section A(2), the continuation of work into an overtime status is exempt from the contractual minimum call-in requirement of four (4) hours minimum overtime pay at time and one-half. The record does not support a change in the existing language set forth at Article VIII, Section A(2) relating to call-in requirements and pay and would create additional unnecessary costs.

An additional PBA proposal would modify language in Article VIII, Section C as to when an employee receives the next higher rate of pay if he or she is

¹ This fact also overrides any weight to be given to the disputed memo concerning the timing of overtime checks.

required to work in place of a supervisory officer. The PBA's proposal is overly broad and could be interpreted as requiring the next higher rate of pay for the entire tour upon the performance of duties that are minimal and performed in unspecified amounts of time that are less than a full tour. The current language is clear and specific and the record does not support any change to the existing language. The PBA offers argument that a depletion of superior officers causes greater responsibility to be assumed by police officers who are subject to liability from assuming decision-making. This argument is worthy of administrative attention and should cause the Town to review existing supervisory staffing levels. Accordingly, the PBA's proposals to change overtime pay, call-in pay and acting supervisory pay are denied.

The Town's proposal to rewrite the first paragraph of Article VIII to reflect the current work schedule is not awarded. The record does not reflect that there is a dispute on this issue or that the current language is inaccurate. Accordingly, it is not awarded and the current work schedule shall continue in effect.

The last issue concerns off duty rates of pay. The existing terms on this issue are set forth in Article VIII, Section B. The Town's proposal would not alter the terms of the off duty rate of \$50.00 per hour with \$45.00 paid to the officer. Substantial evidence on comparisons reflect that the existing off duty rate is low and it has not been increased since 2007. The PBA has established a basis to increase the rate, although its proposal would increase the rate for outside

contractors to \$81.00/hour with \$75.00 paid to the officer and \$6.00 for the Town while the officers' rate would increase to \$95.00 per hour on weekends. The rates proposed are excessive and will not be awarded. Further, given that most of the work that is performed on an off duty basis is voluntary, the PBA has not established a basis to have a higher off duty rate on weekends. Effective as soon as administratively practicable, the off duty rate for police officers shall be set at \$60.00 per hour paid to the officer with the amount paid to the Town be set by the Town in accordance with its statutory obligation to receive an administrative fee for its own costs. The PBA shall receive notice of the fee paid to the Town simultaneously with the implementation of the new \$60.00 per hour off duty rate paid to the officer. The language implementing this award shall be consistent with the existing language in Section B except as modified by the off duty rates that have been awarded.

VACATION

The PBA proposes to delete the second sentence of Article IX, Section B. That section states: "In the event a Patrolman works less than a full calendar year, he shall receive a pro rata share of his vacation." The PBA also proposes to add 1 vacation day for each year of the contract (increase of 5 days over a 5 year contract). The current vacation allotment for police officers is between fifteen (15) days after one (1) year of service and twenty-six (26) days after ten (10) years of service. Sergeants receive twenty-nine (29) days, Lieutenants

receive thirty-two (32) days and the Captain receives thirty-five (35) days. The Town opposes these demands.

The PBA has offered insufficient justification to increase the amount of paid vacation days currently being received under the vacation provisions. No basis has been shown to improve the existing vacation schedule. The existing language in Article IX, Section B requires a pro rata benefit to a police officer who works less than a full calendar year. The PBA's chief complaint is that an officer dislocated a shoulder while on the job and had his vacation days prorated. Its proposal, however, is so broadly stated that it could apply to all circumstances of absence beyond those that involve on the job injuries. Accordingly, I award the PBA's proposal but as modified below:

In the event a Patrolman works less than a full calendar year, he shall receive a pro rata share of his vacation, except when that officer's absence is due to an on the job injury as certified by the Town's appointed physician.

SENIOR OFFICER'S DIFFERENTIAL

The PBA proposes to establish a Senior Officer's differential to be included in base salary for officers with twelve (12) or more years of service at 5%. The Town opposes this proposal. According to the PBA, the differential would recognize increased responsibilities performed by more experienced police officers and reward the benefits that more experienced officers offer to the residents and merchants in Guttenberg. The Town opposes this proposal.

I do not award this proposal. Its costs, which would be well beyond the salary increases that have been awarded, would cause adverse financial impact on the Town. Seventeen (17) officers, or approximately 80%, possessed ten (10) or more years of experience at the time of hearing. All, except those who may have retired, would be eligible for the additional 5% increase above the salary increases awarded. I do not find that the additional costs that would be caused by the awarding of this proposal are justified given the Town's budgetary circumstances that include statutory limitations on its appropriations and revenue increases. Accordingly, this proposal is denied.

CLOTHING ALLOWANCE

The PBA proposes to increase the clothing allowance as follows: \$850 in year 1; \$1,000 in year 2; \$1,150 in year 3; \$1,300 in year 4; and \$1,500 in year 5. The Town opposes this proposal.

The current agreement, at Article XIV, now requires the payment of an annual \$700 clothing allowance. The allowance is to be used "for the purchase, repair and upkeep of apparel." Testimony on this issue was received from Officer Zaldivar. His testimony reflects that the existing clothing allowance has not been increased for at least the past sixteen years and to the existing weekly cost of cleaning uniforms. Comparability evidence has also been submitted on this issue. In general, it shows that the allowance is somewhat less than other

comparable departments and that the allowances have been moderately adjusted in line with increasing costs.

The PBA has met its burden to be awarded an increase in the existing clothing allowance, although not to the extent that it has proposed. As the Town points out, the PBA's proposal more than doubles the existing allowance and would force it to a level that goes well beyond most collective bargaining agreements that are in evidence. Accordingly, I award a modification of the clothing allowance from \$700 to \$850 spread in \$50 increments in years 2011, 2012 and 2013.

HEALTH INSURANCE

The PBA proposes to modify Article XI – Health Insurance to reflect that the Town will provide at least sixty (60) days notice of intent to change insurance carrier and shall provide the PBA the opportunity to review all information about new carrier before any change is implemented. The Town opposes this proposal.

This proposal represents a notice provision and is not unreasonable. It does not change the contractual standard that any such change must yield “substantially similar benefits.” Such notice would provide the PBA with the ability to review and analyze whether a change in the insurance carrier is in compliance with the contract and the law and with an opportunity to provide

useful input. The proposal is awarded but with additional language that would allow the Town to proceed with less notice when circumstances dictate that such action is necessary in order to maintain the continuity of the required insurance coverage. Accordingly, I award the following language:

The Town shall provide at least sixty (60) days notice to the PBA of an intent to change insurance carrier unless it is unable to do so in order to maintain the continuity of the required health insurance coverage.

PBA RELEASE TIME

The PBA proposes to modify the current provision on PBA release time to reflect that the PBA President and Executive Board shall be granted release time to conduct union business, attend union meetings and hearings involving PBA members, and to attend local, county, and State meetings. The PBA President and Executive Board would provide not less than twenty-four (24) hours written notice of any request for release time. The Town opposes this proposal.

The Agreement, at Article IV, provides release time to PBA representatives to attend State and International meetings or conventions, to represent the Association in grievances with the Town and to participate in collective negotiations. Given the size of the police department, the PBA has not established that the existing amount of release time is unreasonable or has impacted negatively upon its ability to represent unit employees. Accordingly, this proposal is denied.

CONVENTION LEAVE

The PBA makes the following proposal with regard to convention leave:

The Town agrees to provide time off without loss of pay consistent with N.J.S.A. 40A:14-177 for up to no more than ten percent (10%) of the membership of PBA Local 88 selected by the membership of PBA Local 88 to attend state or national conventions.

The Town opposes this proposal. I note that Article IV, Section A addresses time off for conventions. The record also reflects that N.J.S.A. 40A:14-177 speaks to time off without loss of pay for such attendance. I award additional language to Article IV, Section A stating that the amount of time for attendance at State and international meetings or conventions shall, at minimum, be in compliance with N.J.S.A. 40A:14-177.

ARTICLE X – HOLIDAYS

Both parties offer proposals with respect to Article X – Holidays. The PBA proposes to roll holiday pay into base pay. The Town proposes to modify Article X – Holidays to provide that no Officer shall be granted holiday leave for Mischief Night, Halloween, and July 4th. Each party rejects the other party's proposal.

Under Article X, police officers receive fourteen (14) paid holidays. With respect to the substance and procedures for the taking of the holidays, the Agreement, at Section B, states the following:

All employees, at their discretion, shall be entitled to the holidays referenced herein to be paid either in cash or in time off. The employee shall notify the employer no later than December 1 of the year preceding the year in which the holidays will be taken as to how many holidays the employee wishes to be paid in cash or how many in compensatory time, not to exceed seven (7) holidays. In the event an employee elects to receive holidays in time off, such shall be provided in accordance with the prevailing departmental practices and procedures. One half of the holidays which are to be paid in cash shall be paid in the first pay period in July of each year, and the other one-half of the holidays to be paid in cash shall be paid in the first pay period of December of each year.

In my evaluation of the parties' respective holiday proposals, I have considered several facts that support the awarding of revisions to Article X. They include the comparatively lower rates of compensation currently being received by unit members and the Town's need to provide greater manpower coverage on certain days in a manner that does not incur increased overtime costs. The elimination of the paid holidays in conjunction with placing the like amount of compensation into base pay would create additional base pay for police officers, some of which is currently paid out in cash. The elimination of holidays would also eliminate the ability to create compensatory time that is now permitted as an alternative to cash under Article X and would provide the Town with normal coverage at straight time on holidays, all of which would reduce overtime costs. The Town's proposal, which is designed to increase coverage on specified days and holidays, would be unnecessary because its goal of normal coverage would be met by the elimination of paid holidays. The inclusion of this proposal in the Award has also been referenced in the salary analysis which supports the enhancement of base pay with far less equivalent cost to the Town, an objective

that is met by awarding of this proposal. Accordingly, I award the PBA's proposal effective July 1, 2012.

SHIFT SWAPS

The PBA proposes to allow unlimited shift swapping so long as no overtime results from the proposed swap(s). The Town opposes the proposal asserting that it interferes with the prerogative of the Director to have control and direction of manpower. The Town further notes that the Director may have needs in areas of specific experience at different times and on different shifts that could be impacted by unlimited shift swapping.

The PBA's proposal acknowledges that shift swapping would not be permitted when overtime results from the proposed swap but it does not allow for departmental approval nor provide a time period of notice. I award a shift swapping provision but as modified to address a limit on its amount, a requirement that sufficient notice be provided to the Town as well as departmental approval of any such requirement. Accordingly, I award the following language:

Shift swapping shall be permitted not to exceed twice per month, with at least 48 hours prior notice to the Director or his designee. Any such request shall require the approval of the Director or his designee which shall not unreasonably be denied.

PAYCHECKS

The Town proposes that bargaining unit members be paid every two weeks. According to the Town, savings would be achieved in administrative, clerical and attendant costs by having all Town employees on a bi-weekly paycheck system. Based upon the administrative and financial efficiencies that are achieved by this proposal, it is awarded effective upon at least thirty (30) days notice to the PBA.

SUPERIORS

The Town proposes that members of the force holding the rank of Police Lieutenant or Police Captain shall no longer be represented by the Bargaining Unit representing Police Officers and/or Police Sergeants.

There are two collective negotiations agreements in evidence reflecting one bargaining unit consisting of "all Patrolmen" and the other representing "all Supervisors." The salary provision of the Supervisors' contract, at Article XX, reflects the titles of Sergeant, Lieutenant and Captain in the superiors' unit. To the extent that the Town's proposal is directed toward bargaining unit separation, no such separation is required due to the existence of two bargaining units and two separate labor agreements. To the extent that the Town is raising a question of law as to whether PBA Local 88 may represent all personnel included in both bargaining units, such question is beyond the scope of this proceeding and

should be pursued before the New Jersey Public Employment Relations Commission. Accordingly, the proposal is denied.

ARTICLE IX – VACATION SCHEDULING

The Town's final offer includes the following proposal to modify Article IX – Vacation Scheduling:

Effective June 1, 2010, no more than one (1) member of the force of the rank of Police Officer or Sergeant shall be permitted to schedule vacation time off per tour, provided however that each member of the force shall be guaranteed, except in the case of emergency, the opportunity to schedule up to two work weeks of vacation between the dates of June 1 and September 15.

§A. Delete and substitute:

Vacation accrual and use shall be on a calendar year. The use of any vacation time shall be subject to the approval of the Director of Public Safety, which approval shall be reasonably exercised.

§B. Delete 2nd sentence:

§E.2. Add: All vacation requests shall be reviewed for approval according to the need of each squad.

Add §F.

In the event from §B a patrolman works less than a full calendar year, his/her vacation shall be prorated. If a patrolman works less than half his/her regularly scheduled work days in any month, he/she shall not accrue any vacation for that month.

The PBA urges rejection of the Town's proposals.

At hearing, and in its brief, the Town has expressed a desire to set limitations in the scheduling of vacation time. It asserts that the current system yields excessive amounts of overtime. This is disputed by the PBA who also points to an arbitration award issued on November 18, 2003 setting forth the procedures for the taking of vacation. It submits that any such result is caused by administrative deficiencies and deep cuts in staffing levels. The PBA further argues that the Town has not submitted any credible evidence in the form of testimony or budgetary impact into the record to support its proposal.

This issue has been contentious. It is true that the existing procedures were set by a 2003 arbitration award. This fact is entitled to weight but it cannot be ignored that much time has gone by since that award and staffing levels have changed. It is not inappropriate for this issue to be reviewed. But, the record is lacking in evidentiary support that would allow for an examination into the merits to the Town's proposals. Put simply, the parties disagree on the underlying facts that deal with the proposal and the record does little to establish a basis for an awarding of the Town's proposals. Accordingly, they are denied. I do, however, strongly recommend and award a joint committee be established to, at a minimum, create a common data base that will assist the parties, and a future arbitrator, to resolve these issues, if they continue to exist, during negotiations for the contract that will succeed the one awarded herein. Accordingly, the Town's vacation proposals are denied.

ARTICLE XI – SICK LEAVE

The Town seeks to delete Article XI, Section A(5) which states that “All employees covered by this Agreement shall be granted sick leave on an as needed basis up to a maximum of one (1) year for each occurrence or need.” In place of the existing language, the Employer would substitute the following language:

All employees covered by this Agreement shall be granted a leave of absence with pay, up to a maximum of one (1) year, for an officer who is ill, injured or disabled, provided the Town’s doctor shall certify to such illness, injury or disability. Such leave shall be approved in increments no greater than three months at a time and each request shall require medical certification from the Town’s Doctor.

In my evaluation of this proposal, I note that Article XI, Section A(4) allows the Town to require an examination by a physician retained by the Town for an employee who is absent for medical reasons. While there is no evidence that Article XI, Section A(5) has been abused, it is reasonable to clarify the provision to reflect that the Town’s right to require an examination for an employee who is absent for medical reasons extends to longer term illness, injury or disability, and acknowledge that the right of that physician to certify an employee’s illness, injury or disability may be undertaken at reasonable periods during an absence that has the potential to extend to a maximum of one (1) year. This can be accomplished by the award of additional language to the end of the first sentence in Article XI, Section A(5) stating that the Town’s physician shall have the ability

to certify an officer's illness, injury or disability for extended absences in increments of no greater than three months at a time.

ARTICLE XII - HEALTH INSURANCE

The Town proposes the following changes to Article XII– Health Insurance:

Prescription Co-Pay – Effective July 1, 2010, prescription co-pay to be increased as follows:

Generic – no change

Brand – increase from \$5 to \$10

Preferred – increase from \$5 to \$25

Health insurance premium – effective July 1, 2010, any increase in health insurance premiums over the base amount of June 30, 2010 shall be split as follows: 75% paid by Town, 25% paid by employee.

Note: All proposals agreed upon during negotiations remain agreed upon. See Town's proposals 8, 10, 11, 12, 13, 14 and 15.

Notwithstanding the specifics of the Town's proposal, it noted in its brief that unit members were required to contribute 1.5% of base salary towards health care benefits as required by law on May 21, 2010 pursuant to P.L. 2010, Chapter 2. As the Town points out, this contribution was a result of legislative action and was legally mandated. Subsequent to that legal development, there was additional legislative action addressing the issue of health insurance contributions. The Governor signed P.L. 2011, Chapter 78 into law on June 2011 pursuant to that legislation.

This award must be consistent with law because N.J.S.A. 34:13A-16g(5) and (9) requires the arbitrator to consider the Town's lawful authority and statutory restrictions. Accordingly, the Award will reflect that health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

The law does not preempt prescription co-pays which is also the subject of dispute. Here, the Town seeks increases to the existing levels of co-payments. Currently, there is a \$5 co-pay for both generic and brand name drugs. There is no category for "preferred" drugs. The Town has proposed the following co-pays:

Generic –	\$5
Brand –	\$10
Preferred –	\$20

The record reflects that the same level of co-payments for generic and name brand drugs is virtually non-existent elsewhere. The estimated plan costs have been shown to be reduced by requiring increases in the name brand drug co-payments. Those estimates do not show an analysis into the "preferred" drug category either in costs or what constitutes a "preferred" drug. The Town has met its burden to establish an increase in co-pays and they are awarded with modifications. Effective, upon sixty (60) days notice, the co-pay schedule shall be as follows:

Generic –	\$5
Name Brand –	\$15

SALARY

The PBA proposes salary increases of 5% across the board in each year of the Agreement. The PBA also proposes to increase the Sergeant's Differential to 16.5% to match the level of differential to that in certain adjacent jurisdictions.

The Town makes the following wage proposal:

July 1, 2008 to June 30, 2009 – 3.5%
July 1, 2009 to June 30, 2010 – 3.0%
July 1, 2010 to June 30, 2011 – 0.0%
July 1, 2011 to June 30, 2012 – 2.5%
July 1, 2012 to June 30, 2013 – 2.5%

Further, the Town proposes that effective July 2, 2008, the salary steps for police officers shall be based on an attached schedule that references the Town's proposal to add two new steps at the bottom of the guide effective for anyone who was hired after July 1, 2009 as follows:

\$35,000.00 Initial hire
\$40,000.00 After one (1) full work year

* Note: These steps shall not receive any additional increases.

The Town also submits language that it says would ease its effect on existing newer employees who could be affected by its proposal. It would provide that no officer on staff, as of the date of the execution of this Agreement, shall have his or her salary reduced nor shall they be required to make any reimbursement to

the Town for payment made prior to the execution of this Agreement. (Exception – overpayments excluded)². The Town further proposes to have retroactive payouts staggered to avoid a full immediate impact.

The Town asserts that its proposal of 3.5%, 3%, 0%, 2.5% and 2.5% is reasonable and should be awarded. The Town rejects the PBA's offer of 5% annual increases as excessive and without evidentiary support. While the CFO stated that the Town's offer can be funded, the Town urges that an award should be no higher than its own offer without it having to suffer negative financial consequences. It notes that it initially offered 3% annually but modified its offer prior to the proceeding due to loss of funding and the impacts of the recession on its finances. From this, it argues that:

The proposal for increases submitted by the Town, as well as the Town's other economic cost savings proposals, must be considered the best that can be done. The Town has put forth its best offer under the circumstances and the one it presently has the ability to pay. The Town has a responsibility to its taxpayer residents, as well as the police officers to be fiscally prudent.

Any increase beyond that which the Town has offered would potentially require raising taxes or cutting other services. In view of Guttenberg's demographics, raising taxes is only going to force taxpayers to move out of town. Furthermore, Guttenberg operates a bare bones employee work force. The Town has no unessential services to cut. The Arbitrator, after considering all of these factors, will have to conclude that the Town's offer is more than generous and the only one that can be paid.

² This is a separate reference to overpayments that may have been made in the past. This issue is unrelated to the contract issues.

The Town urges that attention be paid to its argument that the PBA's comparability evidence is not current because the data does not cover time periods, "when the current global, national and statewide budget and economic crisis began to loom ominously." The Town claims that the data, as well as the PBA's economic analysis, were derived from "a more prosperous time period ... than the present bleak financial roadway." By way of one example, the Town points to a July 2, 2010 memo from DCA notifying it that it was not going to receive payment of REAP property tax assistance for 2010 under the State's 2010-2011 budget.

The PBA supports its proposal based mainly upon comparisons with other law enforcement units in Hudson County municipalities. It also relies heavily upon Dr. Caprio's financial analysis that the Town's finances are sufficiently healthy to make police salaries in Guttenberg more competitive with those in surrounding areas. Pointing to his analysis, the PBA contends that its proposal would not negatively impact the Town or its residents and can be funded within the Town's lawful obligations. It contends that the interest and welfare of the public will be served by boosting a low level of morale among police officers who have been highly productive given the shrinking levels of manpower.

The presentations on the salary issue have been extensive and have mainly centered on the Town's finances and law enforcement comparability. References have also been made to the continuity and stability of employment,

the cost of living and the overall compensation and benefits currently being received by unit members and to what extent they should be changed by the terms of the Award. The interests and welfare of the public criterion is the factor entitled to the most weight because it is implicated in virtually all of the criteria including the Town's statutory limitations and obligations.

The wage award must carefully weigh and balance all of the relevant evidence in order to arrive at a reasonable determination of the salary issue. The PBA's comparability evidence, while relevant, focuses too narrowly on improving the Town's relative standing within the County without sufficient regard to the fact that such salary relationships have developed over the course of many years and have, more than likely, been influenced by local factors unique to each governmental entity. Despite their geographical proximity, the socioeconomic and demographic characteristics between Guttenberg and municipalities such as West New York, Weehawken and Union City widely differ and do not support the basis for the PBA's claim to the wage increases it has proposed. This is not to say that the comparability evidence is not entitled to weight but rather that there are other influencing considerations that constrain the amount of increase that can be directed towards achieving the PBA's goal. Its proposal for 5% increases is also not supported by the cost of living data which is more in line with the Town's proposal nor the continuity and stability of employment criterion given the relative stability of the department's workforce.

The Town's financial proposal, while not "draconian" as the PBA suggests, would diminish the PBA's relative standing, especially over the first three years of the Agreement but the extent to which the Town can do otherwise is limited by a diminished financial capacity that appears during the 2009-2010 contract and fiscal year and statutory limitations on the Town's ability to raise funds through increased taxation. The PBA has established that the Town had a \$122,000 CAP margin in 2009 but thereafter, reductions and/or elimination of extraordinary aid, declines in construction permits and taxable residential units and sharp increases in tax appeals simply cannot sustain a result that would go substantially beyond the Town's proposal in order to address the PBA's comparability evidence.

The record reflects that a result that is modestly beyond the Town's proposal, accompanied by the elimination of holidays and the value of those days being placed into base pay, would address the comparability issue but without adverse financial impact. Such result can be achieved at projected costs that are not significantly above the Town's calculations which may not be realized due to the declines in staffing levels. Accordingly, I award the following changes to the salary schedule: 3.0% effective July 1, 2008, 2.75% effective July 1, 2009, 2.25% effective July 1, 2010, 2.0% effective July 1, 2011, no increase on July 1, 2012, the time that the value of the holiday pay is placed into the base pay salary schedule, and 2.0% effective January 1, 2013. The costs of the award are substantially less than what the PBA has proposed and while beyond what the

Town has proposed, the differences above the Town's projected costs can be reasonably borne within the Town's financial abilities as shown through Dr. Caprio's detailed and comprehensive financial report. The across the board increases are 0.5% higher than the Town's proposal but calculated and phased in in a manner that gives attention to the downturn in the financial and economic evidence that set in between the start date of the contract and the time in which the record was closed. The enhancement of base pay through the inclusion into base pay of the value of the paid holiday provision will add to the costs of the award, but such costs are substantially less to the Town than the base pay enhancement that is realized by the PBA. On this record, a reasonable estimate of such cost would be approximately 1.75% as a result of increased pension contributions and the roll in costs of the improved base pay off of an original base of approximately \$1,660,796. Because of this cost, the 2% increase in wages that have been awarded in 2012-13 shall be deferred to January 1, 2013. Retroactive pay, if the Town so chooses, may be split into two equal payments, one in this fiscal year, and one during the next fiscal year. The costs of the Award on an annualized basis are approximately \$40,000 above the Town's proposal which can be funded without adverse financial impact and within the statutory obligations of the Town.

The salary modifications shall also include the Town's proposal with respect to the salary schedule, although it will be awarded as a new hire salary schedule without impact upon employees who are on the payroll as of the date of

the award. It will provide for an initial hire step of \$35,000 without adjustment for the duration of the contract except for change resulting from the inclusion of the value of holiday pay on July 1, 2012. It will provide for a new Step 1 at \$40,000 after one full work year without adjustment for the duration of the contract except for change resulting from the inclusion of the value of holiday pay on July 1, 2012. Each succeeding step, shall be achieved after an additional full year of service and will end at Step 8 at the same level of maximum salary as that achieved by existing employees. Steps 2 through 8 for both salary schedules shall be identical in value. The increases awarded shall be retroactive to their effective dates and shall include those who have retired in good standing on normal or disability pensions through the date of their separations.

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

AWARD

1. All proposals by the Town 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 or mutually agreed to by the parties.
2. **Duration**
There shall be a five-year agreement effective July 1, 2008 through June 30, 2013.
3. **Paychecks**
Paychecks shall be provided on a bi-weekly (every two weeks) basis upon at least thirty (30) days notice to the PBA.

4. **Article X – Holidays**

Article X shall be deleted except for a single reference to the elimination of paid holidays as a result of this award. Effective July 1, 2012, the value of the paid holidays at each compensation level at step and rank shall be placed in the base pay salary schedule at all steps and ranks for all purposes.

5. **Article XII – Health insurance**

The Town shall provide at least sixty (60) days notice to the PBA of an intent to change insurance carrier unless it is unable to do so in order to maintain the continuity of the required health insurance coverage.

Upon sixty (60) days notice, the Town shall adjust the prescription co-pay schedule as follows:

Generic –	\$5
Name Brand –	\$15

Health Insurance Contributions:

Health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

6. **Article XIV - Clothing Allowance**

The annual clothing allowance shall be modified as follows:

July 1, 2010	\$750
July 1, 2011	\$800
July 1, 2012	\$850

7. **Shift Swaps**

Shift swapping shall be permitted not to exceed twice per month, with at least 48 hours prior notice to the Director or his designee. Any such request shall require the approval of the Director or his designee which shall not unreasonably be denied.

8. **Article XI – Sick Leave**

The following language shall be added to Section A(5):

The Town's physician shall have the ability to certify an officer's illness, injury or disability for extended absences in increments of no greater than three months at a time.

9. **Article IX – Vacation**

Article IX, Section B shall be modified to provide as follows:

In the event a Patrolman works less than a full calendar year, he shall receive a pro rata share of his vacation, except when that officer's absence is due to an on the job injury as certified by the Town's appointed physician.

Section A(5):

A joint committee shall be established to, at a minimum, create a common data base governing all aspects of vacation use, including cost, that will assist the parties, and a future arbitrator if necessary, to resolve any issues relating to vacation, if they continue to exist, during negotiations for the contract that will succeed the one awarded herein.

10. **Article VIII – Overtime**

Effective as soon as is administratively practicable, the off duty rate shall be set at \$60.00 per hour paid to the officer. The Town shall set its fee in accordance with its statutory requirements with notice to the PBA to accompany the increased pay received by the officer.

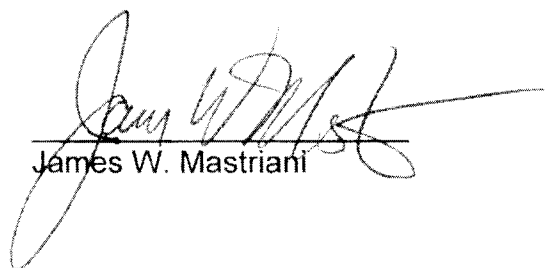
11. **Salary**

Each step and rank shall be increased effective and retroactive to the following dates. 3.0% effective July 1, 2008, 2.75%, effective July 1, 2009, 2.25% effective July 1, 2010, 2.0% effective July 1, 2011, no increase on July 1, 2012, the time that the value of the holiday pay is placed into the base pay salary schedule and 2.0% effective January 1, 2013. Retroactive pay, if the Town so chooses, may be split into two equal payments, one in this fiscal year, and one during the next fiscal year.

The salary modifications shall also include the Town's proposal with respect to the salary schedule, although it will be awarded as a new hire salary schedule without impact upon employees who are on the payroll as of the date of the award. It will provide for an initial hire step of \$35,000 without adjustment for the duration of the contract except for change as a result of the inclusion of the value

of holiday pay on July 1, 2012. It will provide for a new Step 1 at \$40,000 after one full work year without adjustment for the duration of the contract except for change as a result of the inclusion of the value of holiday pay on July 1, 2012. Each succeeding step, shall be achieved after an additional full year of service and will end at Step 8 at the same level of maximum salary as that achieved by existing employees. Steps 2 through 8 for both salary schedules shall be identical in value. The increases awarded shall be retroactive to their effective dates and shall include those who have retired in good standing on normal or disability pensions through the date of their separations.

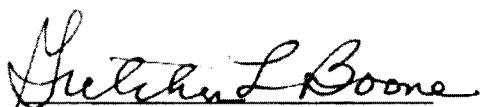
Dated: March 3, 2012
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 3rd day of March, 2012, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



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