

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

| | | |
|-------------------------------|---|----------------------|
| | X | |
| BOROUGH OF NEW MILFORD, | X | |
| | X | |
| Public Employer, | X | |
| | X | INTEREST ARBITRATION |
| -and- | X | DECISION AND AWARD |
| | X | |
| NEW MILFORD PBA LOCAL NO. 83, | X | |
| | X | |
| Labor Organization. | X | |
| | X | |
| PERC Docket No. IA-2012-008 | X | |
| | X | |

INTRODUCTION

The New Milford Policeman's Benevolent Association, Local 83 ("Local 83", the "PBA", or the "Union"), and the Borough of New Milford (the "Borough", "New Milford" or the Employer") previously entered a collective negotiations agreement, which expired on December 31, 2011. (the "Agreement" or "CNA"). (Joint Exhibit 3.) Negotiation sessions for a successor agreement were held on November 4, 2011, November 22, 2011, and on December 13, 2011.

A final bargain on was not reached. As a result, on January 5, 2012, Local 83 petitioned the Public Employment Relations Commission ("PERC", or the "Commission") to initiate interest arbitration over the terms for a successor collective agreement. (Joint Exhibit 1.) The Petition, which listed six economic issues and one non-economic issue, was served on the Borough. (Joint Exhibit 1, Appendix A.)

"On or about January 12, 2012, The Borough submitted its response to the Petition which, among other things, disputed each and every article of the expired CNA. (Borough's Post-Hearing Brief, page 1; See also Joint Exhibit 2.) This response designated twenty (20) economic issues, and 31 Non-Economic Issues. (Joint Exhibit 2.)

INITIAL PROCEEDINGS

On January 11, 2012, I was appointed to serve as Interest Arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16 (e) (1). This statutory provision requires that an initial award be issued within 45-days of appointment with no provision for a mutually agreed upon extension of any length. I scheduled an interest arbitration hearing for February 2, 2012, and directed each party to submit a final offer in accordance with N.J.S.A. 34:13A-16 (f) (1). Each party's final offer submission was subsequently tendered to me.

Local 83 submitted the following final offer:

1. The PBA proposes a four (4) year contract to succeed the prior Agreement.
2. The PBA proposes a wage increase of 2.75% effective on each successive February 1 over the four (4) year term.
3. The PBA proposes an elimination of the twenty-five percent (25%) offset on the holiday fold-in provision. The issue was set forth on the PBA Proposal Sheet as Issue No. 5, as follows:

Modify Paragraph C of Article 19 by deleting the provision at the end of said paragraph reflecting the "subtracting twenty-five percent (25%) language. Thereafter, the full value of holidays would be used in computation.

4. The PBA proposes a Work in Higher Rank Modification, which was detailed in the PBA Proposal Sheet at Item No. 10, as follows:

Whenever a member is caused to work in a higher rank position then said member shall be paid at the higher rank rate of compensation for all time so worked.

(PBA Exhibits 1 & 2.)

The Borough of New Milford submitted the following final offer:

I. ECONOMIC PROPOSALS

A. Article 53 Term of Contract: January 1, 2012 through Dec 31, 2014

B. Article 8 Salary: The Borough proposes the following salary increase:

January 1, 2012: 0%

January 1, 2013: 0%

January 1, 2014: 2%

Salary guide:

Effective January 1, 2012, all new hires will be hired pursuant to a new salary guide which will include 2 additional steps. These steps shall be one (1) year steps and will be between Step 1 and the maximum Step 9. The Probation Step will be changed to Pre-Academy Certification Rate.

C. Article 9, Work Day, Work Week and Overtime/Comp Time

1. Overtime Compensation: Insertion of par. E to read:

In the event, the Borough Hall is closed due to inclement weather, hurricane, or power outages, only those employees scheduled to work shall receive the regular salary. No additional compensation or overtime will be granted unless authorized by the Chief of Police or his designee.

2. Inclement Weather: Limit pay during inclement weather as follows:

In the event, the Borough Hall is closed due to inclement weather, hurricane, or power outages, only those employees scheduled to work shall receive the regular salary at straight pay. No additional compensation or overtime will be granted unless authorized by the Chief of Police or his designee.

D. Article 14 Longevity: The Borough seeks the following:

1. Current employees: Effective January 1, 2012, all longevity payments currently paid per the following schedule in an amount not to exceed an annual payment of \$10,000 until retirement or separation from employment:

Three percent (3%) of base pay after four (4) years of service

Four percent (4%) of base pay after eight (8) years of service

Five percent (5%) of base pay after twelve (12) years of service

Six percent (6%) of base pay after sixteen (16) years of service

Seven percent (7%) of base pay after twenty (20) years of service

Eight percent (8%) of base pay after twenty-four (24) years of service

2. **New employees:** Employees hired after December 31, 2011 will adhere to the following schedule for annual payments until retirement or separation from employment:

Completion of ten (10) years - \$1,500
Completion of fifteen (15) years - \$3,000
Completion of twenty (20) years - \$4,500
Completion of twenty-five (25) years - \$6,000

E. **Article 17 Vacation:** Modify vacation leave for new hires as follows:

Employees of the Police Department shall receive vacation on the following basis:

0 to 5 years – 5 days
5 to 15 years – 10 days
15+ years – 15 days

Employees will be permitted to carry over up to six (6) unused vacation days from over year to the next (non-cumulative).

F. **Article 18 Personal Leave:** Each employee will have three (3) days of personal leave. The personal leave shall not accumulate and must be used in the year it is earned.

G. **Article 19 Holiday:** Modification relative to calculation in Article 19, Par. C as follows:

Holidays shall be eliminated and the thirteen holidays will be converted into base pay effective January 1, 2011. The amount shall be calculated based on the base salary divided by 1946 hours. The hourly rate is then multiplied by 13 holidays multiplied by 8 hours multiplied by 75% to determine the amount of holiday pay to be rolled into the base pay. The 2011 Base with Holidays Rolled In will be effective for all employees of the bargaining unit as set forth in the revised Appendix A3.

H. **Article 20 Sick Leave:** Modify sick leave as follows:

1. **Current employees:** Employees hired before January 1, 2012 will adhere to the following. Employees shall be eligible to receive five (5) sick days for each calendar year. Upon retirement or death, the employee or his/her estate or designated beneficiary will receive full payment for any unused accumulated sick leave computed on the basis of final wages in an amount not to exceed \$15,000. Current employees with more than \$15,000 shall be capped at the level that is "in the bank" as of December 31, 2011.

2. **New employees:** Employees hired after January 1, 2012 shall be eligible to receive five (5) sick days for each calendar year worked with benefits when he is unable to work due to a verifiable sickness, injury or illness..... Employees will not be permitted to bank any sick days.

I. Article 23 Medical Contract: The Borough proposes the following:

1. **Current employees:** The Borough proposes that all employees shall contribute a percentage of the employee's total annual salary or a percentage of the annual premium as per state law. Also, the employee may opt out and receive a cash payment from the Borough, to be included in the paycheck spread out over the course of the year in the amount of 25% of the premium or \$5,000 whichever is greater.

2. **Retirees:** Payment for retiree health benefits subject to state law.

J. Article 50 Terminal Leave:

1. Modification of par. B, as follows:

All accumulated and unused holidays earned prior to January 1, 2011 shall be frozen at the then current rate to date of retirement.

2. Modification of par. C, as follows:

All unused vacation days as well as those personal days earned prior to December 31, 2011 shall be frozen at the then current rate.

3. Elimination of par. E.

4. Modification of par. F to read:

The employee shall submit his/her retirement requests at least 6 months prior to the date of retirement. Upon calculation of the accumulated leave bank, the Borough reserves the right pay for all time due over a 5 year period rather than a lump sum payment in lieu of a protracted terminal leave. The failure to provide at least 6 months notice shall result in a forfeiture of the additional twenty (20) days. No payment under this section shall count toward nor affect, either by increasing or decreasing, any pension or retirement benefit due the employee.

5. Elimination of par. G.

(Borough Exhibit 3.)

On January 30, 2012, with the agreement of the parties, I conducted a pre-arbitration mediation session with the objective of amicably resolving all, or some of the disputed issues. The parties, at that time, affirmed their voluntary resolution of several minor disputes. Citing to PBA Exhibit 2, these issues are: Item 1B – The word “Probation” on the Wage Schedule will be changed to “Pre-Academy Certification Rate”; Item 4A – The Uniform allowance will be increased by \$100.00 to Seven Hundred

Dollars (\$700.00); Item 6 – The mileage allowance will be changed to the current IRS rate; and Item 8B – Paragraph E in Article 50 governing Terminal Leave will be deleted.

A hearing was held on February 2, 2012 to address the combined total of 23 proposals appearing in the Final Offers. Competent, and experienced counsel represented the parties. Local 83 and the Borough sponsored testimony, and submitted several thousand pages of documentary evidence. At the hearing's conclusion, each party acknowledged that it had a full and fair opportunity to present proofs and testimony.

Thereafter, the Borough and Local 83 exchanged, and filed post-hearing briefs with the undersigned Interest Arbitrator. New Milford's post-hearing submission is hereinafter referenced as "Borough Post-Hearing Brief, p. #". The Union's post-hearing submission is hereinafter referenced as "PBA Final Summation, page #".

On February 27, 2012, pursuant to P.L. 2010, c. 105 effective January 1, 2011, I issued the following Interest Award:

1. There shall be a three-year agreement effective January 1, 2012 through December 31, 2014.
2. Each step of the salary schedules shall be adjusted, as follows:

| | |
|------------------|------|
| July 1, 2012: | 1.0% |
| January 1, 2013: | 2.0% |
| January 1, 2014: | 2.5% |
3. Article Fifty governing Terminal Leave is modified as follows:

Paragraph E is deleted.

Paragraph F is re-designated Paragraph E, and modified to state:

E. If the employee submits his/her retirement request prior to October 1st of any given year, in lieu of terminal leave, the employee can receive a lump sum payment payable by April 15th of the following year (year of retirement) for all time due in lieu of protracted terminal leave.

Alternatively, the employee may within two months prior to his/her planned retirement request periodic payments, as follows:

One-third of the total payable within sixty (60) days of the effective retirement date;
An equal amount of one-third payable three hundred sixty-five (365) days thereafter; and
A final amount of one-third payable three hundred sixty-five (365) days thereafter.

The choice between a lump sum, and a one-third payment schedule shall remain solely with the employee.

Former Paragraph G is re-designated as Paragraph F

Former Paragraph H is re-designated as Paragraph G

4. All items not specifically awarded as proposed by the Borough and the PBA are denied.

5. Except as the parties may otherwise mutually agree, the provisions and terms and conditions of the prior agreement shall continue in effect in the new agreement unchanged.

Of consequence to the post-award proceedings, I also found

...A reasoned interest arbitration analysis must be preceded by proposals having been: identified; examined; debated; examined (sic); and ultimately recognized as in dispute. These obligations, as shown by the record, were clearly met so far as contract term, wage increments and terminal leave.

The same cannot be said for other proposals
For which the record is insufficient to allow a determination on these other issues.

(IA-REM-IA, page 36.)

POST-AWARD PROCEEDINGS

The Borough's Appeal

On or about March 9, 2012 the Borough of New Milford filed a Notice of Appeal, and supporting brief with the Commission. (IA-REM-IB.) The Borough their in challenged the Award on several grounds; seeking its vacation. Those grounds were:

Evident miscalculation of figures and an evident mistake in the description of a person, thing or property referred to therein, permitting modification under N.J.S.A. 2A:24-9;

Failure to correctly apply the criteria specified in N.J.S.A. 34:13A-16g(1), which addresses the interest and welfare of the public;

Failure to correctly the statutory criteria specified in N. J. S. A. 34:13a-16g(2)

Failure to apply the criteria set forth in N.J.S.A. 34:13A-16g(3), which addresses the overall compensation presently received by the employees;

Failure to reasonably apply the criteria set forth in N.J.S.A. 34:13A-16g(6), relating to the financial impact of the award on the governing unit;

Failure to properly consider the criteria set forth in N.J.S.A. 34:13a-16g(9), the statutory restrictions imposed on the employer; and

Violation of the clear public policy against protecting the public interest by maintaining the welfare of the Borough's resources and its citizens in accordance with New Jersey Supreme Court precedent.

PBA Local 83 filed a brief in opposition to the appeal.

On April 9, 2012 the Commission issued its decision in Borough of New Milford, P.E.R.C. No. 2012-53. (IA-REM-ID.)

The Commission's Decision

The award was vacated, and remanded for issuance of a new award." (IA-REM-ID, page 19.) In so ruling the Commission observed remand was appropriate "particularly in light of the fact that this was the first the new statutory award cap imposed." Id. at page 19.

In explaining its decision, PERC reaffirmed the traditional--Commission and court tested--framework for interest arbitration awards. Inter alia, it emphasized,

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the Award which of the [9 statutory] factors are deemed relevant, satisfactorily explain why the other are not relevant, and provide an analysis of the evidence on each relevant factor.

Id. at page 8. (Emphasis added.) Vacation will follow if an appellant demonstrates that the arbitrator failed to give "due weight" to the relevant subsection 19g factors, or was not supported by substantial credible evidence. Id. at page 8. At day's end, the Commission instructed that an arbitrator must:

- a) Provide a reasoned explanation for the decision;
- b) State what statutory factors were considered to be most important;
- c) Explain why they were given significant weight; and
- d) Explain how other evidence, or factors were weighed

and considered

Id. at page 11.

Having fully vacated the February 27th Award, the Commission found no need to individually reach every argument advanced by the Borough of New Milford. As a general matter, however, it noted that the Award,

did not adequately evaluate the parties' proposals in light of the statutory criteria; explain why he gave more weight to some factors and less to others; and issue a comprehensive award that reasonably determined the issues and is supported by substantial credible evidence as to all of the parties' proposals. This does not require the arbitrator to adopt the parties' proposals, but where there has been evidence presented in support of a proposal, the reason for its adoption, modification or rejection must be analyzed. Essex Cty., P.E.R.C. No. 2011-92, 38 NJPER 76 (¶17 2011).

Id. at page 18. It also, more specifically, observed "While the arbitrator made findings of fact regarding the settlements the Borough has reached with other units, he did not analyze the evidence of internal comparability in his 16g2 analysis. Thus, on remand, the arbitrator must evaluate the 16g2 factor; explain the weight he gave to this factor; and make a determination based on the evidence." Id. at 17.

On remand, I was instructed to analyze all proposals listed in the parties' final offers for which there was adequate evidence of record. For proposals lacking sufficient evidence, I was to address why I found a deficiency.

The Remand Hearing

Following service of the Remand Order, I notified counsel and PERC of my intent to schedule another hearing. An additional hearing, I explained, should assist me to further explore the adequacy of the evidentiary record, and to fully address the Commission's concerns. To foster this objective, I prepared and transmitted a list of questions to be addressed at hearing. They were:

A – What is the numerical value for each factor that your client contends makes-up the 2011 Base Salary?...

- B – What was the total “Base Salary” for 2011? (Show your methodology for reaching this amount);
- C – What is your client’s written numerical estimate of the financial impact of its last offer on New Milford taxpayers?
- D – Which, if any, section “g” factors are not relevant to the Award? Why?
- E – Which Police Departments does your client believe are comparators under Section “g” 2(c)? Why?;
- F – How would the Award, as rendered, affect the municipal purposes element of New Milford’s property tax?;
- G FOR NEW MILFORD: What evidence in the record supports Proposal C.1 to curtail additional compensation during named emergent conditions “unless authorized by the Chief or his designee?”
- H. FOR NEW MILFORD: What are your arguments in support of Proposal C.1?
- I. FOR NEW MILFORD: What are the differences between Proposals C.1 and C.2?;
- J. FOR NEW MILFORD: What evidence in the record supports Proposal E to modify vacation leave for new hires?
- K. FOR NEW MILFORD: ... arguments in support of Proposal E?
- L. FOR NEW MILFORD: What evidence in the record supports Proposal F as to Personal Leave?
- M. FOR NEW MILFORD: What are your arguments in support of Proposal F?
- N. FOR NEW MILFORD: What evidence in the record supports Proposal H.1. to modify the formula for the accumulation of sick leave, and to cap the “sick leave bank”?
- O. FOR NEW MILFORD: What are your arguments in support of Proposal H.1.?
- P. FOR NEW MILFORD: What evidence in the record supports Proposal H.2. to modify sick leave for new hires?
- Q. FOR NEW MILFORD: What are your arguments in support of Proposal H.2.?
- R. FOR LOCAL 83: What are your arguments against Proposal C.1?
- S. FOR LOCAL 83: What are your arguments against Proposal E?
- T. FOR LOCAL 83: What are your arguments against Proposal F?
- U. FOR LOCAL 83: What are your arguments against Proposal H.1?

V. FOR LOCAL 83: What are your arguments against Proposal H.2? and

W. FOR BOTH PARTIES: What evidence in the record touches Holiday Pay calculations addressed in Proposal G?

1. What is the past practice regarding the payment of holidays?
2. What is the history behind the introduction of Section 19, Paragraph C into the contract?;
3. How was Section 19, Paragraph C applied during the term of the prior contract?
4. What are your arguments for/against Proposal G?

A hearing was held on May 3, 2012 at which the parties were again represented by experienced counsel. Local 83 and the Borough called the following fact witnesses:

Called on Local 83's Behalf

Sergeant Nicholas DiGenio

Called on the Borough's Behalf

Gary Higgins
Mayor Ann Subrizi
Christine Demiris

Their testimony was transcribed, and the transcript submitted to me. All exhibits, proffered by the parties, were received into evidence.

The Borough of New Milford filed a Post-Hearing Letter Brief ("Borough Remand Brief") dated May 9, 2012. PBA Local 83 filed a Letter Memorandum ("PBA Remand Memorandum"); also dated May 9, 2012. I exchanged these documents between counsel.

FINDINGS OF FACT

Uncontested Facts

Based on the record, as developed during the hearings on March 16 and May 3, 2012, I find the following as undisputed facts:

1. The Borough is located in Bergen County, and covers approximately 2.3 square miles. (PBA Exhibit 3; Borough Exhibit 5.)
2. Six municipalities border New Milford. They are Bergenfield, Dumont, Haworth, Oradell, River Edge, and Teaneck.

3. More than 16,300 persons reside in the Borough, which is governed a Mayor and a six-member council. (PBA Exhibit 3; Borough Exhibit 5.)
4. Between December 26, 2010 and October 26, 2011 the municipality and its residents experienced several emergencies. These included a blizzard, two unexpected snowstorms, and Hurricane Irene. (Testimony of Ann Subrizi, T. --.)
5. The hurricane led the Hackensack River to flood with resulting residential property damage within the Borough. (Testimony of Ann Subrizi.)
6. 15 New Milford homes are currently on a "severe repetitive loss" list as the result of the River's repeated flooding. (Testimony of Ann Subrizi, T. I., p and T. II, page 109.)
7. The Federal Emergency Management Association ("FEMA") compiled this list. (Testimony of Ann Subrizi, T. II, page 109.)
8. FEMA's regulations include an option for affected municipalities, like New Milford, to purchase listed homes, raze them, and either sell the land or put it to other uses. (Testimony of Ann Subrizi, T. II, page 109 - 111.)
9. To date, none of the 15-homes have been acquired, or removed from the tax roles. (Testimony of Ann Subrizi, T. II, page 110 - 111.)
10. The weather related emergencies led to the "closing" of Borough Hall on at least three occasions. (Testimony of Christine Demiris, T. II, page .)
11. Decisions to close Borough Hall are collaboratively made by the Mayor, Chief of Police, and Municipal Clerk. (Testimony of Christine Demiris, T. II, pages 125 - 126.)
12. Employees assigned to Borough Hall are paid, for the entire day, when they are sent home. (Testimony of Christine Demiris, T. II, page 127.)
13. During the weather emergencies, Department of Public Works ("DPW") and Police Department work their normal schedules, as well as any needed overtime. (Testimony of Christine Demiris, T. II, page 124.)

14. DPW employees are switched from straight time to overtime rate when Borough Hall is closed. (Testimony of Christine Demiris, T. II, page 124.)

15. Police Officers are given "comp time" when Borough is closed. (Testimony of Christine Demiris, T. I, page 155 - 157; T. II, pages 119 - 120.)

16. Municipal Clerk Demiris testified,

My understanding is, even the people [PBA represented employees] who were working get the additional hours as well. So the way I understand it, everyone was compensated for that time. In addition to the time you were paid for being here, you were given the additional time as well.

(Testimony of Christine Demiris, T. II, page 119.)

17. Ms. Demiris testified that she personally became aware of the compensatory time practice "probably about five years ago." (Testimony of Christine Demiris, T. II, page 121.)

18. When asked if the practice was implemented every time Borough Hall was closed during those five years, Ms. Demiris responded,

I have to be honest with you, I only know what I've been told is the practice. I don't what actually - At the end of the year the Police Department provides a list of all of the time... They keep track of it themselves. So what's put in, or why it's put in or how it gets there, I can't speak to.

(Testimony of Christine Demiris, T. II, page 122.)

19. The Hekemian Group is pursuing before purchase of property before the New Milford Zoning Board of Adjustment. (Testimony of Ann Subrizi, T. II, page 112.)

20. Its zoning application addresses the land's use either as commercial development and/or high-density residential construction. (Testimony of Ann Subrizi, T. II, page 112.)

21. The Borough would not enjoy any revenue from this project "until something is actually built." (Testimony of Ann Subrizi, T. II, page 113.)

22. There are 6,346 households, and 4,207 families residing in New Milford. (Borough Exhibit 14; PBA Exhibit 3.)
23. The median per capita income in 2009 was \$36,031 rising to \$42,006 in 2010. (Borough Exhibit 13; see also Borough Exhibit 2(b), page 11.)
24. The most recently reported household median income is \$81,708. (Borough Exhibit 2.)
25. About 4.6 % of the families are below the poverty line, compared with 4.3% for all of Bergen County. (Borough Exhibit 13.)
26. Between 2008 and 2011 the municipal tax rate increased by an average of 4.94%. (Borough Exhibit 2(b).)
27. Between 2008 and 2011 the average bill in New Milford increased by 4.60 per annum, resulting in a rise of the average residential tax bill from \$8,698 to \$9,898. (Borough Exhibit 2(b).)
28. The total amount realized in 2011 by taxes was \$14,910,525. (Borough Exhibit 2(b).)
29. For 2011 the total Operating Budget was \$18,063,633. (Borough Exhibit 2(b).)
30. For 2012 the total Operating Budget is \$18,571,325. (Borough Exhibit 2(b).)
31. Between 2008 and 2011 New Milford's operating budget rose by 4.66% (1.55% per annum) from \$17,260,981 to \$18,063,633. (Borough Exhibit 2(b), page 17.)
32. Total salaries and wages for 2011 were \$7,219,349; equivalent to 39.99% of operating budget. (Borough Exhibit 2(b), page 20.).
33. The Collective Negotiation Agreement, which came to the end of its term on December 31, 2011, contains a Salary Guide in Appendix A1 headed "Base Wages." (Joint Exhibit 1, page 26.)
34. The CNA also contains appendices A2 and A3, which roll-in holiday pay into base salary. (Joint Exhibit 1, pages 27 & 28.)

35. The expired CNA has two clauses touching the calculation of Base Salary.

36. Article Ten provides,

To compute an Employee's hourly rate, the sum of his yearly base salary (including longevity, college stipend, if any, and detective stipend pay, if any) shall be divided by 2080.

Effective January 1, 2011 to compute an employee's hourly rate, the sum of his yearly base salary (including longevity, college stipend, if any, and detective stipend, if any) shall be divided by 1946 hours.

(T. II, p. 10; Joint Exhibit 1, page 8.)

37. Article Nineteen, Paragraph C states, in part,

Holidays shall be eliminated and the thirteen holidays will be converted into base pay effective January 1, 2011 following the 3.5% across-the-board increase in 2011...

38. In 2011, the base salary for represented, New Milford police personnel was \$3,278,654 pursuant to the Borough's calculations.

39. In 2011, the base salary for represented, New Milford police personnel was \$3,251,064 pursuant to the PBA's calculations.

40. From 2008 to 2010 current fund balance decreased by 2/3rds from \$1,017,742 to \$335,695. (Borough Exhibit 2(b), page 14.)

41. On November 10, 2011 Moody's Investors Services ("Moody") downgraded New Milford's General Obligation Debt Rating from Aa3 to A1. (Borough Exhibit 5.)

42. Moody reported that the downgrade "reflects New Milford's moderately-sized tax base, favorable socioeconomic profile and low debt burden." (Borough Exhibit 5.)

43. It further noted that its "rating also incorporates the borough's recently narrowed financial flexibility, evidence by reduced cash and Current fund balance levels, renewed need for cash flow borrowing and more stringent state-wide property tax levy increase limitations." (Borough Exhibit 5.)

44. Moody also characterized the Borough as benefiting from above-average wealth levels, low unemployment (i.e., 7.6% as of September 2011), and low debt burden. (Borough Exhibit 5.)
45. The changed rating reduced New Milford's general obligation debt quality from "high" to "upper medium grade."
46. Historically, the Borough's Police Department has employed an average of 33-sworn personnel.
47. In 2010 the Borough hired two patrol officers. (Borough Exhibit 2.)
48. Throughout the first 6-months of 2011 the Borough's Police Department was comprised of 34-sworn personnel.
49. On May 31, 2011 Officer Gerard Oleskiewicz left the Department at top pay, and benefits.
50. The vacancy created by Officer Oleskiewicz's retirement was not filled as of January 1, 2012.
51. On December 31, 2011 Lieutenant Bruce Raffo worked his final day.
52. The vacancy created by Lieutenant Raffo's retirement was not filled as of January 1, 2012.
53. On January 1, 2012 the Department had 31-sworn personnel; excluding Chief Papaietro who is not in the bargaining unit.
54. There are, statistically, 1.96 officers for each 1,000 Borough residents. (See PBA Exhibit 6.)
55. The *32-member bargaining unit as of December 31, 2011* was comprised of 24 non-supervisory Officers; 6 Sergeants; and 2 Lieutenants.
56. The 2011 Base Salary, for represented New Milford police personnel, was \$3,453,344 arrived at, as follows:

| <u>NAME</u> | <u>RANK</u> | <u>Base</u> | <u>Longevity</u> | <u>Educ. Allow</u> | <u>Detective Stipend</u> | <u>TOTAL</u> |
|-----------------|--|--------------------|------------------|------------------------|------------------------------|--------------------|
| Carlino, B. | Probation (1/1/11-5/31/11) Patrolman 1 | \$15,222 | - | \$ 342 | | \$15,564 |
| Carlino, B. | (6/1/11-11/30/11) Patrolman 2 | 25,635 | - | 410 | | 26,045 |
| Carlino, B. | (12/1/11- 12/31/11) | 4,962 | - | 68 | | 5,030 |
| Clancy, B. | Patrolman 7 | 102,647 | 4,106 | 1,200 | | 107,953 |
| Di Genio, N. | Patrolman 7 | 102,628 | 4,105 | 730 | | 107,463 |
| Duby, Jr. Wm. | Patrolman 7 | 102,726 | 6,164 | 1,200 | | 110,090 |
| | Patrolman 5 | | | | | |
| Finale, B. | (1/1/11-5/31/11) Patrolman 6 | 35,223 | 1,057 | 500 | | 36,780 |
| Finale, B. | (6/1/11-12/31/11) | 54,056 | 1,621 | 700 | | 56,377 |
| Giacobone, R. | Patrolman 6 | 92,823 | 2,783 | 1,200 | | 96,808 |
| Haggerty, F. | Patrolman 7 | 102,647 | 4,106 | 1,200 | | 107,953 |
| Herrero | Patrolman 7 | 102,636 | 4,105 | 920 | | 107,661 |
| Johnson, T. | Sergeant | 110,207 | 8,817 | | | 119,024 |
| Jones, R. | Sergeant | 110,122 | 6,607 | | | 116,729 |
| Kiene, J. | Patrolman 7 | 117,921 | 9,434 | | | 127,355 |
| Kiene, K. | Sergeant | 110,207 | 7,714 | | | 117,921 |
| Lamorges | Patrolman 7 | 102,647 | 4,106 | 1,200 | | 107,953 |
| Littlefield, S. | Sergeant | 110,122 | 7,709 | | | 117,831 |
| Long, B. | Patrolman 7 | 102,756 | 6,165 | 700 | \$ 1,250 | 110,871 |
| Marshall, D. | Patrolman 7 | 102,678 | 6,161 | | | 108,839 |
| | Probation | | | | | |
| Mattessich, D. | (1/1/11-5/31/11) Patrolman 1 | 15,222 | - | 500 | | 15,722 |
| Mattessich, D. | (6/1/11-11/30/11) Patrolman 2 | 25,635 | - | 600 | | 26,235 |
| Mattessich, D. | (12/1/11-12/31/11) | 4,962 | - | 100 | | 5,062 |
| Moroney, J. | Patrolman 7 | 102,757 | 7,193 | | | 109,950 |
| Morris, K. | Patrolman 7 | 102,726 | 6,164 | 1,200 | | 110,090 |
| O'Brien, M. | Patrolman 7 | 102,647 | 4,106 | 1,200 | | 107,953 |
| O'malley, J. | Sergeant | 110,255 | 8,820 | 1,200 | | 120,275 |
| Perez, N. | Patrolman 7 | 102,599 | 4,104 | | | 106,703 |
| Petrie, S. | Patrolman 7 | 102,647 | 4,106 | 1,200 | | 107,953 |
| Pisano | Patrolman 7 | 102,647 | 4,106 | 1,200 | | 107,953 |
| Ramaci, F. | Sergeant | 110,220 | 6,613 | 1,200 | 1,250 | 119,283 |
| Russino, G. | Patrolman 7 | 102,638 | 4,106 | 980 | | 107,724 |
| Trapani, R. | Patrolman 7 | 102,647 | 4,106 | 1,200 | | 107,953 |
| Van Suders, K. | Patrolman 6 | 92,823 | 2,785 | 1,200 | | 96,808 |
| Vinci, C. | Patrolman 7 | 102,638 | 5,132 | | | 107,770 |
| Wester, K. | Patrolman 7 | 102,647 | 4,106 | 1,200 | | 107,953 |
| Wilde, Bill F. | Patrolman 7 | 102,686 | 5,134 | 1,200 | | 109,020 |
| | | <u>\$3,096,261</u> | <u>\$155,343</u> | <u>\$24,550</u> | <u>\$2,500</u> | <u>\$3,278,654</u> |

Addition of 2011 Retirees to Compilation

| | | | | | |
|------------------|-------------|---------|-------|-----|---------|
| Raffo, B. | Lieutenant | 117,943 | 9,435 | 550 | 127,928 |
| 1/1/11- 12/31/11 | | | | | |
| Oleskowicz, G. | Patrolman 7 | 42,835 | 3,427 | 500 | 46,762 |
| 1/1/11 -5/31/11 | | | | | |

ADJUSTED BASE SALARY TOTAL: \$3,278,654 + \$127,928 + \$46,762 = \$3,453,354,

57. The 31-member bargaining unit as of January 1, 2012 was comprised of 24 non-supervisory Officers; 6 Sergeants; and 1 Lieutenant.
58. Represented employees work a schedule of 21-shifts, with 4-sworn officers assigned to each shift. (See PBA Exhibit 4, Testimony of Nicholas DiGenio.)
59. They are on duty, within this schedule, a minimum of 1946 hours per year. (See, Joint Exhibit 1, page 8.)
60. The Borough also employs represented white collar, public works, and library personnel.
61. Within the Borough's jurisdiction there are: 55-cateries; 2-CVS drug stores; 3-public schools, 3-private schools; 7- banks; Curtis Publications; a Shoprite supermarket; a nursing home; and a Bergen County Park. (Testimony of Nicholas DiGenio; see also PBA Exhibits 3, 7 & 8.)
62. New Milford also is home to several houses of worship.
63. For crime index reporting purposes, the Borough is classified as an "Urban Center."
64. In 2010 there were 7,625 General Calls to the New Milford Police Department. (PBA Exhibit 6.)
65. The violent crime rate, for 2010, was 0.3 per thousand, and the non-violent crime rate was 6.1 per thousand. (Borough Exhibit 10; PBA Exhibit 10).
66. In 2011 there were 8,868 General Calls. The greatest number of these involved traffic including: 53-motor vehicle accidents; 1510-motor vehicle stops; 473-traffic enforcement actions; 1-hit and run with injuries; and 90-traffic related services. (PBA Exhibit 5.)
67. In 2011 there were also: 1-attempted suicide; 2-auto thefts; 27-buglaries; 6-violent disputes; 7-bank escorts; 43-psychiatric/emotionally disturbed persons; 3-robberies; 2-sexual assaults; 4-simple assaults; and 1-weapons related incident. (PBA Exhibit 5.)

68. Throughout the day, and in particular during commuting hours, the traffic flowing through and within the Borough is at its heaviest level. (Testimony of Nicholas DiGenio; PBA Exhibit 9.)

69. During day time hours, non-residents also enter, and remain in the Borough for assorted purposes including food & pharmaceutical purchases, banking, education, visiting restaurants, and private sector employment. (Testimony of Nicholas DiGenio.)

70. At night, New Milford becomes more of a "bedroom community." (Testimony of Nicholas DiGenio.)

71. Among other public outreach programs bargaining unit members assist with a Junior Police Academy, DARE, the Drug Alliance, Crime Stoppers, and car seat installations by certified installers. (Testimony of Nicholas DiGenio; Testimony of Ann Subrizi.)

72. The Borough's law enforcement personnel assist Bergen County by participation in a Rapid Deployment Force (5 officers), Fatal Accident Team (1 officer), and by liaising with the Gang Task Force (1 Sergeant and 1 Detective). (Testimony of Nicholas DiGenio.)

73. Borough police personnel also coordinate with departments in adjoining municipalities; the converse is true as well. (Testimony of Nicholas DiGenio.)

74. New Milford's police force has a superior level of expertise, and is well respected throughout the community. (Testimony of Ann Subrizi and Nicholas DiGenio.)

75. White collar Borough employees are represented for the purposes of collective bargaining by the RWSDU, Local 108 ("Local 108"). (Borough Exhibit 7.)

76. Local 108 in a document dated February 18, 2011 signed-off a wage freeze for the entire year in exchange for the Borough's promise not to implement layoffs, or furloughs during the calendar year. (Borough Exhibit 7.)

77. Employees in the Public Works Department are represented for the purposes of collective bargaining by the New Milford Department of Public Works Benevolent Association ("PWBA"). (Borough Exhibit 6.)
78. The PWBA, in a document dated February 14, 2011, signed-off on a wage freeze 2011 in exchange for the Borough's promise not to implement layoffs, or furloughs during the calendar year. (Borough Exhibit 6.)
79. Employees in the New Milford Public Library are represented for the purposes of collective bargaining by the Library Union, Local 108 Public Employee Division, RWDSU, WFCW ("Library Union"). (Borough Exhibit 9.)
80. In a Memorandum of Agreement dated March 23, 2011, the Library Union signed-off on a 0% salary increase for the third year of its 2009-2011, labor agreement in exchange for the Borough's promise not to implement layoffs, or furloughs during the calendar year. (Borough Exhibit 9.)
81. PBA Local 83 was asked, but declined to waive the 3.5% salary increase reflected in Appendix A-1 of the Agreement. (Testimony of Ann Subrizi; see also Joint Exhibit 3, page 26.)
82. The parties' collective bargaining agreement expired on December 31, 2011.
83. Prior to this expiration date they met three time to discuss possible terms for a successor agreement.
84. The Borough's proposed a three year contract with salary increases of: January 1, 2012: 0%; January 1, 2013: 0%; and January 1, 2014: 2.0%.
85. The PBA's proposed a four year contract with salary increases of: February 1, 2012: 2.75%; February 1, 2013: 2.75%; February 1, 2015: 2.75%; and February 1, 2015: 2.75%.

Disputed Facts

Sworn Officer Scott Petrie, and Mayor Ann Subrizi gave divergent testimony concerning the Mayor's alleged use of the words "We're golden."

Officer Petrie testified that, in December 2011, the "Chief asked me to help him prepare the budget for salary and wage line items." (Officer Petrie, T.I, page 86.) He did as directed, and presented the data to Chief of Police Frank Papaietro. On December 29, 2011 he was contacted by Chief Papaietro, and asked to "sit down with the Mayor and speak with her for a few minutes." (Officer Petrie, T.I, page 87.)

At a meeting attended by the Chief and several others, "The Mayor wanted to review the proposal from the Chief as to her salary and wage line items [which were lower than those calculated by Officer Petrie.]" (Officer Petrie, T.I, pages 87 – 88.) Discussions ensued. (Officer Petrie, T.I, page 89.)

The next morning, while attending a holiday breakfast, the Mayor again spoke with Officer Petrie about the data. (Officer Petrie, T.I, page 90.) The Mayor asked if certain promotions, which the Borough was considering, had been included in his data. (Officer Petrie, T.I, page 90.) She also inquired whether his salary and wage line items reflected "the two percent increase on the base salary." (Officer Petrie, T.I, page 90.) Officer Petrie answered "yes." (Officer Petrie, T.I, page 90), He also testified the Mayor commented to the effect that if the numbers are correct "we're golden." (Officer Petrie, T.I, page 90.)

Officer Petrie understood the Mayor to mean, "the numbers were golden as far as they were accurate and within keeping underneath our 2011 budget." (Officer Petrie, T.I, page 91.) On cross-examination he conceded that her "golden" reference might have meant that their two sets of figures were now in alignment. (Officer Petrie, T.I, page 94.)

Mayor Subrizi testified that Chief Papaietro suggested Officer Petrie be present when preliminary budget numbers were reviewed. (Mayor Subrizi, T.I, page 191.) The three of them talked about "all the line items in operating expenses as well as salaries." (Mayor Subrizi, T.I, page 191.) "[W]hen Scott completed giving me all the information that he had calculated for the Chief, I indicated to him that was all I needed." (Mayor Subrizi, T.I, page 191.) Her testimony does not reference the "we're golden" comment attributed to her.

Chief Papaietro was not called to testify by either party.

INTEREST ARBITRATION STANDARDS

Under New Jersey Law interest arbitration follows impasse in negotiations between public employers and law enforcement employees over the terms for a successor collective bargaining agreement. In this matter, the disputed issues are to be resolved by "conventional arbitration," meaning that after carefully weighing proofs and arguments as they appear on the record the arbitrator will impose the terms of their new labor agreement. See N.J.S.A. 34:13A-16d. This responsibility is undertaken after labor and management have held collective negotiations on the issues that divide them. These negotiations set the stage for the Award's resolution of contested items. Arbitrators are entitled to anticipate that their services have been petitioned only after good faith bargaining has identified contested topics, winnowed as many as possible from contention, and highlighted the remaining differences in the parties' position.

Municipal residents, and union members alike depend on their representatives to bring their insights and negotiation skills to the bargaining table. An arbitration award, no matter how wise, is never as good as the parties' worst bargain.

To guide and control the process our Legislature has developed a set of detailed standards. The arbitrator's task is to decide interest disputes, under these standards, as follows:

The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant and provide an analysis of the evidence on each relevant factor; provided however, that, in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award.

(1) **The interests and welfare of the public.** Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).

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

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

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

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

(3) **The overall compensation presently received by the employees**, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) **Stipulations of the parties.**

(5) **The lawful authority of the employer.** Among the items the arbitrator or panel of arbitrators shall assess when considering this factor

are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A: 4-45.1 et seq.).

(6) **The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c.62 (C40A: 4-45.45), and taxpayers.** When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the proceeding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award for each ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) **The cost of living.**

(8) **The continuity and stability of employment** including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) **Statutory restrictions imposed on the employer.** Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

(Emphasis added.)

Each party bears responsibility for adducing evidence that it believes may be relevant and essential to the application of these factors. Indeed, "the arbitrator need not require the production of evidence on each factor." Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 83 (1994). This is the parties' job.

THE PARTIES' POSITIONS ON THE FACTORS, AND THE ARBITRATOR'S PRELIMINARY OBSERVATIONS

The arbitrator's duty is to evaluate disputed issues, based on the record, using the legislature's enumerated factors. Due weight must be given to each factor that is deemed relevant. When comparing the wages, salaries, hours, and conditions of employment in the same, or similar jurisdictions the arbitrator is to consider PERC's published comparability guidelines.

The arbitrator may determine that a factor is not relevant. An explanation is then required about why the factor was deemed irrelevant. The sole exception to this rule is Factor 6. In all interest arbitrations the parties shall introduce evidence on, and the arbitrator shall analyze this factor. This requires consideration of the "financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P. L. 2007, c.62 (C40A:4-45,45), and tax payers."

The following factor analysis summarizes the salient portions of: A. The Borough's Position; and B. The PBA's Position. These general summaries will not extend to all of the evidence and argument. However, the totality of the parties' presentations have been considered and reviewed. When helpful to an understanding of this Opinion and Award, I have added a Section "C" containing my observations.

Factor 1: Interests and welfare of the public

A. The Borough's Position

Indisputable facts evidencing its precarious financial, support the Borough's stance that its final offer "while Spartan by standards, is the only offer which will not negatively impact the interest of the public, the Borough, other Borough employees, or the PBA bargaining unit members." (Borough Post-Hearing Brief, p. 16.) This is a particularly difficult time for New Milford, and not the moment to burden taxpayers with funding increased wages, and terminal leave payouts. The devastating weather over the

past 15-months, and the specter of losing 15 flood prone homes from the tax rolls bespeak the need for great fiscal prudence. "Herein, the interests and welfare of the public are of paramount importance and should be accorded most weight." (Borough Remand Brief, page 3.)

Notably, other Borough employees received "zero percent" wage and salary increases for 2011. "Their sacrificial give back should not go unrecognized by this Arbitrator." (Borough Post-Hearing Brief, p. 18.) "The Borough's offer ensures continuation of an internal zero increase which is on par with other Borough employees." (Borough Remand Brief, page 15.)

Since 2008 New Milford has been operating on a declining budget, a contracting tax base, shriveling state aid, and a falling budget surplus. "Consequently, it is imperative for the Borough to control the costs of its largest expenditures [*i.e.*, salaries, wages, & fringe benefits] in order to mitigate the burden on the taxpayers, who will ultimately have to bear the bulk of the costs of the increase in salaries and benefits." (Borough Post-Hearing Brief, p. 18.)

Categorically and absolutely the public's interest includes "the amount of property taxes that homeowners will be required to pay." (Borough Remand Brief, page 3.)

B. The PBA's Position

"The interest and welfare of the public in the Borough of New Milford are well protected and served by the sworn personnel of the New Milford Police Department." (Final Summation of PBA, page 6.)

During daylight hours the Borough is a busy place. Residents, visitors, and transient commuters benefit from a range of police services. The quantity of these services is on the rise as demonstrated by the increasing call volume. Officers are highly

trained, and supply new and enhanced services including: two School Resource Officers; Junior Police Academy; Car Seat Certified Installers; officers with foreign language skills; a police boat; and participation in drug awareness and prevention programs.

"The nature of services was acknowledged to be diverse even in the employer's own proofs...New Milford is a busy place with a high level of noted offenses. This is a challenging law enforcement environment." (Final Summation of PBA, page 8.)

Never-the-less bargaining unit members have been required to do more with less since the Borough has historically permitted the force to remain understaffed. Officers, accordingly, are working at a high level of economic efficiency.

In "consider[ing] the total impact on the taxpayers and residents one must perforce add in the factors for loss of personnel." (PBA Remand Memorandum, page 12.) With the retirements of Officer Oleskowicz and Lieutenant Raffo the Borough has had cost savings, as will be the case with the May 2, 2012 disability retirement of Officer Giovanni V. Russino (PBA Remand Memorandum, page 10), which followed line-of-duty injuries.

Moreover, the amendments to statutes governing pension and medical care will have an important—and from the municipality's vantage positive—impact on New Milford's cost of operations. While these "may not be within the narrow confines of the 'base salary' computation under the [Interest Arbitration] statute, they are without question relevant to the total cost of operations when impact on the taxpayers and residents is considered." (PBA Remand Memorandum, page 12.)

C. The Arbitrator's Observations

Interests and welfare of the public: paramount, but difficult to quantify and apply

In 2009, Local 83 and the Borough of New Milford participated in interest arbitration before Jeffery B. Tener, former Chair of the Public Employment Relations

Commission. Seven months following the close of those hearings, Arbitrator Tener delivered a 59-page, well-reasoned decision. Borough of New Milford and PBA Local 83, Docket No. IA-2008-070. He explained that while the public's interest and welfare is critical factor, it is difficult to quantify and apply. Id. at 48. This factor's application requires balancing effective law enforcement against reasonable competitive wages and benefits for police officers. Id. Arbitrator Tener wrote, "it is apparent, even without looking at specific financial factors, that the Borough is hard-pressed to provide the level of police services that it would like to provide even though...the wages and benefits which it provides to its officer are low compared to others in the County." Id. at 49.

Today, the same is true. Starting and top step wages are toward the bottom of Bergen County municipalities. However, the Borough's economic well-being, along with that of other municipalities, has declined in the years since Arbitrator Tener's award. These communities are coping with declining State Aid, decreases in non-tax revenues and the statutory, tax levy cap.

Factor 2: Comparison of wages, salaries, hours, and conditions of employment

A. The Borough's Position

As a general matter, New Milford contends that its offer is consistent with salary and other direct monetary benefits of sworn officers in neighboring communities. Any comparison with all Bergen County municipalities would be inappropriate. More specifically, the Borough notes:

(a) There is "growing trend toward of low to moderate salary increases."

(Borough Post-Hearing Brief, page 20; see also Borough Remand Brief, pages 13 & 14.)

This clement movement is shown by pre-arbitration cap resolutions in the City of Englewood, Englewood Cliffs, Hasbrouck Heights, Norwood, North Arlington, Spotswood, and Waldwick. Similarly, the elimination of longevity for new hires is

becoming more common. (See Borough Post-Hearing Brief, p. 20.) New Milford needs to control longevity, holiday pay, and terminal leave to avoid tax increases and/or cuts in necessary programs.

(b) "The PBA enjoys wages, salaries and conditions which are rapidly diminishing in the public sector." (Borough Post-Hearing Brief, p. 22.) Historically generous, in comparison with other public sector employees, police economic packages are no longer feasible given the 2008 fiscal crisis and subsequent tax levies. Unlike other public employees, PBA members are not subject to furloughs. "The members of the PBA [Local 83] enjoy a broad range of benefits that are comparable to other agencies within a reasonable distance from the Borough." (Borough Remand Brief, page 13.)

Accordingly, the Borough's sole recourse is to trim, or eliminate benefits. This is particularly apt with regard to the terminal leave provision. This benefit is much more generous for police, than for personnel in New Milford's white collar and DPW units.

(c) While few private sector jobs are comparable to those of urban police officers, several non-law enforcement occupations are both dangerous and pay less. Included among them are convenience store clerks, and urban taxi drivers. Moreover, "few, if any, public or private sector employees can retire after 25 years of service at a 70% pension, inclusive of health benefits." (Borough Post-Hearing Brief, p. 22.)

(d) Within New Milford, the Borough accentuates that the PWPA, Local 108, and the RWDSU USCW cooperatively responded to the municipality's 2011 budgetary quandary by agreeing to "zero percent increases." These labor organizations, as well as Local 83, were approached soon after the two percent cap was imposed by the State, and at a time when the Borough's auditors and the Governing Body were wrestling with the impacts of the new restraints on municipal operations. (T. I, page 180 – 181.) Mayor Subrizi testified, "Realizing the bulk of our budget is salaries, benefits and pensions, we

went back to each bargaining unit and asked them to voluntarily take a zero percent increase." (T. I, page 181.)

Local 83 did not join its sister unions by agreeing to a contract modification foregoing the 3.5% wage increase--awarded by Arbitrator Tener--for 2011. The PBA has higher pay, and superior benefits when compared with other Borough employees. Since PBA members "are not subject to furloughs like other public employees...the Borough is left with no other recourse but to trim or eliminate fringe benefits." (Borough Post-Hearing Brief, p. 22.)

B. The PBA's Position

The compensation program for New Milford police personnel is among the poorest in all of Bergen County. By way of example, examining "top step," pay rates for 21 other law enforcement units the Borough falls 17.65% below average. This statistical shortfall is not supplemented by differentials, equity adjustments, or other special allocations. Indeed, it would require four years of 7.093% increases "just to catch up and achieve average." (Final Summation of PBA, page 19.) The PBA proposal will keep the Borough's officers at the bottom of the pack, while the employer's proposal will intensify the shortfall.

Too, holiday pay is below the level of other bargaining units. Indeed, owing to the workings of Article Nineteen, Section C, New Milford police have "the lowest holiday benefit in the entire County of Bergen." (Final Summation of PBA, page 16.)

Local 83 rejects the proposition that comparing law enforcement officers to private sector employees will add to the analysis of this matter. "In the first instance, there is no comparable private sector job to that of a police officer." (Final Summation of PBA, page 22.) Among their unique obligations is 24-hour a day duty, whether "on or off the clock," to enforce the law within New Jersey's territorial limits. They must reside in

New Jersey, be trained and periodically recertified in firearms use, and operate within strict regulatory limits. In summary, they work "within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility." (Final Summation of PBA, page 28.)

C. The Arbitrator's Observations

Comparison of wages, salaries, hours, and conditions of employment is merits considerable weight

"Comparison" traditionally is a crucial element when assaying proposed wage changes. Pay levels vary from place to place, between types of employers, and between employers in the same industry, e.g., textiles, municipal government, and health care. They also vary within different divisions/departments of the same employer. Accordingly, it is appropriate to appraise New Milford police wages against those for other Borough employees, and against law enforcement personnel in nearby communities.

Comparison, within each category, examines internal and external consistency. There are a plethora of possible considerations when making such comparisons. *Intercommunity match-ups* may include considerations of: size/composition of police forces; quantity/quality of services; level of training; and participation on special task forces. *Internal comparisons* may include assaying: value to taxpayers; educational prerequisites; mandated certifications, or licenses; physical, intellectual, and communication skills; continuing training requirements; variety and complexity of tasks; degree of difficulty; hours of work; being "on call"; unpleasant conditions; hazards and/or risk of injury; physical and/or psychological stressors; and degree of dedication to public service.

The Borough of New Milford is an urban center. Its police officers work full days dealing with a daily flow of people through, and into the community. Traffic related events, interpersonal conflicts, call for help etc keep its 31-officers engaged. With 1.96 officers per 1,000 residents the Borough is understaffed; even discounting the 16% increase in general calls during 2011. Then too, there are violent crimes at a rate of 0.3% per thousand, and the risk of work related injuries as demonstrated by Officer Russino's disability retirement. (T. II, page 170.) In sum, the conditions of work are stressful, and at times hazardous. The most appropriate comparison is to sworn personnel in other communities.

The best source of comparison is to the wages, hours, and conditions of employment of sworn personnel in similar Northwest Bergen municipalities. Passing over the PBA's assertion that New Milford officers fall 17.65% below their Bergen County colleagues, a review of the collective agreements in evidence, demonstrates a clear wage disparity. Even with the 3.5% increase that New Milford officers received in 2011, they remain among the lowest paid within the County's approximately seventy municipalities. As of December 31, 2011 top step, annual salaries for patrol officers in several reasonably comparable Bergen County communities were:

| Municipality | Salary |
|---------------------|---------------|
| Allendale | \$111,572 |
| Edgewater | \$107,615 |
| Cresskill | \$106,683 |
| Dumont | \$101,634 |
| Glen Rock | \$109,183 |
| Haworth | \$100,767 |
| Hasbrouck Heights | \$112,217 |
| Midland Park | \$113,402 |
| Oradell | \$105,885 |
| Waldwick | \$115,781 |
| Wallington | \$109,535 |

From the record supplied by the parties, it is evident that at a top step of \$98,493 (\$102,441 including the roll-in of holidays previously awarded by Arbitrator Tener) New Milford's sworn officers are among the lowest paid in Bergen County.

The record contains no data supporting a conclusion that other economic factors significantly counterbalance the picture reflected in Local 83's salary guide. I reject the Borough's conclusion that the evidence "presented in the initial hearing shows that the base salary of the Borough's officers is mid-range to that of other officers in Bergen County." (Borough Remand Brief, page 12.)

Internal comparison with other New Milford employees requires a different analysis.

While the CNAs for Local 108 and the other unions were entered in evidence, the record is bereft of even rudimentary information about the job requirements and work performed by other Borough employees. Whereas Sergeant Nicholas Di Genio testified for more than an hour about the duties and responsibilities of Sworn Officers, the record sheds no light on the demands and requirements of laboring as a librarian, general maintenance worker, vehicle driver, or clerical employee. What are their educational prerequisites? What is the variety and complexity of their daily tasks? What are their hours of work? What conditions--pleasant and unpleasant--are associated with their jobs? Does their work require as much dedication to the public welfare as does that of police officers?

Everyone knows, in a general sense, what is demanded of workers in common occupations. This general knowledge does not suffice for the purposes of Interest Arbitration. Arbitrators are required to rule based on the evidence. When proof is lacking, they cannot rely on their "common sense" guesses about what specific jobs, in specific

organizations require. The skimpy record makes it difficult, and intellectually dangerous, to apply the internal comparison factor.

Turning to Factor g2(a), Police work can hardly be compared with private sector employment. The Union aptly cited Borough of River Edge and PBA Local 201, PERC 1A-97-20, in which Interest Arbitrator Carl Kurtzman wrote:

[There is] a lack of specific private sector occupational categories with whom meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualification for public sector police and their training and unique responsibilities which require public sector police to be available and competent to protect the public in different emergency circumstances set public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight.

Id. at 30.

Factor 3: Overall Compensation Presently Received

A. The Borough's Position

Although municipalities differ, the wages and benefits provided to New Milford PBA are both fair and competitive. Their pension, disability and medical benefits are superior to those of other employees. "In sum, the compensation criterion reveals an economic package which is generally competitive." (Borough Post-Hearing Brief, p. 24.)

B. The PBA's Position

Recent modifications to the pension and health care statutes deplete the buying power of police officers, and thus diminish their overall compensation. These statutory transformations operate "to the direct benefit of each respective public employer, here the Borough of New Milford," (Final Summation of PBA, page 34) by shunting costs to the employees.

Other bargaining unit benefits, which comprise the total compensation package, are either mid-range, or below average. Vacation and sick leave allowance are virtually the same throughout Bergen County. Moreover, there "are no other unusual, or unique benefits available to the Police Officers in New Milford." (Final Summation of PBA, page 16.) For example, the Borough does not afford night or rotational differentials, or a weapons allowance.

The holiday pay benefit is the lowest in Bergen County. This is attributable to the provision in Article 19 permitting a twenty-five percent (25%) reduction from each holiday's full value. Not content with this situation, New Milford's now proposes altering the method calculating holiday pay formula, and thus further reducing this benefit.

C. The Arbitrator's Analysis Including Relevance/Weight

Overall Compensation Presently Received--While a Net Advantage to Bargaining Unit Members--Has Been Diminished

Most residents of New Jersey are in the same boat. The economic downturn has hit everyone, and made life more difficult. While an economic comeback may well have begun, it has not arrived in force. The wage component of overall compensation is below what would be anticipated in more normal times.

Overall compensation, however, is more than wages. "This factor requires an arbitrator to consider all of the economic benefits received by employees involved in a case, including direct wages, vacations, excused leaves, insurance, pensions, and medical benefits. It thus directs a focus on all employee benefits, not just the items at issue in the case." Borough of Hasbrouck Heights and PBA Local 102, 1A-2010-053, page 68. In this light, New Milford's officers enjoy fringe benefits that are competitive with their Bergen County peers, and no doubt the envy of many private sector employees. They gain from holidays, vacation days, sick leave, medical coverage, and participation in the PFRS.

The picture is less bright than was true in 2008. Local 83 accurately asserts that statutory pension and medical plan amendments require employees to expend money on contributions that formerly were paid by the public employer. Chapter 78 of the Laws of

2011 increased the share of health benefits coverage paid by public employees and retirees. Police contributions toward pensions have also increased. **Factor**

4: Stipulations of the Parties

The parties stipulated, through counsel at the May 3, 2012 hearing, that the Borough's Medical Contract proposal was intended to ratify that health care coverage under the CNA would be maintained in keeping with New Jersey's statutory requirements. (T. II, pages 84 – 86.)

The Arbitrator's Observations:

Pursuant to this stipulation, the following provisions will be included in my Award as paragraphs H and I in Article Twenty-Three of the Agreement,

H. All employees shall contribute a percentage of the employee's total annual salary, or a percentage of the annual premium as per state law. Any employee may opt out and receive a cash payment from the Borough, to be included in the paycheck spread out over the course of the year in the amount of 25% of the premium or \$5,000 whichever is greater.

I. Payments for retiree health benefits shall be subject to state law.

Factors 5 & 6: The Lawful Authority of the Employer, and The Financial Impact on the Governing Unit

A. The Borough's Position [Combined Statement Touching Lawful Authority & Financial Impact]

"Fiscal responsibility is a factor that directly impinges upon the Borough's ability to continue to provide adequate public services." (Borough Post-Hearing Brief, p. 24.)

This duty must be met within its budget restraints as informed by the CAP laws. It includes filling vacancies, and making promotions when and where appropriate.

In PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71 (1994), the New Jersey Supreme Court stated that "the financial impact criterion requires consideration of the municipality's ability to existing local programs and services, and to initiate new programs and services." (Borough Post-Hearing Brief, p. 25.) While interest arbitrators

must determine if public employers can legally raise sufficient revenue to fund their awards, their primary focus is on how residents and taxpayers, whether wealthy or poor, are impacted. (Borough Remand Brief, page 13.)

In this matter, the 2.75% across-the-board increases proposed by the PBA would cause taxpayers to "feel the pain." (Borough Remand Brief, page 14, fn 5.) In contrast, over three years New Milford's salary proposal would establish an annual cost to the taxpayer of \$13 in 2012, \$20 in 2013, and \$39 in 2014. (Borough Remand Brief, page 14.) This offer "presents a fair balance between the reasonable salary increases within the 2% hard Arbitration cap and the minimal tax impact upon the residents while leaving a narrow window for salary increases for the remaining union and non-union employees." (Borough Remand Brief, page 14.)

B. The PBA's Position [Combined Statement Touching Lawful Authority & Financial Impact]

PBA Local 83 rejects the Borough's "Tax Points" argument as pure speculation. There is no way, it contends, "to project an assessed valuation three (3) years into the future." (PBA Remand Memorandum, page 11.) It argues further,

...for one to even consider total impact on the taxpayers and residents one must perforce add in the factors for loss of personnel. The cost of police operations in New Milford is dramatically less than it was in 2011. Two (2) senior police personnel have left, substantial reductions in pension contributions have resulted and, of key importance is the fact that this Employer as with other public agencies, is going to have a significant cost participation [by employees] in the payment of insurance premiums which will escalate over the term of this contract...

Unquestionably, the cost of operations for this Police Department will be reduced.

(PBA Remand Memorandum, page 12; see also Final Summation of PBA, page 32.)

In New Milford's case, its anticipated payment to the Police and Fire Retirement System ("PFRS") was reduced \$217,983. This reduction lowered police services costs by

6.76% directly inuring to the Borough's financial benefit. The four-year phase-in of employee contributions toward health also will result in increasing savings for New Milford.

More generally, the Union observes that a "consideration of the proofs in this case consistent with criteria g5, g6 and g8 provide no impediment whatsoever to an award of the PBA Position as presented. The referenced statutory limitations are in line with the "Appropriation Cap", the later passed "Levy Cap" and the so-called "Hard Cap". (Final Summation of PBA, page 32.) The cost impact of the PBA salary proposal is not in conflict with the foregoing legal and financial restraints.

Applying the Caps, Local 83 emphasizes, turns on correctly computing the bargaining unit's base wage point. This calculation is essential to the arbitrator's application of the "Hard Cap" statute. The PBA calculates this base to be \$3,233,692. This sum, it notes, differs from the Borough's calculation by "only Seventeen Thousand Nine Hundred Twelve Dollars (\$17,912.00). (Final Summation of PBA, page 32.) The Union attributes this "delta" to the reduction in longevity caused by the 2011 retirements of Officer Oleskowicz and Lieutenant Raffo. Their absence from payroll, it emphasizes, also resulted in a reduction of operational costs.

Combined with the savings flowing from the Raffo & Oleskowicz retirements, the reduction in pension and health care contributions allows New Milford to finance the PBA's last offer without increasing payroll. "In effect, the entire PBA Last Offer Position can be funded from any one of a number of sources in reduced costs to this Municipality without increasing the payroll at all." (Final Summation of PBA, page 37.)

Nothing prevents the Borough's from easily meeting the PBA's Last Offer. New Milford has almost two billion dollars in taxable land & improvements, a tax rate lower than several nearby towns, and mid-range *per capita* income. With a gross tax levy of

\$45,165,561, a collection rate exceeding ninety-eight percent (98%), and debt well below New Jersey's statutory limit of 3.5% of equalized value New Milford is in a strong fiscal position.

"In sum, there is an exceptionally high net valuation of approximately Two Billion Dollars, a competitive if not low effective tax rate, and a very favorable debt picture. This is not a poor town." (Final Summation of PBA, page 41.) The future could be even brighter given development plans, by S. Hekemian Group, for a 14-acre site on the banks of the Hackensack River.

C. The Arbitrator's Observations on Lawful Authority, and Financial Impact

As More Money is Allocated to the Police, Less is Available for Other Priorities

Arbitrators recognize the statutory limits placed on employers in this era of caps. The record is clear that New Milford has reduced financial flexibility as shown by the reduction of its reserves, and the 2011 impetus asking other unions to choose between layoffs and foregoing negotiated increases. Moody's downgrade of the general obligation debt rating while not a disaster was far from a vote of confidence. It reflected that rating organization's opinion that the Borough's reduction of reserve combined with New Jersey's tax levy limitations could force it into the debt market, where its chances of default would be somewhat greater than in prior years. While New Milford may not be poor, it does have cash flow issues as demonstrated by its declining surplus.

Local 83 rightly notes that reductions in health care and pension contributions, and the savings resulting from the Raffo & Oleskiewicz retirements in 2011 work to the Borough's general fiscal benefit. Each month these positions remain vacant the Borough spends less on wages. The 2012 reduction in the PFRS billing lowers New Milford's costs in the short term.

These truisms do not address if and/or how such cost reductions might work to Local 83's advantage. This hotly contested question need not be addressed head-on as the implementation of the Arbitration Cap plays a much greater role in the outcome of this matter.

Factor 7: The Cost of Living

A. The Borough's Position

"Any increase should not exceed the CPI for the Northeast Region." (Borough Post Hearing Brief, p. 26.) In this instance, the PBA's proposed salary adjustments are double the Consumer Price Index ("CPI"). Any wage increase, the Borough asserts, should not exceed the Northeast Region's CPI.

B. The PBA's Position

The Bureau of Labor Statistics has calculated the cost of living to be 3.4% over the last twelve months; with the cost of fuel and other commodities having significantly risen. "This alone guarantees that an award of the PBA's Position as presented will guarantee a loss of...real money value as inflation exceeds the amount sought." (Final Summation of PBA, page 45.) Granting the Borough's Last Offer would further reduce the purchasing power of officers and their families; this "would be disastrous." Id.

C. The Arbitrator's Observations

Cost of Living is a Weighty Factor Affecting Both Parties

From November 2010 through November 2011, the CPI for all items was on an upward slope with the cost of food increasing by 4.6%. (Borough Exhibit.) Moreover, in recent months health care, rents, gasoline, and used car prices have risen. Cost of living increases most likely will continue affecting the Northeast in the foreseeable future.

These price increases place economic demands on wage earners and on public agencies tied to budgets. Since they have multiple income streams, organizations often

are in a better position to cope with rising costs than are employees who largely depend on the static sums in their paychecks.

Factor 8: Continuity and Stability in Employment

A. The Borough's Position

Nothing supports a conclusion that the Borough has been plagued by turnover, or instability within the ranks of its police officers. The current compensation level has been sufficient to attract and retain qualified sworn personnel.

B. The PBA's Position

Not Available

C. The Arbitrator's Analysis Including Relevance/Weight

Workforce Stability Depends on Multiple Factors, and Has Limited Relevance at Present

At present, the continuity and stability of the workforce has limited relevance in New Milford, and elsewhere. The economic climate assures that private and public sector employees have limited prospects for changing jobs. This factor, however, still merits consideration.

With need to fill out its ranks as senior officers retire, the Borough of New Milford will increasingly be in the market for recruits. Other Bergen County municipalities with richer pay and benefit packages will be more attractive to the available labor pool. Additionally, less senior officers (who have gained from New Milford's training) may opt to change employers.

Factor 9: Statutory Restrictions

Under the Arbitration Reform Act interest arbitrators shall not render awards which, on an annual basis increase, base salary items by more than 2.0 percent of the aggregate amount spent in the twelve months immediately preceding the expiration of the

collective agreement subject to negotiation. The parties acknowledge this rule's applicability to the within arbitration.

DISCUSSION

Interest arbitrators are required to explain how each statutory criterion played into their final determination, and why their decision is reasonable as a matter of law. We also are required to certify that the limitations imposed by the levy cap have been accounted for in our awards. The within voluminous record has been culled, the parties' positions perused, and my determination explicated in keeping with the statutory criteria.

The 9-criteria in New Jersey's interest arbitration statute are guides for resolving economic conflicts touching protective services personnel, their municipal employers, and the citizens they defend.

I first address proposals that are denied in their entirety. Denials flow from one of two general reasons. Some are based on findings that the proposal is not supported by sufficient credible evidence. Although not un-sympathetic to the constraints placed on arbitration advocacy by the 45-day time limit for IA cases, I can only issue awards supported by the evidence. Arbitrators are not to engage in speculation, or to make "good guesses" about what a party may have really meant.

Alternatively, well-supported proposals warrant rejection if their impact on unit employees, or on the municipality would not be commensurate with, or balanced by, the terms of the overall award.

Non-Base Salary Economic Proposals That Have Been Denied

Overview

New Milford's economic proposals were formulated with the intent of furnishing optimal taxpayer services consistent with existing fiscal restraints. The governing body

sought to reduce expenditures, fine-tune administrative processes, and enhance productivity. The following exchange, during the February 2, 2012 hearing, is instructive:

Q. And, with regard to the budget in 2011, what was the council's at that point regarding expenditures and operating within the budget?

Answer by Mayor Subrizi: Well, that was the first year that we had the State impose[d] Budgetary cap and the auditors at that time gave us some information about how much we were going to be allowed -- What the limit was that we were going to be allowed to raise the Budget levy. I don't remember the number.

Q. And, what steps did the Borough take in an attempt to operate within that limit with regard to Union and non-Union personnel?

Answer by Mayor Subrizi: Realizing that the bulk of our budget is salaries, benefits and pension, we went back to each bargaining unit and asked them to take a voluntary zero percent increase. At that time we did not know if we were going to be able to provide for the contracted raises within the two percent cap recently imposed at that time.

(T. I, pages 180 – 181.)

[The Mayor then testified that every union, except Local 83, yielded to her request for "zero percent increases" in 2011.]

Later in her testimony Mayor Subrizi added,

A. As Mayor, I feel responsible to the entire Borough and all the taxpayers. And, I feel that it's my duty to make the most fair contract with the police and with the other bargaining units and maintain some sought of balance as to what's fair to the bargaining unit as well as to keep in mind that I'm responsible to the taxpayer...

Well, in New Milford, we have had a tough year. In addition to Having people displaced by Hurricane Irene, in various stages of Repair or maybe not even back within their house, we, indeed, have, As most of the counties, State, Country, a fair share of people with Foreclosures, you know, pending. And, there are many people I know Who are out of work, or under employed at this time.

And, our tax bill, as our tax bill grows and our taxpayers ability to pay it weakens I feel that the climate is that we really have to tighten our belt.

(T. I, pages 188 – 189.)

In this uncertain environment, following the Union's refusal to accept a "zero percent increase," the parties held three bargaining sessions, i.e., November 4, 2011, November 22, 2011, and December 13, 2011. Multiple issues were discussed including,

but not limited to, matters cited in their Final Offers. These limited negotiations did not successfully resolve many of the broad and deep issues that divided labor and management in the Borough.

Three weeks after their last meeting, the within IA Petition was filed with the Commission. The multifaceted questions presented in this arbitration are reflective of problems that are arising across New Jersey.

Municipal employers and employees, over the past four years, have been substantially impacted by the depressed economy. Although New Milford is not a large municipality, the issues advanced to arbitration are large. Intricate questions have been presented for resolution in a trying economic climate. They touch the future direction of: salary guide steps; wage increments versus retirement packages; longevity payments; sick and vacation day accrual; and terminal leave compensation. Each of them is of vital concern to the parties.

The proponent of a proposal is obligated to develop a record supporting its position. My task is to reasonably resolve those issues so long as they are supported by substantial credible evidence. Local 83 acknowledged this in its Memorandum on Remand, when it observed,

Issues such as inclement weather proposals, longevity, sick and vacation leave, personal leave and holiday roll-in calculation, are clearly and unequivocally economic proposals. The burden of advancing an argument on such matters lies with the party advancing the proposal.

(PBA Remand Memorandum, page 2.)

I have identified various proposals as not sufficiently supported by credible evidence to allow a reasoned decision.

1. The Borough of New Milford's Proposal C.1 & C.2 to Modify Compensation During Inclement weather is Denied as not supported by Record Evidence.

The Borough of New Milford called Municipal Clerk Christine Demiris to offer evidentiary support for Proposal C.1 & C.2. Her testimony was largely hearsay, restricted to what others purportedly told her about "comp time" practices when Borough Hall was closed for emergencies. Ms. Demiris estimated that the costs linked to these purported practices ranged between ten and twelve thousand dollars per occurrence. (T. II, pages 120 -121.) Time records, which might substantiate this estimate, are maintained by the Police Department; not the Municipal Clerk's office. (T. II, pages 122.) While the arbitration hearings were held in New Milford, the Borough neither called supporting witnesses, nor produced Police Department time records. The evidence on this issue is, at best, speculative.

The record is devoid of information supporting the Borough's belief that "the day shift receives a double benefit and those officers assigned to the second and third shifts receive compensation for not working." (Borough Brief, page 11.) The answers to leading questions that have been cited in support of this conclusion are not accorded significant weight.

2. Borough Proposal E seeking to modify vacation leave for new hires is Denied as not supported by Record Evidence, and Otherwise Not Conducive to health and safety

The Borough proposes a two-tier vacation schedule for new hires, in keeping with the following:

0 to 5 years – 5 days
5 to 15 years – 10 days
15+ years – 15 days

Applying this formula, vacation days would be reduced by fifty percent (50%) for the first five years on the force, and by 33.3% for the next five years. Savings for years 1

3. The Union's Proposal for a Four-Year Term, and the Borough's Proposal for a Three-Year Term are Denied. The Successor Agreement Will Have a One Year Term, running from January 1, 2012 through December 31, 2012

The rate of change in New Jersey's public sector militates against the three-year term (proposed by the Borough), and the four-year term (proposed by PBA Local 83). Legal and regulatory evolution, economic fluctuations, the housing market, and myriad other forces make this a risky time for being locked into long-term agreements. The future is less predictable than ever. Similarly, within New Milford, the impact of flood-damaged properties on ratables, and/or the outcome of planned development by S. Heckemian Group are unknown. A shorter contract would allow the parties greater flexibility to adapt. It would also afford a new opportunity to bargain in good faith over the numerous issues that apparently were not fully addressed during their abbreviated 2011 negotiations.

The limited time at the bargaining table and the number of issues submitted to arbitration, lead me to conclude that this arbitration was premature. The parties need more time to talk. While I cannot undo the past, I can afford them an opportunity to meet and confer as soon as reasonably possible.

Conventional arbitration permits neutrals to set durations other than those proposed by labor and management. In this instance, I have chosen an 12-month term even though each party--for its own reasons--sought a longer contract. They had the freedom to stipulate to a mutually acceptable term, but did not do so. Finally, they were asked at the February 2nd and the May 3rd hearings if they had any stipulations. Their successor contract accordingly shall run from January 1, 2012 through December 31, 2012.

This determination is in keeping with New Jersey's public policy that

the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that...employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste;...

(N. J. S. A. 34:13A-2)

To comply with this policy

the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment.

(N. J. S. A. 34:13A-5.3) (Emphasis added.)

Additional time and effort at the bargaining table might have been to great avail, and saved the considerable time, effort and expense that this Interest Arbitration entailed. By way of example, it became apparent at the May 3, 2012 hearing that there was no disagreement over the Borough's proposal to add two sections to Article Twenty-Three governing Medical Contracts. New Milford's sole objective was to ratify that health care coverage would be maintained in keeping with New Jersey's statutory requirements. Once this became apparent, following a brief exchange, Local 83 readily stipulated to the inclusion of the proposed language.

The 45-day time limit governing interest arbitration makes it imperative, in this Arbitrator's opinion, for parties to take maximum advantage of negotiations. As the number of issues expands, the necessary time for thoughtful and thorough bargaining also expands.

The 12-month term is awarded by way of giving the parties an immediate opportunity to meet, confer, and reach agreement. In particular, the intertwined issues of terminal leave and the banking of unused sick and vacation days merits prolonged discussion. The extent to which accumulated days should be used as a "retirement fund" touches the Borough's sick and vacation day liability; currently exceeding two million

dollars. It also touches Local 83's desire to bargain for a wage increase that is beyond the two percent limitation on Interest Arbitrators.

Within the realm of municipal bargaining, labor and management might consider becoming more collaborative. The authors of Collaborating on School Reform: Creating Union-Management Partnerships to Improve Public School Systems write,

A strike or a vote to strike was the motivation or critical event for most the districts [i.e., employers] to seek an alternative direction in their union-management relations. They recognized that the adversarial relationships...were not productive, and certainly not in the best interests of teachers, administrators, or students. The union leadership and top management in each district made a choice to change their relationship, which was the first step in establishing a collaborative approach in school improvement.

Rutgers, School of Labor and Management and Labor Relations, New Brunswick (October 2010), pages 3 & 4.

Adopted Non-Salary, Economic Proposals

1. Borough Proposal F Concerning Personal Leave is Substantially Granted

The Borough proposes that Article Eighteen be amended to read,

Each employee will have three (3) days of personal leave.
The personal leave shall not accumulate and must be used
in the year it is earned.

In thus barring bargaining unit members from accruing personal leave, New Milford's stated intent is to reduce the municipality's exposure to terminal leave liability. In that respect, it observes that each personal day not accrued will work to the Borough's benefit in future years.

The text of Article Eighteen in the expired Agreement (Joint Exhibit 1)--as a result of Arbitrator Tener's previous Award--provides for the same result. It states, in pertinent part, "Effective January 1, 2010, personal days will either be used by the end of the year or lost." This provision thus nullifies an earlier sentence permitting personal days

to be accumulated "from year to year up to a maximum of six." (Joint Exhibit 1, page 11.)

Owing to Arbitrator Tener, the parties already have an understanding that personal days would no longer be accumulated. The record demonstrates no baneful results. It is reasonable to carry this term into the future so that officers will have time for personal business which conflicts with scheduled tours of duty.

However, the Borough's proposed abbreviated version of Article Eighteen cuts too broadly by omitting two sentences speaking to the Chief's discretion to grant, or deny leave days. Article Eighteen should remain in the Agreement essentially in its current form. To avoid any confusion, the sentence beginning "Personal days may be accumulated..." will be stricken. This will permit the "use them, or lose them" condition to be applied without confusion.

2. Borough Proposal J To Modify Terminal Leave Payouts is Granted in Part

New Milford advanced a series of proposals to modify Article Fifty of the Agreement. Terminal leave for retiring employees is governed by this provision. Under its initial paragraphs leave will be computed, as follows:

A. Seventy-five percent (75%) of accumulated sick days for the entire period of employment which the total is not to exceed 183 working days.

A1. Unused sick leave earned from January 1, 2010 Forward shall be paid at the rate earned and not at the rate in effect at the time of retirement. The most recently earned sick leave shall be deemed to be used first, and

B. All accumulated and unused holidays earned prior to January 1, 2011 to the date of retirement, and

C. All unused vacation days as well as those personal days earned prior to December 31, 2009, and

D. For employees, who, during the term of this contract attain 20 or more years of service with the Borough of New Milford, those employees only will receive an additional

through 5 are estimated at \$5,340. An additional \$9,365 in savings is projected during years 6 through 10. See B-BEM-1, page 14.

Additionally, the Borough would limit the carryover of unused vacation time to six, non-cumulative days. This must be read in conjunction with its proposal to modify Article Fifty – Terminal Leave by freezing the rate(s) at which accumulated vacation days are valued when terminal leave pay is computer. This is discussed more fully *infra*.

The proposal for a modified vacation schedule for new hires is denied. Curtailing benefits reduces immediate expenses. If this maxim was sufficient to win the day, most of New Milford's proposals could be granted automatically. However, reasoned analysis demands more. Assaying this proposal requires additional information not contained in the record. By way of example, New Milford failed to proffer data about: projected attrition; staffing needs; cost/benefit of authorizing overtime in lieu of hiring; or delaying recruiting by limiting activities, e.g., liaising with the County Gang Task Force, Junior Police Academy.

Even with a more complete record, limiting officers' vacation time risks their health and safety, and perhaps the public's well-being. At the May 3rd hearing, I inquired, if "the Borough ever consider whether, in the big picture, five days of vacation as a general matter would be sufficient for officers to maintain this equilibrium that they need to do their job?" (T. II, p. 128.) It was suggested that alternative existed for officers such as sick leave, or participation in the EAP.

This apt observation spoke to cures for problems that vacation leave may help to prevent. I find that the Borough's proposal for a second tier vacation schedule for new hires is neither supported by the evidence, nor reasonable under the circumstances.

twenty (20) working days towards terminal leave.

Terminal leave thus permits eligible bargaining unit members to use accrued days--as calculated in Paragraphs A to D--prior to retirement. They continue to periodically collect pay, while being relieved of reporting for duty.

Article Fifty also permits lump sum payments in lieu of paid leave. Under Paragraph F,

If the employee submits his/her retirement request prior to October 1st of any given year, the employee can receive a lump sum payment payable by April 15th of the following year (year of retirement) for all time due in lieu of protracted terminal leave. The choice shall remain solely with the employee.

Among New Milford's proposed changes to Article Fifty is replacing the text of Paragraph F with,

The employee shall submit his/her retirement requests at least 6 months prior to the date of retirement. Upon calculation of the accumulated leave bank, the Borough reserves the right pay for all time due over a 5 year period rather than a lump sum payment in lieu of a protracted terminal leave. The failure to provide at least 6 months notice shall result in a forfeiture of the additional twenty (20) days. No payment under this section shall count toward nor affect, either by increasing or decreasing, any pension or retirement benefit due the employee.

Parenthetically, it should be noted that each party sought removal of Paragraph E from Article 50. Their *de facto* stipulation will be adopted in my award. *See infra*.

The suggested language for Paragraph F sets revised parameters for retirees who opt for lump sum payouts. This type of arrangement would have a positive budgetary impact on the municipality.

Other than workplace gossip, employers often have little indication about when an employee will elect retirement. This is reflected in the Borough's Post-Hearing Brief. It observes on page 3, "Currently, there are officers who are eligible to retire; however, it is not known whether the[y] will retire during the term of this contract." Predicting retirement dates is easier said than done. Similarly, accurately forecasting whether a

retiree will choose a lump sum payout over terminal leave is difficult; if not impossible. These uncertainties make budget projections problematical. Also, the amounts in question are not insubstantial.

Especially in hard economic times, funding large payments on short notice can be a tricky proposition. New Milford would benefit from its Paragraph F proposal by:

1. Establishing that employees "shall," submit retirement requests at least 6-months in advance of separation; and
2. Reserving a right to pay over a 5-year period, rather than a lump sum payment.

I, however, believe this proposal goes too far. Emergencies, health conditions, family issues, opportunities, or simply being "worn out" all may influence when someone ends employment. Officers may not know until late in the game when retirement is prudent, or for that matter essential. Also, unfettered managerial discretion to disburse payments over 5-years may lead to perceived abuses, and consequent conflicts. If a retiree perceived that payment schedules were arbitrary, dispute resolution fees would offset the Borough's savings.

This said, all parties would benefit from a structured, periodic payment procedure triggered by retiring employees who were free to select payment options. Retiring personnel could address the tax consequences of different payment schemes, and effectively annuitize a portion of their income. Moreover, extended payments would lessen the Borough's chances of incurring debt to fund the benefit.

I have revised paragraph F, to be re-designated as "Paragraph E," to read:

Employees may elect to receive accrued terminal leave benefits either as a lump sum, or in three equal installments paid over three years.

If the employee submits his/her retirement request prior to October 1st of any given year, the employee can receive a lump sum payment payable by April 15th of the following year (year of retirement) for all time due in lieu of protracted terminal leave.

Alternatively, the employee may, within two months prior to his/her planned retirement, request periodic payments, as follows:

- One-third of the total payable within sixty (60) days of the effective retirement date;
- An equal amount of one-third payable three hundred sixty-five (365) days thereafter; and
- A final amount of one-third payable three hundred sixty-five (365) days thereafter.

The choice between a lump sum, and a three-year payment schedule shall remain solely with the employee.

3. PBA Proposal 4 Regarding Pay for Work in Higher Rank is Granted

Local 83 proposes that a new term be added to the Agreement. It would state,

Whenever a member is caused to work in a higher rank position then said member shall be paid at the higher rank rate of compensation for all time so worked.

The Union supports this provision as "one found in virtually al (sic) the contracts in evidence wherein a member is caused to assume the duties of a higher rank along with the attendant obligations, liability, and requirements." (Final Summation of PBA, page 21.) Additionally, it notes that the economic impact, if any, would be negligible since the municipality alone elects when it shall move an officer into a higher rank.

New Milford opposes the proposal on the ground that its adoption would "impinge upon its managerial discretion to determine how to employ its personnel." (Borough Post-Hearing Brief, page 33.)

PBA Proposal 4 is granted. The wage-effort system in the United States rests on the foundation that workers are paid for the tasks they perform. A Patrolman who is temporarily labors as a Sergeant merits the appropriate pay.

Base Salary Proposals

Introduction

Interest arbitration awards touching "Base Salary" begin with a reasoned application of that term's statutory definition.

Under the arbitration reform legislation Base Salary is defined as "the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service." The definition states further that Base Salary "shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract." This instant case requires an examination of the "any other item" branch of the definition.

1. Detective Squad Stipends, Education Allowances, and What Formerly Was Called "Holiday Pay" Are Components of Base Salary Under the Parties' Agreement

Detective Squad Stipends and Education Allowances

The parties do not agree whether annual payments made under Article Forty-Nine (Joint Exhibit 1, page 23) to Detective Squad members are included within Base Salary. They are also in conflict about whether educational allowances, under Article Forty-Five, fit within the definition.

The Borough of New Milford urges that the parties' CNA incorporates both payments into Base Salary. It points to Article Ten headed "Hourly Rate," which states:

To compute an Employee's hourly rate, the sum of his yearly base salary (including longevity, college stipend, if any, and detective stipend pay, if any) shall be divided by 2080.

Effective January 1, 2011 to compute an employee's hourly rate, the sum of his yearly base salary (including longevity, college stipend, if any, and detective stipend, if any) shall be divided by 1946 hours.

It further notes that Article Nineteen incorporates, what was previously called "Holiday Pay," into Base Salary.

PBA Local 83 does not concur. The Borough, it asserts, erroneously categorizes college credit allowances and Detective Squad stipends as falling within base wages. (See

Borough Exhibit B-2, page 1.) Detective compensation is restricted to the "period in which a member is assigned [to the Squad] by the Chief as a Detective. It is a fixed sum of dollars *per annum*." (PBA Post-Hearing Memorandum, page 6.) This stipend is not paid to all bargaining unit personnel, "but only to those so assigned and only for the period of the assignment." (PBA Post-Hearing Memorandum, page 6.)

The same reasoning, the Union notes, holds true for college credit allowances. They "are not universal in application." (PBA Post-Hearing Memorandum, page 6.)

I disagree with Local 83. When weighing the parties' competing arguments, Article Ten's express language prevails. The PBA's "lack of universality" challenge does not trump Article Ten's clarity. Arbitrators almost always defer to such clear and unequivocal language.

Additionally, including these stipends and allowances in Base Salary is consistent with other public sector CNAs. Teacher salary guides often list multiple rates reflecting years of service, and educational attainments. They reflect agreements that employees with additional college credits will enjoy higher rates than similarly situated peers without such advanced schooling. In this instance, rather than expressing their agreement through a salary guide, the parties have used clear contract language. Article Ten demonstrates that academic progress toward a law enforcement degree will be rewarded by increased pay.

Similarly, the salary guide could have incorporated a step for Detectives. See Borough of Glen Rock Collective Agreement, and Borough of Pitman Collective Agreement (Union Exhibits 11, Tab __ & 17.) The failure of New Milford to follow the same pattern does not remove Detective Stipends from Base Salary. Ignoring the words in Article Ten would elevate form over substance.

Holiday Pay Roll-In

As a result of the Tener Award, effective January 1, 2011, all 13-holidays were eliminated, and converted into base pay. (Joint Exhibit 1, pages 11 & 12.) Article 19, Paragraph C thereafter provided for this roll-in calculation, as follows:

The amount shall be calculated by determining the value of each holiday and multiplying the daily value by 13 holidays and then by subtracting 25% which is an approximation of amount the Borough will or would pay if it made a full pension contribution on that amount.

(Joint Exhibit 1, page 12.) The parties now accept that "holiday pay" is a component of Base Salary. However, they have competing proposals about what should occur in the future.

2. Local 83's Proposal to eliminate the 25% offset on holiday fold-in is Denied

The Union proposes eliminating the 25% offset in the holiday fold-in clause because New Milford police have "the lowest holiday benefit in the entire County of Bergen." (Final Summation of PBA, page 16.) This, it asserts, is attributable to Article Nineteen, Paragraph C's reduction of the value of each former holiday by 1/4.

Finding that Arbitrator Tener's reasoning remains persuasive, I reject the Union's proposal. His award explained,

I have added holiday pay into base pay minus the cost to the Borough of its contribution to PFRS on this added salary which I have approximated at 25%. This addresses one major concern of each party. For the PBA it addresses the relatively low salaries received by these officers compared to others in Bergen County... For the Borough, this change eliminates one of the contributing factors to the massive terminal leave payments which it has been compelled to make. Employees will not receive holidays so will not be able to Accumulate holidays as a means of increasing their terminal leave. This also assures that holidays are paid at the rate at which they are earned.

Id. at 43.

To accept the PBA's proposal would undo a carefully crafted award, which nicely balances the parties' competing interests. If this arrangement were unraveled, the Borough would lose the benefit it was awarded by Arbitrator Tener. Unused vacation days could again be included when computing terminal leave pay.

4. The Borough's Proposal to change the wording of Article Nineteen Paragraph C governing calculation of the holiday pay fold-in is Denied

New Milford proposes modifying the holiday pay offset language by inserting a revised formula into Paragraph C of Article Nineteen. The modified language would read,

The amount shall be calculated based on the base salary divided by 1946 hours. The hourly rate is then multiplied by 13 holidays multiplied by 8 hours multiplied by 75% to determine the amount of holiday pay to be rolled into the base pay.

Applying this modified formula will "smooth out" the present guide and create a traditional guide based on rank. (Borough Remand Brief, page 9; see also T. II, pages 26 - 28.) By way of example, of the 22 "Patrolmen 7" listed in the 2011 Guide: 8 officers had a base salary of \$102,647; 3 officers had a base salary of \$102,441; 2 officers had a base salary of \$102,726; 2 officers had a base salary of \$102,638; and the remaining 7 officers had individual base salaries ranging from \$102,757 to \$102,559.

A chart reflecting the PBA's proposal demonstrates that if that if the proposal was adopted all 22 employees holding the rank of Patrolman 7 would have the identical base pay of \$102,757. (B-REM-1, page 19.) Applied across the bargaining unit this approach would "place all officers in the same rank on the same grid while providing administrative convenience and fiscal efficiency to the Borough." (B-REM-1, page 19, Note.)

Gary W. Higgins, an accountant with Lerch, Vinci & Higgins, made this recommendation to the Borough. (T. I, pages 102 & 106 - 107.) The cost, he testified, would be "\$3,000 approximately, that the Borough is willing, you know, to give to into the PBA to smooth out this differential." (T. II, page 28; see also pages 30 - 31.)

PBA Local 83 rejects the Borough's position. Recalculating the holiday role-in is unnecessary, it contends, since the value has been melded into base pay for over a year. (PBA Remand Summary, page 4.)

I deny New Milford's proposal to modify the language appearing in Paragraph C of Article Nineteen. The Union correctly asserts that the existing language was heretofore applied. This was in keeping with Arbitrator Tener's Award. Moreover, despite testimony from a Borough witness, I am not convinced that the revised formula actually works.

5. The Borough's proposal to Cap Longevity Payment for Current Employees is denied

The parties introduced much evidence, and expended considerable effort arguing whether longevity should be capped for current employees.

Local 83 asserts that this, and several other economic issues, "referenced [on appeal by New Milford] as not being adequately addressed by the arbitrator were in fact not adequately addressed by the Employer at hearing." (PBA Remand Memorandum, page 2.) It continues by asserting that the "record is silent on any economic assertion as to what these several items mean." (PBA Remand Memorandum, page 2.) By way of illustration, the Union asserts that New Milford failed to answer any of the following:

What is the current cost of this asserted benefit?

What is the impact of the Employer proposal?

What is the cost savings of the Employer proposal?

How does such change as is asserted (sic) impact on the ultimate value of the Arbitrator's Award?

Id. at 2. The PBA adds this absence of evidence was demonstrated on its cross-examination of Borough witnesses.

During the remand hearing the longevity proposal was the subject of testimony demonstrating that no current employees would reach the proposed longevity cap during the life of a three-year successor contract. While applying the guide to these 31-employees provided some basis for quantifying future payments "it's not written in concrete because somebody might come or go." (T. II, page 166.)

While the record shows longevity payments cost the Borough \$127,928 in 2011, there is no information on savings projected savings even after current employees reach the proposed \$10,000 cap after 2014. Nor was any analysis or argument offered on the relationship between longevity, and the comparatively low wages New Milford Officers receive in comparison with sworn employees in nearby police departments.

For "off-step" officers, longevity is the predominant path to increased wage income. Unlike their brother and sisters on step who receive a "raise" once every twelve months, they receive longevity increases in stages over the years. I find that capping longevity pay in this context would most impact those who have given longest service to New Milford.

There is an insufficient basis for the grant of this proposal. This said, the Borough's related proposal to establish a lesser longevity schedule for persons hired after January 1, 2012 has been granted.

The new longevity schedule is applicable only to future recruits who will join the New Milford Police Department after January 1, 2012. They will not feel its impact for several years since this contractual right to longevity would not accrued until an officer ends her tenth year on-the-job. New recruits, accordingly, should not be overly dissuaded from joining the Borough's Police Force.

Adopting this "new hire" proposal while rejecting the Borough's proposed longevity changes for current employees creates a balance between anticipated cost savings, and not dampening the morale of officers who have given many years of service to the municipality.

6. The Borough's Sick Leave Proposals Are denied

A New Milford officer may be granted up to 15-sick leave "days for each calendar year worked with benefits when he is unable to work due to a verifiable sickness, injury or illness." (Joint Exhibit 1, page 12.) The Borough proposes to lower allowable sick days from 15 to 5. Just as five vacation days are insufficient for law enforcers, 5-sick days might risk their health. Those who had exhausted this allotment might be motivated to report for duty even though not in top shape. This could endanger them, their colleagues, and the public.

In denying this proposal, I realize that the Borough's chief concern is what it perceives as "banking" sick days in order to increase terminal leave pay. The Agreement as written certainly creates an increasing economic liability for New Milford. As noted earlier, untangling this issue is better left to the negotiation table. In any instance, the record is not sufficiently complete for me to create a remedy beyond modifying former Paragraph F of Article Fifty.

Salary Adjustment

As explained, herein, the economic award for 2012 comes within the Hard Cap, and does not run afoul of either the Appropriation Cap, or the Levy Cap. This is in keeping with our Supreme Court's determination,

The statutory direction to consider the financial impact on the municipality demands more than answer the question whether the municipality can raise the money to pay the salary increase. Given the existence of financial constraints and budget caps...an award to police

or fire departments necessarily affects other municipal employees and the entire municipal budget.

Hillsdale PBA Local 207 at 86.

Salary Award Analysis

As set forth in my Findings of Fact, the Base Salary is \$3,453,344 for the 12-months preceding contract expiration. I computed it, as follows: \$3,259,539 (wages paid, including holiday roll-in, Detective Stipend, and Step increments) + \$168,205 (Longevity) + 25,600 (Educational Allowance).

PBA Local 83 has proposed a "Base Pay" concept as an alternative. This approach is premised on an assumption that all police officers are at maximum step. Applying this theory, Base Pay was computed to be \$3,233,692. This method, the Union observes, removes step movement as a factor (since everyone is presumed to be at maximum), and produces a figure that is "only" \$17,912 higher than the Borough's computation.

Whatever the practical merits of the Union's alternative, it clearly varies from the statutory formula. As an Interest Arbitration appointed by the Commission, I am required to adhere to the statute, which defines Base Salary as,

the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties...

Applying the statute to contract (and calendar) year 2011 Base Salary was \$3,453,344. This amount includes that year's step movements, \$168,205 for longevity payments, Detective Stipends of \$2,500, and education allowances totaling \$26,500. While the Borough has alluded to "Uniform Allowance" being part of the base, the record is devoid of evidence supporting its inclusion. Accordingly, the Base Salary for this arbitration totals \$3,453,354.

The law does not free me to use Local 83's proffered alternative. Nor, may I may lawfully accept New Milford's \$3,278,654 alternative.

The Borough proposed figure falls \$174,690 short of my calculation. This difference flows from its failure to include Officer Gerard Oleskowicz, and Lieutenant Bruce Raffo when making Base Salary computations. These Sworn Officers worked in the New Milford Police Department in 2011. Officer Oleskowicz was employed between January 1 and May 31st. He earned \$46,762 in Base Salary compensation. Lieutenant Raffo worked for the entire year. His earnings of \$127,928 also contributed toward the Borough's Base Salary

Using \$3,453,354 as the Base Salary for the one year contract as much as \$69,067 may be award to pay increases. This maximum is calculated, as follows:

$$\$3,453,354 \times .02 = \$69,067 \text{ per year}$$

Before addressing the award based on this amount, it should be noted that in 2012 step increments--if left undisturbed under the current guide--would be \$57,164, while the normal operation of Appendix "B" would generate a \$6,183 increase in longevity payments. The combined value of step and longevity increases equals \$63,347. This falls below the two percent maximum award by \$5,720, i.e., $\$69,067 - \$63,347 = \$5,720$.

Even though I do not find the "we're golden" comment to be an admission that the Borough has the financial ability to fund a 2% wage increase, my independent examination of the Levy Cap confirms its ability to pay. While the Borough negates the strength of income sources other than the tax levy, Moody has characterized New Milford as benefitting from above-average wealth levels, low unemployment (i.e., 7.6% as of September 2011), and a low debt burden. (See Borough Exhibit 5.)

Also, a factor analysis leads me to reasonably conclude that awarding the 2% maximum is within the law's bounds. This determination is supported by Factors 2, 3, 6,

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Also, a factor analysis leads me to reasonably conclude that awarding the 2% maximum is within the law's bounds. This determination is supported by Factors 2, 3, 6,

7, and 9. In particular, the Consumer Price Index, and rising health care and pension contributions assure that--work as they will--the Officers' buying power will decrease. The United States Department of Labor recently reported that inflation continues to outpace wages. Health care, rents, gasoline, and used car prices have risen in recent months. An award of two percent to New Milford's police officers is reasonable.

I have determined to allocate \$63,347 to fund step increments, and longevity increase for 2012. Additionally, although I declined to accept the Borough's proposed language regarding recalculating holiday pay roll-in to smooth out the Salary Guide, the benefits to doing so are apparent. Accordingly, base pay for this limited purpose has been modestly increased for employees hired prior to January 1, 2011, as follows:

Lieutenant \$117,950

Sergeant \$110,260

Patrolman 7 \$102,760

The increases total \$3,077.

Total increase under this award is \$66,424 for an over all percentage of 1.94%.

Any Proposal Not Granted is Denied.

AWARD

1. There shall be a one-year agreement effective from January 1, 2012 through December 31, 2012.
2. The following new provisions shall be added to the Agreement as paragraphs H and I in Article Twenty-Three,

H. All employees shall contribute a percentage of the employee's total annual salary, or a percentage of the annual premium as per state law. Any employee may opt out and receive a cash payment from the Borough, to be included in the paycheck spread out over the course of the year in the amount of 25% of the premium or \$5,000 whichever is greater.

I. Payments for retiree health benefits shall be subject to state law.

3. In keeping with previous understandings between the parties,

- A. The word "Probation" in the Wage Schedule appearing on page 26 of the Agreement will be changed to "Pre-Academy Certification Rate";
- B. The Uniform Allowance in Article Fifteen will be increased by \$100.00 to Seven Hundred Dollars (\$700.00);
- C. The mileage allowance referenced in Article Thirty-Two will be changed to the current IRS rate; and
- D. Paragraph E in Article Fifty, which paragraph begins with the words "In the event an employee" and ends with the words "whichever is earlier" will be deleted.

4. The following new provision shall be added to the Agreement,

Whenever a member is caused to work in a higher rank position then said member shall be paid at the higher rank rate of compensation for all time so worked.

5. The following sentence will be deleted from Article Eighteen of the Agreement,

Personal days may be accumulated from year to year up to
A maximum of six (6) day.

6. The Borough's Proposals C.1 & C.2 seeking to modify Article Nine with respect to compensation during inclement weather are denied in their entirety.

7. Local 83's Proposal to eliminate the 25% offset on holiday fold-in is denied in its entirety.

8. The Borough's proposal to change the wording of Article Nineteen Paragraph C governing the calculation of holiday pay fold-in is denied in its entirety.

9. The Borough's proposal to cap longevity payment for current employees is denied in its entirety.

10. The Borough's proposal to establish a separate longevity schedule for persons hired after January 1, 2012 is granted. The following new provision shall be added to the Agreement,

Employees hired after December 31, 2011 will adhere to the following schedule for annual longevity payments until retirement or separation from employment:

Completion of ten (10) years - \$1,500
Completion of fifteen (15) years - \$3,000
Completion of twenty (20) years - \$4,500
Completion of twenty-five (25) years - \$6,000

11. The Borough's sick leave proposals are denied in their entirety.

12. The Borough's proposal to modify vacation leave for new hires is denied in its

entirety.

13. The Borough's proposal to modify terminal leave payouts in Article Fifty is granted in part.

Paragraph F is deleted; and

The following text will be added, and designed as Paragraph E,

Employees may elect to receive accrued terminal leave benefits either as a lump sum, or in three equal installments paid over three years.

If the employee submits his/her retirement request prior to October 1st of any given year, the employee can receive a lump sum payment payable by April 15th of the following year (year of retirement) for all time due in lieu of protracted terminal leave.

Alternatively, the employee may, within two months prior to his/her planned retirement, request periodic payments, as follows:

One-third of the total payable within sixty (60) days of the effective retirement date;

An equal amount of one-third payable three hundred sixty-five (365) days thereafter; and

A final amount of one-third payable three hundred sixty-five (365) days thereafter.

The choice between a lump sum, and a three-year payment schedule shall remain solely with the employee.

14. The Borough's proposal that new hires will placed on a new salary guide which will include 2 additional steps is denied in its entirety.

15. Base pay for employees hired prior to January 1, 2011, and holding the positions shown below will be increased to the amounts designated,

| | |
|-------------|-----------|
| Lieutenant | \$117,950 |
| Sergeant | \$110,260 |
| Patrolman 7 | \$102,760 |

16. Step increments, and longevity payments under the existing salary guide will take place in their normal course in 2012.

17. All items not specifically awarded as proposed by the Borough, and the PBA are denied.

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

| | | |
|-------------------------------|---|--|
| BOROUGH OF NEW MILFORD, | X | |
| | X | |
| | X | |
| Public Employer, | X | |
| | X | |
| -and- | X | |
| | X | |
| NEW MILFORD PBA LOCAL NO. 83, | X | |
| | X | |
| Labor Organization. | X | |
| | X | |
| PERC Docket No. IA-2012-008 | X | |
| | X | |

ARBITRATOR
CERTIFICATION

I, THE UNDERSIGNED INTEREST ARBITRATOR, pursuant to N. J. S. A. 34:13A-16(f), certify that I have taken "the statutory limitation imposed on the local levy cap into account in making the award." The terms of the Decision and Award executed on May 24, 2012 include an explanation of how each of the statutory criteria "played into the arbitrator's determination of the final award."

Dated: May 24, 2012
Matawan, NJ


Patrick R. Westerkamp, Esq.