

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

---

In the Matter of the Interest Arbitration Between:

**BOROUGH OF MILLTOWN**

AND

**P.B.A. LOCAL NO. 338**

Docket No. IA-2010-051

.....

BEFORE: ERNEST WEISS,  
INTEREST ARBITRATOR

APPEARANCES:

FOR THE PBA:

RICHARD D. LOCCKE, ESQ.  
LOCCKE, CORREIA,  
LIMSKY & BUKOSKY

FOR THE BOROUGH:

ARTHUR R. THIBAUT JR., ESQ  
APRUZZESE, McDERMOTT,  
MASTRO & MURPHY, P.C.

## **PRELIMINARY STATEMENT**

The above parties have had a long-standing collective bargaining relationship. The negotiation units, Borough of Milltown and PBA Local No. 338, are signatories to a Collective Bargaining Agreement which expired on December 31, 2009.

Prior to the filing of the Interest Arbitration Petition by the PBA, the parties engaged in negotiations for a successor agreement. However, although a number of issues were resolved, eventually the parties reached an impasse and the PBA filed a petition for interest arbitration with the Public Employment Relations Commission.

Thereafter, in accordance with the Act, the parties, by mutual consent, agreed to my appointment as interest arbitrator.

Initially, I scheduled and conducted a number of mediation sessions in an attempt to facilitate further settlement of the outstanding issues. Eventually, after diligent effort on both sides, the parties were successful in reducing some of the outstanding issues. In fact, a settlement was reached by the parties herein in mediation, but failed in ratification.

As a result, I convened formal interest arbitration on May 13, 2011. At that hearing before me there were two (2) economic issues presented by the PBA and three (3) issues presented by the Borough as set forth below and are now before me herein for final and binding resolution.

During this formal interest arbitration hearing, the parties were granted an opportunity to present evidence and argument in support of their respective positions. A verbatim transcript of the hearing was produced and received. Both

parties submitted extensive written post-hearing arguments on behalf of their final positions.

## **REMAINING ISSUES TO BE DECIDED**

### **PBA**

- 1. The PBA proposed a four (4) year contract to commence January 1, 2010 and to provide a 3.5% across the board increase at each rank, step and position effective each January 1.**
- 2. The PBA proposed a modification of Longevity (J-1, Article VII) by adding a twenty four (24) year step at an additional 2%, for a total of 10% at that level.**

### **BOROUGH OF MILLTOWN**

**A three (3) year contract- January 1, 2010-December 31, 2012**

- 1. Article IV-Wages**
  - a) Wage increases as follows for each year of the contract for all employees. 2010-0%, 2011-0%, 2012-1.5%**
  - b) Add one new step for new hires between step 4 and step 5 in the current salary guide.**

- 2. Article X- medical Benefits**

**Add to Section A:**

**Effective May 21, 2010 all unit employees shall contribute 1.5% of their base salary toward the cost of health insurance.**

## REVISED STATUTORY CRITERIA

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

1. The interest 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, 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 service 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 jurisdiction, 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 too 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 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 the 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 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 effect 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 employee' 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 taxpayer 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 © 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 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 upon 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. 207, c.62 (C.40A:4-45.45) (N.J.S.A. 34:13A-16g)

## **POSITION OF THE PARTIES**

(Reproduced from their post hearing briefs)

### **POSITION OF THE PBA**

#### **INTEREST AND WELFARE OF THE PUBLIC**

##### **INTEREST AND WELFARE OF THE PUBLIC**

The Borough of Milltown Police Department is a full service law enforcement agency that well serves the interest and welfare of the public of all the residents as well as those who travel through the Borough. While the Borough is not a large town geographically, it is bordered by major highways including nearby Route 1, Route 18 and the New Jersey Turnpike. Numerous counties and heavily traveled local streets are within the Borough's jurisdiction as well. County Road 617 and County Road 606 were identified, commonly known as Ryders Lane and Main Street as major traffic areas. As Milltown Mayor, Gloria M. Bradford stated in her "from the desk of the Mayor" article in the Borough of Milltown website (P-2) Milltown has been declared " the center of population in the State of New Jersey". She described the Borough as follows:

" In this busy, congested area of New Jersey, Milltown is unique. Although we are located between two major highways, we are able to maintain the small town atmosphere that is part of its charm. We are also unique in that we have our own electric and water companies which contribute to our tax ratables and enable us to give personalized and prompt service". (Exhibit P-2, page 1)

Police Officer Christopher Johnson testified at a hearing described policing in the Borough and its many challenges. While the pride and successes in citizen interaction was clear, so were the challenges and the changing nature of the demand for Police service. In several measurable areas of increased demand for Police service this Municipality shows much increased demand. The calls for Police service in 2005, the year proceeding the last contract terms (J-1) numbered fourteen thousand two hundred fifty two (14,252). In 2010, the most recent completed year, calls for service were fourteen thousand nine hundred forty-one (14,941). This represents a 4.8% increase in calls for service. This increase however only begins to tell the story. The nature of the calls for service and the nature of Police action is most telling in this town. Criminal complaints over the same period went from four hundred forty-five (445) up to six hundred seventy-three (673). This is a 51.2% increase in criminal complaints. Arrests numbered two hundred seventeen (217) in 2005 and three hundred seventy (370) in 2010. This is an increase of 70.5%. Even motor vehicle summonses increased sharply from two thousand six hundred eighty-one (2,681) in 2005 to three thousand one hundred thirty-six (3,136) in 2010, an increase of 17%. These numbers and increases are based upon departmental reference as per the subject of PBA President Johnson's testimony and set forth in the record as Exhibit P-5. If one analyzes the data on Exhibit P-5 several points must be made. First, while the calls for service have increased, the nature and the severity of those calls has increased far beyond that number. An increase in calls of 4.8% and increases in criminal complaints and arrests of respectfully 51%

and 70% show that the nature of calls are more critical and more violators are identified and arrested. A shifting nature of Police work in Milltown is clearly established by these marked increases in criminal complaints and arrests as compared to calls alone. It must be noted, and as was developed in the testimony of PBA President Johnson, that these "calls for service" are only part of the activity levels. Such other Police activity has as Officer initiated stops and various types of details would describe. An Officer initiated stop might be where an Officer, in contrast to a call for service from a dispatcher, takes action on his own. Where there may be a detail set up, for example a radar/speed suppression detail, it may be numerous summonses issued although it is considered as a single entry. The significant number of summonses issued are also reflective of both aggressive policing and increased traffic flow. It is this increased traffic flow that was a specific subject of testimony from the PBA.

Largely due to its geographic position and numerous commercial attractions within the Borough, there is a high level of vehicular activity through the Borough on a regular basis. Estimates were over ten thousand (10,000) vehicles per day at certain areas within the Borough and the general traffic flow and activity was described through PBA testimony. In addition, in the event of a problem such as an auto accident or heavy traffic on Route 1 or Route 18, Milltown is the recipient of the overflow. Perhaps the Mayor was most accurate when she described the town as the "center of population in the State of New Jersey". According to the testimony from the PBA, it would seem to be an accurate assessment of the commercial and vehicular traffic flow.

In addition to the traffic flow through the town on the noted roadways, there was also substantial commercial activity within the town that draws people to commercial services. Numerous national chains have area served stores within Milltown. PBA Exhibit P-6 identifies some of these stores to include, but not be limited to the following:

- Target
- Home Depot
- Acme
- Strauss Auto
- Payless Shoes
- Gamestop
- Staples
- 7-11
- Petco
- Quick Check
- Verizon
- Blinds To Go
- Hallmark
- Dollar Store
- Countrywide Home Financing

Fast food and dining attractions include such well known stores and chains as follows:

- Chicken Holiday
- Wendy's
- Bella's Pizzeria
- Taco Bell
- Dominos
- Frescos
- Subway
- Lox, Stock and Deli
- Tomato Factory
- Cold Stone Creamery
- Applebee's
- Legends
- Buy Rite
- Golden Lion

The Borough is also home to many financial institutions, many of which add to the daily traffic flow:

- Kearny Federal Savings
- Bank Of America
- Wells Fargo
- Northfield Savings Bank
- Provident Bank
- Valley National Bank

All of these facilities, commercial attractions and financial institutions bring people into the town and results in a significant increase in daily traffic patterns. The high school is regional with East Brunswick and Spotswood, however there is a private catholic school and pre-school, further adding to the traffic issues. Examples were shown graphically in the photographs contained in pages 9, 10 and 11 of the Exhibit P-6. This is an extremely busy town and while rush hours are peaks in activity, due to the commercial activity and draws within the town, the hours of Police demand are substantial.

Distinction was made by the PBA between nighttime policing and daytime policing. At night most of the resident returned to their homes, have dinner, perhaps spend time with the family and then sleep. These are not the primary issues during the nighttime hours. During the day the commercial and commuter traffic is all up and moving. This is where the demand for Police service is at its peak. As the PBA testimony provided at hearing, this is a very busy town. The work load is increasing.

A particular note in the overview of this law enforcement activity and service to the public is the changes that have occurred in the immediate past to the staffing at the Milltown Police Department. In the period defined as the term of the last contract, from the end of 2005 to the present, there have been significant changes in the Milltown Police Department staffing. The PBA identified the sworn staff within the bargaining unit as it exist day at Exhibit P-3. P-4 is the staff of sworn personnel in the bargaining unit as it existed as of the end of 2005, the commencement point of the most recent contract (J-1). Several changes are noted and most will



be dealt with later in this brief. Suffice it to say at this point that in the bargaining unit there were retirement of four (4) sworn persons out of a prior staff of fourteen (14). In addition one (1) Police Officer left the department. Five (5) trained persons therefore left the bargaining unit out of the fourteen (14) that then existed. At present the bargaining unit is thirteen (13) Police Officers which include five (5) relatively new hires. Chart No. 1 below sets forth the current bargaining unit and compares it the bargaining unit as was composed at the beginning of the term of the recent contract.

#### **Services and law enforcement.**

It is in this context of less Police Officers over recent years and newer Police Officers replacing seasoned reference that numerous new procedures, equipment and services were introduced to the public through the Milltown Police Department. Some of those increased services and equipment offerings were noted as follows:

- AFIS
- Radar Trailer
- Inferred Night Vision Equipment
- Senior Liaison Officer
- Work with Senior Center / Call in Procedure for Elderly
- Police Explorer Program
- Child Safety Seat
- "If You See Something / Say Something/ Tip Line"
- Megan's Law Enhancement
- Domestic Violence Law Enhancement
- Sex Crimes Law Enforcement Enhancement
- Bicycle Safety Program
- Pro Active Drug Enforcement Efforts
- Homeland Security Issues

As was described through the testimony, this Police Department works in close professional contact with numerous other agencies in the area as well, as the Prosecutor's Office and State Police. Many of these inter-jurisdiction efforts were described at hearing. Perhaps of paramount importance is the clear representation of pride in the Milltown Police Department, an exceptional high speed call and an excellent relationship with the public. The respect for the citizens and the respect received from the citizens was described through testimony. This is an excellent Police Department doing an excellent job for the public notwithstanding the public employer's changes to the bargaining unit as described above.

#### **Increase in calls for service.**

This increase however only begins to tell the story. The nature of the calls for service and the nature of Police action is most telling in this town. Criminal complaints over the same period went from four hundred forty-five (445) up to six hundred seventy-three (673). This is a 51.2% increase in criminal complaints. Arrests numbered two hundred seventeen (217) in 2005 and three hundred seventy (370) in 2010. This is an increase of 70.5%. Even motor vehicle summonses increased sharply from two thousand six hundred eighty-one (2,681) in 2005 to three thousand one hundred thirty-six (3,136) in 2010, an increase of 17%. These numbers and

increases are based upon departmental reference as per the subject of PBA President Johnson's testimony and set forth in the record as Exhibit P-5. If one analyzes the data on Exhibit P-5 several points must be made. First, while the calls for service have increased, the nature and the severity of those calls has increased far beyond that number. An increase in calls of 4.8% and increases in criminal complaints and arrests of respectfully 51% and 70% show that the nature of calls are more critical and more violators are identified and arrested. A shifting nature of Police work in Milltown is clearly established by these marked increases in criminal complaints and arrests as compared to calls alone. It must be noted, and as was developed in the testimony of PBA President Johnson, that these "calls for service" are only part of the activity levels. Such other Police activity has as Officer initiated stops and various types of details would describe. An Officer initiated stop might be where an Officer, in contrast to a call for service from a dispatcher, takes action on his own. Where there may be a detail set up, for example a radar/speed suppression detail, it may be numerous summonses issued although it is considered as a single entry. The significant number of summonses issued are also reflective of both aggressive policing and increased traffic flow. It is this increased traffic flow that was a specific subject of testimony from the PBA.

**CHART NO. 1**  
(See Ex- P-3 and P-7)

A	B CURRENT	C 2005	D CHANGE DURING LAST CONTRACT (J- 1)
Sergeant	2	5	-3
Corporal	2	1	+ 1
Police Officer	9	8	+ 1
TOTAL	13	14	-1

While the reduction in the number of sworn Officers is notable, fourteen (14) to thirteen (13), it is only the beginning. The shape of the managerial triangle has been modified. Five (5) Sergeant positions have been reduced to two (2) Sergeant positions. The Corporal position, which is not a promotion, has been increased by one (1) and the number of Police Officers also has been increased by one (1). The net loss is identified in the Column (D) of Chart No. 1. Less supervision has several impacts. Promotional opportunities have been diminished. Obligations which were previously allocated to Sergeants have now been downloaded to Corporals and Police Officers. Responsibility and decision making cannot be ordered up the chain of command as it was in the past but now must be assumed that persons of non supervisory position. Further, the career path has been altered and the likelihood of the serving in a non supervisory position for most if not all of one's career has been increased. While the PBA acknowledges that promotion is not an appropriate subject for bargaining, the consequences of management's actions may be noted and also taken into account what one considers the importance of base pay modification as it impacts on ones career path. Less Officers have been providing additional services and law enforcement.

As was described through the testimony, this Police Department works in close professional contact with numerous other agencies in the area as well as the Prosecutor's Office and State Police. Many of these inter-jurisdiction efforts were described at hearing.

Perhaps of paramount importance is the clear representation of pride in the Milltown Police Department, an exceptional high speed call and an excellent relationship with the public. The respect for the citizens and the respect received from the citizens was described through testimony. This is an excellent Police Department doing an excellent job for the public notwithstanding the public employer's changes to the bargaining unit as described above.

### **COMPARISON OF WAGES AND CONDITIONS OF EMPLOYMENT**

Notwithstanding the very busy work environment and high level productivity of the Milltown Police Officer, said Officer is not paid on par with the Officer's peers and in fact is one of the lowest compensated Police Officers in the entire County of Middlesex. In the last year of the most recent contract, 2009, /J-1/ the top pay rate for a Milltown Police Officer is set forth at Eighty Thousand Six Hundred Dollars (80,600.00). Out of the nineteen (19) towns' contracts in evidence only three (3) pay their Police Officers less than Milltown. Chart No. 2 below sets forth the actual pay rates and puts the relative position of Milltown in the fourth from the bottom position.

#### **CHART NO. 2 2009 POLICE OFFICER SALARY W/OUT LONGEVITY IN MIDDLESEX COUNTY MUNICIPALITIES**

	Maximum
Sayreville	\$97,443
Highland Park	\$93,566
East Brunswick	\$92,537
Piscataway	\$91,110
Spotswood	\$90,574
South Plainfield	\$89,692
New Brunswick	\$89,516
Monroe	\$89,233
North Brunswick	\$89,055
Cranbury	\$86,633
Woodbridge	\$88,169
Carteret	\$85,941
South Amboy	\$85,788
Metuchen	\$84,855
Dunellen	\$81,990
<b>MILLTOWN</b>	<b>\$80,600</b>
Jamesburg	\$80,380
South River	\$78,900
South Brunswick	\$77,108

The average pay rates in Middlesex County for 2009 was Eighty-Two Thousand Eight Hundred Sixty-Eight Dollars (\$82,868.00). This shows a shortfall from average in Milltown of Two Thousand Two Hundred Sixty-Eight Dollars (\$2,268.00) or 2.74%. The shortfall from average however, does not end here.

A common benefit among Municipal Police Officers is longevity and longevity should be considered in the total compensation package. Here, the relative position of Milltown is virtually unchanged.

### CHART NO. 3

#### 2009 POLICE OFFICER SALARY IN MIDDLESEX COUNTY MUNICIPALITIES

Municipality	Base	Longevity	Total Salary
Sayreville	\$97,443	10%	\$107,187
North Brunswick	\$89,055		\$105,940
Piscataway	\$95,664	10%	\$105,230
East Brunswick	\$92,537	12%	\$104,410
Woodbridge	\$93,018	9.5%	\$101,855
New Brunswick	\$89,516	10%	\$101,422
Spotswood	\$90,574	10%	\$100,181
South Plainfield	\$92,080	8%	\$99,446
Monroe	\$89,233	11%/0	\$99,049
Highland Park	\$93,566	7%	\$97,566
Carteret	\$85,941	12%	\$96,254
South Amboy	\$85,788	12%	\$96,083
Metuchen	\$84,855	10.5%	\$93,765
Cranbury	\$88,633		\$91,133
<b>MILLTOWN</b>	<b>\$83,955</b>	<b>8%</b>	<b>\$90,671</b>
South Brunswick	\$85,579		\$90,579
Dunellen	\$81,990	10%	\$90,189
Jamesburg	\$82,792	8%	\$89,415
South River	\$80,486	9%	\$87,730

Once again we see that there is no relief from the poor relative positioning of the Milltown Police Officer. Whether one tests base pay only or base plus longevity, the Milltown Police Officer still ranks near the bottom.

It is essential to note that in this case, that while the public employer seeks to provide no wage increase over the years of the contract, its own Charts placed in evidence as part of its three (3) ring binder completely support the calculations above. Reference is made to the three (3) ring binder at Tab 55 and Tab 66. Tab 55 information matches the information calculated on Chart No. 2 above. Employer Exhibit Tab 56 matches the information on Chart No. 3 above. There is no question that the Employer is not able to support its own case with its own evidence.

If one considers other types of terms and conditions of employment there is no justification of the extremely low relative position of the Milltown Police Officer. For example, a common benefit is the Holiday plan. All towns have some level on holidays. In Milltown the

holiday provisions are below average. Chart No. 4 on the following page compares the holiday benefits in the other municipalities in Middlesex County.

**CHART NO. 4  
ANNUAL HOLIDAY COMPARISON**

Carteret	16
Cranbury	13
Dunellen	13
East Brunswick	18 (144 Hours)
Edison	15
Helmeta	13
Jamesburg	16 (130 Hours)
Milltown	14
Middlesex	13
Spotswood	13
Monroe	15
New Providence	16
North Brunswick	13
Old Bridge	15
Perth Amboy	13
Piscataway	14
Plainsboro	15 (120 Hours)
South Amboy	14
South River	13
Woodbridge	15
<b>AVERAGE</b>	<b>14.4 Annual Holidays</b>
<b>MILLTOWN</b>	<b>14 Annual Holidays</b>
<b>MILLTOWN COMPARED TO AVERAGE</b>	<b>(.4 Days) (2.9%)</b>

Again, the Milltown Holiday benefit is below average (2.9% below average).

Many other important areas for comparison also reflect the poor relative positioning of the Milltown Police Officer. For example, no town in Middlesex County provides a work schedule for its Police Officers that has more hours than the Milltown Police Officers work. Several towns have significantly lesser numbers of annual hours in the Work Chart. The Collective Bargaining Agreement for the nearby Township of North Brunswick (*P-9*) shows a work schedule of four (4) days on followed by four (4) days off with each day being a ten (10) hour day. This work schedule (*P-9/p.47*) generates eighteen hundred twenty annual (1,820) hours. The Highland Park work schedule (*P-10/Tab 1/p.13*) provides for a five-three (5-3) work schedule with an eight (8) hour day totaling eighteen hundred twenty-five (1,825) hours. There are many other variations based on the contracts in evidence. In Milltown the annual work obligation is two thousand eighty (2,080) hours. In other words, nobody works longer and almost all make more.

The rate of change in base wages as reflected by these same contracts supports of the PBA Position.

**CHART NO. 5  
CHANGES IN BASE RATES**

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
East Brunswick	3.9	1.5	2	2
Piscataway	3.95			
North Brunswick	3.5	3.5		
Highland Park	3.9	3.9		
South Amboy	2	2.5	2.75	2.75
Woodbridge	3.25	3.5		
Monroe		1.5	2	2
Sayreville		2.9	2.9	2.9
<b>AVERAGES</b>	<b>3.42%</b>	<b>2.75%</b>	<b>2.41%</b>	<b>2.41%</b>

If one considers the shortfall from average as was established on Charts 2 and 3 and further combines the average rate of change set forth on Chart No. 5 on the preceding page, the evidence clearly supports an award of the PBA Position in this case. One must also note and keep in mind the fact that these Officers are now paying 1.5% of their base pay towards medical costs. If one adds the 1.5% factor to those towns listed on the Charts above, the shortfall from average is even worse and the justification for an award of the Last Offer Position of the PBA is strengthened. The public employer introduced a number of exhibits involving

private sector wage trends. It is the position of the PBA that the best comparisons are made with law enforcement agencies.

### **COST OF LIVING**

In considering criteria g7 under the Act, one can really make a case using the Employer's own exhibits. It establishes that the unemployment rate in Milltown is substantially below the County unemployment rate (T-87). The several news releases and various clipping service data provided all indicate positive increases in the cost of living. Examples include a 1.4% increase for northern New Jersey (T-71), a more recent assessment of February 2011 showing a 1.5% increase (T-72), a restatement of the 1.5% from the Collective Bargaining Bulletin of April 7, 2011 (T-47), private sector wage data showing a 1.6% increase in 2010 (T-44), and several Charts prepared by the Employer each showing that over the history of the years reflected the Milltown PBA has always received more by way of settlement than was calculated in the cost of living. The Arbitrator may note Employer Exhibits T-38 and T-64 in this regard. One may refer to this as a standard deviation. The history as established by the Employer's own exhibits has two (2) main parts; first, the cost of living change is a positive number and not a flat number, and second, the Employer has established that whatever the cost of living is the PBA has a pattern of voluntary settlement that exceeds that number.

### **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 E M P L O Y M E N T**

A review of the language of criteria g8 under the Act would import a weighing of the facts consistent with the private sector concepts of "area standards" and "prevailing wage". Clearly, the "prevailing wage" aspect favors an award of the PBA Position. The PBA starts well below average and is trying to catch a moving average which has been calculated in the Charts earlier in this Brief. There are no offsetting benefits or conditions which would justify this shortfall that has been established.

Perhaps most troubling is the fact that the public employer cannot justify

its own case, even using its own evidence. The Employer placed into evidence, in apparently an attempt to justify its position, *Exhibit T-61* which was the Milltown Municipal Employee bargaining unit contract covering the year 2010, the first year of this Award. On page 8 of said contract, at the top, there is a statement that these employees all received a 2.75% increase to their annual salary effective January 1, 2010. By what justification does this Employer offer zero (0) to these Police Officers when it voluntarily gave other employees as 2.75% increase? It should be noted also that these employees include many who work a thirty-five (35) hour work week (*See Exhibit T-61, p.5, Article IV, Paragraph A*). Not only can the Employer not establish its own position by external comparisons, it cannot justify its own position by internal comparisons. On that subject, even the planned Budget for 2011, which is not finalized (*P-12*) shows significant increases in many "Salary and Wage" line items. The General Administration Salary and Wage line item shows an increase of 4.2% an appropriation for 2011 over 2010. The Mayor and Council Salary and Wages are increased by 12.3% in the same category. The Municipal Clerk's Salary and Wages are increased by 5.5%. Financial Administration's Salaries and Wages have an increased appropriation of 13.2%. Zoning/Board of Adjustments Salaries and Wages are increased in their appropriation by 8.4% in 2011 over 2010. One has to ask the question; What happened to the Police?

This is not a poor town. The proofs do not establish fiscal austerity. This is a town where the "surplus anticipated" in the planned Budget *IP-12, Sheet 4*) shows an increase in surplus of Ninety-Five Thousand Five Hundred Ten Dollars (\$95,510.00) or, to put it in percentages, a twenty-seven percent (27%) increase in the anticipated surplus for 2011 over 2010.

The PBA in this case has made modest requests for the Arbitrator to consider. The base wage increase is well supported as is the modest proposal to increase the Top Step of the Longevity Program. The exhibits clearly establish a very poor relative position on both these items.

Based upon the evidence and testimony introduced at the hearing, and further based upon the arguments set forth in this brief, it is respectfully requested that the Interest Arbitrator rule in favor of the Last Offer Position of the PBA as presented in this case.



# **POSITION OF MILLTOWN**

## **LEGAL ARGUMENT**

### **POINT I**

#### **THE INTERESTS AND WELFARE OF THE PUBLIC ARE BEST SERVED IF THE BOROUGH'S FINAL OFFER IS AWARDED**

N.J.S.A. 34:13A-16g(1) provides that the Arbitrator must give "due weight" to "[t]he interests and welfare of the public." The Appellate Division has interpreted this criterion as requiring the Arbitrator to consider, among other things:

[T]he priority to be given to the wages and monetary benefits of public employees within the municipality's budget and plans. Local 207 v. Borough of Hillsdale 263 N.J. Super. 163, 188, (App. Div. 1993) aff'd. in part rev'd. in part 137 N.J. 71 (1994). See also Fox v. Morris County 266 N.J. Super 501, 516 (App. Div. 1993).

Thus, in ruling on this case, the Arbitrator must determine what is in the public's best interest. When this mandate is applied to the facts of this dispute the following questions immediately rise to the surface:

- (1) Is it in the public interest for Police Officers in the Borough of Milltown to receive percentage salary increases greater than other Borough employees?
- (2) Is it in the public interest for the PBA to receive salary increases significantly greater than those received by employees in both the public and private sectors?
- (3) Is it in the public interest that PBA members receive another step in longevity as a percentage of salary on salaries that are double the average salary of other Borough employees?

For reasons set forth in this and other points of the Borough's post-hearing brief, the interest of the public will be served by the Arbitrator awarding the Borough's Final Offer in this matter. Simply put, there is no possible public interest to be served by the Arbitrator granting salary increases to Milltown Police Officers for 2010 or 2011 when all other Borough employees had their wages reduced for 2010. Even without receiving wage increases, Police Officers in Milltown will do better over the term of a new contract due to the fact that the Borough assumed the majority of the cost of health insurance and pension increases for that year for its Police Officers (not to mention the fact that Police Officers not at the top of the salary guide have advanced and will advance on the guide, which will cost the Borough over \$96,000, or 8.8% and others will receive increases to longevity based on years of service). Even accepting a wage freeze for 2010 and 2011 the Borough's Police Officers will still be in an enviable economic situation vis-a-vis all other employees, be they in or out of Milltown or be they Police Officers or not.

Second, as will be explored in more detail below, to award a four year contract to the PBA, would place an undue burden on the local taxpayer. That taxpayer, both in Milltown and Statewide, is not clamoring to pay public employees more money, particularly Police Officers who will earn over \$82,000 under the Borough's proposal, exclusive of health benefits, longevity, overtime, and clothing allowance, among other things, after but six years of employment. To the contrary, the public clamor concerns the high salaries and, in particular, the excessive cost of health benefits and pensions for public employees. See Borough's B-25 through B-29 with respect to this issue, particularly the Asbury Park Press series on police officer salaries.

Nor is there any indication that the public's interest in having an effective and hard-working police force will in any way be hindered or inhibited if the Arbitrator awards the Borough's Final Offer. Most officers will continue to earn salaries above \$100,000, excluding benefits. See B-62. Nor is there any indication that the Milltown Police Officers will do less than their best work if they are not provided a salary increase for 2010 or 2011. As will be discussed below, in terms of "supply and demand", there are hundreds of qualified persons who would be more than happy to take an entry level job as a Milltown Police Officer, with the guarantee of earning a six figure salary, a terrific medical insurance plan at low cost and a defined benefit pension. The PBA did not claim during the Interest Arbitration hearing, nor could they in good faith, that being placed on the same fiscal footing as all of the other Milltown employees — that is, not receiving a wage increase for 2010 or 2011 — would somehow lead to police officer "discontentedness", such that their work serving the public would somehow suffer.

It certainly is not in the public's best interest to treat one group of employees differently than another. Arbitrator Joel Weisblatt, faced the issue of disparate treatment in In the Matter of the Interest Arbitration Between Township of Holmdel and PBA Local 239 Docket No. IA-93-163 (Arb. Weisblatt 1995) and found that:

The Township presents a compelling argument with respect to the reasonableness of consistency among bargaining units under the public interest criterion. Consistency in treatment among bargaining units of the same employer is unquestionably a generally accepted element of good labor relations policy. Sound and consistent labor relations are certainly in the public interest. It prevents "whipsawing" in negotiations and it reduces the potential for the decline in morale, which often accompanies the perception of disparate treatment. The morale issue is a double-edged sword. Unreasonably favorable treatment of police units could likely cause the morale of the other public employees in the municipality to wane. Such a result would certainly not be in the public interest. (emphasis added).

Milltown's argument is more "compelling" than that presented by the Township of Holmdel in the above-cited matter. In 2010, every other Borough employee, including the Borough's other union, OPEIU Local 32, agreed to accept (or had it imposed on them) furlough

days with no pay that reduced their salaries by 3.7% for 2010. No employee in the Borough except Police Officers received a salary increase for 2010 or 2011 (some officers will receive incremental increases in base salary and longevity in 2010 and 2011). This occurred not because of any performance-based issues with respect to those employees, but rather because of the Borough's economic situation: due largely to cost increases beyond the Borough's control, as well as significant revenue diminution from 2008 to 2010, the Borough exceeded its tax levy cap for 2010 and had to obtain a waiver. In 2011, the Borough faced another problem — the appropriations cap — and spend every dollar it permissible could expend under the cap. Moreover, the Borough lost a huge tax appeal to the tune of \$248,000 that will reduce tax revenue by \$125,000 in 2011 and in years forward. This, coupled with the fact of other pending tax appeals from big taxpayers, severely limits the Borough's ability to afford and pay for wage increases. PBA Local 338 did not present any evidence to the Arbitrator which would support Milltown Police Officers receiving salary increases when none of the other employees in the Borough received such increases for 2010 and in fact saw a decline in pay, or in 2011.

## POINT II

### **A COMPARISON OF THE TERMS AND CONDITIONS OF EMPLOYMENT OF MILLTOWN POLICE OFFICERS TO OTHER PUBLIC AND PRIVATE SECTOR EMPLOYEES STRONGLY FAVORS THE BOROUGH'S POSITION IN THIS MATTER.**

A comparison of the economic "terms and conditions of employment" of Milltown Police Officers vis-a-vis other public and private sector employees both in Milltown (internal comparability) and outside of Milltown (external comparability) strongly favors the Borough's position in this Interest Arbitration.

A. Employment in General: The median household income in Milltown as of 2009 was about \$92,804. That number pales when compared to the \$84,955 top pay salary per year that Milltown Police Officers made in 2010 (and this is individual income, not household income) after only six years of service in the municipality.<sup>15</sup> Add longevity (pensionable income for Milltown Police Officers) and holidays, and the base salary is over \$90,000.00. Add overtime, uniform allowance and clothing maintenance and officers in Milltown are nearing \$102,000 in income. B-62. And, of course, this \$102,000.00 individual salary (\$10,000 more than the median household income is for Borough residents) does not include the fact that Milltown Police Officers receive a wonderful health insurance benefit package with a nominal contribution therefore of less than \$1,500.00 a year ( $\$90,000 \times 1.5\% = \$1,350$ ) by law; have their employer—the Borough of Milltown — make pension contributions in the amount of tens of thousands of dollars per employee each year for each of its fourteen PBA Police Officers; and enjoy job security equal to or better than every other public or private employee in the State. This excellent economic package for the Borough's Police Officers exists for employees who are not required to have more than a high school diploma to be hired, who can retire after twenty-five years of service at 65% of full salary for the rest of their lives, and who are all but guaranteed employment until said early retirement.

The PBA will no doubt argue to the Arbitrator that police work is inherently more dangerous than other employment. While this may be true insofar as suburban police officers

occasionally have to deal with violent criminals, and themselves carry weapons, the PBA has put no evidence to the Arbitrator to indicate that, based upon the rate of on-the-job injuries (for example, missed days of work due to such injuries, or the like) that working as a Police Officer in the Borough of Milltown is more physically dangerous than other types of work. In fact, a person working a physically demanding blue collar job is, on a daily basis, much more likely to be injured "in the line of duty" than a police officer. The Arbitrator is also asked to consider that Milltown Police Officers, given the fact that they can retire at half-pay after only 20 years of service, actually work for a much shorter career span than any other employee in the State, be they public or private.

(By 2013, all but 1 of the 14 Police Officers will be at "top pay scale". Exhibit B-62.)

The PBA may also argue that working as a police officer is a stressful job given the relatively small but nonetheless realistic possibility that a police officer's life might be in danger. There is obviously some truth in this, but the fact that no one in Milltown (or anywhere else in the State of New Jersey, for that matter) leaves police work for any other type of work, coupled with the fact that there are literally hundreds of applicants to fill every police officer vacancy, effectively rebuts the PBA's argument that, given the nature of their work, police officers in the past should make considerably more money than their private sector compatriots, and that this disparity should continue to widen. Baldly stated, the "supply and demand" evidence unequivocally establishes that being a Police Officer in Milltown is a highly desirable position. There are hundreds who would gladly take the job, and few leave the position, except due to retirement.

Despite this truism, the salary increases paid to Milltown Police Officers have consistently outstripped employees in the private sector. See e.g. Exhibit 8-37 and B-38. Not only is this true, but, in past years, Police Officers in Milltown and throughout New Jersey have been largely exempt from the "push and pull" of the economy. Not only have no Milltown Police Officers ever been laid off but the wage freezes and diminution of employee benefits which is almost de rigor in the private sector when tough financial times hit have never had an adverse impact on Police Officers in Milltown -- until now.

B. Public Employment in General: These same points hold true with respect to a comparison of Milltown Police Officers with other public employees. Exhibit 13-48 demonstrates that, between 2003 and 2009, Milltown Police Officers have received cumulative salary increases which are 12.6% higher than State and local government median wage increases. This 13% disparity is a drastic understatement given the fact that most Milltown Police Officers make \$100,000 or more, which is at least double the median salaries of public employees in general. See Exhibit B-62. A conversion of these percentages to actual dollars would establish this point. Borough exhibits 49 through 53 generally highlight some of the trends in the public sector.

Additionally, the same points made above with respect to superior health benefits with minimal financial contributions therefore, a pension system second to none, and the "supply and demand" labor analysis, apply with equal force in comparison of Police Officers in Milltown to public employees in general. It is a fact that public employment in general has become that much more attractive given the recent economic downturn in our State and our nation, the excellent

salary, benefits, pension plan and job security provided to Milltown Police Officers makes Police Department work extraordinarily attractive in Milltown and throughout the State.

C. Internal Comparability: The evidence adduced at the hearing established that in 2010, every other Borough employee had their wages reduced because of furloughs instituted by the Borough as a cost savings measure. The Borough is not seeking a wage reduction in 2010 from the PBA — even though the Borough would be justified in seeking a wage reduction from its highest paid employees. The PBA is asked to assist the Borough in these difficult financial times with a wage freeze for two years, which is better than that provided to other Borough employees who had to accept wage reduction.

Milltown Police Officers enjoy a far superior economic package than do other employees in the Borough. Given the fact that this is the case, there is absolutely no reason why the wage freeze put in place for all Borough employees save Police Officers in 2010 and 2011 should not be applied to the Borough's law enforcement employees. In fact, that the other employees, who make significantly less than police, had their salaries reduced in 2010 could easily justify a "roll back" of salary and/or benefits for those Officers, but the Borough is not looking to do so, and is merely seeking to impose the Borough's "pattern of settlement" upon its Police Officers. Even when the Arbitrator awards this settlement, Milltown's Police Officers will continue to far outstrip, both in terms of base salary and benefits such as pension contributions, pension income after retirement, vacation time, etc., their non-public safety brethren in the Borough of Milltown. Compare Exhibit 8-60 with Exhibit B-61.

D. Comparison With Other Police Officers: A review of the "comparable municipalities", exhibits submitted to the Arbitrator by the Borough (Exhibits B-55 through B-59), demonstrates that Milltown Police Officers also do well economically when compared to comparable municipalities. Exhibit B-55 shows that, as compared to municipalities with its size and demographics, such as Jamesburg, South River, Dunellen, and South Amboy, Milltown is third in salary with respect to maximum salary reached after 5 steps. When the Arbitrator considers the "Corporal" step, achieved after 10 years, Milltown moves into second place among its comparable communities. When adding longevity, clothing allowance and holidays, Milltown officers after 10 years made over \$92,000, putting them ahead of Dunellen, Jamesburg, South River, Cranbury and even the much larger community of South Brunswick. See Exhibits B-56 and B-62.

The towns in the County ahead of Milltown are much larger communities in population and area, such as Piscataway, East Brunswick, North Brunswick and Woodbridge. Yet, when compared to the towns most similar in the County the compensation package paid to Milltown officer is competitive.

Two other points with respect to "external comparability" issue. First, there is no indication from any of the evidence submitted to the Arbitrator by PBA Local 338 that any of these comparable municipalities (or, for that matter, any other towns in Middlesex County), are in the type of financial distress which is being experienced by the Borough of Milltown. Looking at tax rates alone, even equalized tax rates, means little in terms of a "fiscal distress" analysis. In order to make a true comparison of the economic situation in each municipality, one would have

to look at not only tax rates, but revenue, tax cap levy issues, spending cap issues, etc. While one town may have given raises for the three years at issue in this arbitration inconsistent with the Borough's offer, the Arbitrator would need to analyze when those contracts were settled, i.e. before the 2% tax levy cap law was introduced or passed, or whether that town had one-time revenue sources to pay for increases (like liquor license sales or property sales) that Milltown does not have and will not have over the next three years, or whether those other towns had to institute furloughs and salary cuts, or whether those towns have lost the type and size tax appeal Milltown lost in late 2010, reducing its yearly tax revenue from one taxpayer by \$125,000, and having to pay the taxpayer \$248,000.

Second, there is evidence in this record that one other town has faced a similar financial distress as Milltown — the Borough of Spotswood. See Exhibit B-108. In 2011, Spotswood was \$105 dollars under its 2% tax levy cap, even with salary freezes for all its employees. In 2012, Spotswood is facing a \$600,000 budget shortfall (that is, \$600,000 over the tax levy cap, which will require cuts in expenditures to meet the State's mandate on taxes). Like in Milltown, the Spotswood PBA sought interest arbitration in which it sought, among other things, a four year contract and 3.5% wage increases. Instead, Arbitrator Frank Mason made the following award, which was affirmed by PERC:

Three year contract—January 1, 2011 through December 31, 2013

Wage Increase:

2011 — 0%

7/1/12 — 2% (Borough offered 1%) 1/1/13 — 2% (Borough offered 1.5%)

Longevity:

Current PBA members — frozen at current level and convert to flat dollar amount;

Those not receiving longevity and new hires — ELIMINATED

Health Insurance

Effective 7/31/11 all employees in NJDIRECT15 or pay difference for higher plan if selected; employees to contribute 2% of salary.

-The point being that one other Arbitrator considered the dire financial times that municipalities and the local taxpayer are facing and froze wages for 18 months, in addition to eliminating longevity for new hires, and required current officers to contribute 2% of salary toward health benefits.

Accordingly, mere salary comparisons, or even equalized tax rate comparisons, from municipality to municipality are of little relevance with respect to this particular Interest Arbitration. Rather, the focus of the arbitration must be more of the financial ability of Milltown to afford its police officers than trying to keep up with the "Joneses" in the County. It is time that police officers in New Jersey begin sharing the burden of a down economy like the rest of the State's residents. In Middlesex County, it started in Spotswood and should continue in Milltown.

**POINT III**  
**THE OVERALL COMPENSATION RECEIVED BY MILLTOWN POLICE OFFICERS IS EXCELLENT**

As has been outlined throughout this brief, and as demonstrated in many of the exhibits submitted by the Borough to the Interest Arbitrator, the overall economic package received by Milltown Police Officers is excellent. Exhibit B-63 shows that after ten years of service (a level which will be reached by 11 of the 14 Milltown Police Department by the end of a three year collective bargaining agreement), a Milltown Police Officer receives the following salary and benefits:

1. Base salary (including holiday pay and longevity) as of 2009 of \$91,130.
2. The finest health insurance coverage, prescription drug coverage, dental coverage, a free physical exam yearly and even vision coverage. These benefits, which cost the Borough more than \$20,000 per year for family plans (health insurance and prescription being more than \$19,000 alone), are received by the employee for a payment of not more than \$1,350 per year.
3. A retirement pension fully funded (presently at exorbitant rates) by the Borough of Milltown.
4. 15 vacation days or three full weeks off for vacation each year (this figure rises to 25 working days or five full weeks of vacation after 20 years of service). 15 days of sick days after the first year of employment and every year thereafter, which sick days accumulate without limit.
5. For employees retiring from the Borough, up to \$15,000 in payment for unused sick days, a benefit not enjoyed by all Borough employees.
6. Fully paid bereavement of three days. Clothing allowance, uniform allowance, and clothing maintenance allowance. Replacement of uniforms and equipment damaged in the line of duty.
7. Four paid personal days per year.
8. Overtime pay for any work shift in which the Police Officer works in excess of his normal work day or on an off day, with a minimum guarantee of OT in the latter example.
9. The right to work "side jobs" through the Borough at an hourly rate of \$45 an hour (regardless of the Officer's actual rate of pay). In 2009, officers earned an average of \$3,931 in off-duty employment earnings.

In sum, under the Borough's offer a Police Officer with 10 years of service will be earning as a base salary in excess of \$90,000 in 2012. That is for working 2080 hours per year. The Officer will earn time and a half for all work in excess of those numbers of hours. In addition to the right

to earn overtime, Police Officers can work "side jobs" and earn \$45 per hour (regardless of their actual hourly rate).

Although Police Officers are scheduled to work 2,080 hours per year, they actually work considerably fewer hours per year. There are the 3 weeks of paid vacation, which is 180 hours per year that a 10 year Milltown Police Officer is being paid but is not working (officers work a 12 hour day so a vacation or personal day equals 12 hours off). There are the 4 paid personal days, which is another 48 hours off with pay each year. This works out to 228 hours per year of time off with pay (and does not even factor in potential paid time off for sick leave or bereavement leave or compensatory days). That leaves a total of 1,852 hours work per year, which leaves the hourly rate for a ten year Milltown Police Officer at almost \$49.00 per hour. If one factors in the cost of health insurance and pension contributions, the total compensation package received by a 10 year Milltown Police Officer is in excess of \$146,000 a year (See Exhibit B-63), and this package is enjoyed by an employee who has excellent job security once the Officer has completed a single year of probationary employment.

Given this economic package, it is understandable why Milltown has had no problem finding individuals who want to work as a Milltown police officer and why very few leave the Department except by way of retirement. Working as a Milltown Police Officer is a lucrative and secure position, and this will not change under the Borough's proposal. The job will continue to be lucrative under the Borough's offer. Health benefits will continue to be provided almost exclusively at the Borough's cost, while the cost of the health insurance package provided to Borough employees is in excess of \$20,000 per year and is likely to increase by at least 20% per year in 2012 and thereafter. Vacation, longevity, holiday pay, clothing allowance, etc., will be untouched by the Borough's proposal for police officers. In sum, the overall economic package received by Milltown Police Officers is excellent, and will continue to be excellent under the Borough's Final Offer. The difference between the parties' Offers is, as will be explained in the next Point, that awarding the Borough's Final Offer will allow Milltown to continue to offer the same level of public safety services without either (1) providing the same service with less officers or (2) imposing an undue burden on the local tax base, while awarding the PBA's Final Offer will only guarantee that the Borough will be compelled to reduce public safety services to the citizens of Milltown, place a still greater tax burden on a struggling citizenry, or both.

#### **POINT IV**

### **THE PBA'S FINAL OFFER WOULD HAVE A SIGNIFICANT NEGATIVE FINANCIAL IMPACT ON THE GOVERNING UNIT, ITS RESIDENTS AND TAXPAYERS**

N.J.S.A. 34:13A-16g (5) requires the Arbitrator to consider the "lawful authority" of the employer as it impacts on the parties' Final Offers. Among the items to be assessed when considering this factor are the "cap" limitations imposed on municipalities by N.J.S.A. 40A:445 et. seq. The Legislature has actually codified the "cap consideration" requirement at 34:13A-16g(9). 34:13A-16g (6) requires the Arbitrator to consider the financial impact of the parties' offers on the governing unit, its residents and taxpayers. These factors will be addressed in this



brief point.

The Appellate Division in *PBA Local 207 v. Borough of Hillsdale* 137 N.J. 71, stated that the financial impact requirement in the statute does not equate with the municipalities' ability to pay. *Id.* at 188. In fact, the Supreme Court stated in *Hillsdale* that a municipality should not have to prove that it is not financially able to afford the PBA's Final Offer, 137 N.J. at 86. Arbitrators have recognized this fact as well. Arbitrator Barbara Tener analyzed this issue in *In the Matter of Interest Arbitration between Borough of Oakland and Oakland PBA Local 164 IA-93-069* (1994) noting that "[T]he affordability of the respective packages is not, in my view, a very weighty factor unless the more reasonable package is also the more expensive. The question of whether the Borough can afford the PBA's offer is not dispositive in this case "

In this matter the Borough has actually demonstrated both points: that to award the PBA's Final Offer would have an adverse financial impact upon the Borough's taxpayers, and that the Borough cannot afford to pay the wage increases sought by the PBA. First, there is little doubt that the Borough taxpayers, who live in households that make the same amount of salary as an individual Milltown Police Officer, cannot afford to pay even higher municipal property taxes in order to provide Police Officers salary increases which no other Borough employees received for 2010 or 2011. The Borough has offered to pay an increase of 1% in 2012, although finding that money may be difficult in light of current budgetary problems, most notably the spending cap issue from 2011. But there is no justification for the Arbitrator to even consider, much less award, a 3.5% increase in 2010 when every other Borough employee had their pay reduced, or a 3.5% increase in 2011 when no other employee received an increase in 2011. Further, because the Borough is subject to a 2% tax levy cap for 2012 and in future years, the PBA cannot justify an award of salaries of 3.5% in years after 2011. Such an award by the Arbitrator ensures that the Borough will be forced to cut services to reduce expenditures and bring the Borough within its tax cap limits. For the PBA, that means more work with less officers.

Of course, this is not simply the Borough's opinion, but the opinion of the State of New Jersey's Division of Local Government Services. As explained above, the Borough had to seek concessions in 2010 from its other union, OPEIU, in the form of reduced salary in order to obtain a tax cap waiver. Non-union employees had the salary reductions imposed on them. Likewise, in 2011, the Borough, even after budgeting for no salary increases for any of its employees, spent at its expenditure cap the maximum. The expenditure cap, which is 3.5% per year, as been established by the State of New Jersey as an attempt to at least hold down (although obviously not eliminate), the annual increases in local property taxes which have plagued New Jersey taxpayers. Moreover, the State has established a 2% tax levy cap as another way to hold down, but not eliminate, tax increases to local property tax rates. In other words, the State of New Jersey has established by statute that it is not "in the interest of the public" to increase the local tax levy by more than 2%. The Arbitrator in this matter is required to consider not only that factor, but factor 9, which is the statutory cap.

If the Arbitrator in this matter awards the PBA the increases it seeks (3.5% in 2010, with an actual cost of 6.84%, and 3.5% in 2011 with an actual cost of 8.73%, see Exhibit B110), the Borough will be compelled, in order to comply with the award, to reduce services through layoffs. The 2010 budget is over. There is no money available for raises in that budget. The 2011 budget has been set. There is no money available to pay wage increases to the police because of the expenditure cap issue discussed above. A 3.5% increase to the PBA in 2010 and 2011 will cost the Borough \$174,001, which includes only increase and increments. Such an award effectively guarantees layoffs, and that has a significant negative impact on taxpayers.

In sum, if the Arbitrator awards the PBA's Final Offer, it is requiring the Borough of Milltown to layoff officers in 2011 and to violate the 2% tax levy cap every year thereafter (or to seek a levy cap waiver for 2012 and 2013). (16) The Borough asserts that to do so would be contrary to the statutory requirements of the statute. There is no express "extraordinary cost" exception in the Cap Law which would allow the Arbitrator to compel, and the Borough to successfully obtain, a waiver of the 2% levy cap. The public is not clamoring to pay police officers more money, especially when those officers make tens of thousands more per year than the per capita income in Milltown. Further, even if compliance with an Interest Arbitration award could legally compel a municipality to seek a levy cap waiver, what would be the justification for such an award? Certainly not comparison of Milltown Police Officers with other employees — those employees have already had their wages reduced and frozen. Not a comparison of working conditions of Milltown police with other employees, public or private, within or without the Borough. Certainly not based upon the "continuity and stability" of employment. There is no factual or evidential basis in this matter for the Arbitrator to force the Borough of Milltown to layoff employees to pay outrageous police salaries in 2010 and 2011 and then be compelled in 2012 and 2013 to seek a levy cap waiver in order to provide the Milltown Police Officers the 14% accumulated salary increase they are seeking for four years, a number that increases to 23.2% with salary incremental costs, but without longevity costs. See B-110 The Mayor and Council have no intention of voluntarily seeking such a levy cap waiver because it cannot be justified." (17)

(16. The alternative would be to require the Borough to layoff employees to pay for police salary increases. The PBA could not even argue for this alternative, and the Arbitrator, in his consideration of the "public interest", could not justify reducing services to the public to further increase the salaries of police officers who will already earn over \$100,000.00 under the Borough's Final Offer.)

(17 Frankly, the Legislature and Governor have spoken loudly and clearly on this issue with the new Interest Arbitration law — increases to salary, including step movement and longevity cannot exceed 2%, which coincidentally is the 2% levy cap amount. That is the new public policy in this State. That the Milltown PBA contract ended before the new law went into effect does not change this fact or the analysis requiring consideration of the 2% tax levy cap)

## **POINT V**

### **AN ANALYSIS OF THE COST OF LIVING MILITATES AGAINST THE PBA'S FINAL OFFER AND IN FAVOR OF THE BOROUGH'S FINAL OFFER**

Over the last six years (between 2003 - 2009), salary increases for Milltown Police Officers have totaled 34.2%, while the CPI-U increase for the same period of time was 21.4%. Thus, for the six years immediately prior to the expiration of the last PBA Local 338 Collective Bargaining Agreement, the Milltown salary increases have risen, without apparent justification, by a full 12.8% more than the cost of living. See B-64.

The cost of living increase for calendar year 2009 was 0.4%. The Milltown PBA received a wage increase of 4%. In 2010, the cost of living increase was 1.7%. In the first few months of 2011, CPI has been similar to 2010. B-65. Leaving aside the fact that, given the significant increases in pension contribution and health insurance contribution costs, Milltown Police Officers have already received significant increases in their overall compensation even without a salary increase, the fact is that, even without a raise in 2010 or 2011, Milltown officers will still be far ahead of the cost of living and should in no way inhibit the Arbitrator's ability to award the

Borough's Final Offer. Indeed, the cost of living was so low in 2009 and 2010 that there was no adjustment to Social Security payments in 2010 and 2011, and no increase in New Jersey pension payments. See Exhibits B-73, B-74 and B-75.

In contrast, the PBA is seeking salary increases of 3.5% for four years. Looking back at the CPI trend over the past two years, if the PBA's Final Offer is granted, Milltown Police Officers will, once again, have received salary increases in excess (read double) of the comparable CPI-U for the same period. As the Borough's evidence makes clear, the economy is not getting much better and economic growth is much slower than anticipated. Full economic recovery is not likely until 2013 or after. See generally Exhibits B-76 through B86.

In fact, the trend nationally in bargaining has been more in line with the Borough's offer. Exhibit 13-43 shows that first year wage increases of 0% have been rising steadily since 2008. And in Exhibit 47, it demonstrates that by the first quarter of 2011, the percentage of contracts with no raises in the first year has equaled 41%, up from 34% for all of 2010. And Exhibits 43 and 44 show that Local Government workers have had median increases of 0.8% to 1.0% in 2010.

For several years the CPI, along with a comparison of police officers' salary to their private sector employment equivalence and the "stability and continuity of employment" Interest Arbitration factors, have been largely ignored by Interest Arbitrators. It would be particularly ironic if, in this matter, the Interest Arbitration decision actually relied on the CPI as a means of granting the Borough's Final Offer to police officers in part because of the CPI factor. The cost of living factor must be considered in conjunction with the other factors, in particular, in this matter, the Borough's ability to pay or lack thereof. Insofar as the Borough has demonstrated beyond cavil that its Final Offer must be accepted because of its inability to pay for a salary increase for its Police Officers for calendar year 2010 and 2011, the fact that we cannot predict with better accuracy than using history as a guide for the next three years and that there might be a disparity in the Borough's favor (for the first time in memory) between the 2011 wage freeze and the CPI for 2011 should in no way tip the scales in favor of the PBA's Final Offer in this Matter.

In addition, the only legitimate way to gauge cost of living increases is to look at an employee's total compensation package. As detailed in the "-Cost-Out" section of this brief, Milltown Police Officers received increases in their total compensation, as gauged by salary guide increases, the increased cost of the employee's health insurance and the increased pension contributions made on behalf of the employees by the Borough, which will greatly exceed the CPI increases in the next three years. For better or for worse (and through no fault of the Police Officers themselves), the cost of employing a Police Officer in the Borough has skyrocketed, and these "fixed cost" increases, in and of themselves and exclusive of any salary increases, have historically been higher than the CPI, as have the PBA raises in the last six years. In light of this undisputed fact, the CPI factor does not support the Arbitrator widening that gap still further by awarding the PBA's final offer.

Significantly, each of these three categories of cost increases are in areas which directly benefit Police Officers in Milltown — salary guide advancement; health insurance; and pension contributions. This is not a situation in which the Borough is pointing to an increase in non-employee benefit costs (such as fuel, etc.) as a justification for not providing a salary increase. In light of this information, the analysis of the CPI factor actually supports a 4 year wage freeze for Milltown Police Officers, and this same analysis is ample justification for the Arbitrator to award the Borough's 0%/0%/1.5% salary offer in this matter.

The PBA's other economic proposal should also not be awarded based on the CPI

analysis There is no justifiable reason to give police officers an additional 2% longevity step after 23 years. The difference between the current payment of 8% and the proposed payment 10% of base salary is an additional \$1,678.10 at 2009 salary levels. With 14 PBA members, the cost to the Borough is \$23,507 for every year past 24 years that one of the current PBA members stays with the Borough. If awarded, it is equal to the Arbitrator granting the PBA a 2.1% increase to salary. Longevity to public employees is a dinosaur; a benefit that's usefulness has been outlived with base salaries hovering near \$90,000 without longevity. Employees receiving \$90,000 in base pay should not also be receiving an artificial increase in salary whose purpose is no longer relevant. Police compensation is at an all time high in Milltown, a cost that the Borough, as is evident from its financial information for 2010 and 2011, can no longer afford.

In short, the CPI factor supports the Borough's offer, which seeks to maintain benefits at a certain level for police officers, while attempting to control future costs through the change in the number of steps in the salary guide. There is ample evidence in this record to support the Borough's Final Offer in total.

#### **POINT VI**

#### **THE CONTINUITY AND STABILITY OF EMPLOYMENT ENJOYED BY THE PBA IS FAR BETTER THAN WHAT OTHER PUBLIC OR PRIVATE SECTOR EMPLOYEES ENJOY.**

This factor weighs heavily in favor of the Borough's Final Offer. Milltown Police Officers are not only extremely well paid, but are so contented in their positions that they never leave short of retirement. Nor are they ever forced to leave due to layoffs, work slowdowns or the like. In addition, the salary increases received by Milltown Police Officers have consistently outstripped, even by way of percentage increases only, and without factoring in actual dollar increases (which widens the gap still further), wage increases received by other public and private sector employees throughout the State and Nation.

The job security point bears particular notice. While it is of course possible that a New Jersey resident with a high school diploma could obtain a job with better salary and benefits than that of a police officer (although this is not easy to imagine, and is belied by the relative ease by which the Borough fills the rare vacancy which occurs in its Police Department), those "private sector" salary and benefits, not to mention job security, are in no way guaranteed. This is what makes work as a Police Officer in Milltown and throughout New Jersey so attractive — police officers simply do not lose their jobs when there is a change in the economy or in crime rates.

A 25 year old Milltown resident could start his or her own computer software consulting company and, in a relatively short time, if he or she were both lucky and very talented might be able to earn \$50,000 or even \$100,000 a year. That employee would have no paid sick time, no paid vacation time and would have to buy his or her own health insurance, thereby reducing the earnings of \$100,000 by tens of thousands of dollars. Moreover, there is no guarantee that this computer software expert will continue to earn that salary, or even that he or she will continue to have sufficient work to earn any salary in subsequent years. The same is of course also true for a high school graduate working for a private company (the difference being, of course, that this high school graduate is extremely unlikely to earn \$50,000 or \$100,000 in an entry level job, or even after having been in the job for ten years).

In contrast, the newly hired Milltown Police Officer, as demonstrated in Exhibits B-63 and B-107, although he or she will be earning around \$35,000 in the first year, has the following guarantees effectively for the rest of their employment life once he or she survives the probationary period:

1. The surety of continued employment. There has never been a layoff in the Milltown Police Department, and layoffs of police officers anywhere in New Jersey are rare, although recently have ticked up a bit which goes more to the expense of the officer (regardless of the drop in crime rates, for example, which occurred in the 1990's).
2. The guarantee of family medical insurance, dental insurance, and vision insurance for the life of his or her employment.
3. An automatic employer-made contribution to an excellent pension system, which is guaranteed by the State of New Jersey. Private sector employees not only have no guarantee of future contributions but, of course, those contributions are made to private retirement plans, and the Arbitrator is certainly aware of the vagaries of such a plan. Indeed, many private employers do not even make "employer" contributions to such retirement plans, leaving Social Security at age 65 as the employee's sole source of retirement income. Milltown Police Officers not only have the Borough making contributions to the PFRS of \$20,000 per year (2011 per employee rate), but can begin collecting that lucrative pension a decade and more prior to the time when private employees can begin collecting their meager Social Security stipend, which did not increase in 2009 or 2011.
4. Guaranteed time off each year, at a frequency unmatched in the public sector and unapproached in private employment, for vacation, illness, death in family, and personal days.
5. A guaranteed increase in one's salary from year to year regardless of merit or individual achievement (or lack thereof) as a police officer. Under the current contract, this guaranteed guide advancement after the first year represents a \$4,881 increase between 2011 and 2012, which averages out to a 13.7% annual salary increase purely for guide advancement (without the annual wage increase, which enhances the existing salary levels). This is true while the employee remains in the salary guide, and remains true after the employee hits maximum after seven years of service — that maximum increases every year. If the Arbitrator adds 1 step to the guide as the Borough has proposed to eliminate the \$18,000 step increase between Steps 4 and 5. 2010 and 2011 will, once the Arbitrator awards the Borough's Final Offer, be the first time in decades that Milltown Police Officers will not receive these automatic increases, although those in guide will continue to receive increases. No where in the private world (outside of private union members, who not only receive lower percentage increases but make tens of thousands of dollars less in base salary per year), are there guaranteed annual wage increases. Indeed, as noted above, not only are wage increases not guaranteed, but nothing else is either—be it retirement plans or employment itself.
6. Guaranteed holiday pay and longevity pay, which are included in base salary for pension purposes.

7. The ability to retire, collect a pension, and obtain lifetime medical benefits from the State of New Jersey after only 25 years on the job.

What the Borough of Milltown is proposing is that, for two years (18 months of which have already passed and due to a financial exigency which is not the fault either of the Borough or its Police Officers, one of those favorable "continuity and stability" factors — the guaranteed annual increase, not be given to its Police Officers. All of the other excellent benefits and virtual certitude of future employment will continue to exist for Milltown's Police Officers. Particularly in these difficult economic times, there is no doubt that this Interest Arbitration criteria strongly favors an award of the Borough's Final Offer on wages.

Finally, the Borough has proposed adding one new step to the guide to eliminate the \$18,000 increment between Steps 4 and 5 This has no impact on current officers. The impact is on new officers who will now reach top step and the \$85,000 base salary in seven years versus six years. Top pay does not change; the proposal assists the Borough with future costs — the existing bubble step; and the stability and continuity of the unit is preserved with the continued guarantee of step increases, albeit at much more reasonable levels.

(The Borough notes that recently hundreds of officers have been laid off in places like Newark and Camden. This fact actually supports the Borough's position — layoffs have not been hitting (yet) suburban communities. Bin the layoffs create a very attractive pool of candidates who would love the benefits and salary of a Milltown officer, albeit one with a wage freeze for 24 months. Nonetheless, the officers would still be looking at a job that pays more than \$90,000 per year.)

## **POINT VII**

### **THE ARBITRATOR SHOULD AWARD THE OTHER COMPONENTS OF THE BOROUGH'S FINAL OFFER, AND REJECT EACH AND EVERY COMPONENT OF THE PBA'S FINAL OFFER**

The Borough has already explained at length why the wage component of its Final Offer should be awarded. For the following reasons, the other components of the Borough's Final Offer should be awarded by the Arbitrator, and the remaining elements of the PBA's Final Offer should be rejected.

As to the length of the contract, the Borough is proposing a three year term (20102012), while the PBA is proposing a four year term. While the Borough understands, in normal circumstances, that the Arbitrator might be tempted to go beyond 3 years in an arbitration such as this one, given the fact that the award in this matter will be issued in 2011 and, under a 3 year award, the awarded contract will expire at the end of 2012 — in another year and a half - it would be inappropriate and unfair for the Arbitrator to award a contract in excess of three years in this matter. The reason therefore is simple: the economic uncertainties of the times. The only "certainty" beyond 2011 and 2012 is that the Borough's health insurance and pension costs are likely to increase, and will certainly not decline. What will happen with the National, State and Milltown economy beyond 2012 is, moreover, completely uncertain. It is unjustified to award a four year contract in this economic climate.

How could the Arbitrator, in these uncertain fiscal times, make a forecast as to what would be an appropriate salary for Milltown Police Officers in 2013? The entire "ability to pay" and "impact on the taxpayers" is impossible to predict. Nor would the Arbitrator be able to make any predictions on the cost of fuel in 2013, much less the cost of living, the potential loss of State aid to municipalities, etc. Given these myriad fiscal uncertainties, it would be inappropriate for the Arbitrator to even consider making an award in excess of three years.

As stated in the point above, the Borough is seeking to increase the number of steps in the guide to a total of 7 to eliminate the \$18,000 increase between Steps 4 and 5 in the present guide. The PBA proffered no evidence against the number of steps for new hires, and considering that the steps simply elongate the time new hires reach top pay, their non objection is understood. It does not impact current employees and provides the Borough with a future savings in cost by specifically eliminating the bubble step. Such a proposal is completely justified. An \$18,000 pay raise in one year, not tied to performance, is too high for any employer to absorb and impacts on the ability of the Borough in future years to negotiate wage increases knowing that incremental fixed costs are high.

As for the PBA's other proposal — to add a new longevity step at 24 years and make it a 10% longevity payment — the Borough has addressed this proposal above. There is no justification to adding a new longevity step for employees who are making more than \$90,000 per year. In what other industry do employees receive longevity payments on top of a \$90,000 base salary? Milltown police officers have a compensation package, in 2009 dollars, of almost \$150,000. Longevity is not needed to retain employees in today's economy, especially when this compensation package can be had without more than a high school diploma. The PBA's proposal on longevity should be rejected.

For the foregoing reasons and above-cited authorities, the Borough of Milltown respectfully requests that the Interest arbitrator award the Borough's Final Offer in its entirety in this matter.

## **DISCUSSION AND OPINION OF ARBITRATOR**

**Criterion 1.** I agree with the general sentiment that **the interest and welfare of the public** is best served by providing fair wages and conditions of employment to the officers who serve and protect the citizens of Milltown. Both parties expressed a similar sincere desire in this regard. However, differences exist in the perception of what and how much is fair compensation. Obviously, it is the difference in this perception combined with the severe economic down turn

suffered by all New Jersey communities that is the essence of this Interest Arbitration.

I recognize that increased productivity in a police department is not necessarily a reason, by itself, to increase wages. However, an increase in pay for increased effort as depicted by the PBA Charts above, coupled with additional responsibility, is generally a persuasive argument for a wage increase. In this instance, the additional productivity combined with the addition of specialty units, as listed above, was one of the factors driving my conclusion regarding the wage increases and other economic benefits in each year of the three-year duration of the contract. In reaching this conclusion, I also thoroughly considered the other existing relevant statutory factors.

As reproduced herein above,

**The PBA is seeking, in part, a four (4) year contract to commence January 1, 2010 with a wage increase of 3.5% across the board at each rank step and position effective each January 1, of the contract.**

**Additionally, the PBA proposed a modification of the existing longevity as contained in Article VII of the contract (J1) by adding twenty fourth (24) year step at an additional 2% for a total of 10% at that level.**

**The Borough's last offer was for a three (3) year contract with wage increases for all employees in the bargaining unit of 0% in 2010, 0% in 2011 and 1.5% in 2012.**

**Also, effective May 21, 2010 all unit employees shall contribute 1.5% of their base salary toward the cost of health insurance.**

**Additionally, adding one new step for new hires between steps 4 and 5 of the current salary guide.**

With respect to the duration of the contract I note that, although a substantial time has passed since the expiration of the previous contract, given the economic



difficulties of the Borough, and with uncertain future economic challenges I became persuaded by the Borough argument that a three-year contract is more appropriate at this time.

I instinctively resist the temptation of splitting the difference in the final wage position of the parties, although at times such an approach may be appropriate. In this instance, for the reasons further stated below, I concluded on the basis of the extensive record made before me that, the 3.5% across the board in each year, as proposed by the PBA, was somewhat excessive given the current difficult economic position of the Borough. However, the zero percent (0%) wage adjustments in the first two years of the contract herein, as proposed by the Borough, was in my considered opinion somewhat low.

As expanded further below, I have concluded that an effective reasonable compromise under these difficult financial circumstances is to structure the first year wage increase of 3% to begin retroactively on July 1, 2010 instead of January 1, 2010. Such a six month start delay reduces the actual cost to the Borough to 1.5% . In effect it can be restated as a 0% on January 1, 2010 and a 3% increase on July 1, 2010 with an actual wage cost to the Borough of 1.5% . However, there is the 1.5% health premium contribution by the members of the Unit.

The second and third year wage increases will be delayed to begin April 1, 2011 and April 1, 2012 year. Thereby reducing the 3% wage cost of the two base wage increases in both years. There is of course the inevitable mathematical compounding which cannot be avoided in multiple year contracts.

The longevity proposal, beginning in the 24<sup>th</sup> year of service of an additional amount of 2% would be implemented beginning December 31, 2012.

Additionally, the previously agreed upon PBA contract proposals agreed upon before and during the mediation process as contained in PBA proposal (P1) #s 2, 4A and B, 5B and 8 shall be incorporated in the new agreement.

The health care contributions of 1.5% of base salary as proposed by the Borough, are hereby granted.

The additional salary guide step between the existing steps 4 and step 5 is hereby granted as proposed by the Borough.

The three year duration of the contract as proposed by the Borough is also granted.

Therefore, after through consideration of the arguments and allegations of both parties and for the reasons sated below, I concluded that three percent (3%) delayed-start wage increase across the board is appropriate.

This amount appears to be somewhat less than the documented State average and is therefore found to be more reasonable under the circumstances.

As above stated, I recognize that increased productivity in a police department is not necessarily a reason, by itself, to increase wages. However, an increase in pay for increased effort as depicted in PBA Chart No.1 above, coupled with additional responsibility, is generally a persuasive argument for a wage increase. In this instance, the additional productivity combined with the addition of specialty units, as listed above, was one of the factors driving my conclusion regarding the delayed-start three percent (3%) across the board wage increase in each year of the three-year duration of the contract.

Again, in reaching this conclusion, I thoroughly considered all the statutory factors as described below.

**1. Interest and Welfare of the Public.** I gave significant weight to this first statutory factor. I note that the legislature also gives this factor great weight in it's recently revised title 34:13A-15 where it states in part: "This act shall be known and may be cited as the-- **Police and Fire Public Interest Arbitration Reform Act.**" (Emphasis added)

The evidence and testimony at the hearing before me revealed that, on a daily basis, an exceptionally high number of vehicles pass through the various highways and expressways that bring traffic to and through the Borough to the entire Middlesex County area as well as the Borough's unusually large commercial and educational destinations on Highway 18. Clearly the demands for maintaining public safety were shown to include a number of shopping centers with many dining places attracting visitors from the entire surrounding area.

Therefore, given the exceptional increase in productivity and professionalism on the part of the Milltown police officers, I concluded that the Interest and Welfare of the Public is well served and efficiently delivered.

Finally, I found that the evidence in the record before me reveals that the change in the structure of the Department reduced the total sworn police personnel. Obviously, such reduction also generates savings to the Borough. Of course, such reductions in personnel also diminish the promotional opportunities, generate more work for the lower ranks but at the same time create greater value to the community.

In this regard I also note that the Borough provided no significant or convincing argument in opposition to the PBA on this statutory factor. Therefore, I find that in Milltown, the Interest and Welfare of the Public is well served by a properly compensated Police Department which efficiently and economically provides the vital police services and meets the increasing work

load in the Department. Therefore, on balance, greater weight is granted to the members of PBA Local 338 as a result their high productivity while saving taxpayer dollars through attritional losses in the workforce.

**Criteria 2 and 3 Comparison of Wages and Terms and Conditions of Employment.** In this statutory criteria, both parties were able to put forth statistics favoring their respective positions. The PBA produced Chart No. 5 showing base-wage increases of eight (8) surrounding municipalities with an average annual wage settlement of 3.42% in 2010, 2.75% in 2011, 2.41% in 2012 and 2.41% in 2013.

The PBA relies in part on computation of averages of the compared contracts in the surrounding municipalities. However, I note that averages of wage increases can sometime be deceiving since total negotiated economic benefits and work schedules differ in cited Collective Bargaining Agreements in evidence.

Additionally, while the comparison of occupations and wages in the private sector is always difficult for many of the obvious reasons, I must consider that the taxpayers of this community are predominantly employed in the private sector and therefore the average wage increases in that sector necessarily affect the community's economic ability to shoulder the increases herein.

Consequently, I believe for the reasons stated above, and in light of all the statutory criteria herein, that the delayed-start of 3% per year across-the-board wage increases, in each of the three years of the contract, is more reasonable than the proposed 0% in the first two years of the contract and the 1.5% in the final third year of the contract, as proposed by the Borough.

Given the 1.5% of base wage for health contributions, the Borough proposal would result in 0% base wage increase for the entire three year contract herein.

Additionally, in **Criterion 2**, I also gave significant weight to the comparison of the Milltown PBA contract, their hours of work, wages, and conditions of employment with other public employee contracts in the record performing the same or similar services and with other employees generally. Both criteria 2 and 3 form the basis for establishing a universe of comparison as statutorily required.

At the formal arbitration hearing in this matter both parties submitted numerous collective bargaining agreements negotiated in the various municipalities throughout Middlesex County. I gave appropriate weight to the contracts which were identified through documents, testimony and post-hearing arguments.

I note that the bargaining Unit employees are already contributing the statutorily required 1.5% of base wages for health care insurance premium costs since June 2010. While I obviously acknowledge that medical costs are continuously increasing and constitute a significant part of the municipal budget, given the obvious insufficiency of the record in this regard, I am unable to place a dollar value on the cost of future health insurance benefits. Doing so would be speculative at best.

Additionally, I considered the Borough's arguments regarding the existing economic costs of providing police protection to the community. Such existing costs had been previously negotiated under entirely different economic conditions. While they may certainly be relevant as a comparison of total compensation, they cannot be properly counted again in costing out the new

contract. Such external increases in costs as health insurance premiums are not under the direct control of the PBA.

I note that Comparability is only one factor in the statute to consider. However, I found that the average rate of wage increase among comparable Middlesex county municipalities in evidence, even those comparisons submitted by the Employer, such as Exhibit "B56" do not support the wage freeze proposed by the Borough. This finding is based on the proofs in the record made before me by both parties at the formal arbitration hearing in this matter. The Borough's 0% wage increase position for the first two years of the Employer proposed contract was not convincing on the basis of the proofs in evidence.

As statutorily required, I also considered the three Sub Criteria. **2(a) In private employment in general, 2(b) In public employment in general and 2(c) In public employment in the same or similar comparable jurisdiction.**

However, for reasons stated below I found **2a** and **2b** only marginally relevant and **2c** somewhat more relevant since other public employees in the same jurisdiction are compensated from a common budget and serving the interest and welfare of the residents and taxpayers of the same Employer.

Sub Criteria **2(a), employment in the private sector**, is generally held to be non comparable in interest arbitration since there are no private sector jobs that compare to the job of a police officer who is statutorily required to protect the public in various emergent circumstances on and off duty. I give this comparison only minimal weight.

As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of



private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight. ( Borough of River Edge and PBA Local 201 PERC IA-97-20, pg. 30)

The same is true to a lesser extent of Sub Criteria **2(b) public employment in general**. There is simply no resemblance between public employees in general and the unique dangerous duties of a sworn police officer.

With reference to **Sub Criteria 2c**, here again I found such comparisons minimally relevant except that the employee compensations are emanating from the same source and the same budget. In this regard however I note that that for the 2010 contract year in the same jurisdiction of Milltown, the members of the Office Professional Employees International Union Local 32, received a 2.75% increase to their annual base salary, significantly higher than the 0% increase proposed by the Borough herein for the PBA.

While it must be acknowledged that such significant wage increase differences were clearly negotiated on a substantially lower salary base than are enjoyed by the members of the Police Department, the contrast of offering a 0% wage increase to the PBA and a 2.75% increase to another bargaining unit in the same jurisdiction is obvious but not controlling.



Finally, I again emphasize that of the many comparable contracts submitted by both parties, I have nothing in the record to show that any other bargaining unit in a Middlesex County contract in evidence negotiated or was awarded an across the board 0% wage increase. The Employer provided only one example in evidence to support its 0% wage position.

**Criterion 3.** I also considered the **overall compensation presently received by other employees of the Borough of Milltown.** This sub-criterion supports the Borough's position that the 3.5% wage increase sought by the PBA was somewhat excessive in the existing difficult economic climate. However, I note that the other Units of the Borough were not shown to have had a dramatic increase in productivity and responsibilities, as did the PBA. Therefore, as stated above, for reasons more thoroughly discussed below, the Borough's wage increases of 0% per year for the first two years was found to be inadequate but the 3.5% for each year in the 4 years of the contract proposed by the PBA was found to be somewhat excessive.

In considering **Criterion 3**, I gave appropriate weight to "**The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.**" I found that the top salaries of the PBA were significantly lower than average in the police departments in Middlesex County. However, the number of years to reach top step on the salary guide, were noticeably above average. As a result, I considered favorably the Borough proposal to add an additional step on the existing salary guide between steps 5 and 6 for a total of

7 steps on the guide. This step increase will have the effect of removing the existing \$18,000 bauble step in the alary guide.

**Criterion 4.** There were no significant **Stipulations of the Parties** herein. However, this does not foreclose any other agreements of the parties, that may have been reached prior to my arrival as Interest Arbitrator and the procedural changes, which may be necessary to conclude the instant contract.

Additionally, as above herein stated the previously agreed upon PBA contract proposals agreed upon before and during the mediation process as contained in PBA proposal (P1) #s 2, 4A and B, 5B and 8 shall be incorporated in the new agreement.

**Criterion 5** Under the **Lawful Authority of the Employer**, the PBA ordinarily argues that the Employer has the legal authority and sufficient Cap flexibility in accordance with criterion g.5 of the Act. However, such flexibility, if it exists, does not necessarily mean cash availability for expenditure by the Borough. However, this additional Cap when it exists is obviously not extra money actually available but merely the amount by which the Employer could legally exceed its budget if it became necessary. Such ability does not by itself indicate an entitlement to a wage increase.

Additionally, I considered the existing debt load and the rising cost of health care for the Borough as it is for most municipalities particularly during the current national economic downturn. However, in this regard I must note that even if there was a comfortable and substantial ability to fund the entire PBA proposal, it would not necessarily mean that the entire proposal is reasonable.

Here I agree with the Borough argument that under the existing economic circumstances, a 3.5% wage increase would be somewhat excessive as indicated by recent settlements in comparable communities. However, as stated above, the deferred start of 3% wage increase in each of the three years of the contract falls slightly short of the average base pay increases depicted in the PBA exhibits. However, the record reveals that the existing base rate is close to bottom of the Middlesex County municipalities even as submitted by the Borough. (B55). The late start arrangement, particularly in the first year, reduces the actual cost of the increases to the Borough and raises the base rate standing of Milltown PBA as compared to the other Middlesex County municipalities in the record herein.

**Criteria g5 and g9**, require the Arbitrator's consideration of the limitations imposed upon the Employer by PL 1976, c. 68 (C.40A:4-45. 1et seq.) In the case of **g5** and Section 10 of PL 2007,c. 62 C. 40A:4-45.45) for **Criteria g9**.

In this regard the PBA presented the Annual Financial Statement for 2010 in evidence indicating in part in Sheet 19 an amount of budget flexibility supported by the 2009 Report of Audit indicating that the tax rate has remained essentially flat. The PBA argued that as demonstrated by (AFS Sheet 9), the Borough has “an excellent cash position” and is below CAP Levy.

**Criteria g6. The Financial Impact on the Governing Unit, its Residents and Taxpayers**, would not be immediately devastated even if the entire PBA proposal were to be awarded. However, as stated above, given the negative economic prospects being able to afford the increase in a given year is not necessarily the controlling factor in determining its reasonableness. When all the statutory factors

are taken into consideration the 3% delayed-start wage increase each year in a three-year contract, appears in this case, to be more reasonable than the 0% proposed by the Borough.

**Criteria g6, The financial impact on the governing unit, its residents and taxpayers. When considering this factor in 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 employee' 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 taxpayer 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 © initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.**

For the above stated reasons and being aware of the general obvious budget difficulties in all the municipalities in the State of New Jersey, I gave this Criterion and the arguments of the Borough significant weight. As a result of the continued existence of negative economic circumstances, I have more confidence that the late-start base wage increases herein are appropriate.

With respect to **criterion g7, COST OF LIVING** I considered the various exhibits submitted by the Borough including B64 showing the Milltown PBA base wage increases during the last seven years were greater as compared the CPI-U increases in this area. However, exhibit B71 a more

recent news report of the Bureau of Labor Statistic (BLS) for the month of December 2010 indicate an increase “1.4% over the year”. Additionally, I also examined Exhibit B44 showing a 1.6% wage increase in 2010 but a 2.6% in 2009 according to BNA. (B44) Here, the Borough established that the recent voluntary wage settlements were greater than the increase in the local cost of living. Of course these wage settlements occurred in a more favorable economic environment.

**Criterion 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.**

Under this criterion the PBA pointed out that the Borough has not justified the rational of granting the other Milltown employees, members of the UPEIU, a 2.75% wage increase for 2010 and offering a 0% increase the PBA for the same year and the same municipality. However, I note that the voluntary settlement of that Collective Bargaining Agreement was with a duration of 2008 through 2010 and may have been during more favorable economic conditions at that time.

However, the PBA further argued that the planned budget for 2011(P-12) indicates the General Administration Salary and Wage line item shows an increase of 4.2% over 2010. The appropriations for the Mayor and Council Salary and Wages are increased by 12.3% and the Financial Administration increased by

13.2% The PBA argued that the proofs herein do not indicate fiscal austerity. However, in this regard I also note that the internal comparability evidence indicates that all other employees received furloughs resulting in affect a wage decrease whereas the PBA is asked to accept a two year wage freeze not a wage reduction.

With respect to the final statutory criteria, the Borough correctly pointed out that there was no hard evidence that the **Continuity and Stability of Employment** would be negatively affected by the Borough's proposal or that it would be enhanced by the PBA proposal.

However, such evidence is difficult to gather accurately and most often it is speculative. The best evidence of course in this regard as argued by the Borough is the turnover of employees, when officers give up their seniority in order to seek a position elsewhere for greater compensation. I have nothing in the record to indicate that such a condition exists in Milltown.

As stated above, both sides ordinarily agree that maintaining a competitive and fair compensation program in the police department is desirable and is in the best interest of the citizens and taxpayers. However, as above stated, there is usually disagreement as to what and how much is fair compensation.

Therefore, after thoroughly considering all the evidence in the record made before me, in light of all the factors of the revised statutory criteria as required, and after reviewing the respective positions and the extensive post hearing arguments of the parties, I make the following Award:

**AWARD**

- 1. Duration of the contract shall be three years. January 1, 2010 through December 31, 2012**
  
- 2. A three percent (3%) across the board retroactive wage increase as of June 1, 2010. A three (3%) across the board retroactive wage increase as of April 1, 2011 and a three (3%) across the board wage increase as of April 1, 2012.**
  
- 3. Add a twenty fourth (24) top step of longevity with an additional 2% for a total of 10% effective December 31, 2012.**
  
- 4. An additional step on the existing salary guide between step 5 and step 6 of the guide eliminating the bauble step for newly hired employees.**
  
- 5. Health care premium cost contribution of 1.5% of base salary by all members of the Bargaining Unit as of June, 30, 2010.**

(Additionally, the previously agreed upon PBA contract proposals, agreed upon before and during the mediation process as contained in PBA proposal (P1) #s 2, 4A and B, 5B and 8 shall be incorporated in the new agreement.)



**ERNEST WEISS, INTEREST ARBITRATOR.**

STATE OF: NEW JERSEY  
COUNTY OF: SOMERSET

On this 18<sup>th</sup> day of November, 2011, before me personally came and appeared Ernest Weiss, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.

NOTARY PUBLIC OF NEW JERSEY  
My Comm. Expires May 5, 2015