

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

In the Matter of Interest Arbitration Between

BOROUGH OF KEYPORT
"the Borough or Employer"

and

KEYPORT PBA LOCAL 223
"the PBA or Union"

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**INTEREST ARBITRATION
DECISION
AND
AWARD**

Docket No: IA-2004-099

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE TOWNSHIP:

Brian W. Kronick, Esq.
Genova, Burns & Vernoia
Of Counsel & On the Brief

FOR THE PBA:

Richard D. Loccke, Esq.
Loccke & Correia
Of Counsel & On the Brief

Procedural History

The Borough of Keyport (the "Employer" or "Borough") and Keyport PBA Local 223 (the "PBA" or "Union") are parties to a collective bargaining agreement (the "CBA") which expired on December 31, 2003. Upon expiration of the CBA, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA filed a petition with the New Jersey Public Employment Relations Commission ("PERC") on April 19, 2004, requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on June 30, 2004 from its Special Panel of Interest Arbitrators.

I conducted a mediation session on September 13, 2004. The matter was held in abeyance pending reorganization of the governing body and the appointment of new Labor Counsel. Subsequently, I conducted mediation sessions on March 29 and April 14, 2005. The parties continued direct negotiations which proved unsuccessful. Formal interest arbitration proceedings were invoked and I conducted a hearing on August 3, 2005 when the parties presented documentary evidence in support of their positions. Over the next several months, informal discussions were held in a final effort to reach a voluntary resolution. These discussions were unsuccessful. I established a briefing schedule and both parties filed post-hearing briefs and I closed the record on January 4, 2006. The parties agreed to extend the time limits for the issuance of the award.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

The parties did not agree on an alternate terminal procedure. Accordingly, the terminal procedure is conventional arbitration. I am required by N.J.S.A. 34:13A-16d(2) to “separately determine whether the net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section.”

Statutory Criteria

The statute requires the arbitrator to:

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

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

(2) Comparison of the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C. 34:13A-16.2); provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such 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.

PARTIES' LAST OFFERS

PBA

1. **Term of Agreement:** January 1, 2004 to December 31, 2007.

2. **Salary:**

The PBA proposes a 5% across-the-board salary increase to be effective January 1st in 2004, 2005, 2006 and 2007.

3. **Longevity:**

The PBA proposes to increase the twenty-year longevity step from 6.5% to 8.5%. The PBA also proposes to increase the 7% longevity to 9% and make it effective upon the completion of twenty-four years of service. The PBA also proposes to merge the two longevity schedules and remove the January 1, 1995 "grandfather" clause.

4. **Sick Leave:**

The PBA proposes to modify Article XV to provide that each retiring employee shall, at the employee's option, have the right to receive the terminal benefit over a period of up to eighteen (18) months in up to three (3) separate payments to be issued on the employee's requested date(s). These payments shall not accrue interest.

5. **Work Schedule:**

The PBA proposes that the current work schedule be codified and written into the contract without change.

BOROUGH

1. **Term of Agreement:** January 1, 2004 to December 31, 2007.

2. **Salary:**

The Borough proposes a 3.25% across-the-board salary increase to be effective January 1st in 2004, 2005, 2006 and 2007.

3. **Health Benefits:**

The Borough proposes to increase the employee contribution to \$300 annually and to require that all employees hired on or after January 1, 2006 contribute 20% of the health care premium.

POSITIONS OF THE PARTIES

PBA LOCAL 223

The following are the PBA's arguments and contentions in support of the statutory criteria:

Interests and Welfare of the Public

The PBA notes that the Keyport Police Department is a multi-service full time law enforcement agency offering a variety of services and specialties to the public, in addition to traditional law enforcement obligations. The Borough's population is 7,568. (B-20). During the day, the Borough's population is much higher due to its proximity to major roadways, commercial activities and port facilities. The PBA submits that the work of the Keyport Police Department addresses many of these transient issues and heavy traffic flow occasioned by geographic proximity.

The PBA submitted specific data with respect to its substantial calls for service and the increase in calls for service over the last twenty years. P-27 compares the 1984 Keyport Police statistics with 2004, the most recent full year statistics available. This comparison shows an increase in annual complaints from 8,050 in 1984 to 10,823 in 2004, an increase of 34.5%. Detective investigations increased from 708 to 938 over this term, for an increase of 32.5%. The PBA submitted statistics as of August 2005 and compared these same categories of statistics to August 2004. P-27 shows that in the first seven months of 2004 there were 6,358 complaints. This increased to 7,669 during the same period in 2005 showing an additional increase of 20.6%. During the same period, Detective Bureau investigations increased from 545 to 620, an increase of 13.8%. The PBA submits that these increased statistics show a busy Department with its measurable activities growing significantly.

The PBA notes that additional departmental programs and responsibilities have been implemented or significantly increased since the last CBA including the following:

- TRIAD Officer - Senior Citizen Focus
- Crime Prevention Officers
- Enhanced DARE
- Homeland Security Terrorism Equipment and Training
- defibrillator Training and New Equipment
- School Response Training - Columbine
- CERT - Community Emergency Response Team
- K-9 Unit - This is a new Unit as the Department had not previously had a dog.
- New Identification Equipment and Programs for School Children and Other Municipal Workers, such as waitresses, Municipal Official, others, *etc.*
- MDT - Mobile Data Terminals, Computers in Patrol Cars
- MVR - Mobile Video Recorders
- 4-Wheel Drive Vehicle
- Departmental "Public Inspection Day"

The PBA points out that, in addition to the above new services, there is also a new computer system and many new procedures. The Municipal Building is new and houses a new police department facility which includes a new jail, evidence room and armory which are maintained and staffed by sworn police personnel.

The PBA submits that the most significant factor in consideration of the increased work load is that the Keyport Police Department is working with the same number of patrol officers it had twenty years ago. In 2004, as in 1984, there are twenty sworn non-supervisory personnel. (P-26). Notwithstanding increased land use, increased traffic, increased calls, and increased complexity of calls, there is virtually no change in the work force performing these tasks. The PBA submits that these figures demonstrate the Department's productivity and professionalism.

The PBA submits that Borough police officers interact with other contiguous area departments and with the Monmouth County Prosecutor's Office and the State Police. The PBA submits that the best universe of comparison is with area towns in eastern Monmouth County and those in the general shore area.

The PBA asserts that the exceptional professionalism and productivity of the Borough's police officers strongly support the interests and welfare of the public.

**Comparison of the Wages, Salaries, Hours
and Conditions of Employment**

The PBA asserts that its compensation does not match the exceptional productivity of the Borough's police officers. The PBA contends that the Borough has one of the lowest base pay rates in the region with no offsetting benefits. The Borough prepared many charts to illustrate what it believes are comparable salaries. The PBA notes that the current salary schedule in J-1 includes folded-in holiday pay. There are thirteen holidays folded into base pay which has a value of 5%. The PBA submits that the true comparative maximum salary excluding holiday pay is \$66,740. The PBA submits that a \$66,740 maximum salary places Borough police officers at or below all comparables.

The PBA notes that the comparable salaries in evidence are not static numbers. They are increasing through negotiations annually. The PBA submits that the "going rate" is an important consideration in the evaluation of comparable salaries. The PBA provided the following chart showing the average salary increases in comparable law enforcement agencies.

CHART 1

Base Rate Increases

	2004	2005	2006	2007
Aberdeen		4	4	
Bradley Beach	4	4.25	4.25	
Freehold	4	4	4	4
Manasquan	4.7	4		
Monmouth Prosecutors	6.9	6.5		
Neptune Township	4	4		
Ocean Prosecutors	4.67	4.67		
Point Pleasant	4	5.1	4	
South Amboy	4.5			
Spring Lake		4.5	4.5	4.5
STFA	4			
SP/NCO	4			
Marlboro		4	4	4.25
AVERAGE	4.477%	4.56%	4.15%	4.25%

The PBA asserts that the above salary increases are fully supportive of its last offer. The average increases closely approximate the PBA position. The PBA submits that consideration must be given to the low salary position of the Borough's police officers when compared with police officers in other communities.

The PBA contends that there is no support for the Borough's salary proposal given the Borough's negotiated settlements with other bargaining units. B-25 is a contract between the Borough and the International Union of Operating Engineers covering employees in the Public Works Department and dispatchers who work in the Police Department. The CBA

provides a 4% salary increase in 2004. A review of the CBA shows that these employees receive fifteen annual holidays whereas police officers receive only thirteen holidays. B-26 is a CBA between the Borough and the International Union of Operating Engineers covering clerical employees. Again, the CBA provides for a 4% salary increase in 2004. This bargaining unit also receives fifteen annual holidays.

B-28 is a listing of base salaries for various municipal police departments in the region. The PBA contends that B-28 is supportive of its salary proposal when consideration is given to the rolled-in holiday pay in the Keyport maximum salary. The PBA contends that when the \$66,740 maximum salary (with holiday pay) is compared with other communities, the Borough's police officers rank near the bottom of all of the selected comparables.

The PBA seeks to modify the method of payment of terminal benefits. The PBA proposes to delay the payments at the employee's request. For example, if a police officer were to retire near the end of a calendar year then most of the earnings would accrue for that year and if they paid the full value of the terminal payment in the same tax year it would have a potentially detrimental tax impact. By having an eighteen-month period over which the monies must be paid in up to three payments there is the potential for tax planning. The PBA submits that this is a benefit to the employees and it is also a benefit to the Borough since the Borough would not have to pay all of the money at once. The Borough could spread its obligation over an extended period and the Borough would not be paying interest.

The PBA seeks to remove the "grandfather" clause restricting longevity benefits. The PBA submits that there is no reason to continue the two-tier plan which is detrimental to the work force when police officers earn significantly different rates of compensation based solely on their date of hire. The PBA points out that there is no way under the current contract provisions for any catch-up to occur. The PBA submits that reduction of the

effective date of the top step on the longevity schedule from the completion of twenty-five years of service to completion of twenty-four years of service merely brings the impact of the longevity benefit to within a twenty-five-year career. Under the current program, a police officer would have to work twenty-six years to receive the full value of the last longevity step.

The PBA contends that the cost of the 2% increase on the 20th and 24th year longevity steps is minimal. B-2 shows that only four bargaining unit members would benefit. The PBA submits that the financial impact on the Borough is minimal and it enhances the career path of the career-oriented police officer.

Private Sector Comparisons

The PBA asserts that private sector comparisons are not entitled to significant weight in comparisons to police officers. The PBA notes that the Borough made comparisons to private sector employment at the hearing. The PBA submits that the best comparisons are made with other public employees and specifically other law enforcement employees. The PBA maintains that due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparison to private sector employees (as compared to other police officers) must result in a strong justification for significantly higher compensation to be paid to police officers. The PBA cites the following excerpt from Arbitrator Carl Kurtzman's interest arbitration award in support of its argument regarding private sector comparisons:

"As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public

sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight.” (Borough of River Edge and PBA Local 201, PERC IA-97-20, at 30).

The PBA respectfully asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that of a police officer. A police officer has obligations both on and off duty. This is most unusual in the private sector. A police officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. Certainly this is not seen in the private sector. The police officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Again such public franchise and unique provision of statutory authority is not found in the private sector. There is no portability of pensions in the law enforcement community after age thirty-five. Police officers may not take their skills and market them in other states as one may market one’s own skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

The following represents certain statutory and other precedential laws controlling the relationship of police officers to their employers:

1. The Federal Fair Labor Standards Act, 29 USCA §201, *et seq.* applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7 day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.

2. The New Jersey State Wage & Hour Law, NJSA 34:11-56a, *et seq.* does not apply to the employment relationship between a police officer and the officer's Public Employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, Perry v. Borough of Swedesboro, 214 N.J. Super. 488 (1986).
3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. NJSA 40A:14-118. There is no such statute covering private employment in New Jersey.
4. NJSA 40A:14-122 provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, NJSA 40A:14-122. No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under 40A:14-122.2. There are no such private sector limitations on promotion.
7. A police officer in New Jersey must be resident of the State of New Jersey, NJSA 40A:14-122.8. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute 40A:14-123.1a. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, 40A:14-127.1. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, NJSA 40A:14-127.3. No such requirement exists in private sector.

The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage NJSA 40A:14-131. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed 6 days in any one week, "except in cases of emergency". NJSA 40A:14-133. The Fair Labor Standards Act gives superior protection to private sector employees.

11. NJSA 40A:14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65 year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, NJSA 40A:14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

The PBA submits that the greatest differentiation between police officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the state or not. Police Officers are statutorily conferred with specific authority and "...have full power of arrest for any crime committed in said officer's presence and committed anywhere within the territorial limits of the State of New Jersey." NJSA 40A:14-152.1. A Police Officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector. Police Officers are trained in the basic Police Academy and regularly retrain in such specialties as fire arms qualifications. This basic and follow up training

schedule is a matter of New Jersey statutory law and is controlled by the Police Training Commission, a New Jersey statutorily-created agency. Such initial and follow up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of police officer certification and the police officer's job. This is rarely found in the private sector.

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one state to another, there is more of a global competition to be considered. The New Jersey private sector employee must consider the possibility that his industrial Employer might move that plant to another state or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The Employees must work locally and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other states, even in Mexico.

The PBA contends that local comparisons are more relevant to police salaries. The PBA cites the decision of Arbitrator William Weinberg in support of its argument:

"Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g, (2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct Employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such a contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, at pages 29 - 31).

The PBA argues that any time there is a comparison made between a police officer and a private employee generally, the police officer's position must gain weight and be given greater support by such comparisons. The police officer lives and works within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility. The level of scrutiny, accountability and authority are unparalleled in employment generally. The police officer carries deadly force and is licensed to use said force within a great discretionary area. A police officer is charged with access to the most personal and private information of individuals and citizens generally. His highly specialized and highly trained environment puts great stress and demand on the individual. Private employment generally is an overly generalized category that includes virtually every type of employment. The

PBA notes that in such a wide array of titles as the nearly infinite number covered in the general category of "private employment" there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in police work. A police officer is a career committed 25-year statutorily oriented specialist who is given by law the highest authority and most important public franchise. The PBA asserts that a police officer should be considered on a higher wage plane than private employment generally.

Lawful Authority of the Employer

The PBA asserts that an award of its salary proposals will not have an adverse financial impact on the Borough. This factor generally references the "Cap Law" which is a limitation on spending consistent with certain statutory formula based upon certain classifications of municipal expenditures. The Cap Law is set forth in each Municipal Budget in its application and calculation.

J-7 is the Borough's Municipal Budget for 2005. The Cap calculation is set forth at sheet 3b. Sheet 3b shows that the Borough has prepared a budget which is within the Cap Law and which shows significant underutilized flexibility. Sheet 3b of the 2005 Municipal Budget shows that the Cap limitation for the Borough \$4,779,275. However, the entire amount was not used in the adopted Budget. The next line below is captioned "Total 2005 Operating Appropriations Within Caps". This is the amount of Cap-covered appropriations which were actually used in the appropriated Budget. The amount under such appropriations permitted was \$4,593,456 which is \$185,819 below the permitted number of \$4,779,275.

The adopted 2005 Budget shows an appropriation within Cap that is \$185,819 less than permitted. The PBA maintains that there is no Cap problem in the Borough and that the adopted Budget is well within the Cap formula.

The PBA submits that the following chart puts the Cap limitation and its salary proposals in perspective. Chart 2 below calculates the bargaining unit base wage rate.

CHART 2

Bargaining Unit Base Rate

	Census	Base Rate	Total
Captain	1	\$86,107	\$86,107
Lieutenant	1	81,873	81,873
Sergeant	5	77,630	388,150
Patrolmen	11	70,078	770,858
Total	18		\$1,326,988
		1% = \$13,269	

The PBA points out that Chart 2 over calculates the true base wage since it includes all officers at maximum though some officers are moving through the steps to maximum and the base rate includes holiday pay. Chart 2 shows that 1% of base salary is \$13,269. This is 1/14th of the amount which the Borough is under Cap in 2005 which is equivalent to fourteen percentage points of underutilization of the Cap formula. The PBA submits that there is no Cap problem in the Borough.

The Financial Impact on the Governing Unit, its Residents and Taxpayers

The PBA asserts that the financial impact of an award of its last offer on salary will be extremely small and almost imperceptible on the Borough's residents and taxpayers. The PBA submits that Keyport is a rapidly growing community with significantly increased needs for police services which are being subsidized by a static work force. The economic benefit to the citizens and taxpayers by the absorption of these additional work activities and services

with a virtually unchanging work force cannot be overlooked when it comes to cost of operations. The citizens are without question getting more for the same amount of money. The PBA asserts that Keyport is a municipality with a strong ratable base of approximately one-third of \$1 Billion (J-8, Sheet 1). The PBA submits that Keyport is a young, growing community. B-22 shows that the median age is 38.1 years and most residents (82.9%) have a high school degree or higher with approximately 16 percent having a Bachelor's Degree or higher. The unemployment rate is low and the per capita tax levy of \$1,127 is also low. The PBA points out that the Borough is a young commuter type population common to the Metropolitan area generally where people maintain their houses and are restoring the old ones.

The 2004 Annual Financial Statement at Sheet 17 is a breakdown of the total levy of \$13,456,438. (J-8). Of this levy, \$4,012,260, about twenty-nine percent, is the portion used for the support of the Municipal Budget. The PBA points out that the police officers' salaries are only part of the \$4,012,260 needed for municipal operations. The PBA notes that a comparison of the total cost of the bargaining unit base rate (Chart 2) to the total tax levy of \$13,456,438 shows that the police salaries represent 9.8% of the total tax levy. When the 9.8% is compared to a typical tax bill of \$5,000, the resulting cost of the police salary base is \$490 or \$40.83 per month. The PBA submits that the multifaceted police force is available for less than the cost of the cable bill. The PBA calculates the impact of a 1% salary increase as 40.8 cents per month for the entire bargaining unit. The PBA submits that its salary proposal has a minimal impact on the Borough's residents and taxpayers.

The PBA points out that the school portion of the Borough's total tax levy is \$7,473,679 or 57% percent of the total tax levy. (J-8, Sheet 17). P-27 shows that only 15%

of those eligible to vote cast a ballot on the school district budget. The vote was 379 in favor and 267 opposed. The PBA submits that the low voter turnout and nearly 60% favorable vote shows that there is little taxpayer concern about the budget and the impact of the PBA salaries on the overall budget.

Finally, the PBA notes that only part of the taxpaying community uses the school system. Some have no children, some send their children to private schools and some have children who are finished with public schools. This is not so with the Police Department. All persons use municipal police services, either actively or passively.

The PBA points out that the tax collection rate is strong. The current annual tax collection rate is 96.37% for 2004. (J-8, Sheet 22, line 13).

The PBA notes that Municipal Court fines and costs are for the most part directly attributable to law enforcement action. This may be considered as "absorption of overhead" in other businesses and certainly must be taken into consideration in considering the direct cost of the general operation of the Borough police department as compared to the public obligation for funding. In 2004, the Municipal Court generated \$241,766 which was paid into the general revenues of the Borough. (J-7, Sheet 4). There were additional sums paid on behalf of the police department in the form of numerous grants focused on specific aspects of law enforcement. Each of these grants inures to the public benefit in Keyport both from a service standpoint and a cost deferral. Examples include the "Drunk Driving Enforcement Fund", the Safe and Secure Communities Program, and the "Body Armor Replacement Grant" (J-7, Sheets 9 & 24).

The PBA disputes the Borough's assertions in B-99 regarding pension contributions. The PBA acknowledges that there is a higher cost of pensions this year. While there was a

small fractional increase in employer participation in the Pension System, public employers throughout the State made no contributions for four years in the recent past and a partial cost impact only during the last two years. The PBA points out that State legislation gave public employers a "holiday" from any payments to the Police and Fire Pension System and subsequent legislation provided a five-year phase-in back to 100% of the payments. The PBA contends that the five-year "holiday" with no payments and the five-year phase-in provided cost savings for police services to the Borough.

The PBA submits that B-15 shows that the Borough has a low tax rate. The initial general tax rate of \$3.98 appears high however the equalization ratio brings it down to \$2.67. The PBA contends that the Borough's \$325,113,000 ratable base is large for a small town. The PBA notes that nearby Keansburg has a ratable base of only \$273,900,000. Other shore towns in the area have much smaller ratable bases. P-24 is a copy of the 2004 Monmouth County Board of Taxation - Abstract of Ratables. This document establishes the total taxable value of land and improvements in towns throughout Monmouth County. The PBA cited the following eastern Monmouth County municipalities which have much smaller ratable bases than Keyport:

Allenhurst	\$208,037,700
Avon-By-The-Sea	\$303,453,800
Interlaken	\$196,824,700
Keansburg	\$273,900,860
Loch Harbor	\$71,561,100
Monmouth Beach	\$373,436,500

The PBA submits that the Borough can afford a reasonable and competitive wage increase and maintain a competitive salary program for its law enforcement personnel.

The Continuity and Stability of Employment

The PBA submits that an analysis of this criterion suggests reliance on the private sector concepts of “prevailing rate” and “area standards”. The PBA submits that both concepts strongly support an award of its last offer. According to the PBA, evidence in the record does not support the Borough’s proposals. The PBA concedes that the Borough’s costs are going up but costs are also increasing for the Borough’s police officers. The PBA asserts that modifications in current contractual benefits must be subjected to “compelling need test.” The PBA submits that the record does not support the Borough’s proposals.

The PBA maintains that the Borough has a less costly and more productive bargaining unit which is much smaller in both the number of police officers and the rank structure. Police Officers in the unit have taken on more work and supervisory obligation to pick-up for the reduced staffing. The PBA contends that the career path for the Borough’s police officers has been significantly diminished.

The PBA submits that a review of the language of this statutory factor shows reliance on the private sector concepts of “going rate” and “area standards” and both private sector concepts strongly support an award of the PBA’s last offer.

The PBA submits that the codification and continuation of the current twelve-hour shift schedule system is in the best interests of both the public and the Borough’s police officers. The PBA maintains that the current work schedule works well and the continuation of the schedule will continue work force stability. The PBA contends that the implementation of the 12-hour work schedule has satisfied the parties’ original concerns, there have been no complaints and its value is generally recognized. The PBA seeks to maintain stability in the work schedule during the term of the new CBA.

In conclusion, the PBA asserts that the statutory criteria support an award in favor of its last offer on the outstanding issues.

BOROUGH OF KEYPORT

The following are the Borough's arguments and contentions in support of the statutory criteria:

Cost Out of Proposals

The Borough, in its brief, indicated its willingness to offer a fourth year at 3.25%. The Borough calculates the cumulative cost of the PBA's proposals for a four-year contract to be \$353,823 more than the cumulative cost of the Borough's proposal. (Exhibit N). The Borough contends that the cost of the PBA's proposal is excessive and unwarranted in view of the wages and benefits that are currently offered to other similarly-situated municipal police officers in Monmouth County, to the Borough's other employees, and, most importantly the taxpayers of the Borough who will have to shoulder the burden of any increase through increased taxes. (B-28). The Borough submits that its final offer should be adopted and the PBA's final offer should be rejected.

The Borough describes "new money" as the additional dollars it must allocate in the current year's budget, over the prior year's budget. The Borough asserts that the difference in new additional dollars to fund the PBA salary proposal is significantly higher than the Borough's salary proposal in each year of the agreement (Exhibit N).

Total Cumulative Cost

The Borough cites the analysis of Thomas Fallon, its Chief Financial Officer, who costed out the Borough and PBA salary proposals. The total base pay to the unit is \$1,314,229 (Exhibit N). The Borough's wage proposal costs \$132,346 in new money over the first three years of the new CBA. On the other hand, the PBA's wage proposal over the same three-year term would cost the Borough \$207,155. Over the PBA's proposed four-year term the PBA's wage proposal would cost the Borough \$283,224 in wages only.

The Borough contends that not only is the PBA seeking an unreasonable increase in wages, it is seeking an increase in longevity. The current top two steps of the longevity scale add an additional 6.5% and 7% to base salary. The PBA seeks to increase these longevity payments to 8.5% and 9%. The total cost of the PBA's longevity proposal is an additional \$58,870 over the four-year term. The Borough notes that it is not seeking to eliminate longevity, but cannot afford any change in longevity that would significantly increase longevity costs.

The Borough calculates the total cumulative compensation (salary and longevity) generated by the PBA's salary and longevity proposal to be \$6,255,570 between 2004 and 2007. The Borough calculates that the PBA's salary and longevity proposals will cost \$353,823 more than the Borough's salary proposal over the four-year term of the new CBA.

The Borough maintains that the PBA's proposal is excessive given the generous benefits already received by Borough police officers. Moreover, given the other proposals submitted by the PBA such as increased longevity payments and the impact of any wage increase on overtime, this excessive wage increase proves to be even more excessive.

Comparison of the Wages, Salaries, Hours and Conditions of Employment

This factor requires the Arbitrator to make a comparison of the wages, salaries and conditions of employment of Keyport police officers with other employees of the Borough, other public sector employees, other police officers in comparable jurisdictions, and private sector employees in general. The Borough submits that the evidence shows that its police officers receive far greater compensation than other civilian Borough employees and other civilian represented Borough employees. (Exhibit G). Moreover, Borough police officers receive compensation and benefits which are superior to those received by police officers in

comparable jurisdictions. (B-98). Finally, the Borough police officers' average salary of \$73,203 in 2005 was 53% higher than the average private sector wage of \$38,820 in 2005. (B-24). Borough police officers earn substantially more than other Borough personnel, the average taxpayer in the Borough and police officers in comparable jurisdictions. Therefore, since the Borough police officers are already well compensated, the Borough's more reasonable proposal should be awarded.

Comparison to Other Borough Employees

The Borough maintains that its last offer is more reasonable when compared to other Borough employees. The average base salary for Borough police officers as of August 2005 was \$73,013. (B-3). That average is significantly higher than the average salary and longevity paid to civilian Borough employees. (Exhibit G). The Borough's civilian workforce is comprised of a number of clerical and DPW employees who are represented by the International Union of Operating Engineers (the "IUOE") as well as some non-affiliated employees. The average civilian Borough employee receives wages and longevity in the amount of \$33,311. (Exhibit G). Thus, on average, a Keyport police officer is paid 119% more than civilian employees.

The PBA's last offer of 20% over four years will compound the already substantial and inequitable difference between PBA salaries and the salaries of the Borough's civilian employees. The Borough submits that its offer will maintain the premium pay afforded to police officers over civilian employees.

The Borough asserts that its proposal of 3.25% annual salary increases is reasonable and comparable with past settlements between the Borough and its other unions. The 2002-2004 CBA between the Borough and the IUOE (clerical) provided 4.0% annual salary increases. (B-26). The average salary for an employee in the clerical unit is \$28,535. The

average salary of a Borough police officer is \$73,013. This is 156% higher than the average salary of an employee in the clerical unit.

The 2002-2004 CBA between the Borough and the IUOE (DPW) provided 4.0% annual salary increases. (B-25). The average salary of an employee in the DPW is \$47,169. The average salary of a Borough officer is \$73,013. This is 55% higher than the average salary of an employee in the DPW. Moreover, the DPW has lost two employees over the last two years that have not been replaced due to budgetary constraints. (Exhibit K).

In summary, the Borough asserts that its offer is more reasonable when compared to the wages, salaries and conditions of employment of its civilian unrepresented and represented employees. The Borough submits that its final offer is fair in light of the wages and benefits currently received by its police officers. Moreover, the Borough submits that its last offer will allow police officers to continue to receive a premium well above that of the Borough's civilian represented and unrepresented employees. Conversely, the PBA's last offer is unreasonable, since it will further widen the gap and create greater inequity between police officers and civilian employees.

**Comparison to Public Employment in the Same
or Similar Comparable Jurisdictions**

The Borough asserts that the interest arbitration law has evolved to a point where the "going rate" and "parity" arguments, which police and fire unions traditionally relied upon with great success in interest arbitration, are no longer blindly accepted. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super 163 (App. Div. 1993), aff'd in part, rev'd in part, 137 N.J. 71 (1994). Arbitrators may no longer assume that uniformed employees are per se entitled to higher percentage increases than non-uniformed employees. *Id.* at 198.

The Borough contends that its police officers are well-compensated when compared to their counterparts in Monmouth County's fifty-three other communities. As of 2004, the Borough's police officers were among the highest-paid in the County with an average base salary of \$73,014. (B-28, B-29). According to the New Jersey Department of Labor, the mean average salary of Police and Sheriff's Patrol Officers in Monmouth and Ocean County was \$64,950. Keyport police officers ranked 26th in Monmouth County with an average pay of \$73,014 for patrolmen at the top step. (B-28). Even if the Borough's final offer is implemented, its police officers would enjoy the 23rd best salary when the salary at the top step for patrolmen is considered. (B-28, B-29).

Keyport is a small working class community in Monmouth County that has not seen the unprecedented growth and expansion of some of its counterparts. Keyport ranks 43rd out of the County's fifty-three municipalities in median income. (B-23). Thus, while a Borough police officer ranks 23rd in Monmouth County, the average taxpaying citizen in Keyport is 43rd in median family income in Monmouth County.

The Borough asserts that its police officers recognize that their wages, benefits and working conditions are among the best in the County. The average seniority for a Borough police officer is sixteen years. (B-4). Although a member may retire after twenty years of service, there are four members (22%) with over twenty years of service. (B-4). More significantly, no Borough police officer has been laid off and only one police officer has retired in the last ten years. (B-27). No police officer left to go to another municipal police department.

The Borough contends that its police officers, when compared to other municipal police departments in the County, are well "ahead of the pack" regarding maximum patrol officer salary, average salary and longevity. The Borough submits that in light of these criteria, it is clear that its final offer is more reasonable and should be awarded.

The Borough submits that a review of awards for comparable jurisdictions shows that the PBA's proposed 5% annual salary increases are excessive and unreasonable in comparison to the Borough's more reasonable proposal of 3.25% annual salary increase:

- In the Matter of Interest Arbitration between Township of East Orange and the East Orange FOP Lodge No. 111, IA-2001-51, contained salary increases of 0.0%, 2.0%, 0.0%, 3.5%, 3.5%, 4.0%, 3.5% for each year between 1999 and 2005. (B-60).
- In the Matter of Interest Arbitration between Township of Springfield and Springfield PBA Local 76, 76A, IA-2001-54, contained wage increases totaling 15.1% over four years. (B-61).
- In the Matter of Interest Arbitration between Borough of Fairview and Fairview PBA Local No. 45, IA-2000-74, contained a wage increase totaling 11.5% over four years. (B-62).
- In the Matter of Interest Arbitration between Piscataway Township and Piscataway PBA Local No. 93, IA-2002-60, contained wage increases of 0.5% in 2002, 3.4% in 2003 and 3.9% in 2004, 2005 and 2006. (B-63).
- In the Matter of Interest Arbitration between City of Union City and PBA Local 8, IA-99-88 contained a total wage increase of 3.5% in 1999, 3.5% in 2000, 3.5% in 2001, 3.75% in 2002 and 4.0% in 2003. (B-64).

Finally, in several other CBAs in similar jurisdictions there were no annual wage increases over 4.0%. (B-50).

Private Sector Comparisons

The Borough contends that Borough police officers have fared far better than private sector employees. A review of several recent private sector settlements shows that many CBAs contain wage freezes for part of the contract period. In addition, the wage increases for the remainder of the contract period remained in the 2%-3% range:

- The United Water Utility Workers negotiated a four-year contract with a 0% increase for the first three years and a 3.0% increase for the third year. (B-62).
- The United Tool and Stamping Electrical Workers negotiated a three-year contract which contained no increase for the first two years and a 3.0% increase for the third year. (B-62).

- The Avdel Cherry Textrom contract also contained a 0.0% increase for the first two years and a 3.0% increase for the third year. (B-65).
- Englewood Hospital negotiated a three-year contract which had no increase for the first year and an increase ranging between 2.0% to 3.0% for the second and third years based upon experience and seniority. (B-64).
- Cooper Medical Center negotiated a two-year contract with a 2.5% increase for the first year and a 3.0% increase for the second year. (B-63).

The Borough contends that the PBA's proposed 5.0% annual salary increases are excessive in light of the increases provided to private sector employees over the last several years. In fact, given the low increases (and wage freezes) received by many private sector employees, the Borough's offer is comparable to the wage increases received by private sector employees. Under the Borough's proposal, the PBA will receive 3.25% annual salary increases. This increase, coupled with the PBA's already generous wages, ample time off the job and superior benefits package, will allow the Borough police officers to remain well compensated in comparison to private sector employees.

Financial Impact on the Governing Unit

The financial impact criterion does "not equate with the municipality's ability to pay." Hillsdale, 137 N.J. at 85. The correct application of this criterion does not require an employer to prove that it would suffer a "substantially detrimental result," or that financial difficulties would be created or worsened. Hillsdale, 263 N.J. Super. at 194. Rather, arbitrators must consider the effect their awards will have on other employees, and on the employer's overall budget. Hillsdale, 137 N.J. at 86. Arbitrators must consider factors such as the percentage of citizens on fixed incomes, and the impact of tax increases and other costs on each income category of residents. Hillsdale, 263 N.J. Super. at 194.

With regard to the financial impact criterion (N.J.S.A. 34:13A-16(g)); the Appellate Division in Hillsdale specifically rejected the argument that the employer must prove that it lacks the “ability to pay” the union’s proposal. “[T]he Legislature surely intended that there be more to consideration of the public’s interest and welfare than mere financial impact vis-à-vis ability to pay.” Hillsdale, 263 N.J. Super. at 188-9. The arbitrator must consider the overall impact of the award on governmental programs, on other employees, and on the taxpaying public. “A municipality should not have to demonstrate [that] it would be financially crippled before its arguments [concerning financial impact] could be found to be sufficient.” *Id.* at 194.

The Supreme Court agreed with the Appellate Division that the “financial impact” factor “do[es] not equate with the municipality’s ability to pay.” Hillsdale, 137 N.J. at 85. It is not enough simply to assert that taxes should be raised. *Id.* at 86. Nor must the employer be forced to prove its inability to pay the award, or that substantial detriment will result. *Id.* The arbitrator instead must consider the effect the award will have on other employees and on the overall budget. *Id.* at 86. In *Fox v. Morris County Policemen’s Ass’n.*, 266 N.J. Super. 501, 516 (App. Div. 1993), the Court specifically faulted the arbitrator for failing to explain why salary increases are entitled to priority in the budget over other items, and for suggesting that any economies realized by cutting other budget costs could and should be applied to salary increases. Findings regarding financial impact must be based upon record evidence, not upon the mere assumption that the employer somehow could find a way to fund the award. *Id.* at 517.

The Fiscal Problems Facing the Borough

The Borough provided the following summary of exhibits and evidence to show that it is confronting a number of difficult fiscal problems and financial challenges:

- Increased Municipal Tax Rate: The Borough's Municipal Tax Rate has increased @.361 per \$100 or 42.2% from 1999 to 2005. The Total Tax Rate has increased @ 1.223 per \$100 or 41.4% from 1999 to 2005. (Exhibit A). The Borough's Municipal Tax Rate has increased \$.268 per \$100 in assessed value or 28% from 2003-2005. Luckily, the Borough obtained \$200,000 in Extraordinary State Aid in 2003 and \$175,000 in Extraordinary State Aid in 2004. Thus, the State recognized Keyport's distressed financial picture. Without securing this Extraordinary State Aid the municipal tax increase would have been \$0.0323 per \$100 in assessed value or a 34% increase in the municipal tax rate over a two year period. (Exhibit B).
- Diminished Fund Surplus Balance: As of January 1, 2002, the Borough had a fund surplus of \$950,338. As of January 1, 2004, the fund balance decreased to \$409,311, and as of January 1, 2005 further decreased to \$335,054. Thus, the Borough's surplus fund balance has diminished by \$650,000 over the last three years merely to help fund the borough's budget. (Exhibit C).
- Stable Net Valuation Taxable. Over the last ten (10) years, the Borough's tax ratables have remained stable in the \$320,000,000 range with no increase in ratables projected in the future. Keyport is a fully developed municipality with little hope of increasing its ratables base. Therefore, any increase in police compensation that would result from this interest arbitration proceeding would have to be borne by the present taxpayers of the Borough. (Exhibit D).
- Increase in Municipal Appropriations per Capita. Borough appropriations have increased from \$6,097,170 in 2001 to \$7,267,076 in 2005 representing a per capita increase in appropriations of 19.1% over the past four (4) years. (Exhibit E).
- Increase Tax Levy per Capita. The Borough's Tax Levy per capita has increased from \$2,881,635 in 2001 to \$3,997,763 in 2005 representing a 38.6% increase over the past four years. The total tax levy has increased from \$10,640,273 in 2001 to \$13,730,960 in 2005, a total tax levy increase of 29% over the past four years. (Exhibit F).
- PBA as a Percentage of the Total Wage Base: The total salaries for the eighteen (18) PBA members nearly equals the total salaries paid to all other fifty-four (54) Borough employees. (Exhibit G). The average compensation received by a Borough police officer greatly exceeds the average compensation paid to all other employees of the Borough. (Exhibit G). Given the new legislation amending the Cap law (Exhibit M), and the fact that the Borough has reached its Cap, regardless of what figure is arrived at regarding salary increases, the Borough will have to increase taxes to fund an award and will face a distressed financial situation in 2006 and 2007.

- **Increase in Per Capita Cost of Police Functions:** In 2005, the total operating costs of the Police Department with respect to PBA members was \$2,277,403. The operating costs to the Police PBA include: (1) salaries and overtime; (2) Health, Dental, Life and Workers Comp. Insurance directly related to PBA members; (3) other expenses budgeted for the Police Department; (4) Clothing allowance; (5) [Police and Fire Pension contribution; and (6) gasoline expense. The total operating costs for all other Borough operations in 2005 was \$3,568,752. Thus, the per capita cost of police functions has increased dramatically comprising 39% of the Borough's 2005 budget. (Exhibit H).
- **Increase in Employee Health Care Benefits:** The costs related to employee health care continue to rise at a dramatic rate. Over a four year period the Borough's budgeted cost of health insurance has increased 93.7% with a great share of the costs attributed to the PBA members (Exhibit I). In fact, health insurance costs in 2005 directly attributable to the 18 PBA members was \$236,101 or on average \$13,117 per officer. The health insurance costs for all of the other 54 Borough employees was \$318,409 or on average \$5,896 per employee. Thus, not only do the PBA members earn more than the Borough's other employees they also cost the Borough more in health care dollars.
- **Increase in PFRS Contributions:** The Borough's PFRS contributions have increased significantly and will continue to increase significantly over the life of the contract. In 2004, the Borough's PFRS contribution was \$29,300. In 2005, the Borough's PFRS contribution is \$75,500. The Borough estimates its pension contribution to PFRS to be \$125,500 in 2006, \$180,500 in 2007 and a whopping \$240,500 in 2008. These monumental increases in contributions will have a dramatic effect on the Borough's budget and tax rate in future years. (Exhibit J). In addition, the Borough has pension obligations to PERS for the other Borough employee's that has also seen significant increase causing a drain on the Borough's budget.
- **Increase in Annual Cost of Water and Sewer:** The annual cost of water and sewer to the average customer is estimated to increase 46% over four years. In 2003, the annual cost to the average customer utilizing 20,000 gallons of water was \$900. The annual cost increased to \$1,128 in 2004 and is expected to increase to \$1,218 in 2006 and to \$1,315 in 2007. In addition, the Borough has been required by the New Jersey Department of Environmental Protection to make capital improvements in the water and sewer utility of approximately \$6,500,000 over the next three years. (Exhibit L).

The Borough points out that these increased costs and revenue shortfalls are not caused by mismanagement or poor decision-making. These problems, including the spiraling

property tax rates, increased cost of health care, increased PFRS contributions, and state aid reductions remain outside the control of the Borough governing body and municipal managers.

The Borough notes that it enacted a number of measures in an attempt to meet its responsibilities and face its financial dilemma. These measures have been designed to increase revenue and control expenses. Local taxpayers have shouldered much of the load as the municipal tax rate has increased by almost 28% over the past two years (Exhibit B). In addition, the Borough has been forced to use its surplus funds to cover some of its current expenses with the surplus decreasing by over \$650,000. The Borough has also lost two positions in the Department of Public Works due to budget constraints, but the Borough did not eliminate any police officers. Unfortunately, given the condition of the economy on a national and state level, the Borough's financial position will not change dramatically over the next twelve months and in fact will only get worse.

Keyport is a small working-class community that has not seen the growth and expansion as seen in other County municipalities. Between 1990 and 2000, the population of Keyport decreased while the population of Monmouth County increased by 62,177. (B-22). Despite the decrease in population, the Borough has continued to provide services to its taxpayers in order maintain the appropriate level of safety and order within the community. The Borough has accomplished this feat even with a decrease in its tax base to support these services. Other Monmouth County municipalities have undergone extensive growth and expansion which has also increased ratables. For example, a growing municipality like Manalapan could absorb salary increases without significantly impacting the municipal tax rate due to large increases in the ratable base. Unfortunately, salary increases in the Borough will be funded through increased taxes.

The Borough is facing an unemployment rate higher than the average in Monmouth County and on a par with the State of New Jersey (B-22, B-23). Keyport ranks forty-third out of fifty-three municipalities in Monmouth County in median family income. (Exhibit B-23). These statistics indicate the extreme fiscal and socio-economic strain that has been placed upon the local economy. In 2000, the median income for a male full time year round worker in Monmouth County was \$61,624. (B-21) However, in Keyport, the median income for a male full time worker was \$42,958. (B-20). A Keyport police officer's average annual base salary of \$73,013 is 42% higher than the median income of a male full-time worker in Keyport. The Borough submits that its police force is well compensated considering the condition of the state and local economy.

The Borough submits that the PBA did not present any evidence concerning the fiscal strength of the Borough. While many Monmouth County municipalities have been growing and developing, Keyport has not been so fortunate. Ratables have been stagnant for the last ten years and no change is in sight. No significant development or expansion is on the horizon. Any increase in expenditures will increase property taxes in the Borough. (Exhibit D). The PBA's proposal would increase costs considerably, requiring the Borough to undertake a massive endeavor to maintain any fiscal strength through a decrease in expenditures, reduction in services to the public, layoff of police officers or sharply increasing taxes upon its citizens. The Borough asserts that the PBA's proposal is highly detrimental to its residents.

The Borough contends that the PBA has also failed to provide any evidence concerning where the Borough will obtain the increased revenue necessary to fund its excessive salary proposal. On the contrary, the Borough presented abundant evidence to demonstrate that its final offer is fair to the police officers. The Borough contends that its offer will require a significant tax increase to prevent layoffs or a decrease in services.

In addition, the Borough does not face a favorable tax situation or budget surplus. This high tax rate and lack of budget surplus is further daunting because it will force the Borough to rely heavily on taxes to fund government operations.

According to the Borough, another pressure on the budget is the employee pension system. The Borough's obligation to make contributions to PERS and PFRS was held in abeyance for the last several years. However, the Borough will now have to fund its contributions, which will increase exponentially over the next five years (Exhibit J). The Borough's PFRS contribution in 2004 was \$29,300. The Borough's PFRS contribution in 2005 is \$75,500. The Borough estimates its pension contribution to PFRS will be \$125,500 in 2006, \$180,500 in 2007 and \$240,500 in 2008. Thus, the Borough will continue to have to pay a significant pension expense that it has not had to pay in recent years. In addition, the Borough will have to continue to fund pension contributions for other Borough employees further increasing the Borough's pension expenses.

The Borough asserts that its final offer is reasonable and reflects the municipality's fiscal realities over the course of the proposed new CBA. The state and local economies continue to struggle financially, but Borough police officers have received compensation well above other workers in the same jurisdiction, both public and private. The Borough contends that adoption of the PBA's proposal would be unreasonable in light of the delicate condition of the economy, and the lesser compensation received by other citizens of the community.

Medical Insurance Contributions

The Borough asserts that its proposal to increase employee contributions to medical insurance premiums is comparable to state-wide increases in such contributions. The Borough submits that a balance must be maintained between an employer's burden of paying

increasingly high medical insurance costs and maintaining employee contributions at a reasonable level. The Borough asserts that it currently offers one of the lowest employee contributions in Monmouth County, with a salary deduction of \$10 per pay period or \$260 per year (B-32).

The Borough's proposal seeks to increase the employee contribution from \$260 per year to \$300 per year. In addition, the Borough proposes that all employees hired after January 1, 2006 contribute 20% of the total medical insurance premium. The PBA contends that its proposal is reasonable since other municipalities require much higher employee contributions. For example, Aberdeen Township requires an employee contribution of \$372 and Hazlet Township requires an employee contribution of \$507 (B-32). According to the Borough, based upon the growing national and statewide trend of increasing employee health care cost contributions, the proposed increases are reasonable and fall directly in line with other settlements and awards over the past several years (B-33, B-95). The cost of medical benefits to the employer has continued to experience double digit increases for several years. (B-95, B-96). Over a four-year period the Borough's budgeted cost of health insurance increased 93.7% with a great share of the costs attributed to police officers (Exhibit I). 2005 health insurance costs directly attributable to the eighteen police officers in the bargaining unit were \$236,101, an average of \$13,117 per officer. The health insurance costs for the other fifty-four Borough employees were \$318,409, an average of \$5,896 per employee. This double digit benefit cost trend is expected to continue throughout most of the decade with no "quick fix" in sight. (B-96, B-97).

The financing of health care continues to be an overriding challenge for public and private employers, employees and government entities. The Borough notes that most employers have addressed this problem by simply reducing benefits and requiring workers

to assume greater portions of the cost (B-93, B-94). The Borough has not taken that route. Instead, the Borough submits that it has offered a solid, well-known alternative by proposing a modest increase in the contribution without reducing benefits.

Cost of Living

The arbitrator is required to consider the cost of living in rendering his award. N.J.S.A. 34:13A-16(g)(7). In *Hillsdale*, the Appellate Division faulted the arbitrator for failing to “consider or discuss the disparity between police salary increases and the consumer price index.” *Hillsdale, supra.*, 263 N.J.Super. at 195. In addition, N.J.S.A. 34:13A-16g(8) requires the arbitrator to consider “other factors . . . ordinarily or traditionally considered in the determination of wages.”

The Consumer Price Index (“CPI”) tracks the cost of goods and services in various geographic areas and labor markets. The goods and services which are utilized to calculate the CPI include the entire array of items an average consumer may require. The CPI-U measures income of urban wage earners (B- 90).

The Borough presented historical data related to the CPI as well as data concerning the CPI-U. (B-90, B-92). The data shows that both nationwide and regionally, increases in the CPI have been modest, especially in comparison to the salary increases received by Borough police officers. A comparison of the CPI and past salary increases shows that the unit’s wage levels have far outpaced the level of inflation. The PBA received pay raises significantly higher than increases in the CPI.

According to the Borough, its police officers have received wage increases more than double the CPI. The Borough submits that the stable cost of living prevented any erosion in the purchasing power of police officer salaries. The Borough asserts that its final offer permits reasonable wage increases above the cost of living.

The Interests and Welfare of the Public

The Borough asserts that its last offer is more reasonable in terms of the interests and welfare of the public. The Borough cited judicial case law on this factor. The arbitrator must consider the “interests and welfare of the public” in determining his award. N.J.S.A. 34:13A-16g(1); Hillsdale PBA, 137 N.J. at 83. In the Appellate Division decision in Hillsdale, the Court found that the public interest factor “focuses in part on the priority to be given to the wages and monetary benefits of public employees within a municipality’s budget and plans.” Hillsdale, 263 N.J. Super. at 188. “It is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award. That would also conflict with other enumerated factors and render them hollow.” Id.

The New Jersey Supreme Court emphasized that “the public is a silent party” to the interest arbitration process, and that “an award runs the risk of being found deficient if it does not expressly consider” the public interest. Hillsdale, 137 N.J. at 82-83. “Indeed, the Arbitration Act expressly requires the arbitrator to consider the public interest and public welfare.” Id.

The Borough contends that arbitrators historically understood this criterion as requiring that public safety employees be well compensated. However, the Appellate Division directed that this criterion should be interpreted differently, holding that it “focuses in part on the priority to be given to wages and monetary benefits of public employees within [a public employer’s] budget and plans.” Hillsdale, 263 N.J. Super. at 188.

The New Jersey Legislature reinforced the Appellate Division’s decision, making it clear that the public interest is the most important factor through its 1996 amendments to the Interest Arbitration Act. Initially, the Legislature revamped the Interest Arbitration Law and

submitted a bill to Governor Whitman in December 1995. On December 18, 1995, Governor Whitman vetoed Senate Bill No. 1144, which was a preliminary version of the amendments which were ultimately enacted. Governor Whitman stated that the bill did not address the problems plaguing the previous arbitration procedure, specifically that police and fire contract awards "have escalated well beyond the cost of living and have outpaced awards in both the private and public sector." Governor Whitman expressed the view that "a fundamental shift" was necessary to solve the problems associated with interest arbitration, namely that there must be a greater recognition of the public interest and the ability of government to act for the public welfare.

The Legislature consented to Governor Whitman's point of view. In enacting the final version of the amendments, the Legislature stated that "it is also the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public." N.J.S.A. 34:13A-14(b). The Borough submits that the purpose of the Reform Act was to create a "fundamental shift" in the interest arbitration process, putting the brakes on the interest arbitration procedure which was catapulting police and fire salaries beyond all other employees, and beyond local government's budgetary constraints. Thus, any interest arbitration award that does not make the public welfare the primary interest, violates the clear intent of the Reform Act, and is an improper delegation of governmental powers.

The Borough asserts that its last offer is more supportive of the interests and welfare of the public than the PBA's last offer. The Borough contends that its last offer will accomplish several important public policy goals. Not only would its last offer better manage the element of risk and volatility presented by health care costs and the needs of individual employees, but it gives the Borough a more predictable level of expenses for these

benefits. The wage component of its last offer would enable the Borough to better control its costs and the rate of municipal tax increases.

The Borough contends that there has been no evidence presented by the PBA that the municipal, school or county taxes will not continue to increase over the four-year term of the proposed contract. State aid was dramatically reduced, revenue sources are declining, no new ratables are on the horizon, and the surplus account is being depleted. Given the current economic climate, it appears that state aid will be extremely difficult to obtain in the near future. There promises to be little financial relief from the County government.

According to the Borough, the interests and welfare of the public are best served by the more financially sound offer of the Borough. Additionally, the wage component of the its last offer is reasonable when the police officers' current salary levels are taken into account.

The Borough maintains that its police department has high morale, is generously compensated, is productive, efficient and able to attract and retain employees. The Borough submits that its final offer takes into account the interests and welfare of the public. On the contrary, the Borough contends that the PBA's offer ignores this factor. As a result, the Borough asserts that this factor weighs heavily in favor of its last offer.

Lawful Authority of the Employer

The Borough asserts that its last offer is more reasonable in terms of the lawful authority of the employer. The Borough cited judicial case law on this factor. The Appellate Division in Hillsdale interpreted the "lawful authority of the employer" criterion (N.J.S.A. 34:13A-16g(5)), to refer to the Local Government Cap Law. Hillsdale, 263 N.J.Super. at 193. The Supreme Court agreed: "[G]iven 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, 137 N.J. at 86 (B-10). In Hillsdale, the Appellate Division required the arbitrator to consider the impact of the award on other budget items. Hillsdale, 263 N.J.Super. at 194. In applying the lawful authority of the employer criterion, the Arbitrator must address the Borough’s budget CAP situation, as well as the statutory requirement that the Borough prepare a balanced budget each year.

The Borough contends that the PBA failed to provide any actual evidence as to where it will obtain the necessary revenue to fund its excessive salary proposal. The Borough contends that the PBA’s proposal will throw its budget into disarray and reverse any positive effect of the cost reductions that have already taken place. The Borough asserts that its offer is more reasonable and should be implemented.

Overall Compensation

The Borough asserts that its last offer is more reasonable in terms of the factor concerning overall compensation. The average base salary in the bargaining unit is \$73,014. (B-2). Borough police officers also receive a broad range of economic benefits including: a uniform allowance of \$1,350; up to 25 vacation days; 13 paid holidays; comprehensive medical insurance benefits; longevity benefits up to 7% of base salary in the 26th year of service; sick leave of 15 days per year after the first year of service; and up to 5 personal days.

The Borough’s police officers are also enrolled in the Police and Firemen’s Retirement System, which permits a police officer to retire after twenty years of service and receive a pension equal to 50% of final compensation, or after twenty-five years of service up to 65% of final compensation. N.J.S.A. 43:16A-11.1 and L.1999 c.428. In addition, Borough police officers benefit by contributions to social security.

The Borough notes that the median family income in Keyport ranks forty-third out of fifty-three Monmouth County municipalities. The per capita income for Borough residents is \$23,288. (B-20). Thus, the average police officer base salary of \$73,014 is 69% higher than the average income of Borough residents.

The Borough reiterates that the salaries of its police officers have radically outpaced the CPI over the years thus only minimal increases are required to maintain the unit's strong financial position. (B-90-B-92). The Borough asserts that its offer is more reasonable and should be awarded.

Continuity and Stability of Employment

The Borough asserts that its last offer is more reasonable in terms of the factor concerning continuity and stability of employment. The "stability and continuity of employment" criterion, N.J.S.A. 34:13A-16(g) (8), concerns issues such as the likelihood of layoffs, "give-backs" and salary freezes. Hillsdale, 263 N.J. Super. at 195. The Appellate Division interpreted this criterion to also require arbitrators to consider factors such as the employer's overall salary structure, the rate of unemployment generally, employee turnover, and the "virtual absence of unemployment among police." Fox v. Morris County Policemen's Association, PBA 151, 266 N.J. Super. at 519 (B-11).

According to the Borough, its police department is a desirable place to work. The department has eighteen officers with an average seniority of sixteen years. Even though a member may retire after twenty years of service, there are four members (22%) with over twenty years of service (B-4). More significantly, no Borough police officer has been laid off and only one police officer has retired in the last ten years and no police officers have left to work at other municipal police departments.

The Borough points out that the complete absence of any layoff or downsizing is in complete contrast to the current climate, both in New Jersey and across the nation. (B-67,B-77). Keyport's neighboring Fort Monmouth recently closed. Mass layoffs, job cuts and unemployment claims have become everyday occurrences. Large-scale job cuts have been taking place at both governmental agencies and private employers across the state. Numerous jobs have been eliminated by the federal government, state government, the New Jersey Sports and Exposition Authority, Verizon, Ford, General Motors, Toys-R-Us, Nextel, Lucent and many area hospitals. (B-8, B-87, B-80, B-75).

The Borough submits that its police officers enjoy secure and stable employment, without the threat of a job loss. These police officers remain employed by the Borough for lengthy periods of time. (B-4).

The Borough notes that no evidence was presented to show that a single officer left for a higher-paying job. The PBA has not demonstrated that its costly proposal was necessary to maintain current police officers or attract qualified candidates for openings.

The Borough points out that the New Jersey Appellate Division noted that there is a "virtual absence of unemployment among police." Fox, 266 N.J.Super. at 519. Likewise, police officers are not affected by the trend towards privatization or "downsizing". Police services, unlike other public sector services, are not subject to privatization. Simply put, the trend of mass layoffs and downsizing in both the public and private sector does not affect, nor concern Borough police officers. They are assured of a position, paying significantly more than the per capita income of Borough residents, for as long as they wish to remain employed (up to statutorily-maximum age of 65). The Borough contends that an award of the PBA's salary proposal may jeopardize this historic truth. The Borough asserts that its last offer is supportive of the requirements of this factor.

Other Issues

Longevity

The current top two steps of the longevity scale provide an additional 6.5 % and 7% above base salary. The PBA proposes to increase that longevity payment to 8.5% and 9% for the top two steps. The PBA also proposes to reduce the top step to twenty-four years of service and to remove the "grandfather" clause applicable to employees hired before January 1, 1995. The Borough presently pays \$57,426 in longevity to its police officers. (Exhibit N). The Borough would continue to pay longevity under the existing longevity scale.

Under the PBA's proposal, the cost for longevity would increase to \$68,716 in 2004, \$73,310 in 2005, \$80,892 in 2006 and \$84,937 in 2007. The total cost of the PBA's proposal would be an additional \$58,870 over the four-year term proposed by the PBA. The Borough asserts that any additional increase in longevity benefits is not warranted since these officers are already generously compensated.

Moreover, the Borough contends that this increase is unreasonable since the longevity schedule is comparable to other Monmouth County communities. (B-31). The Board submits that the PBA has not proven entitlement to any additional longevity payments. Nor did the PBA provide any evidence that the current longevity structure is insufficient.

The Borough asserts that its final offer will preserve the current longevity scale. The Borough maintains that the current longevity structure is reasonable and the status quo should be maintained.

Sick Leave

The Borough, in its brief, stated that it was in favor of the PBA's proposal that each retiring employee have the right to receive the terminal leave benefits paid out over a period of eighteen months in up to three separate payments all at the option of the employee.

Work Schedule

The PBA proposed the current "trial basis" work schedule be codified and written into the contract. The Borough maintains that the work schedule set forth in the CBA remain without change. The Borough contends that the PBA did not offer any evidence that the work schedule set forth in the CBA causes discord nor did the PBA offer any evidence that the current work schedule, which has been operating on a trial basis, should be written into the CBA. The Borough contends that if the trial basis work schedule is written into the CBA, many other sections of the CBA would have to be reviewed, analyzed and possibly modified due to the change in the work schedule language. No evidence was presented by the PBA regarding any other change that might be required or the costs associated with such a change.

The Borough requests that the trial basis work schedule continue on a trial basis and the contract remain status quo as it pertains to the work schedule.

Conclusion

The Borough submits that its proposed salary increases, when applied to a well-compensated police force, are reasonable in comparison to employees in similar jurisdictions, other public employees and private employees. The Borough notes that its salary proposal exceeds the CPI and ensures that its police officers will remain among the best-paid in the County. In light of heavy municipal tax increases, massive reductions in state aid, increased operational and health benefit costs, declining sources of revenue and recent legislation, the Borough asserts that its final offer is more reasonable and falls within the Borough's fiscal constraints. In addition, the increases to medical contributions are reasonable and in-line with similar jurisdictions.

For all of the above reasons, the Borough submits that its final offer is fair, reasonable and well-balanced and is in line with an established pattern of settlement and should be awarded in its entirety.

Discussion

The parties presented testimony and more than one hundred documentary exhibits totaling thousands of pages in support of their last offers. I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation why any criterion is deemed not to be relevant.

I have carefully considered the evidence and the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the criteria.

I will set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and arguments regarding the statutory criteria primarily to its own last offer and to the last offer of the other party. I will not do so because, in this conventional proceeding, the terms of the award will be the reference point rather than the parties' last offers. Conventional arbitration is a more flexible process which grants the arbitrator broad authority to fashion the terms of an award based on the evidence without the constraint of selecting any aspect of a final offer submitted by the parties. The prior statute required the selection of the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of showing a need for such change. I shall apply this principle to all new proposals.

The parties agreed and I shall award a four-year agreement. The duration of the new four-year agreement shall be January 1, 2004 to December 31, 2007.

I shall award the following salary increases:

- a. Effective January 1, 2004, 4.0% across-the-board salary increase to be applied to all steps and ranks on the salary schedule.
- b. Effective January 1, 2005, 4.0% across-the-board salary increase to be applied to all steps and ranks on the salary schedule.
- c. Effective January 1, 2006, 4.0% across-the-board salary increase to be applied to all steps and ranks on the salary schedule.
- d. Effective January 1, 2007, 4.0% across-the-board salary increase to be applied to all steps and ranks on the salary schedule.

I shall award an increase in the current medical insurance benefits contribution. The current medical insurance benefits contribution shall be increased to \$20 per pay period effective January 1, 2004.

The parties have stipulated their agreement and I shall award the PBA's proposal to modify Article XV to provide that each retiring employee shall, at the employee's option, have the right to receive the terminal leave benefit over a period of up to eighteen months in up to three separate payments to be issued on the employee's requested date(s). These payments shall not accrue interest.

I shall award a modification of the Article XVII (Hours of Work and Overtime) to provide that the current twelve-hour work schedule shall continue subject to future negotiations and subject to the dispute resolution procedures of PERC. All other proposals of the Borough and the PBA are denied.

Cost of Salary Proposals and Awarded Salary Increases

The bargaining unit scattergram at the expiration of the 2001-2003 CBA includes one captain, one lieutenant, five sergeants, one detective sergeant, nine patrol officers and one detective for a total of eighteen bargaining unit members. The total base pay salary in 2003 is \$1,314,181. The base salary for calculation purposes is the salary that a bargaining unit member was paid in 2003.

The calculations of the parties' last offers do not include incremental step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. Neither party included the incremental costs in their last offers. Historically, incremental costs have not been factored in by the parties. These incremental costs fluctuate depending on the turnover in a bargaining unit. High turnover, while not desirable, keep the public employer's average salary costs down because entry level officers replace senior officers making less than 50% of the maximum step officer's salary.

Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. Calculations for 2004, 2005, 2006 and 2007 do not include the cost of increments.

2004

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2004. The total new cost of the 5% increase in 2004 (excluding increments) is \$65,709. The total base salary cost in 2004 is \$1,379,890. The total new cost of the PBA's proposal for increased longevity is \$10,050 in 2004. The total new cost of the PBA's salary and longevity increase in 2004 is \$75,759. The total cost of the PBA's economic proposals in 2004 is \$1,389,940.

The Borough proposed a 3.25% across-the-board salary increase to be effective January 1, 2004. The total new cost of the 3.25% increase in 2004 (excluding increments) is \$42,711. The total cost of the Borough's proposed salary increase in 2004 is \$1,356,892.

I awarded a 4% across-the-board salary increase to be effective January 1, 2004. The total new cost of the awarded salary increase in 2004 is \$52,567. The total cost of the award in 2004 is \$1,366,748. I awarded an increase in the medical insurance contribution of \$10 per pay period to be effective January 1, 2004. This equates to \$260 annually. The total savings to the Borough is \$4,680. This is \$27,872 less than the cost of the PBA's 2004 salary proposals and \$5,176 more than the cost of the Borough's salary proposal. The total cost of the awarded salary increases minus the awarded increase in medical insurance contributions is \$1,362,068 in 2004.

2005

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2005. The total new cost of the 5% increase in 2005 (excluding increments) is \$68,995. The total base salary cost in 2005 is \$1,448,885. The total new cost of the PBA's proposal for increased longevity in 2005 is \$503. The total cost of the PBA's economic proposal in 2005 is \$1,449,388.

The Borough proposed a 3.25% across-the-board salary increase to be effective January 1, 2005. The total new cost of the 3.25% increase in 2005 (excluding increments) is \$44,099. The total cost of the Borough's proposed salary increase in 2005 is \$1,400,991.

I awarded a 4% across-the-board salary increase to be effective January 1, 2005. The total new cost of the awarded salary increase in 2005 is \$54,670. This is \$14,829 less than the cost of the PBA's salary proposal and \$10,571 more than the cost of the Borough's salary proposal. The total cost of the awarded salary increase is \$1,421,418.

2006

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2006. The total new cost of the 5% increase in 2006 (excluding increments) is \$72,444. The total base salary cost in 2006 is \$1,521,329. The total new cost of the PBA's proposal for increased longevity in 2006 is \$1,563. The total cost of the PBA's economic proposal in 2006 is \$1,522,892.

The Borough proposed a 3.25% across-the-board salary increase to be effective January 1, 2006. The total new cost of the 3.25% increase in 2006 (excluding increments) is \$45,532. The total base salary cost of the Borough's proposal in 2006 is \$1,446,523.

I awarded a 4% across-the-board salary increase to be effective January 1, 2006. The total new cost of the awarded salary increase in 2006 is \$56,857. This is \$17,150 less than the cost of the PBA's 2006 salary proposal and \$11,325 more than the cost of the Borough's salary proposal. The total cost of the award in 2006 is \$1,478,275.

2007

The PBA proposed a 5% across-the-board salary increase to be effective January 1, 2007. The total new cost of the 5% increase in 2007 (excluding increments) is \$76,066. The total base salary cost of the PBA's salary proposal in 2007 is \$1,597,395. The total new cost of the PBA's proposal for increased longevity in 2007 is \$581. The total cost of the PBA's economic proposal in 2007 is \$1,597,976.

The Borough proposed a 3.25% across-the-board salary increase to be effective January 1, 2007. The total new cost of the 3.25% increase in 2007 (excluding increments) is \$47,012. The total cost of a 3.25% salary increase in 2007 is \$1,493,535. The cost of the 3.25% increase in 2007 (excluding increments) is \$47,012.

I awarded a 4% across-the-board salary increase to be effective January 1, 2007. The total new cost of the awarded salary increase in 2007 is \$59,131. The total cost of the award in 2007 is \$1,537,406. This is \$17,516 less than the cost of the PBA's 2007 proposals and \$12,119 more than the cost of the Borough's proposal.

Statutory Criteria

I shall now discuss the documentary evidence and the parties' arguments and contentions in relation to the statutory criteria.

Interests and Welfare of the Public

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the Borough to exceed its authority under the CAP law. The award can be funded without the Borough exceeding its spending authority.

The interests and welfare of the public require the arbitrator to balance many considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and

good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Police Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Police Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony."

(In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

I shall discuss the open issues with respect to the interests and welfare of the public factor.

Term of Agreement

This is effectively a stipulation since the PBA proposed and the Borough indicated, in its brief, a willingness to agree to a fourth year. I shall award a four-year agreement to commence on January 1, 2004 and continue to December 31, 2007. A four-year Agreement will give the Borough continued stability in the financial and operational management of the department. It will also promote a more harmonious bargaining relationship with attendant improvements in morale and productivity.

I conclude that a four-year agreement is consistent with the requirements of the interests and welfare of the public criterion. The award of a three-year agreement that expires on December 31, 2006 would require the parties to commence negotiations approximately six months after the issuance of the award. Negotiations and interest arbitration are time consuming and expensive and can often distract the parties from their mutual obligations to provide efficient and effective police services to the Borough's residents. The current negotiations commenced more than two years ago. Protracted negotiations are not in the best interests of the parties nor are they in the best interests of the public. While neither party suggested a contract through December 31, 2008, I strongly recommend (not award) that the parties seriously consider an additional year. This would effectively be a three-year agreement since the new 2004-2207 CBA will be retroactive nearly twenty-seven months.

Accordingly, I shall award a four-year agreement to be effective January 1, 2004 through December 31, 2007.

Salary

The Borough proposed a 3.25% annual across-the-board salary increase in 2004, 2005, 2006 and 2007 whereas the PBA seeks a 5% annual across-the-board salary increase in 2004, 2005, 2006 and 2007 and additional longevity benefits. The Borough contends that the PBA's salary proposal is much more than the reported average of salary increases for all interest arbitration awards and the reported average of salary increases for all voluntary settlements. I agree with the Borough that the PBA's last offer substantially exceeds the reported average salary increases for police officers. However, I find that the Borough's salary proposal is less than the reported average of salary increases for all interest arbitration awards and the reported average of salary increases for all voluntary settlements and the evidence in the record.

The PERC data shows that the average salary increase in 2004 for awards issued in 2004 was 4.05% and the average salary increase in 2004 for voluntary settlements was 3.91%. The PERC data shows that the average salary increase in 2005 for awards issued in 2005 was 3.96% and the average salary increase in 2005 for voluntary settlements was 3.94%. The PERC data shows similar results in 2002 and 2003. The 2003 PERC data shows that the average salary increase in 2003 for awards issued in 2004 was 3.82% and the average salary increase in 2004 for voluntary settlements was 4.01%. The 2002 PERC data shows that the average salary increase in 2002 for awards issued in 2002 was 3.83% and the average salary increase in 2002 for voluntary settlements was 4.05%. The PERC salary data is not supportive of the PBA's last offer nor is it supportive of the Borough's last offer. The PERC salary data is more consistent with the terms of my award providing for annual 4% salary increases.

In summary, I find that the interests and welfare of the public require a stable and experienced police force and that the terms of my award on salary will maintain the Borough's ability to recruit and retain qualified and experienced police officers consistent with the requirements of this factor.

Comparison of The Wages, Salaries, Hours and Conditions of Employment

Comparisons of the wages, salaries, hours and conditions of employment of the Borough's police officers are to be made with other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar jurisdictions. I shall discuss these sub-factors in order.

The first part, private sector comparisons, calls for comparisons with private sector employees performing similar services as well as private employees generally. It is well established that there are no easily identified private sector police officers who perform services similar to those performed by Borough police officers. Neither party submitted salary data on this sub-factor since none exists. A police officer position is a uniquely public sector position that does not lend itself to private sector comparisons.

I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement. (See excerpt on page 15-16 of this Award). There is no data in the record to evaluate the comparison to other employees performing the same or similar services in private employment. I have given this sub-factor no weight.

The second part of this sub-factor requires a comparison with other employees generally in private employment. Neither party emphasized private sector comparisons. The parties did not submit extensive data on this sub-factor. The Borough offered salary data on certain individual settlements that showed contracts with no salary increases in some or all of the contract years. In addition, the Borough submitted data from individual settlements in the 2% to 3% range. Finally, the Borough noted that its police officers' average salary of \$73,203 in 2005 was 53% higher than the average private sector wage of \$38,820 in 2005. This salary data is anecdotal at best and provides no comparison to average salary increases such as the salary data provide by the Bureau of National Affairs ("BNA") or other reliable sources of such data.

A review of current United States Department of Labor, Bureau of Labor Statistics ("BLS") data shows that total compensation in private industry increased by 4% in 2003, 3.8% in 2004 and 3.2% through the first two quarters of 2005. A review of current United

States Department of Labor, Bureau of Labor Statistics ("BLS") data shows that total compensation in the civilian workforce increased by 3.8% in 2003, 3.7% in 2004 and 3.2% through the first two quarters of 2005. In addition, the BLS reported that the Employment Cost Index ("ECI") for the northeast region of the United States increased by 3.4% in 2005.

The current data on average salary increases in private sector employment in general shows that the PBA's proposed salary increases substantially exceed average salary increases in the private sector generally. The Borough's proposed salary increases, while more in line than the PBA, are below the average increases in the private sector generally. I find that my award, while somewhat higher than private sector settlements in general, is acceptable when measured against the totality of the terms of the award. The 4.0% salary increase in 2004 is offset by the awarded increase in the medical insurance contribution. This \$260 annual increase for eighteen officers offsets the 4.0% salary increase by .28% to bring the average increase in 2004 to 3.72% and the average over the four-year term of the new CBA to 3.92%. This sub-factor, as evidenced by the limited evidence submitted by the parties, is not entitled to significant weight.

The next comparison is with public employees in general. Neither party submitted salary data on public employees in general. I have served as a mediator or fact-finder in many cases involving other public sector employees; i.e., school district employees and non-police municipal and county employees. I am aware of settlement data published by the New Jersey Education Association and the New Jersey School Board Association. A review of this data shows that the average annual salary increases in public employment in general are below the salary increases proposed by the PBA and above the salary increases proposed by the Borough and more closely approximate the awarded salary increases. This sub-factor is supportive of the awarded salary increases.

I shall now address internal comparability with other Borough employees. The Borough contends that its salary proposal is on par with the salary increases recently agreed to with its white collar and blue collar bargaining units. The record shows that the Borough negotiated contracts with its DPW and clerical employees with 4% annual salary increases in 2002, 2003 and 2004. While only the 2004 salary increase is for the same period at issue in this matter, the Borough's agreement to a 4% annual increase is supportive of the 4% salary increase I awarded in 2004. The Borough's proposed 3.25% salary increase is inconsistent with its agreement to 4% annual increases for all other organized Borough employees.

The internal settlement data is significantly below the PBA's last offer and significantly above the Borough's last offer. I find that internal comparability is fully consistent with the terms of my award and is not supportive of the Borough's proposed salary increases nor is it supportive of the PBA's proposed salary increases. This sub-factor is entitled to some weight but not as much weight as comparisons to other police officers in similar jurisdictions. The next sub-factor calls for a comparison of the wages, hours and conditions of employment of employees performing the same or similar services in the same or similar comparable jurisdictions. These comparisons are made to police officers in the same or similar jurisdictions.

As I discussed under the *interests and welfare of the public criterion*, the Borough relied on the average salary of all police officers in the Borough in its comparison to other police officers performing the same services in similar comparable jurisdictions. The Borough cites New Jersey Department of Labor ("NJDOLE") data showing the mean average salary of Police and Sheriff's Patrol Officers in Monmouth and Ocean County to be \$64,950.

The Borough, relying on B28 and B-29, contends that its police officers were among the highest paid in 2004 with an average pay of \$73,014 and that the \$73,014 salary ranked 26th in Monmouth County.

A review of B-28 shows that the average maximum salary of police officers in 2003 was \$71,725. This data does not indicate if holiday pay is included in the maximum salary. Thus, the 2003 maximum of \$70,078 for Borough police officers, which includes holiday pay, is below the average of the nineteen Monmouth County municipalities included in B-28. The Borough is correct that the \$73,014 average salary of its police officers is higher than the average maximum salary in Monmouth. However, the \$73,014 average salary includes the salaries of six sergeants, one lieutenant and one captain. The proper comparison is maximum step patrol officer salaries in the County with the maximum step patrol officer salaries of Borough police officers. The County-wide data includes a number of municipalities with different demographics than Keyport. A review of maximum salaries of communities in northeast Monmouth County (some contiguous) with Keyport's maximum salary (after 4% increases) shows the following:

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Aberdeen		67,390	70,086	72,889
Atlantic Highlands	71,866	74,740		
Hazlet		73,261		
Keyport	70,078	72,881	75,796	78,828
Matawan			77,785	80,896
Union Beach		71,986	74,500	77,114
Average maximum:	70,972	72,051	74,542	77,431

Maximum salary has become the “benchmark” which employers and employee organizations both rely on when making comparisons. Employers and employee organizations also rely on average annual salary increases when making comparisons. The above salary data confirms that Keyport maximum salaries are below average maximum salaries in the County. However, this data includes municipalities that are not similar comparable jurisdictions. A review of maximum salaries of police officers in northeast Monmouth County, including several communities that are near Keyport, shows a maximum salary that is more competitive. The maximum salary of Borough police officers in 2004, 2005 and 2006 is as much as \$1400 higher than the average of these northeast Monmouth County communities. Again, the data does not indicate if holiday pay is rolled into base pay but it is fair to say that the application of 4% annual salary increases will maintain the relative placement of maximum salaries when compared with northeast Monmouth County and the County as a whole.

Maximum salary is an important component of compensation and while it is a major element in total compensation there are other forms of compensation that could be measured to evaluate this component properly. This includes longevity, hours of work, holiday, vacation benefits and other leave time, educational stipends, medical insurance benefits and employees’ obligations to contribute, uniform cleaning and maintenance allowances, and retiree health insurance.

The award of 4% annual increases will maintain Keyport’s relative position in the above groupings. There is simply no basis to award the PBA’s 5% annual salary increases to narrow the gap with the highest paid communities nor is there any basis to award the Borough’s 3.25% annual salaries increase to narrow the gap with the lowest paid communities.

As discussed under the *interests and welfare of the public* criterion, I established that the salary data in the record was support of the awarded salary increases. I further found that the salary data in the record was not supportive of the PBA's last offer nor was it supportive of the Borough's last offer. Moreover, I found that the terms of the award are consistent with the PERC reported average of salary increases for all interest arbitration awards and voluntary settlements.

This data shows that the average salary increase in 2004 for awards issued in 2004 was 4.05% and the average salary increase in 2004 for voluntary settlements was 3.91%. This data shows that the average salary increase in 2005 for awards issued in 2005 was 3.96% and the average salary increase in 2005 for voluntary settlements was 3.94%. The PERC data shows similar results in 2002 and 2003. The 2003 PERC data shows that the average salary increase in 2003 for awards issued in 2004 was 3.82% and the average salary increase in 2004 for voluntary settlements was 4.01%. The 2002 PERC data shows that the average salary increase in 2002 for awards issued in 2002 was 3.83% and the average salary increase in 2002 for voluntary settlements was 4.05%.

The Monmouth County comparability data submitted by the Borough and the PBA is similar but not identical. Neither the Borough nor the PBA comparability data indicates if any pre-existing benefits were included in the salary increases.

The terms of my award are consistent with the sub-factor requiring comparisons of the wages, hours and conditions of employment of employees performing the same services in similar comparable jurisdictions. All of the above salary data is consistent with the terms of my award providing for annual 4% salary increases. This sub-factor is entitled to great weight. I find that the external comparability data detailing salary increases in other municipalities in Monmouth County and throughout the State is the most relevant factor in this proceeding.

Accordingly, in consideration of the above analysis, I shall award annual salary increases of 4% effective January 1st in 2004, 2005, 2006 and 2007. These salary increases shall be across-the-board for all steps and ranks and fully retroactive.

Longevity

The PBA proposes to increase the twenty-year longevity step from 6.5% to 8.5%. The PBA also proposes to increase the 7% longevity to 9% and make it effective upon the completion of twenty-four years of service. The PBA also proposes to merge the two longevity schedules and remove the January 1, 1995 "grandfather" clause.

The Borough is opposed to any changes in the current longevity schedule. The Borough calculates the total cost of the PBA's longevity proposal is an additional \$58,870 over the four-year term. The Borough notes that it is not seeking to eliminate longevity, but cannot afford any change in longevity that would significantly increase longevity costs.

The first issue is the PBA's proposal to remove the January 1, 1995 "grandfather" clause. This is a very limited "grandfather" clause. The only difference is in the first longevity step. Employees hired before January 1, 1995 received their first longevity payment of 1% after five years of service. Employees hired on or after January 1, 1995 now receive their first longevity payment of 1% after seven years of service. This effectively delays the payment for two years. There are no other differences. The 10th, 15th, 20th and 25th steps are identical on both longevity schedules.

As previously stated, a governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of showing a need for such change. I find that the PBA has not met its burden on this issue. Not only is the "grandfathered" portion minimal at best, it is also difficult to revisit these issues without

knowing what the “trade-off” was, if anything, when the parties agreed to a two-year delay in the 1% longevity payment. Further, two additional steps were added to the salary schedule meaning that the 1% longevity is still applied to the maximum step.

The second part of the PBA’s proposal is to increase the 6.5% and 7% steps by 2% to 8.5% and 9%. The PBA also seeks to change the eligibility for the 7% step from “after 25 years of service” to “after 24 years of service.” The cost of improving longevity must be measured as part of the total economic package. The PBA’s proposed increases add more than \$10,000 to the cost of the 2004 salary increase. This is equivalent to an additional .75% in 2004 and with additional increases in future years (compounding and additional employees at higher steps) could generate more than \$50,000 in cumulative costs over the term of the new CBA. I established that the salary data in the record was supportive of the awarded 4% annual salary increases and that such salary data was not supportive of the PBA’s proposed 5% annual salary increases. The PBA’s longevity proposal would increase the total economic cost of its proposal to 5.75% in 2004 and make its proposal even more out of the range when compared with settlements in the County and throughout the State.

Accordingly, I find that the PBA has not met its burden on this issue and it is hereby denied.

Medical Insurance Contributions

The Borough proposes to increase the employees’ contribution to \$300 annually and to require that all employees hired on or after January 1, 2006 contribute 20% of the health insurance premiums. The current CBA provides that “each employee shall contribute the sum of Ten (\$10.00) Dollars per pay period for a total of Two Hundred Sixty (\$260.00) Dollars per year toward the cost of their medical insurance benefits.” The PBA is opposed to any changes in the current level of medical contributions.

The Borough asserts that its proposal to increase employee contributions to medical insurance premiums is comparable to state-wide increases in such contributions. The Borough contends that it currently offers one of the lowest employee contributions in Monmouth. According to the Borough, Aberdeen Township requires an employee contribution of \$372 and Hazlet Township requires a contribution of \$507. (B-32).

The Borough's proposal to require new employees to pay 20% of the health insurance premiums is not justified on this record. There is insufficient evidence in the record to justify such high contributions by new employees who are also the lowest paid. This contribution for new employees could be as much as \$3,000 annually for an officer with family medical coverage. The awarding of the Borough's health care proposal could affect its ability to recruit and retain qualified police officers. The Borough has not met its burden and its proposal for new employees is denied.

However, while I have denied the Borough's proposal for a 20% contribution for new employees, I am convinced that an increase in the current \$10 contribution is justified. A review of the CBA shows that the \$10 contribution per pay period has been in effect since January 1, 1993. The level of contributions has not increased in more than thirteen years. During the same thirteen years, the salaries of the Borough's police officers have increased substantially. I shall award an increase in the contribution to \$20 which shall be effective January 1, 2004. This is for several reasons.

In the past, unions have been resistant to both a reduction in plan options (elimination of Traditional Plan) and to premium cost sharing provisions (in any form) for medical insurance. However, that is no longer the case. Tens of thousands of State employees have seen the elimination of the Traditional Plan and agreement to cost sharing provisions.

Employees in many counties are now sharing in the cost of health insurance premiums and many municipalities have negotiated both reduced plan options and health insurance premium cost sharing.

The premium cost sharing agreements include fixed dollar bi-weekly payments (with cap & without cap); obligation to pay the difference between a POS Plan and a Traditional Plan; single only coverage in Traditional Plan with full payment for dependent coverage; elimination of Traditional and limitation to POS Plan only for new hires; cash incentive to switch to lower priced health plan; 50/50 sharing between employer and employee for the increased cost of health insurance premiums (often with cap); bi-weekly contributions based on a salary range; percentage contribution of full cost of health insurance; full payment of dependent coverage in Traditional Plan; employee payment of 50% of annual increase in dependent coverage; declining percentage contribution ranging from 20% upon initial employment declining to no cost beginning with 13th year of employment; payroll deduction with or without a 125 Plan (allowing pre-tax payments for health care contributions); financial incentives to migrate to lower cost health plans; and employee financial incentives for "opting out" of employer provided health insurance.

Many of these health care concessions have been made voluntarily in the give-and-take of negotiations. These concessions are often made to insure the continuation of the level of benefits and the continuation of the existing network of doctors and hospitals. Salary and health care are often linked in bargaining. Concessions on health care influence the level of salary increases. The total cost of a settlement for an employer includes the increased cost of a negotiated salary increase and the increased cost of employee fringe benefits. It is undisputed that the cost of health insurance and drug prescription coverage is the most

significant component of employee benefits. The cost of these health insurance benefits are rising at a much higher rate than inflation and salary increases. Health insurance is a costly fringe benefit that must be considered as part of the cost of employment and part of the overall wage and fringe benefit package of an employee.

Under the statute, health insurance must be treated as an economic item just like salary and longevity. The increased cost of providing this benefit cannot be considered only as an employer obligation but also must be viewed as a continuing fringe benefit to an employee that is more costly to provide. As previously stated, consideration must be given to the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under the statutory criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the entire award.

All of the above comparability data was gleaned from the synopses of awards and voluntary settlements as reported by PERC and other interest awards. This data does not include the results of many contractual negotiations resolved without the intervention of PERC. I have not included data showing increased co-payments for prescription drugs and office visits. This is a common component of voluntary and arbitrated agreements. As the cost of prescription and health care premiums increased, increases in co-payments for prescription drugs and office visits have become common elements of health care cost containment. This can be described as the "less painful" way of reducing the impact of an employer's continued health care cost increases. Other options include higher out-of-network contributions, increased maximums for major medical co-payments, and increased deductibles for employees and dependents.

Accordingly, based on the above data showing extensive modifications in health care cost sharing, I award an increase in the current contribution to \$20 which shall be effective January 1, 2004. Article XXVII (B) shall be modified as follows:

Effective January 1, 2004, each employee shall contribute the sum of Twenty Dollars (\$20.00) per pay period for a total of Five Hundred Twenty Dollars (\$520.00) per year toward the cost of their medical insurance benefits.

The impact of the increased contribution will be offset by the annual 4.0% salary increases. All of the economic components of the award must be considered in their totality and balanced to achieve a reasonable result under the statutory criteria. Comparability on a state-wide basis is the criterion entitled to the greatest weight in the awarding of an increase in medical contributions. I have also given weight to the interests and welfare of the public and the lawful authority of the employer. Finally, I have taken account of the total economic change in consideration of this issue.

Work Schedule

The PBA proposes that the current work schedule be codified and written into the contract without change. According to the PBA, the codification and continuation of the current twelve-hour shift schedule system is in the best interests of both the public and the Borough's police officers and that the continuation of the work schedule will continue work force stability. The PBA proposed the codification of the schedule and the addition of the following provision in the new CBA:

The current twelve (12) hour shift schedule system shall continue subject to future negotiations between the parties and the dispute resolution procedures under the Public Employment Relations Commission.

The Borough maintains that the work schedule language set forth in the CBA should remain without change. The Borough contends that if the trial basis work schedule is written into the CBA, many other sections of the CBA would have to be reviewed, analyzed and possibly modified due to the change in the work schedule language. The Borough requests that the trial basis work schedule continue on a trial basis and the contract remain status quo as it pertains to the work schedule.

Both the PBA and the Borough favor the continuation of the current work schedule. There is nothing in the record to suggest that the current twelve-hour work schedule is not working to the benefit of the Borough and its police officers. This schedule was initially implemented as a "trial" but the time for the trial period has elapsed and they have continued the schedule. The Borough did not seek any changes in the current work schedule but has expressed concern that the inclusion of the twelve-hour work schedule language in the new CBA will require that other parts of the CBA be modified to comport with the schedule.

I am not convinced that major modifications should be made to Article XVII (Hours of Work and Overtime) in the new CBA. However, inasmuch as both parties are committed to the continuation of the twelve-hour work schedule, I shall award the inclusion of the following language in Article XVII to maintain the status quo:

The current twelve (12) hour shift schedule system shall continue subject to future negotiations between the parties and the dispute resolution procedures under the Public Employment Relations Commission.

The inclusion of the above language, while falling short of the PBA's proposal for codification of the work schedule in the CBA, provides the needed stability in the bargaining relationship. I have placed great weight on the *continuity and stability of employment* factor as well as the *interests and welfare of the public* factor.

Lawful Authority of the Employer

This factor, among other things, requires the arbitrator to consider the limitations imposed on the Borough by the CAP Law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

This can be a significant factor in interest arbitration matters when the parties last offers on salary are extreme or when a party is asserting that the CAP Law affects their ability to fund salary increases. There is certainly no ability to pay argument under the New Jersey Cap Law (including the recent amendments) given the difference between the cost of the Borough's four-year salary proposal and the terms of my award. This difference is reduced by the award of a 100% increase in the medical contribution. The difference must be measured against the Borough's \$328 Million property tax base and the Borough's nearly \$13.5 Million budget. The difference between the cost of my award and the Borough's last offer in 2004 is \$5,176; the difference in 2005 is \$10,571; the difference in 2006 is \$11,325; and the difference in 2007 is \$12,119. This difference is minimal. The retirement of one police officer at maximum to be replaced by another police officer at the bottom of the salary schedule will result in a savings to the Borough of more than \$42,000 in 2004 and nearly \$48,000 in 2007. Obviously, the Borough's savings are multiplied if there are additional retirements.

There is absolutely no evidence in the record to show that the awarded salary increases or any other aspect of this award will cause the Borough to approach the limits of its financial authority or to breach the constraints imposed by the CAP Law in funding the salary increases I have awarded.

**Financial Impact on the Governing Unit,
its Residents and Taxpayers**

There is no evidence that the terms of my award will require the Borough to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not directly impacted by this proceeding nor is there any evidence that the terms of this award will affect on the Borough's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

Based on the evidence in the record, I conclude that the financial impact of the award will not adversely affect the governing unit, its residents and its taxpayers.

Cost of Living

Arbitrators must consider changes in the cost of living. The cost of living data shows that the increase in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), for New York-Northern New Jersey increased by 3.8% in 2004. This is below the awarded salary increase in 2004. The 2005 CPI data shows that the CPI increased by 3.7% in 2005.

I conclude that the awarded base salary increases, while moderately higher than the increase in the cost of living in 2004 and 2005 provide for an acceptable increase in real earnings. The award provides for base salary increases that over the full term of the CBA will allow for a modest increase in real earnings consistent with historical trends.

Continuity and Stability of Employment

The terms of my Award will maintain the continuity and stability of employment for the Borough's police officers. The salary award in this matter will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Borough to continue to recruit and retain qualified police

officers. There is no evidence in the record to show that the Borough has had problems with recruitment and retention of police officers. I gave significant weight to this criterion in my award of the work schedule language and the denial of the Borough's proposal that new employees contribute 20% of the cost of health insurance premiums. I found that the implementation of a two-tiered system on health care contributions has the potential for reducing the Borough's ability to recruit and retain qualified and experienced police officers.

I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

Overall Compensation

I have considered the overall compensation received by the Borough police officers and find that the terms of my Award will maintain the existing levels of economic benefits. The terms of my award on salary and health benefits are consistent with other settlements in Monmouth County and throughout the State, thus maintaining a consistent level of benefits. The salary award will maintain a competitive salary and permit the Borough to continue to recruit and retain qualified police officers.

Accordingly, after carefully considering each of the statutory criteria in relation to the evidence in the record, I respectfully issue the following award:

AWARD

1. **Term of Agreement:**

There shall be a four-year agreement effective January 1, 2004 through December 31, 2007.

2. **Salary:**

All steps and ranks on the 2003 salary schedule shall be increased by 4% effective January 1, 2004.

All steps and ranks on the 2004 salary schedule shall be increased by 4% effective January 1, 2005.

All steps and ranks on the 2005 salary schedule shall be increased by 4% effective January 1, 2006.

All steps and ranks on the 2006 salary schedule shall be increased by 4% effective January 1, 2007.

All salary increases are fully retroactive. The following are the new salary schedules with the application of the above salary increases:

SALARY SCHEDULE A-1

Employees hired prior to January 1, 1998

	<u>EFF.</u> <u>1/1/04</u>	<u>EFF.</u> <u>1/1/05</u>	<u>EFF.</u> <u>1/1/06</u>	<u>EFF.</u> <u>1/1/07</u>
ACADEMY	35,536	36,957	38,436	39,973
PATROLMAN:				
4TH CLASS	36,291	37,743	39,252	40,822
3RD CLASS	48,525	50,466	52,485	54,584
2ND CLASS	60,200	62,608	65,112	67,717
1ST CLASS	72,881	75,796	78,828	81,981
DETECTIVE	73,959	76,917	79,994	83,194
DET. SGT.	80,735	83,964	87,323	90,816
SERGEANT	80,735	83,964	87,323	90,816
LIEUTENANT	85,148	88,554	92,096	95,780
CAPTAIN	89,551	93,133	96,858	100,733

SALARY SCHEDULE A-2

Employees hired on or after January 1, 1998

	EFF. <u>1/1/04</u>	EFF. <u>1/1/05</u>	EFF. <u>1/1/06</u>	EFF. <u>1/1/07</u>
ACADEMY	35,536	36,957	38,436	39,973
PATROLMAN:				
6TH CLASS	36,291	37,743	39,252	40,822
5TH CLASS	43,928	45,685	47,513	49,413
4TH CLASS	50,693	52,721	54,830	57,023
3RD CLASS	57,457	59,755	62,145	64,631
2ND CLASS	64,734	67,323	70,016	72,817
1ST CLASS	72,881	75,796	78,828	81,981
DETECTIVE	73,959	76,917	79,994	83,194
DET. SGT.	80,735	83,964	87,323	90,816
SERGEANT	80,735	83,964	87,323	90,816
LIEUTENANT	85,148	88,554	92,096	95,780
CAPTAIN	89,551	93,133	96,858	100,733

3. **Sick Leave:**

Effective January 1, 2006, Article XV shall be modified to provide that each retiring employee shall, at the employee's option, have the right to receive the terminal benefit over a period of up to eighteen (18) months in up to three (3) separate payments to be issued on the employee's requested date(s). These payments shall not accrue interest.

4. **Health Benefits:**

Article XXVII (B) shall be modified as follows:

Effective January 1, 2004, each employee shall contribute the sum of Twenty Dollars (\$20.00) per pay period for a total of Five Hundred Twenty Dollars (\$520.00) per year toward the cost of their medical insurance benefits.

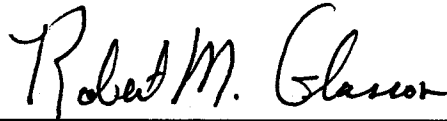
5. **Work Schedule:**

Article XVII shall be modified by the inclusion of the following language:

The current twelve (12) hour shift schedule system shall continue subject to future negotiations between the parties and the dispute resolution procedures under the Public Employment Relations Commission.

6. All proposals of the Borough and the PBA not awarded herein are denied and dismissed. All provisions of the existing CBA shall be carried forward except those provisions modified by the terms of this Award.

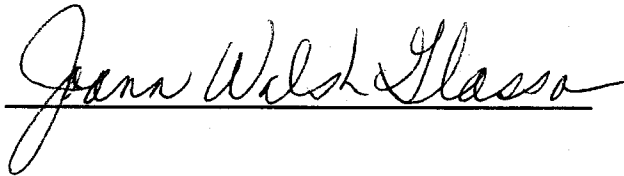
Dated: March 15, 2006
Pennington, NJ

A handwritten signature in cursive script that reads "Robert M. Glasson". The signature is written in dark ink and is positioned above a horizontal line.

ROBERT M. GLASSON
ARBITRATOR

STATE OF NEW JERSEY) ss.:
COUNTY OF MERCER)

On this 15th day of March 2006, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

A handwritten signature in cursive script, reading "Joann Walsh Glasson", written over a horizontal line.

Joann Walsh Glasson
Notary Public
State of New Jersey
Commission Expires 12-11-06