

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration between)
)
BOROUGH OF BERGENFIELD,)
a municipality in the COUNTY OF BERGEN,)
STATE OF NEW JERSEY)
(“Borough” or “Employer))
)
and)
)
POLICEMEN’S BENEVOLENT ASSOCIATION)
LOCAL No. 309 (“PBA”))
)
)

Before: J. J. PIERSON, Esq.
Arbitrator

INTEREST ARBITRATION
OPINION and AWARD

Docket No. IA-2009-011

The undersigned derives jurisdiction as Interest Arbitrator of this matter from appointment by the Public Employment Relations Commission (“PERC”) and mutual request of the parties per N.J.A.C. 19:16-5.6 in an impasse between the Borough of Bergenfield (“Borough”) and the Bergenfield PBA Local 309 (“PBA”) resulting from negotiations of their Collective Bargaining Agreement (the "Agreement"). The designation directs the Arbitrator to decide the dispute and issue a written Opinion and Award. In furtherance of the process, an administrative/mediation session was conducted on January 20, 2009 and, subsequently, an evidentiary hearing was conducted on March 24, 2009 at the Municipal Building, Bergenfield, New Jersey. Due notice of hearing was given to the parties, and full opportunity was provided for the parties to present evidence, together with post hearing briefs, in support of their respective positions. Since the parties have not agreed upon an alternative form of impasse resolution, this Arbitrator is left with “conventional” authority to render a final and binding decision.

Appearing for the Borough:
Eric M. Bernstein, Esq.
Timothy Driscoll, Mayor
Frederick L. McGarril, Chief of Police
Alice Czykier, Acting Borough Administrator

Appearing for the PBA:
Richard Loccke, Esq.
Scott Macfie, PBA President

Issue What shall be the terms and conditions of the successor Collective Bargaining Agreement, based on consideration and application of all of the relevant statutory of N.J.S.A. 4:13A-16(g)(1) through (9)?

BACKGROUND

The Borough of Bergenfield is a 2.9 square mile community with twenty-seven thousand (27,000) permanent residents. The Borough is located within Bergen County and in close proximity to New York City. The town is crisscrossed by numerous roads and has close access to State and Interstate highways. As a result, there is considerable motor vehicle activity of local residents and out-of-town visitors.

The Borough of Bergenfield is a “mixed” community of single family homes, high-end residential properties and an expanding element of high-rise residences. Within the Borough are one-hundred thirty (130) commercial addresses, ten (10) public schools, parochial schools, multiple assisted living centers and an eighteen (18) hole golf club (Knickerbocker Golf Course).

The Borough and the PBA Local 309 are currently parties to a collective bargaining agreement (the “Agreement”) which expired on June 30, 2008. The bargaining unit includes of all sworn Police Department personnel, excluding the Chief of Police, and consists of forty-five (45) employees in the title of Patrolman, Sergeant, Lieutenant and Captain.

The proceedings in this matter commenced with the Borough and the PBA engaging in direct negotiations (June 17, 2008 and July 10, 2008) and making attempts to reach a voluntary agreement. The Petition to Initiate Compulsory Arbitration was filed on August 4, 2008 and letter of August 15, 2008, this appointment was made. While communication continued between the parties, a pre-interest arbitration (mediation) session was conducted on January 20, 2009 at the municipal offices. When mediation efforts were not successful, a formal interest arbitration hearing was scheduled.

An arbitration hearing was conducted on March 24, 2009, at the Municipal Building, Bergenfield, New Jersey. At all steps of the arbitration proceeding, the parties were represented by Counsel and, at the conclusion of the hearing, written briefs were submitted by Counsel.

The Borough introduced its financial profile, reflecting a municipality that generates its revenue primarily through a strong tax base. The Borough asserted that, despite a solid revenue base, municipal officials make relatively conservative fiscal decisions with respect to appropriation caps, levy caps, surplus, debt and tax collections, with the welfare of taxpayers in mind.

The Borough FY 2008 Municipal Budget revealed \$21,641,135.00 in total allowable appropriations for municipal purposes within the statutorily defined cap. From this amount, the Borough spent \$21,574,008.00, leaving \$67,127.00 in its "Available Bank Cap" for future use. The Borough also utilized less than the statutorily allowable levy cap set forth in the 2009 Municipal Budget. While \$25,551,697.00 was the maximum allowable amount, the actual tax levy used under that amount was \$25,373,375.00.

The Borough noted that it increased its annual surplus. In 2008, the Borough anticipated and realized \$1,486,000.00 in annual surplus. For the 2009 Municipal Budget, the Borough anticipates \$1,715,050.00. Compared to the annual surplus, the Borough maintained that it has kept its debt low, with current net debt to equalized valuations set forth as 0.74%, well below the New Jersey debt limit of 3.5%. According to the Borough, the 2008 Annual Financial Statement maintains a near-perfect tax year collection rate, at 99.58%, calculated on a ratable base of \$2,421,129,139.00.

The Borough budgets for forty-five (45) uniformed police officers through the rank of captain, all represented by the PBA. (The Police Chief is excluded from the bargaining unit). The police force represents a significant investment by the Borough. In the 2008 Borough Report of Audit for the Fiscal Year Ended June 30, 2008, the total expenditures for police department salaries and wages was \$6,249,208, which represents forty-nine percent (49%) of the Borough's budgeted salary expenditures of \$12,804,713.00 and eight percent (8%) of the Borough's total 2008 expenditures of \$78,197,368.00. Police services represent the single largest expenditure in the Borough's budget. Expenditures for police services for 2009 total \$6,601,016.00, with the next highest expenditure for insurance more than a million and one-half dollars less at \$4,955,234.

As required by statute, the Borough and the PBA submitted their last offers to this Arbitrator in advance of the arbitration hearing. The Final Offers follow:

FINAL OFFERS OF THE PARTIES

FINAL ECONOMIC OFFER of the BOROUGH

1. Duration: July 1, 2008 through June 30, 2011

2. Article III (Salaries)

A. See Appendix A for pay schedule.*

[*Note: As expressed in its post-hearing brief, the Borough’s proposed salary guide is differentiated between those employees hired on or before December 31, 2008 and those employees hired on or after January 1, 2009. The Borough also proposed the addition of two (2) steps for police officers for those hired after January 1, 2008 (from five (5) steps to seven (7) steps to the top level salary). The Borough’s proposed guide follows:

Proposed Salary Guide (Hired on or before 12/31/08)

<u>Step</u>	<u>2008 Base</u>	<u>7/1/08 (+3.0%)</u>	<u>7/1/09 (+3.4%)</u>	<u>7/1/10 (+3.4%)</u>
Training	\$40,832	\$42,057	Remains \$42,057	Remains \$42,057
1	\$54,963	\$56,612	\$58,537	\$60,527
2	\$62,815	\$64,699	\$66,899	\$69,174
3	\$78,519	\$80,875	\$83,625	\$86,468
4	\$86,371	\$88,962	\$91,987	\$95,115
5	\$104,149	\$107,273	\$110,920	\$114,691
Sergeant	\$114,342	\$117,772	\$121,776	\$125,916
Lieutenant	\$124,903	\$128,903	\$133,024	\$137,547
Captain	\$134,731	\$138,773	\$143,491	\$148,370

Proposed Salary Guide (Hired on or after 1/1/09)

<u>Step</u>	<u>2008 Base</u>	7/1/08 (+3.0%)	7/1/09	7/1/10
Training	\$40,832	\$42,057	Remains \$42,057	Remains \$42,057
1	\$54,963	\$56,612	\$58,537	\$60,527
2	\$62,815	\$64,699	\$66,899	\$69,174
3	\$78,519	\$70,008	\$71,571	\$73,185
4	\$86,371	\$79,325	\$81,409	\$83,561
5	\$104,149	\$88,642	\$91,247	\$93,937
6	--	\$97,959	\$101,085	\$104,313
7	--	\$107,273	\$110,920	\$114,691
Sergeant	\$114,342	\$117,772	\$121,776	\$125,916
Lieutenant	\$124,903	\$128,903	\$133,024	\$137,547
Captain	\$134,731	\$138,773	\$143,491	\$148,370

In order to be eligible for retroactivity pay in either 2008 or 2009, the employee must be on the payroll at the time of the award from the arbitrator.

Add the phrase "with the Bergenfield Police Department" to the end of the first sentence in §5. Additionally, the provisions of this Section shall only apply to those employees receiving such as of June 30, 2008. All other employees shall not be eligible to receive such.

3. Article IV (Longevity)

For all employees hired on or after January 1, 2009, said employees shall be eligible for longevity as follows:

- 10-15 years - \$600.00
- 16-20 years - \$800.00
- 21 or more years - \$1,000.00

There shall be no eligibility for longevity prior to such.

4. Article V (Work Schedules and Overtime)

The provisions of §4 shall only apply if the recall is not contiguous to the employees' shift.

5. Article VII (Holidays and Personal Days)

Eliminate the provisions of §1 and indicate that there shall be no extra pay for holidays if worked.

6. Article VIII (Insurance and Death Benefits)

Effective July 1, 2009, all members of the bargaining unit, present and former, shall be covered under the provisions of the prescription plan handled through the SHBP. Any changes as to co-pays/coverages etc. to said plan made by the SHBC shall govern the employees/former employees under the bargaining unit as to this benefit. There shall be no stand alone prescription plan.

The provisions of health medical insurance in §5 shall be revised as follows:

“As of 1/1/10 and throughout the term of the Agreement, each active employee shall pay the following amount per paycheck for 24 or 26 paychecks for medical/health benefits based on the level of coverage a bargaining unit member receives, depending upon how paychecks are paid on an annual basis as follows:

- a. Single coverage - \$35.00 per paycheck;
- b. Husband and wife coverage - \$50.00 per paycheck;
- c. Parent and child coverage - \$50.00 per paycheck; and
- d. Family coverage - \$75.00 per paycheck.”

7. Article IX (Vacations)

The provisions of §2 shall only apply is (if) the approval for carryover is done by the Borough Administrator or designee in writing. Any carryover vacation not used in the carryover year shall be forfeited. All existing carried over vacation days, if paid by the Borough in the future, shall be at the employee's daily rate in effect on June 30, 2009.

8. Article XI (Grievance Procedure)

- A. Working days, in this Article, shall be defined as Monday through Friday, irrespective of whether the employee works the days or not.
- B. The filing for arbitration in §4 shall be calendar days.

9. Article XIII (Terminal Leave)

The provisions in §1 shall be capped based on the employee's annual yearly based salary as of December 31, 2008 for all existing employees. For all employees hired on or after January 1, 2009, the cap shall be a total dollar amount not exceeding \$15,000.00.

10. Article XIV (Sick Leave)

Add a new §4 as follows: "Abuse of sick leave shall be cause for disciplinary action, up to and including termination. Accumulated unused sick leave shall not be paid under any circumstance".

11. Article XV (Separability and Savings) - Delete the last sentence

FINAL ECONOMIC OFFER of PBA LOCAL 309

- 1. The PBA requested a four (4) year contract to succeed the prior Agreement. Except as set forth in the Award, the PBA seeks to have the prior contract continue in full force and effect.
- 2. The PBA proposed an across-the-board wage increase of four and one-half percent (4.5%) at each step, rank and position to be effective on each successive July 1st over the four (4) year term.¹

NON- ECONOMIC PROPOSALS of PBA LOCAL 309

- 3. The PBA proposed the addition of a "Personnel Files" clause, as a new item to the contract and is considered as a non-economic issue, as follows:

1. At the scheduled arbitration hearing on March 24, 2009, the PBA initially submitted an economic proposal for a five (5%) per cent increase in wages in each of four years. In addition, the PBA proposed an increase in clothing allowance (Article VI), modified by adding One Hundred Dollars (\$100.00) per contract year. The salary proposal was amended (reduced to 4.5%) and the proposal for the clothing allowance increase was withdrawn in the PBA's post hearing brief.

Personnel Files

“A personnel file shall be established and maintained for each Employee covered by this Agreement. Such files are confidential records and shall be maintained in the office of the Chief of Police, and may be used for evaluation purposes.

Upon advance notice and at reasonable times, any member of the Department may at any time review his personnel file. However, this appointment for review must be made through the Chief of Police or his designated representative.

Whenever a written complaint concerning an office of his actions is to be placed in his personnel file, a copy shall be made available to him and he shall be given the opportunity to rebut it if he so desires, and he shall be permitted to place said rebuttal in his file. When the Employee is given a copy of the complaint, the identification of the complainant shall be excised. However, if any disciplinary action is taken based on any complaint, then the Employee shall be furnished with all details of the complaint, including the identity of the complainant.

All personnel files will be carefully maintained and safeguarded permanently, and nothing placed in any file shall be removed therefrom. Removal of any material from a personnel file by any member of the force shall subject that member to appropriate disciplinary action.”

Maternity/Paternity Leave

4. The PBA proposed the addition of a “Maternity/Paternity Leave” clause as a new item to the contract and is considered as a non-economic issue, to wit:

“A. Female Police Officers shall advise the Employer of a pregnancy. The rights of a female Police Officer shall include, but not be limited to the following provisions:

1. The female Police Officer shall be permitted to work her normal duties so long as such work is permitted by a doctor’s note. The doctor shall be a physician of the female Police Officer’s own choosing.

2. In addition to the other provisions of this Article, the female Police Officer shall be permitted to use accumulated sick time, compensatory time off and any other accumulated time benefits which she may have during the period of her pregnancy and the period following childbirth.

3. Upon return from maternity leave, the Officer shall be returned to work without loss of seniority or benefits and shall be returned to the same position as worked prior to utilizing leave.

4. The female Police Officer shall at all times be kept at full benefits and shall be considered as on active duty for all computation purposes.

5. Upon return to active duty status, the female Police Officer shall be placed in the same position which she held before departing for maternity status.

B. Both male and female Police Officers shall be permitted such time and such terms and conditions as are provided under the Federal Family Leave Act and the New Jersey Temporary Disability Benefits Law.”

STATUTORY CRITERIA

Pursuant to N.J.S.A. 34:13A-(d)(2), wherein the dispute is resolved through conventional arbitration, the resolution is reached through application of all of the relevant statutory of N.J.S.A.

4:13A-16(g)(1) through (9), with due weight given to each of the follow criteria:

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4045.1 et seq.).

(2) Comparison of wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C:34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacation, 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 P.L. 1976, c. 68(C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or 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 of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and other such factors not confined to the foregoing which are ordinarily or traditionally considered in the determinations 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).

With this general backdrop, the Borough and the PBA submitted their respective positions, based upon the evidence and argument presented, in support of their Last Offers.

POSITIONS OF THE PARTIES

The PBA

The PBA presented its arguments and evidence through the testimony of Detective Scott Macfie, John Casper (Officer of the Year²) and Lt. Cathy Madalone.³ The PBA contended that the Borough of Bergenfield stands as a fiscally successful town with a high tax collection rate, stable ratable tax base and surplus funds. In light of the town's financial success, the PBA argued that the town can afford to allot extra funds to the members of the PBA, who represent a capable and active role in the community. The PBA's argument hinged on the financial success of the town and its ability to afford the PBA demand in its final proposal. According to the PBA, compared to the Borough's financial circumstances, the relative increase to the wage base makes the PBA proposal reasonable.

2. Officer Casper testified to the participation of the Police Department in, and "as part of", the community. In addition to offering scholarships, the PBA sponsors sports teams and donates to numerous charities (ie, Special Olympics)..

3. In addition to offering general information, Officer Macfie narrated a Power Point presentation. As in uniformity with other presentations by PBA clients of Counsellor Loccke, Local 309's introduction of evidence was extensive, wide-reaching and professionally introduced. PBA witnesses were informative, credible and reliable.

As the record reflected, during the proposed four (4) year term of the Agreement, the PBA sought an across-the-board wage increase of four and one-half percent (4.5%) at each step, rank and position to be effective on each successive July 1st during each year of the proposed four (4) year term. The PBA argued that it deserves the wage increase when compared to similar jurisdictions, in which bargaining unit members are compensated at higher levels than the Borough PBA. The PBA relied on the towns of Ridgefield, Saddle Brook, Tenafly, Mahwah, East Rutherford, Closter, Hasbrouck Heights and Wood-Ridge as comparable jurisdictions and maintained that officers in those towns receive higher compensation than PBA members.

In further support its demand for increased compensation, the PBA contended that Local 309 Police Officers fall behind comparable jurisdictions in regards to longevity pay, ranking near last compared to similar jurisdictions (PBA Brief – Chart 1). The PBA highlighted its ranking regarding longevity pay not to argue for greater longevity pay but to support its argument for increased base wages.

Additionally, the PBA asserted that it falls below averages for comparables regarding holidays, clothing allowances, education incentives and vacation days. As the PBA argued, in proposing increased base rate wages, it was seeking to compensate police officers for the perceived shortcomings in contract entitlements. It was the position of the PBA that its members should be placed on equal footing with members of bargaining units in comparable jurisdictions.

In further support of its argument that Local 309 members receive less compensation than other comparable jurisdictions, the PBA pointed to its work schedule. According to the PBA, the bargaining unit has one of the highest total number of annual hours worked among all police departments in evidence. The PBA alleged that the bargaining unit's schedule of an average workweek of forty (40) hours contains the equivalent of 6.4% more annual work than the balanced charts of comparable jurisdictions in evidence. Therefore, even with a somewhat competitive base pay, the PBA submits that its hourly wage rate, when compared to compensation received, falls behind officers in comparable jurisdictions.

With respect to the Borough's ability to pay, the PBA argued that the ability to use \$67,127 less than the \$21,641,135 statutory cap for annual appropriations indicates the financial capability of the Borough to pay for the PBA's proposed salary increases. Similarly, the PBA asserted the Borough's ability to stay below the levy cap, maintain a surplus, collect taxes at a near-perfect rate, encourage a strong ratable base to grow with new commercial and industrial projects, and maintain a relatively low amount of debt demonstrates the Borough's ability to meet the PBA's demands and compensate Local 309 Police Officers for their services.

The PBA further contended that the Borough could absorb nearly the entire cost of wage increase by virtue of attritional losses. The PBA submitted that the Borough has saved \$1,830,217 in base pay through departures from the police department. Because less officers are doing more work and saving the Borough money, the PBA argued that the savings from these attritional losses should be put toward compensating the PBA members.

The PBA also suggested that costs relating to the Police Department are absorbed by the performance of the Police Department in Municipal Courts. The PBA contended that, because police officers write summonses that contribute to the Borough's general treasury (\$507,396 in 2008), the Borough can afford the proposed base wage increase. The PBA compared this figure with the proposed base wage increase to conclude that the magnitude of money brought in through police operations offsets the cost of their compensation. The PBA further contended that, with federal and state grants and aids alleviating costs to operate the police department, the cost of the proposed compensation increases will not have a negative impact the Borough.

Similarly, the PBA argued that insurance costs have not negatively impacted the Borough, due to significant insurance refunds.⁴ . The PBA further argued that the Borough could afford to pay the proposed increases because the Borough has paid relatively small sums into police pensions over the last decade.

4. As the PBA offered, without making any actual expenditure out of its own funds, the Borough received \$166,780 in refunds from insurance carriers in 2008..

The PBA also submitted documents by the Public Employment Relations Commission indicating changes in the cost of living, showing a 4.9% increase in Bergen County for 2006-2007. This number, the PBA argues, supports its position in terms of increasing its wage base.

The PBA further contended that the police department has managed to accomplish many achievements, provide innovative public services and obtain CALEA accreditation, despite having fewer sworn personnel than in the past, with forty five (45) sworn police officers currently in the department as opposed to forty nine (49) in 1990. As the PBA argued, with a reduced workforce of forty five (45) sworn officers to respond to an increased number of calls for service (from ten thousand thirty-seven (10,037) in 1990 to twenty-eight thousand seventy-eight (28,078) calls in 2008) the PBA wage increase proposal is warranted.

In bolstering its proposal, the PBA submitted several arguments against the Borough's own proposal. First, the PBA contended that agreements between the Borough and its employees submitted into evidence by the Borough were outdated. Second, in comparing the Borough's final offer with the agreement between the Borough and the Bergenfield Police Department Telecommunicators Association, only highlights the fact that the Borough abandoned the multiple insurance changes in another municipal agreement. Furthermore, the PBA pointed out that the Borough has offered two (2) pages of givebacks in the present matter which was not offered in Telecommunicators agreement. As the PBA suggested, because no third party arbitration decided the outcome of the negotiations, the Borough has singled out the police department for wholesale changes while voluntarily abandoning such issues with the Telecommunicators.

The PBA also contended that the Borough's economic proposal cannot be supported by the statutory criteria. In that respect, the PBA argued that the Borough's reliance on private sector employment and compensation as a comparable to the members of the PBA is fundamentally unsound, based on the disparate natures of police work and private sector work.⁵ In drawing the

5. The PBA submitted language from a recent decision by Arbitrator Carl Kurtzman, who wrote on the difficulty of comparing the working conditions of public sector police officers with private sector employees

distinction between a public police officer and a comparable private sector employee, the PBA highlighted several factors that separate the two forms of employment. In the PBA's view, the totality of these factors make even similarly situated private employees poor comparisons to the circumstances of the PBA's members.

Finally, the PBA conceded that the "Personnel Files" clause and "Maternity/Paternity Leave" language are non-economic issues viewed more as codifications than contract changes. The PBA nevertheless requests the adoption of both provisions.

For all the reasons presented, the PBA requested the Arbitrator to make an Award consistent with its final offer.

The Borough

The Borough contended that its overall proposal, both in terms of economics and contract language, is more realistic and reflective of the present economic times than the demands of the PBA. The Borough further contended that its proposals were consistent with the agreements reached with, and salary packages provided to, police officers in comparable jurisdictions in northern New Jersey.

The Borough argued that Bergenfield is facing similar recessionary struggles as other municipalities in the State of New Jersey and throughout the nation. In support of its position, the Borough introduced a recent survey conducted by the New Jersey State PBA which found that one (1) in five (5) New Jersey Police Agencies are currently facing the loss of police officers. As such, the Borough maintained that the governing body takes a conservative approach in its fiscal decisions and is attempting to guarantee future employment without layoffs.

performing the same or similar services. The PBA pointed to a number of distinctions, including: the narrowly structured statutorily created environment; the fact that no real comparable job exists in the private sector; the constant nature of police work; and the inability of police officers to take their skills and market them in other states.

The Borough further advanced a conservative approach to the proceeding by raising the current national economic crisis and the uncertain financial future facing the municipality, its citizens, residents and taxpayers and submitting an Agreement of shorter duration. It was the position of the Borough that a three (3) year contract for the period of July 1, 2008 through June 30, 2011 was more prudent. Noting the majority of comparable agreements submitted by the PBA were for terms of four (4) years, the Borough contended that most of those agreements were negotiated prior to the downturn in the economy and certainly prior to the current recession.

In addition to a shorter contract term, the Borough proposed a “more modest salary increase” of 3.0% on July 1, 2008, 3.4% on July 1, 2009 and 3.4% on July 1, 2010. As the Borough contended, its proposal was more than fair and generous in light of the current recession facing the Borough, the State and the nation.

While proclaiming its appreciation for the work performed by the police force, the Borough contended that its residents, citizens and taxpayers do not have boundless resources to pay ever-increasing salaries for public employees. The Borough further argued that Police Department expenditures represented forty nine percent (49%) of the Borough’s current budget expenditures.

The Borough nevertheless expressed its commitment to reasonably compensating law enforcement officers and, as such, maintained that its proposed wage increases for officers and members of the PBA (3.0% in 2008, 3.4% in 2009 and 3.4% 2010) was appropriate, especially when compared to the PBA’s four (4) year agreement of salaries would increase salary costs by cost \$21,257,347, without any longevity pay, senior officer differentials or other proposed increases. The Borough contended that its proposed salary increases would cost \$14,894,276, a difference of \$6,363,071.

As the Borough further expressed, when based on the forty five (45) persons in the bargaining unit of, the PBA’s proposed increases would cost the Borough a total of \$472,385 per man over the duration of the Agreement as opposed to its proposal translates to a total of \$330,984.

While a significant cost, the Borough characterized its comparative proposal as “more realistic.”⁶

In terms of the PBA salary increases, the Borough argued that its proposed increases are also more consistent with salary increases offered to other collective bargaining units within the Borough. The Borough offered examples of salary increases provided in the white collar unit represented by Local 29/108, which received raises ranging from 2.9% for clerk typists in 2009 to 3.9% for the Deputy Borough Clerk in 2010; the majority of Local 29/108 members received raises of 3.0% to 3.1% in 2008, 2009 and 2010; the members of FMBA Local No. 65 tentatively agreed to raises of 3.0% for 2008, 2009 and 2010; Police dispatchers represented by the Bergenfield Police Department Telecommunicator’s Association received raises of 3.4% in 2009 and 2010; and the Public Workers Supervisors received raises of 3.5% for 2005, 2006 and 2007.

In further support of its position for more modest salary increases, the Borough submitted nine (9) collective bargaining agreements governing police officers in comparable, local and “similarly situated municipalities.” According to the Borough, the municipalities under PBA agreement have comparable populations, ranging from 17,503 residents in Dumont to 30,783 residents in Fair Lawn, with Bergenfield in the middle with 26,247 residents.

The Borough acknowledged the nine (9) collective bargaining agreements submitted from comparable jurisdictions averaged “percentage increases” of approximately 4.1%. However, the Borough argued that the comparable percentage wage increases did not reflect the current state of economic affairs, since many increases were negotiated several years prior. The Borough highlighted the fact that the average wages were almost a full percentage point lower than the demands of the PBA.⁷

6. It must be noted that the Borough’s comparison, while accurate, is based on a three year agreement as opposed to a four year agreement.

7. At the time of this statement, the PBA had proposed a five (5%) percent increase in each year of the Agreement.

The Borough also contended that a more modest salary proposal represented austerity and moderation, which are essential to bargaining in the current unstable economic climate. To bolster this argument, the Borough suggested the agreements submitted by the PBA compared salary increases offered to bargaining units in jurisdictions which were neither recent in time nor reflective of the dire economic situation facing the entire nation.⁸

In seeking to highlight the “shifting tide toward more modest salary increases in these unstable economic times”, the Borough sought special permission for this Arbitrator to consider the recent Interest Arbitration Award issued by Arbitrator James Mastriani on May 5, 2009. It was the Borough’s position that an arbitrator may accept such evidence pursuant to N.J.A.C. 19:16-5.7(k).⁹ In submitting the award for consideration, the Borough argued that the conservative increases in the award reflected the need for modest alterations in agreements as a consequence of the current economic crisis.

In submitting agreements from comparable jurisdictions, the Borough asserted that its proposal achieves the major objective of allowing its police officers to remain in relative standing to police officers in comparable jurisdictions. As the Borough argued, the PBA’s demands would place its members in a better position than members of bargaining units in comparable jurisdictions.

8. The Borough further maintained that the only agreement aligned with the proposed period in the Local 309 Agreement was the Elmwood Park agreement, which reflected a wage settlement a full percentage point below the PBA demands.

9. The Borough specifically submitted the recent Interest Arbitration Award of Arbitrator James Mastriani (issued May 5, 2009), containing a “no wage increase” in one year of the contract and a “freeze on all step increases and no credit for time worked during this period ...”. (See In the Matter of Interest Arbitration Between State of New Jersey and PBA Local 105, PERC Docket No. IA-2008-014, James W. Mastriani, Arbitrator, 2009). The award, covering the Corrections Officers of the State of New Jersey, represented by PBA Local 105, provides for increases of 3.5% in 2007, 3.5% in 2008, no increase in 2009, 2.0% in 2010 and 2.0% increase in 2011. Furthermore, the award provides that there will be a freeze on all step increases and no credit worked during that period toward time needed for any step increment, with limited exceptions. The award also reduced Corrections Officers Recruit salaries to \$40,000 and froze them at \$40,000 for the entire term of the Agreement. Finally, the Agreement requires, for the first time, that all members of the bargaining unit contribute toward health benefits.. While this Arbitrator acknowledges reading the award and takes notice of its content, Arbitrator Mastriani’s Award was neither based on facts similar to make a correlative finding nor used as precedent in this Award.

The Borough emphasized the top step salary for a police officer in the Borough was well within the range of top step salaries in comparable municipalities, such as Cliffside Park, Dumont, Elmwood Park, Fair Lawn, Garfield, Lodi, Lyndhurst, Ridgewood and Rutherford. The Borough further emphasized that police officers enjoy the second highest (top step) salary of comparable jurisdictions; with Elmwood Park's top step salary at \$104,776. Moreover, the Borough noted the average salary for a top step officer in comparable jurisdictions as \$99,265 (excluding Cliffside Park and Garfield, where salaries are outdated). It was the position of the Borough that, as of January 1, 2008, its Police Officers were paid \$4,884, or five percent (5%), more than the average top step officer in comparable municipalities.

Similarly, the Borough maintained that comparable jurisdictions pay more modest salaries to superior officers than the Borough's superior officers. The Borough introduced a chart (see Brief page 61 of 69) revealing higher comparable salaries for superior officers as of January 1, 2008, to those in similarly situated municipalities. The Borough argued that, given the comparative data presented in the chart, superior officers and rank-and-file police officers in the Borough are paid well when compared to their counterparts in comparable municipalities. According to the Borough, its proposed salary increases would maintain the salaries of the officers and members of the PBA at the top of the range of salaries for comparable Borough communities.

The Borough further asserted that, considering the the PBA's overall compensation and benefits (such as holidays, vacations, health insurance, clothing allowance, and sick and terminal leave), members of the bargaining unit fair as well as if not better than bargaining units in comparable jurisdictions.

The Borough also introduced comparisons of Police Officers' salaries to private sector wages and again concluded that PBA officers are relatively well paid. Reviewing the data compiled by PERC (see P-20), the Borough highlighted the average private sector salary for 2007 as \$53,594, well below the Borough's top step police officer's salary of \$104,149. Similarly, the average annual wage for local government employees in 2007 was \$52,452, about one-half of the salary of a top step police officer in the Borough.

The Borough expressed an argument in opposition to the PBA's proposed salary increases as an extravagant plan which would require the Borough to find significantly greater new funding to pay the increases. As the Borough advanced, increased funding would most arrive in the form of tax increases, layoffs and other employment actions resulting from the Borough's budget cap and tax levy cap. The Borough argued that, in compounding the individual cost per bargaining unit member by the number of current forty-five (45) bargaining unit members, the total cost would be \$21,257,347, or an average of \$472,385, during the proposed four (4) year period.

In further arguing against the PBA's proposal, the Borough alleged that significant dollar increases will occur if the PBA achieves its proposed salary increases. The Borough submitted calculations demonstrating how the annual (5%) percentage increases for each position would compound annually to result in total annual percentage increases of 5.39% per year, a significant compensation increase.¹⁰

The Borough further calculates that, since each percentage raise is based on a percentage from the previous year, there is a compounding effect for 2010, 2011 and 2012, resulting in PBA demanding true salary increases for Sergeants, Lieutenants and Captains of 5.0% in 2008, 5.25% in 2009, 5.51% in 2010, and 5.79% in 2011. [While the percentages differ, the compounding effect is accurate.]

10. The Borough, basing its calculations on five (5%) percent increases over the four-year period, concluded that Borough rank-and-file police officers would receive increases of \$22,444 (at Step 5), thereby raising the top-step officer's salary from \$104,149 to \$126,593 by the end of the contract for a total percentage increase of 21.55% over four (4) years or an annual percentage increase of 5.39% per year. For police sergeants, over the PBA's proposed four (4) year period, would be \$24,641, raising the Sergeant's salary from \$114,342 to \$138,983 by the end of the contract. This increase represents a total percentage increase of 21.55% over four (4) years or an annual percentage raise of 5.39% per year. For the PBA Lieutenants, the proposed dollar increase over the four (4) year period is \$26,917, raising the Lieutenant salary from \$124,903 to \$151,820 by the end of the contract. This increase represents a total percentage increase of 21.55% over four (4) years or an annual percentage increase of 5.39% per year. For Captains in the Bergenfield Police Department, the proposed total dollar increase over the four (4) year proposed period is \$29,035 for Captains, thereby raising the Captain's salary from \$134,731 to \$163,766 by the end of the contract in 2012. This represents a total percentage increase of 21.55% over four (4) years or an annual percentage increase of 5.39%. [The same calculations can be made for 4.5% increases.]

In estimating the cost of the PBA's proposed plan to the municipality and its taxpayers, the Borough argued that since not all personnel are at the top step of the salary guide throughout the contract term, the arbitrator must also take into account and include the additional costs incurred by the Borough in the step increases received by bargaining members as they move through the salary guide. According to the Borough, based on the total number of bargaining unit members as of June 30, 2008, the salary demands of the PBA will cost over \$1,428,790 in salary increases, or an average of \$31,751 per man the during of the proposed four (4) year contract, without longevity pay or any other proposed increase.

Similarly, the Borough argues the PBA's proposed clothing allowance increase represents another unreasonable, excessive obligation that would jeopardize the Borough's financial stability in the current tough economic climate. In rejecting the PBA's clothing allowance, the Borough noted that it provides officers with complete uniforms and equipment at the outset of their employment, with every possible clothing item they could need while working. The Borough further argued that PBA members already receive \$950 a year clothing allowances, which is \$200 higher than the clothing allowances provided to other Bergenfield employees and twice the current clothing allowance provided to police dispatchers.

As the Borough argued, police officers in comparable jurisdictions receive less in clothing allowances. Nine (9) other comparable jurisdictions receive less in annual clothing allowances, and the average clothing allowance among ten (10) comparable jurisdictions is \$673.20. The only comparable jurisdiction that provides a greater allowance, Lyndhurst Township, does not provide its officers with an initial comprehensive list of clothing and uniforms as the Borough provides its officers.

Likewise, the Borough argued that, although the PBA submitted forty nine (49) comparable jurisdictions in support of its clothing allowance demand, only six (6) agreements reflected clothing allowances greater than the existing \$950 per year in the PBA Agreement.

Further to the PBA proposal to increase the existing allowance by \$100 in each year of the proposed four (4) year agreement is awarded, the Borough noted that only one comparable jurisdiction, Hasbrouck Heights, provided its officers with a greater clothing allowance. Nevertheless, the average of the forty nine (49) agreements provided by the PBA is \$608 per year, well below the existing \$950 per year already provided to PBA members.¹¹

As a result of the comparison between the allowance received by PBA members and other Borough employees, as well as the comparison between Borough PBA members and officers in comparable jurisdictions, the Borough maintained the clothing allowance is more than fair and generous and the allowance should not be increased at all as it reasonably meets the needs of PBA members. The Borough requested that the proposal be denied.

The Borough also opposed the PBA's non-economic proposal regarding bargaining unit member Personnel Files. The Borough argued that although many collective bargaining agreements include provisions related to personnel files, the PBA proposal did not align with the Borough's agreements with other municipal unions (including the FMBA Local No. 65, the Bergenfield Employee Association, the Bergenfield Public Works Supervisors of Personnel and the Bergenfield Police Department Telecommunicator's Association), which do not include any provision relating to personnel files. As the Borough asserted, it is not required to include such a personnel file provision in its agreement with the PBA.¹²

11. In support of its position, the Borough urged this Arbitrator to follow the example set by Arbitrator Glasson In the Matter of Interest Arbitration between Fort Lee and PBA Local 245. According to the Borough, in Fort Lee, as in this case, PBA Local 245 sought to increase its monthly clothing allowance by \$100 per year. In that case, Arbitrator Glasson found that the existing allowance provided to Fort Lee officers was \$175 below the average of the departments surveyed. Despite this finding, Arbitrator Glasson declined to award the PBA's requested increases in the clothing allowance, finding that no increase was warranted. The Borough argued that since no increase was warranted in Fort Lee, where the clothing allowance was below the average of comparable jurisdictions submitted to the arbitrator, then no increase is warranted for the PBA, which already receives a clothing allowance well above the average of comparable agreements submitted by both the Borough and the PBA. The Borough concluded that police officers in Bergenfield receive clothing allowance significantly above the average clothing allowance provided to any other Borough employees.

12. The PBA acknowledged the agreement between Bergenfield and Local 29/108 – R.D.S.W.U., AFL-CIO provides that “once each year, an employee may review their employment file.”

Nevertheless, while acknowledging its obligation to maintain confidential personnel files for each employee and does not object to the inclusion of a Personnel File provision in the collective bargaining agreement, the Borough contended that the provision drafted by the PBA contains an inconsistency.¹³ The Borough suggested that, to correct this ambiguity, the provision should read: “Any member of the Department may review his or her personnel file, upon advance notice and at a reasonable time, by making an appointment with the Chief of Police or his or her designated representative.”

Finally, regarding the PBA’s second non-economic proposal, specifically to alter the existing Maternity/Paternity Leave policy, the Borough did not dispute its obligations to comply with the Federally mandated Family and Medical Leave Act and the New Jersey Family Leave Act. According to the Borough, it has adopted a Family and Medical Leave Act Policy applicable to all Borough employees which mirrors the federal and state mandates.

The Borough contended that, because both Federal and State statutes, as well as the similar Borough policy, already govern maternity and/paternity leave, the PBA’s proposed alteration is unnecessary. The Borough suggests that if such a provision were to be included, such a provision should include a reference to and incorporate the relevant federal and state laws, as well as Borough policy.

The Borough requested the Arbitrator to accept its Final Offer, in its entirety, as reasonable and reject the PBA’s Final Offer, as noted.

13. The Borough pointed to the language proposed by the PBA that “upon advance notice and at reasonable times” an employee “may at any time review his personnel file” as being inconsistent.

SUMMARY OF FINDINGS

The record reveals an exemplary Police Department, lead by a respected Police Chief and composed of forty-five (45) sworn Police Officers in the ranks of Police Officer (29), Sergeant (7), Lieutenant (4) and Captain (2). Whether considered in the context of services provided to the Borough or viewed by the level of training and certifications achieved, the Police Department is considered productive and professional at every level. The Department maintains the distinction of being one of only four departments (out of 70 municipalities) in Bergen County and one of forty-one municipal departments (out of 566) in the State to achieve Certification status with CALEA.

A further review of the record indicates that Police Department personnel enjoy a solid economic package of wage and benefit entitlements, secured through a past history of strategic negotiations and tactical use of contract successes in comparable communities. The PBA now seeks wage increases of four and one-half (4.5%) percent at each step, rank and position to be effective on each successive July during each year of a proposed four (4) year term. A successful PBA award of a 4.5% wage increase in each of four (4) years would produce the following salary guide:

Rank Present Base Salary	Effective <u>7/1/08</u>	Effective <u>7/1/09</u>	Effective <u>7/1/10</u>	Effective <u>7/1/11</u>
Training: \$40,832.	\$42,669.	\$44,590.	\$46,596.	\$48,693.
1 st Year: \$54,963.	\$57,436	\$60,021.	\$62,721.	\$65,544
2 nd Year: \$62,815.	\$65,642.	\$68,596.	\$71,682.	\$74,908.
3 rd Year: \$78,519.	\$82,052.	\$85,745.	\$89,603.	\$93,635.
4 th Year: \$86,371.	\$90,258.	\$94,319.	\$98,564.	\$102,999.
5 th Year: \$104,149.	\$108,836	\$113,733.	\$118,851.	\$124,200.
Sergeant: \$114,342.	\$119,487	\$124,864.	\$130,483	\$136,355
Lieutenant: \$124,903.	\$130,524.	\$136,397.	\$142,535.	\$148,949.
Captain: \$134,731.	\$140,793.	\$147,130.	\$153,750.	\$160,669.

As per evidence placed in the record during the hearing, the Borough of Bergenfield manages the community with conservative fiscal constraint while providing its citizens with quality services. According to the 2008 Municipal Data Sheet State Fiscal Year (E-1), the Borough has a tax ratable base of \$2,421,129,139. In 2008, the Borough appropriated \$21,574,008, although allowed a total appropriation up to \$21,641,135 (E-1, Sheet 3). Furthermore, the actual tax levy proposed in the 2009 Municipal Budget is \$25,373,375, while the maximum allowable amount to be raised by taxation for the 2009 Fiscal Year is \$25,551,697 (E-1, Sheet 3c-1). Compared to the 2008 Levy, the Borough enjoys a notable percentage of cash collection rate of 99.58% (Annual Financial Statement for the SFY Year 2008, Sheet 22). To this Arbitrator, the collection rate reflects the commitment of resident taxpayers and the Borough administration. The 2009 Anticipated Budget Surplus for the Borough is \$1,715,050, an increase from 2008, in which the Borough anticipated and realized a budget surplus of \$1,486,000.

In accordance with the Borough's philosophy of fiscal conservatism, the Borough has restrained debt. While the New Jersey debt limit is 3.5%, the Borough's percentage of net debt to equalized valuations is 0.74% (Annual Debt Statement SFY 2008, E-2, Page 1).

As of 2008, the Borough's aggregate assessed valuation of real property equaled \$2,419,001,755, with an average ration of assessed to true value at \$73.66 (Table of Equalized Valuations 2008). The aggregate true value of real property was \$3,284,009,985. Finally, the equalized valuation in the Borough was \$3,286,137,369. This Arbitrator agrees that, as evidenced by these figures, the Borough has demonstrated an ability to keep low debt and low taxes, collect taxes and maintain property values.

The Borough has also demonstrated a commitment to allocating funds toward public safety, evidenced by the Borough's decision to allot nearly half of salaries of Borough employees in 2008 for salaries within the Police Department. According to the 2009 Municipal Data Sheet State Fiscal Year, the Borough has increased the amount it has appropriated for police department funding. (2009 Municipal Data Sheet State Fiscal Year, Sheet 15)

For the 2009 fiscal year, the Borough has allotted \$6,347,616 for police department salary and wages. Additionally, for 2009, the Borough has allotted \$154,900 for other department-related expenses and \$98,500 for the acquisition of police vehicles. In total, these figures represent the Borough's commitment toward compensating its police officers in a fair manner. As viewed by the budget document, base wages are not the only factor in the town pays its officers in total compensation. In addition to base wage, the town pays its officers longevity and a \$950 yearly clothing allowance.

Proceeding past cursory analysis, and accepting the PBA last offer on its face, calculations of wage increases proposed approach twenty (20%) percent, compounded over the course of the Agreement. As such, under the PBA proposal, a Police Officer at top step would enjoy a salary increase from \$104,149 to \$124,200 in 2011 (\$20,051). A Captain's salary in 2011 would exceed \$160,000, a \$26,000 wage increase. In today's economy, such increases are not realistic.

Nevertheless, the PBA contend that officers deserve this increase when compared to similar jurisdictions and comparable bargaining units in the towns of Ridgefield, Saddle Brook, Tenafly, Mahwah, East Rutherford, Closter, Hasbrouck Heights and Wood-Ridge. As the PBA claims, other jurisdictions "excel" in compensation.

The Borough also makes present comparisons with communities believed to be "similarly situated"¹⁴ and, when compared to those municipal police employees, it would appear that Local 309 not only falls within the range of top wage police salaries in the County, but exceeds all but one municipality for the pay of a top step police officer"

1. "Similarly situated" in terms of their Bergen County location, size, population and demographics.

<u>Municipality</u>	Top Step Officer Salary as 1/1/08
Bergenfield	\$104,149
Dumont	\$91,228
Elmwood Park	\$104,776
Fair Lawn	\$95,819
Lodi	\$100,942
Lyndhurst	\$98,698
Ridgewood	\$99,244
Garfield	\$93,466 (2007)
Rutherford	\$99,639 (as of 7/1/07)
Cliffside Park	\$78,616 (as of 2006)

The Borough also submitted comparable salaries for Sergeants, Lieutenants and Captains*:

<u>Municipality</u>	<u>Sergeant's Salary</u> as of January 1, 2008	<u>Lieutenant's Salary</u> as of January 1, 2008	<u>Captain's Salary</u> as of January 1, 2008
Bergenfield	\$114,342	\$124,903.	\$134,731.
Dumont	\$96,861	\$102,330	\$107,811
Elmwood Park	\$114,206	\$123,342	\$133,210
Lodi	\$107,061	\$113,177	\$119,296
Lyndhurst	\$108,047	\$117,398	No Data Available
Rutherford	\$106,557	\$115,613	No Data Available
Garfield	\$98,552 (2007)	\$102,213 (2007)	\$107,724 (2007)
Cliffside Park	\$81,965 (as of 2006)	\$85,924 (as of 2006)	\$89,879 (as of 2006)
Fairlawn	No Data Available	No Data Available	No Data Available
Ridgewood	No Data Available	No Data Available	No Data Available

*In its post-hearing brief (see Page 61 of 69), the Borough cited the salaries for superior officers as:

Sergeant: \$118,115	Lieutenant: \$129,024	Captain: \$139,177
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Again, comparisons indicate that salaries for Sergeants, Lieutenants and Captains employed in the Borough exceed those salaries earned by the same ranks in similarly situated municipalities.

A familiar strategy is observed in the present arbitration, where the PBA has introduced forty-nine (49) public sector agreements, settlements and arbitration awards in support of its final proposal.¹⁵ After careful analysis, this Arbitrator notes two distinctions from the present matter. First, the PBA relied heavily on contract advancements secured in times of stronger municipal (and State) economies; and, second, the PBA relied on contract comparisons where “comparables” carried significant weight in awards and settlements.

The Borough submitted salary guide proposal which differentiated between those employees hired on or before December 31, 2008 and those employees hired on or after January 1, 2009. For present employees, the Borough proposed a three-year Agreement with 3%, 3.4% and 3.4% increases on each July 1st, with the Proposed Salary Guide (For Officers Hired on or before 12/31/08):

<u>Step</u>	<u>2008 Base</u>	7/1/08 (+3.0%)	7/1/09 (+3.4%)	7/1/10 (+3.4%)
Training	\$40,832	\$42,057	Remains \$42,057	Remains \$42,057
1	\$54,963	\$56,612	\$58,537	\$60,527
2	\$62,815	\$64,699	\$66,899	\$69,174
3	\$78,519	\$80,875	\$83,625	\$86,468
4	\$86,371	\$88,962	\$91,987	\$95,115
5	\$104,149	\$107,273	\$110,920	\$114,691
Sergeant	\$114,342	\$117,772	\$121,776	\$125,916
Lieutenant	\$124,903	\$128,903	\$133,024	\$137,547
Captain	\$134,731	\$138,773	\$143,491	\$148,370

15. If nothing else, Counsel for the PBA exhibited a subtle and accomplished strategy in final brief, thus enhancing opportunity for adoption of the PBA proposal, by reducing the five (5%) percent wage increase proposal to a “mere” four and one-half (4.5%) percent wage increase proposal.

Proposed Salary Guide (For Officers Hired on or after 1/1/09)

<u>Step</u>	<u>2008 Base</u>	<u>7/1/08 (+3.0%)</u>	<u>7/1/09</u>	<u>7/1/10</u>
Training	\$40,832	\$42,057	Remains \$42,057	Remains \$42,057
1	\$54,963	\$56,612	\$58,537	\$60,527
2	\$62,815	\$64,699	\$66,899	\$69,174
3	\$78,519	\$70,008	\$71,571	\$73,185
4	\$86,371	\$79,325	\$81,409	\$83,561
5	\$104,149	\$88,642	\$91,247	\$93,937
6	--	\$97,959	\$101,085	\$104,313
7	--	\$107,273	\$110,920	\$114,691
Sergeant	\$114,342	\$117,772	\$121,776	\$125,916
Lieutenant	\$124,903	\$128,903	\$133,024	\$137,547
Captain	\$134,731	\$138,773	\$143,491	\$148,370

The Borough also proposed the addition of two (2) steps for police officers for those hired after January 1, 2008 (from five (5) steps to seven (7) steps to the top level salary).

In the opinion of this Arbitrator, present analysis of economic offers mandates greater emphasis on the cost implications of salary increases and consideration of fiscal limitations on the municipal budget. Whether apparent to the general public or unnoticed by better economic times, nearly one-half of the municipal salary budget relates to public safety costs. Thus, in an environment of where economic constraint and budgetary hurdles loom, a greater emphasis must be placed on the economic impact (and balance) of bargaining unit advancements.

Stated in historic perspective, the parties questioned was how to compensate uniformed officers in a relative fashion for their professional work. The point of departure in present terms question how to budget increased costs, including those associated with the wages and benefits of uniformed officers who have surpassed the compensation norm and enjoy the benefit of a substantial collective bargaining agreements.

There should be no quarrel that, when compared to police departments in comparable municipalities in Bergen County, Local 309's Agreement maintains a salary structure which is favorable. While wage increases in other communities the PBA uses as "comparable"¹⁶ manifest settlements corresponding to the percentage increases sought herein by Local 309, when considered in real dollars, granting the PBA's salary proposal would have an enormous, possibly ill, impact on the Borough's finances. Thus, although this Arbitrator viewed the economic proposals of the Borough as more realistic in terms of present day economic realities¹⁷, extrinsic evidence infers that the Borough's wage proposal to present Officers was calculated in strategy with other cost saving proposals.¹⁸

Consider the median household income in Bergenfield was \$73,803 in 2007 and the median family income was \$87,358 in 2007. As the salary guide demonstrates, the 2007 top step salary of \$101,361 for a Bergenfield Police Officer (without considerations of additional household or family income) compared very favorably to the population of the Borough. With the salary increase on July 1, 2007, a Bergenfield Police Officer at top step salary earned a base pay of \$104,149. The conclusion is simple, base pay for municipal police officers greatly exceeds the median household and median family income of the municipal citizenry.

16. A review of contract duration dates leaves the general finding that comparable increases were gained at a time before the present negotiation/arbitration proceeding commenced and prior to the present economic environment facing public sector employers.

17. This Arbitrator takes judicial notice of the financial collapse of two major international investment companies (Lehman Brothers and Bear Stearns); the closings, consolidations and mergers within the national and local banking system; and the general economic crisis in both private sector businesses and public sector (Federal, State and local) operations. These incidents have all occurred during the pendency of the present arbitration proceeding. Moreover, all these factors lead to the simple and undisputable conclusion that the Borough is facing economic limitations prevalent in every sector of the economy.

18. For example, the proposed two-tier salary guide and the proposal for a change in health care carriers.

Herein, this Arbitrator has no intention of eliminating any contract benefit previously earned or extracting language of entitlements previously bargained for. Achievements in bargaining unit wage levels are apparent, as are the fringe benefits. Those gains shall remain. However, this Award is a singular attempt to recognize valued law enforcement service to a community with respectful constraint on the advanced economic position enjoyed by the Department's police officers. We now turn to statutory criteria, with this Arbitrator's emphatic accent on the public's demand for services, the impact of the economic increase on the taxpayer, and the results of the award on the general welfare of the community.

The Borough and its citizens recognize the police department as active and effective factor in maintaining peace and order within the municipality and providing extra services to the community. In 2008, the Police Department received a twenty-eight thousand seventy-eight (28,078) calls for service, demonstrating a high level of activity. From testimony on the record, it is apparent that the community demands an effective police force.

In addition to standard policing functions, members of the Bergenfield Police Department provide voluntary and charitable services, participate in local parades, distribute safety information to local schools, assist in preventive conduct programs (ie, drunk driving education), direct the youth police academy and involve themselves in many other community oriented services.

And, as stated previously, evidence demonstrates that the Borough's total expenditures for police department salaries and wages was \$6,249,208 in 2008, representing forty-nine percent (49%) of the Borough's budgeted salary expenditures of \$12,804,713.00 and eight percent (8%) of the Borough's total 2008 expenditures of \$78,197,368.00. Police services represent the single largest expenditure in the Borough's budget.¹⁹ Thus, any wage increase has significant impact on the financial operation of the Borough.

19. Borough Report of Audit for the Fiscal Year Ended June 30, 2008

With respect to the interests and welfare of the public, this Arbitrator considers the PBA proposal to be beyond the parameters of the Borough's budget and the economic limitations under N.J.S.A. 40A:4-45.1 et. seq. The scale of the PBA's proposal would place too great a financial burden on the Borough. The Borough's overall proposal is an attempt to award present officers with increases, when taken together with cost-saving items (specifically, the prescription drug program carrier).²⁰

With respect to comparability issues, the evidence clearly reveals that Local 309 enjoys a collective bargaining agreement which is generally more economically rewarding than the vast majority of contracts covering uniformed officers in the same or similarly situated communities of Bergen County.

Evidence demonstrates that the overall compensation of the Bergenfield Police Officers, at top step of the salary guide²¹, is also significant in scope and financial terms (wages and benefits). In addition to a base salary of \$104,149 (as of June 30, 2008), a longevity benefit entitles officers to receive two (2%) percent of salary after 10 years of service (equivalent to an additional \$2,082 per year as July 1, 2008). Members of the bargaining unit further enjoy thirteen (13) paid holidays, included in the base salary of officers; fifteen (15) vacation days (after 10 years of service); three (3) personal days; contributions to medical and hospitalization insurance; clothing allowance of \$950 per year; overtime payments of time and one-half of regular pay for time worked in excess of forty (40) hours in a week; minimum call-in time of two (2) hours at time and one-half of regular pay; and sick leave up to one (1) full work year.

20. The Borough submitted the recent Interest Arbitration Award of Arbitrator James Mastriani (issued May 5, 2009), containing a "no wage increase" in one year of the contract and a "freeze on all step increases and no credit for time worked during this period ...". (See In the Matter of Interest Arbitration Between State of New Jersey and PBA Local 105, PERC Docket No. IA-2008-014, James W. Mastriani, Arbitrator, 2009). While informative, Arbitrator Mastriani's Award was neither based on similar facts nor used as precedent.

21. Which is the majority of officers represented by Local 309.

When comparing the wage package of the Police Officers to private sector average annual wages, evidence reveals that the Local 309 bargaining unit exceeds a large segment of the economy. The average private sector salary for 2007 was \$53,594 (see PBA-20, PERC data), well below the top step Police Officer's salary of \$104,149.

In Bergen County, the average private sector annual wage for 2007 was \$56,587, still well below the PBA salaries. When considering the advancements received through this Award, the PBA will be approaching "twice" the average private sector annual wage in Bergen County. Superior Officers exceed twice the average annual wage in Bergen County.

The parties submitted no "Stipulations."

With respect to the cost of living, in light of the economic climate of the nation and the apparent state of the State, both proposals exceed the recognized cost of living.

With respect to the lawful authority of the employer, this Arbitrator accepts the Borough's contention that it has met all the requirements imposed by P.L. 1976, c. 68(C.40A:4-45.1 et seq.). It is the Borough's budget cap and tax cap levy, and the limitations imposed under N.J.S.A. 40A:4-45.45 that requires of significant note. Indeed, while the core of the tax cap formula is a four (4%) percent increase (over the previous year's amount raised by taxes), it is this Arbitrator's conclusion that the PBA's proposal would result in the Borough exceeding the Cap limit.

As a result, and placing particular emphasis on the interests and welfare of the public and the limitations placed on the Borough by statute (budget caps and tax cap levies), this Arbitrator determines that reasonable wage increases, at each rank and step on the salary guide, shall be implemented, immediately and retroactively, as follows:

Effective: July 1, 2008: 2.5% across-the-board

Effective: July 1, 2009: 2.5% across-the-board

Effective: July 1, 2010: 2.5% across-the-board

Effective: July 1, 2011: 2.5% across-the-board

Increases result in the following base salary guide:

Rank	Effective 7/1/08	Effective 7/1/09	Effective 7/1/10	Effective 7/1/11
Present Base Salary				
Training: \$40,832.	\$41,853.	\$42,899.	\$43,972.	\$45,070.
1 st Year: \$54,963.	\$56,337.	\$57,745.	\$59,190.	\$60,670.
2 nd Year: \$62,815.	\$64,385.	\$65,995.	\$67,645.	\$69,336.
3 rd Year: \$78,519.	\$80,482.	\$82,494.	\$84,556.	\$86,670.
4 th Year: \$86,371.	\$88,530.	\$90,743.	\$93,012.	\$95,337.
5 th Year: \$104,149.	\$106,752.	\$109,421.	\$112,157.	\$114,960.
Sergeant: \$114,342.	\$117,200.	\$120,130.	\$123,134.	\$126,212.
Lieutenant: \$124,903.	\$128,025.	\$131,226.	\$134,507.	\$137,870.
Captain: \$134,731.	\$138,100.	\$141,552.	\$145,090.	\$148,717.

It is notable that these wages increases are dramatically below the PBA proposal and perceptibly less than the Borough proposal in each year of the four (4) year Agreement. However, there is clear justification for this decision, when the interest and welfare of the public and the budgetary constraints facing the Borough are considered with the present overall compensation now paid to the bargaining unit are calculated in actual dollars. Increases expressed in terms of actual dollars are set forth as follows:

Rank and Present Base Salary	Base Salary Increase in Dollars: Effective 7/1/08	Base Salary Increase in Dollars: Effective 7/1/09	Base Salary Increase in Dollars: Effective 7/1/10	Base Salary Increase in Dollars: Effective 7/1/11
Training: \$40,832.	\$1,021.	\$1,046.	\$1,073.	\$1,098.
1 st Year: \$54,963.	\$1,374.	\$1,408.	\$1,445.	\$1,480.
2 nd Year: \$62,815.	\$1,570.	\$1,610.	\$1,650.	\$1,691.
3 rd Year: \$78,519.	\$1,963.	\$2,012.	\$2,062.	\$2,114.

4 th Year:	\$86,371.	\$2,159.	\$2,213.	\$2,269.	\$2,325.
5 th Year:	\$104,149.	\$2,603.	\$2,669.	\$2,736.	\$2,804.
Sergeant:	\$114,342.	\$2,858.	\$2,930.	\$3,004.	\$3,078.
Lieutenant:	\$124,903.	\$3,122.	\$3,201.	\$3,281.	\$3,363.
Captain:	\$134,731.	\$3,369.	\$3,452.	\$3,538.	\$3,627.

Whether viewed separately or on balance, Bergenfield Police officers have reached a significant compensation level. The majority of police personnel now receive between \$104,149 and \$134,731 in annual base salary, without the added considerations of benefit entitlements and longevity payments. And considering the increases over the course of the Agreement, to be paid retroactively to July 1, 2008, Police Officers will be receiving substantial new money in their salaries. These figures are not insignificant, whether taken alone or in comparison to the household incomes and family incomes in Bergenfield and to police departments in similarly situated municipalities. And, there is significant cost implications resulting from this Award.

What is the cost of this Award, based on the above increase? For purposes of comparison, consider forty-five (45) sworn officers in the ranks of Police Officer (29), Sergeant (7), Lieutenant (4) and Captain (2), with three (3) Training positions budgeted for, but not filled. Assuming the three budgeted positions at the Training salary, twenty-nine police officers at the top-step salary²² and a wage budget of \$5,055,318 as of June 30, 2008, increased wage costs for bargaining unit salaries are as follows²³:

22. Although the evidence reveals police officers are on various steps of the salary guide, placing all police officers on top step is used herein solely for upper limits of direct comparison purposes.

23. While checked for accuracy by this Arbitrator, all numbers are subject to recalculation by the parties to ensure accuracy.

Rank	July 1, 2008 Dollar Increase	July 1, 2009 Dollar Increase	July 1, 2010 Dollar Increase	July 1, 2011 Dollar Increase	Total
Training (3)	\$1,021 x 3 = \$3,063	\$1,046 x 3 = \$3,198	\$1,073 x 3 = \$3,219	\$1,098 x 3 = \$3,294	\$12,774.
5 th Step Officer (29)	\$2,603 x 29 = \$75,487	\$2,669 x 29 = \$77,401	\$2,736 x 29 = \$79,344	\$2,804 x 29 = \$81,316	\$313,548.
Sergeant (7)	\$2,858 x 7 = \$20,006	\$2,930 x 7 = \$20,510	\$3,004 x 7 = \$21,028	\$3,078 x 7 = \$21,546	\$83,090.
Lieutenant (4)	\$3,122 x 4 = \$12,488	\$3,201 x 4 = \$12,804	\$3,281 x 4 = \$13,124	\$3,363 x 4 = \$13,452	\$51,868.
Captain (2)	\$3,369 x 2 = \$6,738	\$3,452 x 2 = \$6,904	\$3,538 x 2 = \$7,076	\$3,627 x 2 = \$7,254	\$27,972.
Total	\$117,782.	\$120,817.	\$122,791.	\$126,862.	\$489,252.

Effective: July 1, 2008: 2.5% increases = \$117,782 (versus \$227,490, per the PBA offer)
Effective: July 1, 2009: 2.5% increases = \$120,817 (versus \$237,726, per the PBA offer)
Effective: July 1, 2010: 2.5% increases = \$122,791 (versus \$248,424, per the PBA offer)
Effective: July 1, 2011: 2.5% increases = \$126,862 (versus \$259,620, per the PBA offer)

From the figures utilized herein, total wage increases over the four (4) year period of the July 1, 2008 - June 30, 2012 Agreement will exceed \$489,000.

Despite the “new money” required to meet its obligation, this Arbitrator is of the opinion that the wage increase imposed herein will assist in maintaining continuity and stability of employment. While not evidenced in great detail, documents revealed that numerous municipalities throughout the State are contemplating adjustments to police department manpower, including layoffs. However, in its brief, the Borough contended that its “proposal will guarantee the continuation and stability of employment for all members of the PBA Local 309 during the proposed contract terms;...”. If the Borough is to be taken on its word, this Award of less economic impact will further guarantee the continuation of employment for all Police Officers.

Moreover, Bergenfield Police Officers will be receiving two simultaneous (and immediate) increases exceeding five (5%) percent in their base wages (as a result of the increases awarded for July 1, 2008 and July 1, 2009). The majority of officers²⁴ will be receiving a retroactive payment of \$5,272. And when considering that, in just eight months from the date of this Award, bargaining unit members will be receiving another three (2.5%) percent increase (on July 1, 2010), ranging between \$2,736 and \$3,627, the rationale for “respectful restraint” finds justification. When adding the intention of relief for the Borough’s budget and respite to the taxpayer, this Award has merit. Finally, recognizing a four year wage increase exceeding ten (10%) percent²⁵, when compounded, base salary increases between \$10,812 and \$13,987 (without considerations of longevity payments²⁶ or other benefits) and adjusted base salaries between \$114,960 and \$148,718, the bargaining unit has made significant gains. This Arbitrator finds the Award herein both justified and responsible.

The Borough’s proposal that eligibility for retroactive pay in 2008 and 2009 will require the police officer to be on the Borough payroll at the time of this Award will be granted. However, the request for elimination of the Senior Officer Differential shall be denied. This is an issue which requires negotiation between the parties.

With respect to the other economic and non-economic proposals of the Borough, this Arbitrator finds no compelling reasons for adoption.

24. Between 5th year officers at “top step” and Captains.

25. 10.4% when compounded.

26. Longevity amounts to notable resources, when considering the Borough pays 1% of base pay for every six to eight years of service, 2% of base pay for nine through eleven years of service, 3% of base pay for twelve through fourteen years of service, 4% of base pay for fifteen through seventeen years of service, 5% of base pay for eighteen through twenty years of service, 6% of base pay for twenty-one through twenty-three years of service, and 8% of base pay for twenty-four and more years of service. Longevity pay for an officer with more than twenty-one years of service and holding a superior officer rank can exceed \$10,000 per year.

Specifically, the Borough's request to modify Article IV (Longevity), and the eligibility for all employees hired on or after January 1, 2009 (to be 10-15 years - \$600.00; 16-20 years - \$800.00; and 21 or more years - \$1,000.00, with no eligibility for longevity prior to such) shall be denied. This is an issue more appropriate to discuss in negotiation and not sought in arbitration without compelling reasoning.

With respect to the Borough's request to modify Article V (Work Schedules and Overtime) with the proposal that "The provisions of §4 shall only apply if the recall is not contiguous to the employees' shift" shall be denied.

The Borough's request to modify Article VII (Holidays and Personal Days) by "eliminating the provisions of §1 and indicate that there shall be no extra pay for holidays if worked" shall be denied.

With respect to the Borough's request to change the carrier under Article VIII (Insurance and Death Benefits), specifically that "Effective July 1, 2009, all members of the bargaining unit, present and former, shall be covered under the provisions of the prescription plan handled through the SHBP. Any changes as to co-pays/coverages etc. to said plan made by the SHBC shall govern the employees/former employees under the bargaining unit as to this benefit. There shall be no stand alone prescription plan" shall be denied.

Moreover, the Borough's request for provisions of health medical insurance in Article VIII, § 5 to be revised "As of 1/1/10 and throughout the term of the Agreement, each active employee shall pay the following amount per paycheck for 24 or 26 paychecks for medical/health benefits based on the level of coverage a bargaining unit member receives, depending upon how paychecks are paid on an annual basis (specifically, for a. Single coverage - \$35.00 per paycheck; b. Husband and wife coverage - \$50.00 per paycheck; c. Parent and child coverage - \$50.00 per paycheck; and d. Family coverage - \$75.00 per paycheck)" shall be denied.

While the Borough presented post-hearing evidence in support of its position affecting both requests²⁷, this Arbitrator must agree with the PBA's objection to the untimely submission of evidence.²⁸ This matter has merit in the face of economic realities and could well be an issue for negotiation and arbitrable. However, relevant information must be properly disseminated, reviewed and discussed. The timing of submissions results in the evidence being found inadmissible.

The Borough's request to modify Article IX (Vacations), specifically that "The provisions of §2 shall only apply if the approval for carryover is done by the Borough Administrator or designee in writing. Any carryover vacation not used in the carryover year shall be forfeited. All existing carried over vacation days, if paid by the Borough in the future, shall be at the employee's daily rate in effect on June 30, 2009" is denied. There was no compelling evidence presented to support a change in the contract entitlement.

The Borough's proposal to modify Article XI (Grievance Procedure) by requesting "A. Working days, in this Article, shall be defined as Monday through Friday, irrespective of whether the employee works the days or not" and "B. The filing for arbitration in §4 shall be calendar days" shall be denied. There was no compelling evidence presented to support a change in the contract entitlement.

27. It is acknowledged that the Borough submitted evidence when it became available.

28 As expressed in Counsel's letter, the objection was to the attempt to supplement the record post hearing. As Counsel further expressed, "The difference between insurance plans in any category of coverage goes far beyond a mere rate change. notwithstanding this ancillary and unilaterally supplied information, is unawardable as a matter of law." While a change to an insurance plan may be "awardable" as a matter of law, this Arbitrator must agree with the PBA's position that such a change could not be awarded if based on unilaterally supplied, post hearing evidence. Thus, this Arbitrator denies the admission of post hearing evidence in support of the Borough's request for a change to the provisions of Article VIII.

The Borough's request to modify Article XIII (Terminal Leave) by capping the provisions of Article XIII, Section 1, based on the employee's annual yearly based salary as of December 31, 2008 for all existing employees, shall be denied. Similarly, the proposal that all employees hired on or after January 1, 2009, shall be capped at a total dollar amount not exceeding \$15,000.00 shall be denied. While there is obvious cost-saving to this proposal, there was no compelling evidence presented to support a change in the contract entitlement.

The Borough's request to modify Article XIV (Sick Leave) by adding a new §4 as follows: "Abuse of sick leave shall be cause for disciplinary action, up to and including termination. Accumulated unused sick leave shall not be paid under any circumstance" shall be denied. There was no evidence that any police officer has abused sick leave nor supportive for a change in the contract entitlement.

Finally, the Borough's request to modify Article XV (Separability and Savings) by deleting the last sentence shall be denied.

Similarly, the PBA's request for the addition of a "Personnel Files" clause, as a new item to the contract, shall be denied. The Borough's contracts with other municipal unions (including the FMBA Local 65, Bergenfield Employee Association, Bergenfield Public Works Supervisors of Personnel and Bergenfield Police Department Telecommunicator's Association) do not contain Personnel File provisions.²⁹ The PBA has not submitted evidence to support a compelling necessity to include a "Personnel Files" clause within the successor Agreement.

29. The Borough did acknowledge that one contract, with Local 29/108 RWDSU, states that "once each year, an employee may review their employment file."

Finally, PBA’s proposed addition of a “Maternity/Paternity Leave” clause as a new item to the contract shall be granted, in part. While the language proposed by the PBA shall not be adopted, as proposed, the Borough shall codify for the PBA its obligations to comply with the Federal and Medical Leave Act (FMLA) , 29 U.S.C.A. §2601 et. seq. and the New Jersey Family Leave Act (FLA) N.J.S.A. 34:11b-1 et. seq. Since the Borough has represented that it has adopted a FMLA Policy applicable to all Borough employees (see Borough Post-Hearing Brief, Exhibit A), the same shall annexed to the successor PBA Local 309 Agreement.

* * * * *

In consonance with the proof, and upon all the foregoing, the undersigned Arbitrator hereby renders, decides, determines, and issues the following.

INTEREST AWARD
Public Employment Relations Commission
Docket No. IA-2009-011

1. **Duration**: The Collective Bargaining Agreement shall be effective for four (4) years, effective July 1, 2008 through June 30, 2012.

2. **Wages**: Increase each rank and step on the salary guide, as follows:

- Effective: July 1, 2008: 2.5% across-the-board
- Effective: July 1, 2009: 2.5% across-the-board
- Effective: July 1, 2010: 2.5% across-the-board
- Effective: July 1, 2011: 2.5% across-the-board

A. Wage increases shall be implemented, effective immediately, as follows:

Rank Present Base Salary	Effective <u>7/1/08</u>	Effective <u>7/1/09</u>	Effective <u>7/1/10</u>	Effective <u>7/1/11</u>
Training: \$40,832.	\$41,853.	\$42,899.	\$43,972.	\$45,070.
1 st Year: \$54,963.	\$56,337.	\$57,745.	\$59,190.	\$60,670.
2 nd Year: \$62,815.	\$64,385.	\$65,995.	\$67,645.	\$69,336.
3 rd Year: \$78,519.	\$80,482.	\$82,494.	\$84,556.	\$86,670.
4 th Year: \$86,371.	\$88,530.	\$90,743.	\$93,012.	\$95,337.
5 th Year: \$104,149.	\$106,752.	\$109,421.	\$112,157.	\$114,960.
Sergeant: \$114,342.	\$117,200.	\$120,130.	\$123,134.	\$126,212.
Lieutenant: \$124,903.	\$128,025.	\$131,226.	\$134,507.	\$137,870.
Captain: \$134,731.	\$138,100.	\$141,552.	\$145,090.	\$148,717.

B. Wage increases shall be implemented immediately, with retroactive payments calculated from July 1, 2008 and paid within a reasonable period of time. Retroactive pay shall be paid, based on the following:


Rank and Present Base Salary	Base Salary Increase in Dollars: Effective 7/1/08	Base Salary Increase in Dollars: Effective 7/1/09	Base Salary Increase in Dollars: Effective 7/1/10	Base Salary Increase in Dollars: Effective 7/1/11
Training: \$40,832.	\$1,021.	\$1,046.	\$1,073.	\$1,098.
1 st Year: \$54,963.	\$1,374.	\$1,408.	\$1,445.	\$1,480.
2 nd Year: \$62,815.	\$1,570.	\$1,610.	\$1,650.	\$1,691.
3 rd Year: \$78,519.	\$1,963.	\$2,012.	\$2,062.	\$2,114.
4 th Year: \$86,371.	\$2,159.	\$2,213.	\$2,269.	\$2,325.
5 th Year: \$104,149.	\$2,603.	\$2,669.	\$2,736.	\$2,804.
Sergeant: \$114,342.	\$2,858.	\$2,930.	\$3,004.	\$3,078.
Lieutenant: \$124,903.	\$3,122.	\$3,201.	\$3,281.	\$3,363.
Captain: \$134,731.	\$3,369.	\$3,452.	\$3,538.	\$3,627.

D. To be eligible for retroactive pay, an officer must be on the payroll as of the date of this Award.

3. While the "Maternity/Paternity Leave" language proposed by the PBA shall not be adopted, as proposed, the Borough shall codify its obligations to comply with the Federal and Medical Leave Act (FMLA), 29 U.S.C.A. §2601 et. seq. and the New Jersey Family Leave Act (FLA) N.J.S.A. 34:11b-1 et. seq. As the Borough has represented it has adopted a FMLA Policy applicable to all Borough employees (see Borough Post-Hearing Brief, Exhibit A), the same shall annexed to the successor Agreement and incorporated therein by reference and addendum.

4. All other proposals and offers of the Borough of Bergenfield and PBA Local 309 which are not specifically granted herein shall be considered denied and provisions of the existing Collective Bargaining Agreement not otherwise modified by this Award shall be carried forward.

Dated: November 13, 2009
New Vernon, New Jersey


J. J. PIERSON, Esq., Arbitrator

