

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

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In the Matter of Interest Arbitration Between :  
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**BOROUGH OF SPRING LAKE HEIGHTS** : **INTEREST ARBITRATION**  
"the Borough or Employer" : **DECISION**  
: **AND**  
and : **AWARD**  
:   
**SPRING LAKE HEIGHTS PBA LOCAL 50** : Docket No: IA-2004-020  
"the PBA or Union" :  
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Before: Robert M. Glasson, Arbitrator

**APPEARANCES**

**FOR THE EMPLOYER:**

Kevin N. Starkey, Esq.  
Starkey, Kelly, Blaney, Bauer & White  
Of Counsel & On the Brief

**FOR THE PBA:**

Charles E. Schlager, Jr., Esq.  
Loccke & Correia  
Of Counsel & On the Brief

### Procedural History

The Borough of Spring Lake Heights (the "Employer" or "Borough") and Spring Lake Heights PBA Local 50 (the "PBA" or "Union") are parties to a collective bargaining agreement (the "CBA") which expired on December 31, 2002. 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 September 5, 2003, 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 January 6, 2004 from its Special Panel of Interest Arbitrators.

Mediation sessions were held on February 25 and March 15 2004. The parties continued direct negotiations which proved unsuccessful. Formal interest arbitration proceedings were invoked and a hearing was conducted on December 9, 2004, when the parties presented documentary evidence and testimony in support of their positions. Both parties filed post-hearing certifications and briefs. The record was closed on April 18, 2005. The parties agreed to extend the time limits for the issuance of the award to September 1, 2005.

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's Last Offer**

1. **Term of Agreement:** January 1, 2003 to December 31, 2006.

2. **Salary:**

The PBA proposed a 4.25% across-the-board salary increase in each year of a four-year contract.

3. **Clothing Allowance:**

The PBA seeks a \$50 annual increase in the clothing allowance.

4. **Holidays:**

The PBA seeks the inclusion of holiday pay in base salary to be effective on January 1, 2005. The PBA proposed the deletion of Section A of Article VII to be replaced by the following language:

Employees covered by this Agreement shall receive one and one-half (1½) times their regular pay for all time worked on the following actual holidays: New Year's Day, Easter, Independence Day, Labor Day, Thanksgiving, and Christmas.

5. **Grievance Procedure:**

The PBA seeks to include "minor discipline" in the grievance procedure.

### **Borough's Last Offer**

1. **Term of Agreement:** January 1, 2003 to December 31, 2006.

2. **Salary:**

The Borough proposed a 3.5% across-the-board salary increase effective January 1, 2003; a 3.8% salary increase to be effective January 1, 2004; a 2.5% salary increase to be effective January 1, 2005; and a 2.5% salary increase to be effective January 1, 2006.

## **POSITIONS OF THE PARTIES**

### **PBA LOCAL 50**

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

#### **Interests and Welfare of the Public**

The PBA asserts that interest and welfare of the public in the Borough of Spring Lake Heights are well served by its police officers. The PBA notes that the economic viability of this 1.3 square mile community with approximately 5,230 residents during the off-season to nearly 60,000 people during the summer is good. (P-37). The PBA then presented evidence showing the new projects slated for this community: 112,200 square foot townhouses priced at \$635,000; 2 multiple space office complexes; 11 new businesses and/or restaurants; several renovated businesses and 20 new homes. (P-39).

The PBA demonstrated a strong public presence of the law enforcement unit in the community. Their primary function is providing visible deterrent, special operations and responding to calls for service. The Police Department answered 10,071 calls for service in 2003. (P-23). This included responses to 179 burglar alarms, 468 EMS and First Aid calls, 250 warrants, and 3,159 motor vehicle related response. This is an increase of 22.8% in service calls from 2005. While the major crime categories (murder, rape, robbery and aggravated assault) are not significant if compared to a more urban community (e.g. Asbury Park), but the 2002 crime rate per 1000 of 13.6 increased by over 6 basis points from 2001. (P-25-29). The reason for this jump was primarily attributed to non-violent crimes, particularly larcenies.

## Comparison of Wages, Salaries and Conditions of Employment

The PBA asserts that consideration of Criteria 2 and 3 provides strong support for its position. The following is a summary of maximum police officer salaries included in PBA contracts in the record:

### Chart 1 - 2004 Top Base Wage

Monmouth Prosecutors	\$92,000
Brielle	\$79,752
Sea Girt	\$79,324
Wall Township*	\$77,932
South Belmar	\$77,374
Spring Lake	\$74,375
Avon-By-The-Sea	\$74,144
Manasquan	\$73,626
Belmar*	\$71,442
Bradley Beach	\$71,106
Neptune City	\$71,012
Monmouth Corrections	\$70,000
Monmouth Sheriff	\$70,000
Colts Neck	\$69,976
Spring Lake Heights**	\$65,000
<b><u>Average</u></b>	<b><u>\$75,147</u></b>

\* 2003 Base Wage

\*\*2002 Base Wage

The PBA notes that police officers in Spring Lake Heights are \$10,147 under the average wage presented or 15.6% and \$27,000 less than the top salary in the County. The PBA's salary proposal, without the inclusion of holiday pay would be \$75,775 in 2006 and would only be slightly above the 2004 average base salary.

The PBA points out that the salaries shown above, that are paid to public safety employees in the other municipalities or agencies, are not static. Rather, the base wages are dynamic, normally moving up annually. Chart 2 below is based upon the PBA's exhibits in the record and shows the rates of change with this group of exhibits as percentages of change.

**Chart 2**  
**Average Percentage Increase**  
**Based on PBA Exhibits 2-21, 70-74; 87**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
State Troopers 1	4.00%	4.00%	4.00%	4.00%	4.00%
State Troopers NCO 1	4.00%	4.00%	4.00%	4.00%	4.00%
State Troopers SOA 1	4.00%	4.00%	4.00%	4.00%	4.00%
Avon-By-The-Sea	4.00%	4.00%	4.00%		
Belmar	4.14%				
Bradley Beach	4.50%	4.15%	4.25%	4.25%	
Brielle	4.00%	4.00%	4.00%		
Colts Neck*	5.45%	9.99%	4.75%	4.75%	
Monmouth Corrections*	4.17%	12.00%			
Manasquan	4.40%	4.74%	4.00%		
Neptune City	4.25%	4.25%	4.25%	4.25%	
Sea Girt*	9.75%	7.23%	3.60%		
Monmouth Prosecutors*	7.50%	6.98%	6.52%		
Monmouth Sheriff*	4.17%	12.00%			
South Belmar*	8.16%	4.00%	4.00%	4.00%	
Spring Lake	4.00%	4.40%	4.40%		
Wall Twp.	3.72%				
<b>Average</b>	<b>5.11%</b>	<b>6.48%</b>	<b>4.42%</b>	<b>4.31%</b>	

\*Includes adjustment for certain changes in benefits (i.e. holiday, clothing)

The PBA submits that Chart 2 provides strong support for its salary proposal. The PBA summarized the economic data in its exhibits:

**Avon-By-The-Sea** receives payment for fourteen (14) holidays, \$1,700 in clothing allowance and scaled percentages up to 10% in longevity payments when entering their 25<sup>th</sup> year of service. They received a 4% across-the-board increase for 2003, 2004 and 2005. Their top rate in 2005 is \$77,110 and a top officer would earn \$90,673. (P-3).

**Belmar** receives payment for thirteen (13) holidays, \$880 in clothing allowance and scaled percentages up to 10% in longevity payments when entering their 25<sup>th</sup> year of service. They received a 4% across-the-board increase for 2002, 2003 and 2004. Their top rate in 2004 is \$79,752 and a top officer would earn \$91,254. (P-4).

**Bradley Beach** removed fifteen (15) holidays from their contract and made an adjustment to the base wage, \$850 in clothing allowance, and scaled percentages up to 12% in longevity payments when entering their 21<sup>st</sup> year of service. They received a 4% in 2004, 4.25% in 2005 and 2006. Their top rate in 2006 is \$77,278 and a top officer would earn \$87,401. (P-5 and 6).



**Brielle** receives payment for thirteen (13) holidays (capped at \$4,100), \$2,000 in clothing allowance and scaled flat dollar amounts up to \$7,215 in longevity payments when entering their 21<sup>st</sup> year of service. They received a 4% across-the-board increase for 2003, 2004 and 2005. Their top rate in 2005 is \$79,752 and a top officer would earn \$93,067. (P-7).

**Manasquan** removed fourteen (14) holidays from their contract and made an adjustment to the base wage, \$725 in clothing allowance and scaled percentages up to 9% in longevity payments when entering their 25<sup>th</sup> year of service. They received a 4.4% increase for 2003, excluding holidays, 4.4% in 2004 and 4.0% in 2005. Their top rate in 2005 is \$76,571 and a top officer would earn \$84,187. (P-8).

**Neptune City** receives payment for thirteen (13) holidays, \$1,200 in clothing allowance and scaled percentages up to 7% in longevity payments when entering their 24<sup>th</sup> year of service. They received a 4.25% across-the-board increase for 2003, 2004 and 2005. Their top rate in 2005 is \$74,030 and a top officer would earn \$84,114. (P-9).

**Sea Girt** removed fourteen (14) holidays from their contract and made an adjustment to the base wage, removed clothing allowance from their contract and made an adjustment to the base wage and scaled percentages up to 10% in longevity payments when entering their 21<sup>st</sup> year of service. They received a 3.75% across-the-board increase for 2003, 2004 and 2005. Their top rate in 2005 is \$82,181 and a top officer would earn \$82,931. (P-10).

**South Belmar** removed fourteen (14) holidays from their contract and made an adjustment to the base wage, \$1,700 in clothing allowance and scaled percentages up to 10% in longevity payments when entering their 21<sup>st</sup> year of service. They received a 3.5% across-the-board increase for 2002 and a 4.0% across-the-board increase for 2003, 2004, 2005. Their top rate in 2005 is \$80,470 and a top officer would earn \$88,517. (P-11).

**Spring Lake** removed fourteen (14) holidays from their contract and made an adjustment to the base wage, \$1,650 in clothing allowance and scaled percentages up to 12% in longevity payments when entering their 20<sup>th</sup> year of service. They received a 4% across-the-board increase for 2002 and a 4.4% across-the-board increase for 2003 and 2004. Their top rate in 2004 is \$74,134 and a top officer would earn \$84,950. (P-12 and 13).

**Colts Neck** removed fourteen (14) holidays from their contract and made an adjustment to the base wage, removed clothing allowance from their contract and made an adjustment to the base wage, and scaled flat dollar amounts up to \$3,070 in longevity payments when entering their 25<sup>th</sup> year of service. They received a 4.75% across-the-board increases in wages and longevity for 2003, 2004, 2005 and 2006. Their top rate in 2006 is \$76,693 and a top officer would earn \$79,763. (P-15).

**State Troopers** receive thirteen (13) holidays in the form of compensatory time and \$10,834.27 in clothing allowance. They received a 4% across-the-

board wage increase in 2002, 2003, 2004, 2005, 2006 and 2007. Their top rate in 2007 is \$88,402 and a top officer would earn \$103,656. (P-17 and 18).

**Wall Township** removed six of the fourteen (14) holidays from their contract and made an adjustment to the base wage, \$800 in clothing allowance, and scaled percentages up to 10% in longevity payments when entering their 21<sup>st</sup> year of service. They received a 3.72% across-the-board wage increase in 2003. Their top rate in 2003 is \$77,932 and a top officer would earn \$88,923. (P-21).

**Point Pleasant** receives pay for fourteen and one-half (14.5) holidays, \$675 in clothing allowance and scaled percentages up to 10% in longevity payments when entering their 25<sup>th</sup> year of service. They received a 4% across-the-board wage increase for 2002, 2003, 2004 and 2005. Their top rate in 2005 is \$76,365 and a top officer would earn \$88,935. (P-24).

**Spring Lake Heights** receives pay for twelve (12) holidays, \$1,500 in clothing allowance and scaled percentages up to 9% in longevity payments when entering their 16<sup>th</sup> year of service. Their top rate in 2003 is \$65,000 and a top officer would earn \$75,350. (P-24).

Chart 3 shows the current position of police officers in Spring Lake Heights in both base wage and total compensation, relative to the comparative communities:

**Chart 3**  
**Comparison of Base Wage & Total Compensation**  
**Based on PBA Exhibits 2-21, 70-74; 87**

	<u>Base Wage</u>	<u>Total Compensation</u>
Avon-By-The-Sea (2005)	\$77,110	\$90,673
Belmar (2004)	\$78,586	\$91,254
Bradley Beach (2006)	\$77,278	\$87,401
Brielle (2005)	\$79,752	\$93,067
Colts Neck (2006)	\$76,693	\$79,763
Manasquan (2005)	\$76,571	\$84,187
Neptune City (2005)	\$74,030	\$84,114
Point Pleasant (2005)	\$76,365	\$88,935
Sea Girt (2005)	\$82,181	\$82,931
South Belmar (2005)	\$80,470	\$88,517
Spring Lake (2004)	\$74,375	\$84,950
State Troopers (2007)	\$88,402	\$103,656
Wall Twp (2003)	\$77,932	\$88,923
Spring Lake Heights (2002)	\$65,000	\$75,350
<b><u>Average</u></b>	<b><u>\$78,442</u></b>	<b><u>\$88,336</u></b>

(Year) shows expiration date of contract

Chart 4 below show the position of police officers in Spring Lake Heights in both base wage and total compensation, relative to the comparative communities at the end of 2003, the expiration date of the Spring Lake Heights contract.

**Chart 4 - Comparison of Base Wage & Total Compensation**  
**Based on PBA Exhibits 2-21, 70-74; 87**

	<b><u>Base Wage</u></b>	<b><u>Total Compensation</u></b>
Avon-By-The-Sea	\$71,293	\$83,961
Belmar	\$71,442	\$83,038
Bradley Beach	\$68,275	\$80,994
Brielle	\$63,549	\$76,864
Colts Neck	\$63,549	\$71,041
Manasquan	\$70,295	\$81,132
Neptune City	\$68,117	\$77,491
Point Pleasant	\$70,713	\$82,403
Sea Girt	\$73,979	\$79,312
South Belmar	\$74,398	\$85,844
Spring Lake	\$74,375	\$84,950
State Troopers	\$75,566	\$90,179
Wall Twp.	\$77,932	\$88,923
 Spring Lake Heights	 \$65,000	 \$75,350
 <b><u>Average</u></b>	 <b><u>\$71,037</u></b>	 <b><u>\$82,010</u></b>

Based on Chart 4, Borough police officers are \$6,037 below the average wage base in 2003 or 9.29% and \$6,660 below the average total compensation of the comparative officers in 2003 or 8.84%. This becomes more significant when one analyzes Chart 2 and the subsequent contract analysis by municipality. When one removes the effect of wage adjustments from the base wage of the comparative departments, the result is the actual percentage increase in the base wage. Chart 5, shows that analysis.

**Chart 5 - Comparison of Base Wage & Total Compensation**  
**Based on PBA Exhibits 2-21, 70-74; 87**

	<b><u>2003</u></b>	<b><u>2004</u></b>	<b><u>2005</u></b>	<b><u>2006</u></b>
Avon-By-The-Sea	4.00%	4.00%	4.00%	
Belmar	4.00%	4.00%	4.00%	
Bradley Beach		4.00%	4.25%	4.25%
Brielle	4.00%	4.00%	4.00%	

Colts Neck	4.75%	4.75%	4.75%	4.75%
Manasquan	4.40%	4.40%	4.00%	
Neptune City	4.25%	4.25%	4.25%	
Sea Girt	3.75%	3.75%	3.75%	
South Belmar	4.00%	4.00%	4.00%	
Spring Lake	4.40%	4.40%		
Wall Twp.	3.72%			
<b><u>Average</u></b>	<b><u>4.13%</u></b>	<b><u>4.15%</u></b>	<b><u>4.11%</u></b>	<b><u>4.50%</u></b>

What this means is that just to remain 8.84% below the average total compensation received by police officers in the comparative departments, the arbitrator would need to award approximately 4.15% across-the-board. If the Borough's proposal was awarded, a police officer would be making a base wage of \$73,367 in 2006. This would still be \$5,075 (6.92%) below the average salary of the current top police officers under contract. (Chart 3).

The PBA points out that it is not seeking to be paid near the top of the comparative departments, they merely seek to be compensated closer to the average. Further, the Borough's use of negotiated increases of other non-law enforcement Borough employees as a comparative cannot be given significant weight. County of Essex v. Essex County Sheriff's PBA Local No. 183, PERC No. 2005-52, IA-2003-37 (2005).

The PBA is also seeking a \$50 per year increase in clothing allowance. As shown in the detailed analysis above, clothing allowance among the comparable departments takes form in two levels. The PBA submits that its request to increase the clothing allowance will permit a minimal gain in attaining total compensation.

The PBA also seeks to remove the payment for holidays from the contract and to make an adjustment to the base wage on January 1, 2005. This is a trend throughout the State of New Jersey and within the comparable departments, two departments have completely incorporate their holiday leave into their base wage and another department has incorporated 8 of their 14 holidays into base salary. The PBA contends that this has a

negligible impact on the Borough. The only cost to the Borough would be in pension payments. Again, this amount would be negligible as the Borough is currently responsible to pay only 40% of the total municipal assessment. The PBA also seeks premium pay for working the well-recognized six major holidays. This is a giveback by the PBA, as police officers used to receive premium pay for all named holidays.

Finally, the PBA is seeking a non-economic phrase to be included in the grievance procedure, "minor discipline." Pursuant to N.J.S.A. 34:13A-5.3, public employees may have their minor disciplinary matters (5 days or less) subject to the arbitration procedure in the parties' CBA. However, the statute requires that this phrase be made a part of the parties' contract. While historically, the PBA has enjoyed this right, the PBA believes the statute mandates inclusion in the CBA. As to all of the proposals submitted by the PBA, it is important to note that the Borough has never provided an articulated reason opposing these proposals. Based on the above and as previously argued, the PBA believes that its proposals are within the reasonable economic and non-economic parameters as recorded by the Public Employment Relations Commission and shown in the comparable public contracts submitted at hearing.

#### **Private Sector Comparison**

The PBA asserts that private sector comparisons are not entitled to significant weight in comparisons to police officers. The PBA notes 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. This best evidence and best comparison universe of comparison concept has been supported by arbitrators. 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 a 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 a 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 submits that the Commission's recent decision in County of Essex v. Essex County Sheriff's PBA Local No. 183, PERC No. 2005-52, IA-2003-37 (2005) sets forth the definitive statement on the "lawful authority of the employer." The Commission stated:

- Interest arbitration is an extension of the negotiations process, City of Clifton, PERC 2002-56, 28 NJPER201 (¶33071 2002), and throughout formal arbitration proceedings the arbitrator may continue to mediate and assist the parties in reaching a mutually agreeable settlement. N.J.S.A. 34:13A-16f(3)...The Reform Act reflects the Legislature's intent that arbitrators focus on the full range of statutory factors - not just public safety salaries in surrounding jurisdictions or the governing body's ability to pay the other's party's offer. (Citing, Hillsdale, 137 N.J. at 85-86; Washington Township, 137 N.J. at 82; Fox v. Morris County, 266 N.J. Super. at 516-517; Cherry

Hill. Accordingly, the Act expressly requires the arbitrator to indicate which statutory factors are deemed relevant, satisfactorily explain why the others are not relevant, and analyze each relevant factor. N.J.S.A. 34:13A-16g. It also expressly requires the arbitrator to consider the limitations imposed on the employer by the CAP law. However, while the Act directs “due weight” be given to the taxpayers’ interest, it does not automatically equate the employer’s offer with the public interest. Middlesex Cty., PERC No. 98-46, 23 NJPER 595 (¶28293 1997). The Legislature also recognized “the unique and essential” duties of law enforcement officers and found that an effective interest arbitration process was requisite to maintaining their “high morale,” thereby ensuring the efficient operation of public safety departments and the protection of the public. N.J.S.A. 34:13A-14. Accordingly, arbitrators have viewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale. (citing, Teaneck, 25 NJPER at 459. The Commission further stated, the Legislature rejected proposals that would have amended the predecessor statute to limit increases to the statutory CAP rate, or otherwise set a numerical standard for arriving at an award. Instead, the Legislature directed that disputes be resolved by conventional arbitration, thereby vesting arbitrators with the responsibility and discretion to weigh the evidence and fashion an award.

In exercising that discretion, an arbitrator unquestionably must take into account financial constraints and budget caps, and determine that the net annual economic changes for each year of the agreement are reasonable. (citing, Hillsdale, 137 N.J. at 86; N.J.S.A. 34:13A-16d(2)) However, the CAP law is only one of the many factors an arbitrator must consider. Cf. Irvington, 81 N.J. at 296. Moreover, in enacting both the interest arbitration law and local finance statutes, we believe the Legislature understood that negotiations and interest arbitration would require public officials to consider and plan for settlements and awards that might require budget adjustments.

In sum, an arbitrator must consider the financial evidence and explain how he or she weighed the financial impact and lawful authority criteria, along with the other factors deemed relevant. However, the Reform Act does not require an arbitrator to award the amount the employer has budgeted. Middlesex. Further, an arbitrator does not have the statutory responsibility or legal authority to direct an employer as to how to finance or comply with an award. See, Irvington, 81 N.J. at 296.

### **The Financial Impact on the Governing Unit Its Residents and Taxpayers**

The PBA relied upon the certification of its financial expert, Vincent J. Foti. The following are relevant excerpts from the certification:

1. **Results of Operations** (AFS sheet 19)

This extremely important schedule indicates the amount of surplus generated during the year. Conceptually, it gathers or summarizes the closing entries to operations of various accounts. This is similar to the "bottom line" in the private sector.

<u>Year</u>	<u>Amount</u>
2003	\$385,385
2002	\$458,593
2001	\$874,269

The amount for 2001 was higher than usual due to the fact the Borough had three (3) Miscellaneous Revenues (2001 AFS sheet 20) that the Borough choose not to anticipate; Tycomm Contract \$280,440, Excess Funds Unemployment Trust \$93,954, Excess Funds Public Assistance \$59,766. Revenues of this type will occur periodically and cause a jump in the Results of Operations when a municipality choose' not to anticipate the revenue. The difference between 2001 and 2002 should not be viewed as a decline.

The Borough has the ability to generate surplus, there is no mention of this significant factor in the Borough's certification.

2. **Budget Revenues** (AFS sheet 17)

This schedule shows the total revenues anticipated for the year and the amount actually realized.

<u>Year</u>	<u>Anticipated</u>	<u>Realized</u>	<u>Excess (Deficit)</u>
2003	\$4,115,929	\$4,214,511	\$98,683
2002	\$4,182,929	\$4,367,393	\$184,464
2001	\$4,166,566	\$4,343,727	\$177,161

This clearly shows the Borough can generate excess revenue. Revenue that is not anticipated is recorded as Miscellaneous Not Anticipated, which would again cause variations in the numbers but not to be interpreted as a negative, the revenue is merely recorded in a different section. This was not addressed in the Borough's certification.

3. **Unexpended Balance of Appropriation Reserves** (AFS sheet 19)

This is the amount of unspent budget appropriations from the prior year which pursuant to N.J.S.A. 40A-60 automatically lapse to surplus.

<u>Year</u>	<u>From Year</u>	<u>Amount</u>
2003	2002	\$111,340
2002	2001	\$ 84,903
2001	2000	\$ 42,152

This indicates a certain amount of budget flexibility, which again was not indicated in the Borough's certification.

4. **Fund Balance** (2003 Report of Audit)

The Fund Balance or Surplus as it is referred to is the difference between the Assets and Liabilities, referred to as "Cash Surplus". The following chart shows the Borough's surplus for the last six years and its usage in the budget.

<u>Year</u>	<u>Balance 12/31</u>	<u>Utilized in Budget</u>	<u>%Utilized</u>
2003	\$ 903,977	\$ 410,000	46%
2002	\$ 928,592	\$ 410,000	45%
2001	\$1,039,997	\$ 570,000	55%
2000	\$ 769,100	\$ 600,000	78%
1999	\$ 825,347	\$ 500,000	61%
1998	\$ 778,689	\$ 465,000	60%

The Borough has been consistent with its use of surplus in the budget, it has always been advocated by the Division of Local Government that surplus is the taxpayers money and should be returned to them on regular basis. There should be no unreasonable accumulation of surplus. The Borough has clearly demonstrated its ability to generate the surplus it has utilized in the budgets. The Borough's certification makes no reference to the Surplus.

5. **Tax Rates** (2003 Report of Audit, Abstract of Ratables)

The following chart will clearly show that the Borough has been able to basically maintain a very stable tax rate. The 2000 and 2001 tax rates were stable and they continued to remain stable after a revaluation from 2002 to 2004.

<u>Year</u>	<u>Municipal</u>	<u>County</u>	<u>School</u>	<u>Total</u>
2004	.383	.414	.917	1.714
2003	.380	.427	.808	1.615
2002	.374	.366	.821	1,561
2001	.684	.640	1.389	2.713
2000	.664	.593	1,376	2,633

An additional chart is attached Exhibit A Monmouth County General Tax Rates listing the tax rates for all 53 municipalities in Monmouth County, Spring Lake Heights ranks number 40 out of the 53 municipalities, further indicating there is no stress on the tax rate. The Borough's certification did not reflect any reference to the stable tax rate. The rating agencies, Moodys, Standard & Poors recommend a reasonable increase each year.

6. **Tax Levy** (2003 Report of Audit)

The total Tax Levy is the amount that is funded by the taxpayers, for municipal purposes, school tax and county. The following chart will show the municipal portions is less than 1/3 of the total levy.

<u>Year</u>	<u>Amount</u>	<u>% Municipal</u>
2003	\$11,822,807	24%
2002	\$11,033,024	25%
2001	\$10,195,161	27%
2000	\$ 9,846,850	27%

The Tax Rate in item E indicated stability. This is further supported by the consistency in the tax levy and the percentage that goes for municipal purposes. The Borough's certification makes no reference to these facts.

7. **Property Values** (2002, 2003 Abstract of Ratables, 2003 Report of Audit)

Property values continue to remain stable.

<u>Year</u>	<u>Amount</u>
2003	\$703,517,770
2002	\$703,958,593
2001	\$373,986,886
2000	\$371,295,327

A separate chart is attached Exhibit B - Monmouth County Property Values, indicating Spring Lake Heights ranks 27 out of 53 municipalities.

The increase in 2002 is the result of a Revaluation, and it is not uncommon for the values to more than double.

8. **Reserve for Uncollected Taxes** (2002 Report of Audit)

The Reserve for Uncollected Taxes is what is referred to as a Non-Spending appropriation, similar to a Reserve for Bad Debts in business. It provides an allowance for those taxes that may not be paid by the end of the budget year. The state average for this is 93%. Spring Lake Heights has an almost perfect collection rate as evidenced by the following chart.

<u>Year</u>	<u>Collection Rate</u>
2003	98.92%
2002	98.59%
2001	98.72%
2000	98.77%

When a municipality begins to experience financial stress, this is usually one of the critical areas monitored by the state. The Borough's certification makes no mention of this most significant item being near perfect.

9. **Debt Service** (2003 Annual Debt Statement)

Pursuant to N.J.S.A. 40A:2-6 the Debt limitation for municipalities shall not exceed 3.5% of the average equalized valuation. The following chart indicates the Borough is well below the statutory debt limit.

Equalized Valuation Basis (As of 12/31/03)	\$694,562,830
3.5% of Equalized Value	24,309,699
Net Debt is 0.16%	1,158,192

The Borough's remaining borrowing power is \$23,151,507. The Borough is well below the statutory Debt limit which further adds to their financial stability.

10. **Cash Balances**(AFS sheet 9)

The Borough is in a very good cash position, as indicated in the following chart taken directly from their own financial statements.

<u>Account</u>	<u>As of December 31, 2003</u>
Current Fund	\$ 2,783,687
General Capital	\$ 1,015,128
Trust	N/A

A positive cash flow has enabled the Borough to earn \$61,170 in interest income for 2003 (AFS sheet 20).

11. **CAP Calculation**

Attached are the official State of NJ CAP Calculations for the years 2004 and 2005 both providing additional appropriations for CAP banking. Specifically there is available for 2005 \$278,884.31.

Also, attached is the Local Finance Notice as to how the new CAP law is to be applied. It is inconceivable that there should not be any impact for the first few years in as much as the rate may have been decreased, however, the Base will be increased. Similar to the concept of a revaluation.

When applying the CAP to the municipal budget it only applies to a section of the budget referred to as the operating section, there are items and charges outside the CAP that must be considered. A municipal budget must be looked at globally, no one specific appropriation can be blamed for the CAP. Since the original CAP law inception, there have been continuous modifications and changes to the application of the formula.

In my opinion, the current CAP formula is not posing a financial hardship or impositions on the Borough ability to fund its obligations.



### The Cost of Living

The PBA notes that the cost of living data is regional. All evidence with respect to wages, settlements, and arbitration awards, placed into evidence by the PBA is regional. The same impact of cost of living was felt on those other jurisdictions as well. The result of those wage increases, awards and settlements, is the result of the interplay among all statutory criteria, including cost of living.

The PBA contends that the cost of living criteria is one indicator and is not controlling. Years ago when cost of living was at or near double digit level, employees did not receive increases of like magnitude. Nor should the employees receive the identical value of cost of living at this time because of a lower value. Any employer's reliance on cost of living data is purely situational. The PBA acknowledges that the cost of living data does not fully support its proposal of 4.25%. However, the overview is relevant, as the Borough currently pays officers below the average of other law enforcement officers in other municipalities who are subject to the same cost of living considerations and have a relatively high pattern of settlement and award placed into evidence.

It is well known that the CPI for Urban Wage Earners in the Philadelphia-Wilmington-Atlantic Borough Region increased by 3.40% to 4.2% in 2004. (P-31 and 34). The CPI has a direct effect upon compensation costs. The PBA maintains that the CPI should only be used as a general measure of the cost-of-living increase in a particular region and should not be viewed (1) in a national context; and (2) should not be the ultimate determination of the actual increases experienced by persons within a particular Borough; and (3) viewed in terms of ranges and not point specific percentages. This is particularly true in light of Exhibit 30 entered by the PBA that shows the cost of total compensation for private industry workers in the Northeast rose by 4.3% in 2003 and is on path to increase by 4.8% in 2004. (P-30).

### **The Continuity and Stability of Employment**

The PBA will not, here again, restate its comparability argument and area standards assertions. However, the PBA would like to take notice of one very important fact that appears to be overlooked by the Borough. If one accepts the position forwarded by the Borough, the compensation of law enforcement officers in this Department will become so anemic that law enforcement services could, and most likely will, begin to suffer. This is because the compensation level will be so significantly below that of comparable communities that officers will either not come to work for Spring Lake Heights or look to leave shortly after being trained. It only stands to reason that the PBA's position should be awarded so as to maintain the most important aspect and duty of a municipal government and that is to provide the residents of that community with the highest level of public safety. Therefore, to support the Borough's proposal would cause these law enforcement services to be compromised and would be clearly against public interest.

### **Grievance Procedure**

The PBA seeks to modify the grievance definition and procedure to include minor discipline. Since the State Legislature adopted the Policemen's Bill of Rights to permit public safety unions to negotiate a contractual provision, which would allow employees charged with discipline seeking a penalty of less than five (5) days to achieve their due process through the parties' grievance procedure, rather than through the more costly and time-consuming superior court process. This provision is not only of benefit to the employees, as it provides an expedient hearing process before an individual with an elevated expertise in the public safety field, but it benefits the residents in providing a relatively cost efficient means ensuring the rights of all parties.

### Summary

The PBA asserts that the Borough has not met its burden to establish a prima facie case for its last offer on salary. The PBA contends that the Borough's last offer on salary is outside the norm of public safety negotiations. The PBA submits that the Borough's proposal does not maintain pace with the cost of living nor is it consistent with other public safety comparables.

The PBA notes that Borough police officers have been working diligently, without a pay increase since December 31, 2002. The PBA notes that the officers have received no special dispensation when purchasing goods and services and have lost the time value of any salary increases. The PBA in reliance on its financial expert's Certification, submits that the impact of its last offer would have a minimal, if not negligible impact upon the taxpayers of the Borough.

In conclusion, the PBA requests that, based upon the entire record and the arguments set forth in its brief, that I award its last offer.

## BOROUGH

The Borough asserts that its police officers enjoy a competitive salary and that it will continue to provide a more than competitive salary in the future within the constraints of the CAP law. The Borough believes that the formulation of an equitable settlement for the coming contract term must be conditioned within the context of these factors.

The Borough noted the legislative amendments to the interest arbitration statute. According to the Borough, there has been a "reemphasis" and "redirection" of the statute which now provides greater awareness and significance of the interest and welfare of the public. This is demonstrated by the following additional statutory provision:

It also is 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; and

Further, it is the public policy of this State to prescribe the scope of the authority delegated for the purposes of this reform act; to provide that the authority so delegated be statutorily limited, reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good; and to mandate that in exercising the authority delegated under this reform act, arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved.

The Borough submits that in rendering their awards, Interest Arbitrators are required to consider:

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 monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget.

Interest Arbitrators must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under all the criteria set forth in the statute. Significantly, this statute has been revised to provide for conventional arbitration, giving the Interest Arbitrator greater flexibility in rendering his or her award. The Interest Arbitrator is permitted to award the economic position of either party with respect to each and every economic item. The Interest Arbitrator is further permitted to reject the economic position of either or both parties on any economic item, and to fashion his or her own economic package.

The Borough cites the two New Jersey Supreme Court companion cases which have had a significant impact upon the interest arbitration process. See Hillside PBA Local 207 v. Borough of Hillside, 137 N.J. 71 (1994); Township of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994). In Hillside and Washington, the Court examined the sufficiency of the evidence which the parties must present to an Interest Arbitrator and the relevance of the various eight statutory criteria. In Hillside, the Court instructed that "[i]n general, the relevance of the factor depends on the disputed issues and the evidence presented." Hillside, 137 N.J. at 82 (citing N.J.S.A. 34:13A-6(f)(5); N.J.A.C. 19:16-5.9). The Court also directed the Interest Arbitrator to "determine which factors are relevant, weigh them, and explain the award in writing." Id. Further, the Court cautioned that the Legislature did not intend that any one factor would be dispositive. Id. The Court further explained:

- As the statute states, an arbitrator need rely not on all factors, but only on those that the arbitrator deems relevant. An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence. An arbitrator who requires additional evidence may request the parties to supplement their presentations. . . . [T]he arbitrator need not require the production of evidence on each factor. Such a requirement might unduly prolong a process that the Legislature designed to expedite collective negotiations with police and fire departments. Id. at 83-84.

Moreover, even if the parties do not introduce evidence on a particular factor, the Interest Arbitrator's decision must explain the Interest Arbitrator's rationale for deeming that factor irrelevant. Id. at 84. "Without such an explanation, the opinion and award may not be a 'reasonable determination of the issues.'" Id. In summary, "an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant." Id. at 84.

The Borough contends that the Association has failed to meet its burden of proof with respect to its salary demands. The Borough submits that the PBA failed to present any compelling argument or evidence in support of the statutory criteria.

The Borough asserts that the PBA has failed to demonstrate that it could legally pay the demanded increases under the provisions of the CAP law. The Borough notes that the PBA's financial expert's report primarily addressed the Borough's ability to pay, based upon revenue projections and expenditure calculations. However, the Borough submits that the PBA must prove that the Borough may legally meet its expenditure limits after the proposed salary increase is in place. The Borough maintains that the PBA has failed to meet that burden.

The Borough submits that it has presented substantial evidence in its demographic and comparability exhibits as well as its budget analysis and financial summary, including the expert report submitted by Christine Brown. The Borough asserts that it has met its burden of proof by showing that the additional economic benefits are not warranted based upon demographic, wage and benefit comparability. The Borough further asserts that it met its burden of proof by showing that only the salary increase proposed by the Borough meets the legal obligations under the CAP requirements.

### Statutory Criteria

The following are the Borough's arguments, contentions and analysis in relation to the statutory criteria:

N.J.S.A. 34:13A-16(g) states that the Interest Arbitrator must determine the dispute based upon "a reasonable determination of the issues." "Reasonableness" requires the Arbitrator to apply a subjective standard. The Legislature enumerated eight statutory criteria to which the Arbitrator must give "due weight" in fashioning a decision.

### Interests and Welfare of the Public

The Act requires the Interest Arbitrator to consider "the interests and welfare of the public" in reaching a determination. This criterion focuses upon the priority to be given to the public employee's wages and other economic benefits within a municipality's finite budget and plans. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 183 (App. Div. 1993), rev'd on other grounds, Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994).

Generally, a public employer best serves the public interest by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services. While a municipality may have difficulty balancing these competing interests within the available budget, the municipality should not sacrifice fairness to its employees so that it may provide its residents with a plethora of unnecessary government services. On the other hand, a municipality should not reduce essential government services to satisfy the economic demands of over-reaching public employees.

The Borough notes that the Supreme Court recognized that although compulsory interest arbitration is an adversarial process between a public employer and its employees,

the public is a “silent party” to the proceeding. Hillsdale, 137 N.J. at 82. The Borough cites the Supreme Court’s observations on this criterion:

Compulsory interest arbitration of police and fire fighters’ salaries affects the public in many ways, most notably in the cost and adequacy of police and fire-protection services. Indeed, section 16g expressly requires the arbitrator to consider the effect of an award on the general public. Hence, an award runs the risk of being found deficient if it does not expressly consider “the interest and welfare of the public.” Id. at 82-83 (citations omitted).

The Interest Arbitrator must consider the effect the award will have on the citizens and taxpayers of the Borough of Spring Lake Heights. The Borough submits that it would not be in the interests and welfare of the public to grant the PBA’s unreasonable demands which would either overburden the Borough’s taxpayers or reduce services.

The Borough notes that the average award granted wage increases to police and fire personnel that exceed inflation. If wage increases continue to outstrip inflation and private sector salary increases at the current pace, the relative burden on the taxpayer will continue to increase.

The Borough contends that the PBA’s last offer places little emphasis on the interests and welfare of the public, the Borough’s ability to pay, the lawful authority of the Borough and the financial impact on the governing unit, its residents and taxpayers. The Borough submits that in developing its last offer it took into account not only the needs and desires of the bargaining unit, but also the above-mentioned criteria. The Borough submits that its last offer, which is reasonable and takes into account all of the statutory criteria, must be the position I award.

According to the Borough, an important element in determining the interests and welfare of the public and comparability is the demographics of the municipality. The residents of the Borough, “fighting” relatively low per capita income, net valuation taxable, and state equalized value, are “saddled” with a high tax rate, on an equalized basis.



The Borough asserts that a more accurate understanding of the interests and welfare of the public is established when reviewing the demographics of the Borough in comparison with “comparable” municipalities in Monmouth County:

The Borough ranked seventeenth (17<sup>th</sup>) out of fifty-three (53) municipalities in 2002 with respect to per capita income. (P-57).

The Borough ranked thirty-third (33<sup>rd</sup>) of fifty-three (53) in its population under the 2000 census figures. (B-1).

To raise revenue, the Borough must rely upon a tax base ranked twenty-fifth (25<sup>th</sup>) of fifty-three (53) with respect to net valuation taxable, and twenty-seventh (27<sup>th</sup>) with respect to state equalized value. (PBA 57).

The Borough submits that the above data shows that in terms of relevant comparables it falls squarely in the middle of the pack in Monmouth County, yet the PBA is demanding some of the highest salary increases in the County. The Borough contends that in light of these statistics, it is unreasonable for the PBA to demand a salary increase that will maintain a salary level at or near the highest in the County. The Borough asserts that its salary offer is reasonable, warranted, and in the interest and welfare of the public.

#### **Comparability and Overall Compensation**

The Act requires the Interest Arbitrator to consider a comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally in (a) public employment in the same or similar comparable jurisdiction (b) in comparable private employment and (c) in public and private employment in general.

The Act also requires the Interest Arbitrator to consider 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. N.J.S.A. 34:13A-16(g)(2) and (3). The Borough maintains that the comparable and overall compensation exhibits submitted at the interest arbitration hearing demonstrate the reasonableness of its position.

### Comparable Municipalities

The Borough ranked thirtieth (30<sup>th</sup>) highest among the fifty-three (53) Monmouth County municipalities in maximum base salary in 2002. (P-14). The Borough contends that the given its position again in the middle of the pack, the PBA's demands are completely unwarranted since an award of the PBA's last offer would move them close to the top of the maximum pay scale in the County. The Borough contends that an award of its last offer would maintain the relative salary ranking at a level comparable to other municipalities, both in absolute terms and in relative terms based on population, median income and tax rate.

The Borough submits that the "comparability" criterion does not mean that all municipalities must provide the same benefits or salary increases. If this were the case, salaries and benefits would never change and all municipalities would provide the exact same salaries and benefit packages. Encompassed within the "comparability" criterion is a consideration of trends throughout the State and the nation, as well as a consideration of when "enough is enough."

According to the Borough, the recent trends in other comparable municipalities demonstrate that the PBA's demands are excessive.

In the CBA negotiated between the Borough of Belmar and the PBA, effective from July 2002 to June 2006, the salary increases were 3.5% in the first year and 4.0% for the remaining three years. (B-17).

In the Borough of Avon-by-the-Sea, the CBA provides for a 4.0% across-the-board increase from January 2003 through December 2005. (P-3).

In Wall Township, the CBA provides for increases of 3.72% in 2001, then 3.9% in 2002 and 3.72% in 2003. (P- 14).

In Howell Township, the CBA provides for increases of 3.85% from 2001-2003 (P-14).

The CBA between the State and the State Troopers Superior Officers Association, from 2004 through 2007, provides for a 4.0% across-the-board increase. (P-20).

According to the Borough, in similarly situated municipalities, salary increases beyond 4% are the exception and not the norm. The Borough submits that the PBA's demands are excessive and not in accordance with salary increases in comparable jurisdictions.

#### **Other Borough Employees**

The Borough notes that police officer salaries far exceed the salaries of other Borough employees. Comparing the 2002 salaries of department heads and other non-unionized employees, only the Police Chief, Police Captain, Borough Clerk and Superintendent of Public Works have higher base salaries than the 2002 maximum police salary of \$65,000. (P-14 & 42). Also, for all non-unionized employees, the Borough eliminated longevity for all new hires as of October 2001, which causes a further disparity with police officers, who will continue to have longevity. (B-2).

Moreover, with respect to the CBA of the teachers, the top salary for the 2002-2003 school year was \$65,600, but this salary would not be reached until Step 16 in the salary schedule. (P-22). At the mid-level steps, the salary range was approximately \$35,000-\$40,000. The average teacher's salary in the Borough in 2004 was \$42,395, far below the average salary of the police bargaining unit. (P-62).

The longevity entitlement of this bargaining unit exceeds the longevity entitlement of all other Borough employees. As noted, longevity for non-union employees was eliminated several years ago, yet it continues to be part of the compensation package for police officers.

### National Wage Trends /Private Sector Employment

The Borough contends that national wage trends and private sector employment show the reasonableness of its economic offer. With wages tied to the CPI in many cases nationally, the Borough contends that its last offer more closely approximates the cost of living than the PBA's last offer. When the cost of gasoline and health care is subtracted from the CPI because bargaining unit members contribute to neither, the Borough's proposal becomes even more reasonable.

The Interest Arbitrator can take "judicial notice" of private sector wages increases compiled by the New Jersey Department of Labor. From 2001 and 2002, private sector wages in New Jersey increased by 1.6%. Private sector wages, which averaged \$44,153 in 2001, increased by an average of \$726 to \$44,879 in 2002, far below the wages paid to the Borough's police officers.

The Interest Arbitrator can also take "judicial notice" of reports issued by the Labor Relations Reporter, which indicated that collective bargaining settlements for 2003 fell below 2002 settlements for the same period. Settlements from January 1, 2003 through September 29, 2003 provided an average first year increase of 3.1% while first year settlements averaged 3.9% over the same period in 2002. The median increases over the same period decreased from 3.5% to 3.0%.

Labor unions recognize that overreaching demands may cause elimination of their members' jobs. As a result, unions have modified their demands. Unions negotiating with General Motors, Ford, Chrysler, Goodyear and Verizon all accepted some form of wage freeze. Specifically, the United Auto Workers reached a four year agreement with General Motors, Ford and Chrysler providing a wage freeze in the first and second years of the contract, a 2.0% wage increase in the third year, and a 3.0% increase in the fourth year. The

Communications Workers of America settled with Verizon for a five-year contract that provided for a wage freeze during the first year, including a \$1,600.00 lump-sum payment, and a 2.0% wage increase annually for the next four years of the agreement. The United Steelworkers of America's three-year contract with Goodyear provided for a three-year wage freeze, with profit sharing and cost of living adjustments.

### **The Lawful Authority of the Employer**

The Borough provided an analysis of the "lawful authority" criterion with an emphasis on the Cap Law:

- N.J.S.A. 34:13A-16(g)(5) requires the Interest Arbitrator to consider the "lawful authority of the employer" in determining whether the municipality or the union has proposed the more reasonable economic package.
- The New Jersey Local Government Cap Law (the "Cap Law"), N.J.S.A. 40A:4-45.1 et seq., restrains the lawful authority of the employer by limiting overall budget increases. It thereby restricts a municipality's ability to grant wage increases to its employees.
- In enacting the Cap Law, the Legislature declared it to be "the policy of the [State] that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads." N.J.S.A. 40A:4-45.1. The Legislature also recognized, however, that "local government cannot be constrained to the point that it would be impossible to provide necessary services to its residents. Id.
- The Cap Law controls the costs of local government by prohibiting a municipality, beginning on or after June 1, 2004, from increasing its tax levy by more than 2.5% over the previous year's tax levy, subject to certain exceptions. N.J.S.A. 40A:4-45.2. The New Jersey Supreme Court explained,

As the wording of the statute makes clear, it is the final line of appropriations in a municipal budget (less expenditures excepted from Cap consideration) which cannot exceed by more than [2.5]% the previous year's overall appropriations diminished by that year's Cap exclusions. The law does not preclude a municipality from increasing in excess of [2.5]% any particular line item or items which are reflected in the Borough's total appropriations. It is the budget as a whole, rather than each component thereof, which is subject to the [2.5]% ceiling.

- N.J. State P.B.A., Local 29 v. Borough of Irvington, 80 N.J. 271, 281-82 (1979).

Therefore, the Cap Law does not impose a line-item-by-line-item limitation. Instead, it places a limit on the overall budget to the extent it is subject to the Cap Law. Because salary expenditures fall within the Cap, the Legislature has already predetermined the maximum amount the Borough may increase taxes to cover police salary expenditures. N.J.S.A. 40A:4-45.3.

- N.J.S.A. 40A:4-45.14 provides that a municipality may, by the adoption of an ordinance under certain circumstances, increase its final appropriations by a percentage not to exceed a 3.5% rate as specified in the law. However, the law is also clear that a municipality is not required to increase the cap to 3.5%. If an ordinance is not so approved by the governing body, then the cap limit remains at 2.5%.
- Costs incurred to fund an adverse interest arbitration award must be taken into account by the municipality in determining whether overall employer budgetary appropriations exceeded the ceiling imposed by the Cap Law. Irvington, 80 N.J. 284-92; City of Atlantic City v. Laezza, 80 N.J. 255, 266 (1979). A municipality may, under extremely narrow circumstances, resort to an emergency appropriation to fund an arbitration award which exceeds the budget. The Local Budget Law explains when a municipality may make emergency appropriations. N.J.S.A. 40A:4-46 provides,

A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal. N.J.S.A. 40A:4-46; See N.J.S.A. 40A:4-20 (temporary emergency appropriations).

- Emergency relief, however, will not be available unless the municipality cannot foresee the need for funds at budget making time or “the need arises despite a bona fide effort to structure a reasonable budget.” Passaic v. Local Finance Board of the Department of Community Affairs, 88 N.J. 293, 303 (1982). Nevertheless, even if the municipality qualifies for an emergency appropriation to fund an interest arbitration award, an emergency appropriation will only delay major financial disaster. Irvington, 80 N.J. 271; City of Atlantic City v. Laezza, 80 N.J. 255 (1979).
- N.J.S.A. 40A:4-45.3, which sets forth exceptions to the Cap, partially exempts emergency temporary appropriations passed pursuant to N.J.S.A. 40A:4-20 “to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the municipality” and emergency appropriations passed pursuant to N.J.S.A. 40A:4-46 from the 5% Cap. Significantly, however, to the

extent the aggregate yearly emergency appropriations exceed “3% of the previous year’s final current operating appropriations,” they must be included in the following year’s budget and also must be included within the following year’s permissible Cap limit. N.J.S.A. 40A-45.3(c); 40A:4-46; 40A:4-47.

- Under the Local Budget Law, N.J.S.A. 40A:4-1 et seq., a local governing body possesses “the primary responsibility for allocating available resources among the various services which it chooses to provide to its inhabitants.” Laezza, 80 N.J. at 263. A municipality may not adopt a budget unless the Director of the Division of Local Finance certifies his or her approval, even when the statute permits a “self-audit.” N.J.S.A. 40A:4-10. Additionally, the Director must approve all emergency appropriations which exceed 3% of the municipality’s operating appropriations. N.J.S.A. 40A:4-49. To approve the emergency appropriation, the Director must determine that an “emergency” exists and that the proposed appropriation is “necessary.” N.J.S.A. 40A:4-49(d), (e). If the Director approves the emergency appropriation, the municipality may use funds from the next year’s Cap allowed increase during the current year. Therefore, emergency appropriations “in excess of 3% of the Borough’s budget . . . will merely operate to postpone, rather than avert, major fiscal crises.” Irvington, 80 N.J. at 298.
- Because funding adverse compulsory interest arbitration awards which exceed Cap through emergency appropriations merely delays fiscal disaster, municipality will have to exercise their inherent management prerogative to determine “whether, and to what extent, police personnel or other municipal employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced” to keep the municipal budget within the mandatory 5% Cap. Irvington, 80 N.J. at 298 (citations omitted).
- Amendments to the Cap Law have narrowed the exceptions from the Cap limitation, making it increasingly more difficult for municipalities to keep budgets within the Cap. The Legislature eliminated the following exceptions from the Cap Law:
  1. Cost of special or cap referendum elections;
  2. Amounts offsetting losses in federal revenue sharing;
  3. Purchase of police vehicles and related equipment;
  4. “Additional” spending for testing of water supplies or other expenditures necessary to comply with DEP orders or permits for public water supply systems;
  5. Insurance costs over that of 1985;
  6. 9-1-1 system termination equipment purchased, leased or maintained;
  7. Project costs in a transportation development district project agreement;

8. All budgeted solid waste related expenses;
9. State and federal mandates prior to January 1, 1991.

Relying on the Certification of its financial expert, the Borough contends that it is limited in the salary increases that it can offer to the PBA because greater increases would violate the restrictions of the Cap law. The Borough asserts that its financial expert properly considered the 2.5% limit, as opposed to the 3.5% limit suggested in the Certification of the PBA's financial expert, because the Borough has not approved an ordinance increasing the expenditure limits to 3.5%. The Borough emphasizes that it is not required to increase the expenditure limits to 3.5%. Relying on the Certification of its expert, the Borough asserts that its last offer is financially and legally acceptable and warranted.

According to the Borough, the PBA Certification focuses primarily on the Borough's revenue and its "ability to pay." The Borough submits that it has not argued that it lacks the ability to pay, although the salary proposal of the PBA, if awarded, would place a substantial increased financial burden on the Borough. The Borough contends that the focus of the PBA Certification on revenue and not on expenditure is irrelevant. The Borough characterized the PBA's claim (in the Certification) of a potential CAP problem for 2006 as "pure speculation" that cannot be sustained in view of the clear mandates of the law and the financial picture of the Borough. Moreover, the claim of error in the Borough's Certification related to the omission of a P.O. Nash, even if correct, has no bearing on the ultimate conclusion because the effect would apply equally to the Borough's proposal and to the Association's proposal. The conclusion in the PBA Certification that the Borough is "in sound financial condition" misses the point. The Borough asserts that the Legislature has limited the increases in expenditures and the Borough is bound by that determination, unless and until the Legislature changes the law.



**The Financial Impact on the Governing Unit,  
Its Residents and Taxpayers**

N.J.S.A. 34:13A-16(g)(6) requires the Interest Arbitrator to consider the respective economic offers' financial impact on the governing unit, its residents and taxpayers in determining whether the municipality or the employee representative presents the more reasonable final offer. The considerations under this factor "do not equate with a municipality's ability to pay." Hillsdale, 137 N.J. at 86. The New Jersey Supreme Court emphasized that "[i]t is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of the public interest arbitration award." Id. (quoting 263 N.J. Super. at 188 n.16). Moreover, the municipality does not carry the burden of proving its financial inability to meet the union's final offer. Id.

The Borough submits that its last offer considers the financial impact its award will have on the governing unit, its residents and taxpayers because it takes into account the State's bleak economic condition. The economy impacts upon the Borough's ability to raise taxes. The effect of granting an economic benefit in excess of that proposed by the Borough will have a determined impact on the Borough's attempt to minimize a projected increasing tax rate, contrary to the statutory criteria requiring the Interest Arbitrator to consider the financial impact on the governing unit, its residents and taxpayers.

The Borough points out that in its amendments to the Interest Arbitration statute, the Legislature specifically requires the Interest Arbitrator to consider how the award will impact on the tax rate and the ability of the municipality to "(a) maintain existing local programs and services, (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget."

Based on the arguments set forth above, the Borough submits that an award above its last offer would have a detrimental financial impact on the governing unit, its residents and taxpayers.

### **The Cost of Living**

N.J.S.A. 34:13A-16(g)(7) requires the Interest Arbitrator to consider the consumer price index ("CPI") in determining whether the municipality or the employee representative has proposed the more reasonable economic package. The CPI measures a wage earner's purchasing power. When a wage earner receives a salary increase equaling the CPI increase, the wage earner theoretically will be able to continue to maintain his or her standard of living. In 2002, the CPI rose by 2.4%, a substantial decrease from the 3.4% increase in 2000. In 2003, the CPI rose by an even lesser rate of 1.9%. Factored into these increases is the increase in health insurance costs, a factor not relevant for the Borough's employees. The Borough's police officers have consistently received wage increases which dramatically exceeded increases in the CPI in the 1999-2002 CBA. (J-1).

Based on the above, the Borough contends that in light of the present and projected cost of living figures, the Borough's proposal is more realistic and reasonable than the PBA's and should be awarded.

### **Continuity and Stability of Employment**

N.J.S.A. 34:13A-16(g)(8) requires and Interest Arbitrator to consider the "continuity and stability of employment" in determining whether the municipality or the employee representative presents the more reasonable economic package. The Borough contends that the continuity and stability of employment would be eroded if its last offer is not awarded.

The Borough contends that the economy is slowing down in both the public and private sectors. When composing its economic position, The Borough submits that it took

the continuity and stability of employment into consideration in formulating its last offer. in order to maintain a stable level of governmental services. To the contrary, the goal of the PBA is to obtain the greatest economic advantages for its members. The Borough contends that the PBA presented no information concerning the continuity and stability of employment. The Borough contends that an award in excess of its last offer could lead to a loss of jobs in the Borough.

Based on the above, the Borough asserts that consideration of this criterion favors the award of its last offer.

### **Conclusion**

The Borough submits that these are unusual times that call for unusual fiscal measures. The nationwide recession was magnified by the events of September 11, 2001. The administration in New Jersey is faced with an unprecedented budget shortfall. The full fiscal impact of these circumstances on municipalities and their residents will not be known for some time. This is not the atmosphere to blindly grant salary increases based upon the "going rate", although the PBA's last offer exceeds this figure. It is time to grant reasonable increases such as those proposed by the Borough and to implement cost containment measures.

The Borough contends that the PBA's presentation fails to meet its burden of proof. The PBA failed to produce any evidence regarding any of its demands to meet the statutory criteria. The PBA's failure to present evidence in support of the statutory criteria and established case law precludes the Interest Arbitrator from legally considering, let alone awarding, any of the Association's demands.

The Borough asserts that its last offer more reasonably reflects the statutory criteria when compared to the PBA's last offer. It considers that interests and welfare of the public;

the officer's overall compensation package; salaries and benefits of other employees including police employees in nearby communities; public sector employees in New Jersey and nationwide; and private sector employees in New Jersey and nationwide.

The Borough further asserts that its last offer also considers the impact of the "Cap" law on the Borough's ability to grant wage increases, and the financial impact on the governing unit, its residents and taxpayers in light of modest increases in the cost of living, the relatively "tight" budget appropriations leaving little room for unanticipated expenditures and the withering of revenue sources to fund budget increases, exacerbating the tax rate problem faced by the Borough.

Finally, the Borough asserts that its last offer will maintain continuity and stability of employment. The Borough requests that its last offer be awarded in its entirety.

### Discussion and Analysis

The parties presented testimony and more than 100 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 as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as 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.

I shall award a four-year agreement. The duration of the new four-year agreement shall be January 1, 2003 to December 31, 2006.

I shall award the following salary increases:

- a. 4% across-the-board salary increase effective January 1 of 2004.
- b. 4% across-the-board salary increase effective January 1 of 2005.
- c. 3.75% across-the-board salary increase effective January 1 of 2006.
- d. 3.75% across-the-board salary increase effective January 1 of 2007.

I shall award a modification in the grievance procedure by the inclusion of minor discipline. I shall award the inclusion of holiday pay in base salary to be effective January 1, 2006 and the continuation of overtime for six of twelve holidays subject to verification of current practice. The stipulated agreement regarding Article V, Section B is incorporated in the award. All other proposals of the Borough and the PBA are denied.

#### **Cost of Salary Proposals**

The current bargaining unit (at the close of the record) includes eight police officers and three sergeants. The total base pay salary in 2002 is \$468,808. The base salary for calculation purposes is the salary that a bargaining unit member is paid in 2002. An additional police officer was hired on January 27, 2003 at \$26,100. I shall include the additional officer in the cost out of the parties' last offers and my award. This brings the total base pay salary to \$494,908.

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 amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer's average salary costs down because senior officers are replaced by entry level 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 2003, 2004, 2005 and 2006 do not include the cost of increments.

### **2003**

The PBA proposed a 4.25% across-the-board salary increase to be effective January 1, 2003. The cost of the 4.25% increase in 2003 (excluding increments) is \$21,034. The total cost of the PBA's proposed salary increase in 2003 is \$515,942. The cost of the PBA's clothing allowance proposal is \$600 annually.

The Borough proposed a 3.5% across-the-board salary increase to be effective January 1, 2003. The cost of the 3.5% increase in 2003 (excluding increments) is \$17,322. The total cost of the Borough's proposed salary increase in 2003 is \$512,230.

I awarded a 4% across-the-board salary increase effective January 1, 2003. The cost of the 4% salary increase in 2003 (excluding increments) is \$19,796. The total cost of my award in 2003 is \$514,704. The cost of the awarded salary increases in 2003 is \$1,238 less than the PBA's 2003 salary proposal and \$2,474 more than the Borough's 2003 salary proposal.

### **2004**

The PBA proposed a 4.25% across-the-board salary increase to be effective January 1, 2004. The cost of the 4.25% salary increase in 2004 (excluding increments) is \$21,928. The total cost of the PBA's proposed salary increase in 2004 is \$537,869.

The Borough proposed a 3.8% across-the-board salary increase to be effective January 1, 2004. The cost of the 3.8% salary increase in 2004 (excluding increments) is \$19,465. The total cost of the Borough's proposed salary increase in 2004 is \$531,695.

I awarded a 4% across-the-board salary increase effective January 1, 2004. The cost of the 4% salary increase in 2004 (excluding increments) is \$20,588. The total cost of my award in 2004 is \$535,292. The cost of the awarded salary increase in 2004 is \$1,340 less than the PBA's 2004 salary proposal and \$1,123 more than the Borough's 2004 salary proposal.

### 2005

The PBA proposed a 4.25% across-the-board salary increase to be effective January 1, 2005. The cost of the 4.25% salary increase in 2005 (excluding increments) is \$22,859. The total cost of the PBA's proposed salary increase in 2005 is \$560,728. The PBA also proposed the inclusion of holiday pay in base salary to be effective January 1, 2005. The cost of the inclusion of holiday pay in base salary is the cost of pension payments and possible impact on overtime rates. Neither party provided data concerning the cost of overtime or pension payments.

The Borough proposed a 2.5% across-the-board salary increase to be effective January 1, 2005. The cost of the 2.5% salary increase in 2005 (excluding increments) is \$13,292. The total cost of the Borough's proposed salary increase in 2005 is \$544,987.

I awarded a 3.75% across-the-board salary increase effective January 1, 2005. The cost of the 3.75% salary increase in 2005 is \$20,073. The total cost of my award in 2005 is \$555,366. The cost of the awarded salary increases in 2005 is \$2,786 less than the PBA's 2005 salary proposal and \$6,781 more than the Borough's 2005 salary proposal.



## 2006

The PBA proposed a 4.25% across-the-board salary increase to be effective January 1, 2006. The cost of the 4.25% salary increase in 2006 (excluding increments) is \$23,831. The total cost of the PBA's proposed salary increase in 2006 is \$584,559.

The Borough proposed a 2.5% across-the-board salary increase to be effective January 1, 2006. The cost of the 2.5% salary increase in 2006 (excluding increments) is \$13,625. The total cost of the Borough's proposed salary increase in 2006 is \$558,612.

I awarded a 3.75% across-the-board salary increase effective January 1, 2006. The cost of the 3.75% salary increase in 2006 is \$20,826. The total cost of my award in 2006 is \$576,192. The cost of the awarded salary increases in 2005 is \$3,005 less than the PBA's 2006 salary proposal and \$7,201 more than the Borough's 2006 salary proposal.

I awarded the inclusion of holiday pay in base salary to be effective January 1, 2006. The cost of the inclusion of holiday pay in base salary is the cost of pension payments and possible impact on overtime rates. Neither party provided data concerning the cost of overtime or pension payments. I have considerable experience with this issue in other jurisdictions. A common practice when including holiday pay in base salary is to off-set the employer's cost of the holiday pay in base salary. This is done by either reducing the value of the holidays to be rolled into base or agreement to a lower salary increase. In my analysis of comparable salary increases, I determined that a 4% annual salary increase is consistent with the salary data in the record for Monmouth County. I also determined that a 4% annual increase was consistent with the state-wide salary data provided by PERC.

I have offset the salary increases in 2005 and 2006 by a total of one-half of one percent (0.5%) in consideration of the inclusion of holiday pay in base salary.

### *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 both parties proposed a four-year Agreement. I shall award a four-year agreement to commence on January 1, 2003 and continuing to December 31, 2006.

#### Salary

The Borough proposed a 3.5% across-the-board salary increase in 2003, a 3.8% across-the-board salary increases in 2004, and 2.5% across-the-board salary increases in 2005 and 2006. The PBA proposed 4.25% annual across-the-board salary increases in 2003, 2004, 2005 and 2006.

The PBA submitted salary data showing the average salary increases in eleven Monmouth County municipalities. This salary data shows average base salary increases of 4.13% in 2003, 4.15% in 2004 and 4.11% in 2005. (PBA Chart 5). The PBA submitted other salary data showing higher average salary increases but that data is skewed by the inclusion

of "aberrational" increases from non-municipal jurisdictions. Chart 5 is a more representative measure of salary increases in comparable municipalities. Chart 5 includes salary data from the contiguous communities of Spring Lake, Sea Girt and Wall Township. The average salary increases in the three contiguous communities is 3.96% in 2003 and 4.08% in 2004. Sea Girt reported a 3.75% salary increase in 2005.

The Borough contends that the PBA's salary proposals are excessive when compared to other comparable municipalities. Specifically, the Borough cited negotiated settlements in a number of Monmouth County municipalities showing average salary increases of 3.93% in 2003, 4% in 2004, 4% in 2005 and 4% in 2006. The Borough asserts that this data shows that salary increases beyond 4% are the exception and not the norm.

I agree with the Borough that the PBA's last offer exceeds the reported average salary increases for police officers. However, the Borough's last offer on salary averages 3.08% annually. This is substantially less than the Borough's own Monmouth County salary data; the PERC reported average of salary increases for all interest arbitration awards and voluntary settlements; and all of the CBAs 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 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.

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. The evidence in the record justifies a higher salary increase in 2005 and 2006. However, in consideration of the Borough's additional costs (pension, overtime), I have awarded a total increase of 7.5% in 2005 and 2006 which is approximately .5% to .75% below the average salary increases in Monmouth County and state-wide in 2005 and 2006. This will offset the Borough's costs associated with the inclusion of holiday pay in base salary in 2006.

The PBA contends that the maximum patrol officer salary is significantly behind other comparable Monmouth County municipalities and deserving of a salary increase above the County and state-wide average salary increases. I have awarded salary increases that are consistent with County and state-wide averages in 2003 and 2004. I have awarded salary increases in 2005 and 2006 that are in total, approximately .5% to .75% below the average salary increases in Monmouth County and state-wide in 2005 and 2006. This is intended to offset the Borough's costs associated with the inclusion of holiday pay in base salary in 2006. I will provide additional analysis of the PBA's contentions in the discussion and examination of the comparability criterion.

In summary, I find that the terms of my award satisfy the requirements of the interests and welfare of the public criterion to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. Reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. 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 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 page 18). 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 current data (2003, 2004, 2005) on this sub-factor. The Borough submitted data from the Labor Relations Report showing that settlements from January 1, 2003 through September 29, 2003 provided an average first year increase of 3.1% while first year settlements averaged 3.9% over the same period in 2002. The median increases over the same period decreased from 3.5% to 3.0%.

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 3.5% for the year ending March 2005.

The current data on average salary increases in private sector employment in general shows that the PBA's proposed salary increases exceed average salary increases in the private sector generally. The Township's proposed salary increases are consistent with average increases in the private sector in 2003 and 2004 and below average increases in 2005. 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. 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 consistent with 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 notes that police officer salaries far exceed the salaries of other Borough employees with only the Police Chief, Police Captain, Borough Clerk and Superintendent of Public Works receiving higher base salaries than the 2002 maximum police salary of \$65,000. The Borough also notes that it eliminated longevity for all new hires for non-union employees as of October 2001, which causes a further disparity between the PBA members.

A review of the Borough's 2002 and 2003 salary ordinances shows that salaries increased by 3.5% in 2003 for all Borough employees except for the Head Maintenance Mechanic position which received an 8.3% increase to maximum salary. The 2003 salary ordinance shows the following maximum salaries: Clerical Aides - \$46,404; Laborer/Public Works - \$48,881; Dispatchers - \$50,822; Head Maintenance Mechanic - \$57,901; and Foreman Public Works - \$63,326. These are competitive salaries and can be contrasted with the 2002 patrol officer salary range of \$26,100 to \$65,000. Neither party submitted internal comparability salary data for 2004 and 2005.

The internal settlement data in 2003 is .5% below the awarded salary increase and .75% below the PBA's last offer. I find that internal comparability in 2003 is somewhat below the awarded salary increases. There is nothing in the record to evaluate the 2004, 2005 and 2006 awarded salary increases. This sub-factor is not entitled to great weight.

The next sub-factor calls for comparisons 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 cited negotiated settlements in a number of Monmouth County municipalities showing average salary increases of 3.93% in 2003, 4% in 2004, 4% in 2005 and 4% in 2006. I found that this salary data was supportive of my award and not supportive of the Borough's last offer which averages 3.08% annually nor was it supportive of the PBA's last offer averaging 4.25% annually. Moreover, I found that the terms of my award are consistent with the PERC reported average of salary increases for all interest arbitration awards and voluntary settlements and the CBAs in the record. 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%. 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 consistent with the terms of my award.

The PBA contends that the maximum patrol officer salary is significantly behind other comparable Monmouth County municipalities and deserving of increases above the County and state-wide average salary increases. The maximum Spring Lake Heights patrol officer salary in 2003 will be \$67,600 (\$71,237 with holiday pay) after the application of a 4% salary increase. For comparison purposes only, the 2003 salary would be \$71,237 if holiday pay is included in base salary. The following are 2003 salaries for top step patrol officers in other eastern Monmouth County municipalities:

<u>Municipality</u>	<u>2003 Top Step Patrol Salary</u>
Wall Township	\$77,932*
South Belmar	\$74,398*
Spring Lake	\$74,375*
Sea Girt	\$73,979
Avon	\$71,293
Brielle	\$72,600*
Belmar	\$71,442
Manasquan	\$70,295*
Bradley Beach	\$68,275*
Neptune City	\$68,117
Spring Lake Heights	\$67,600
Spring Lake Heights*	\$71,237

\*Includes Holiday Pay in Base Salary

The above salary data shows that the Spring Lake Heights maximum step patrol officer salary is significantly less than Wall Township, South Belmar (now Lake Como), Spring Lake, Avon, Belmar and Sea Girt; moderately below Neptune City and Brielle; moderately above Manasquan; and significantly above Bradley Beach. It would appear that the PBA is correct in its contention that the maximum patrol officer salary is significantly behind other comparable Monmouth County municipalities and deserving of a salary increase above the County and state-wide average salary increases. However, a review of clothing allowances and longevity is revealing. The following compares longevity and clothing allowance in other eastern Monmouth County municipalities:

**Longevity Comparison**

<u>Municipality</u>	<u>5 years</u>	<u>10 years</u>	<u>15 years</u>
Spring Lake Heights	3%	6%	9%
Spring Lake (Post-1/96)	\$1,500	\$3,000	\$4,500
Spring Lake (Pre-1/96)	3%	6%	9%
Wall Township (Pre-9/98)	4%	6%	8%
Wall Township (Post-9/98)	2%	6%	8%

Bradley Beach	4%	6%	8%
Lake Como (Pre-6/99)	2%	5%	7%
Lake Como (Post-6/99)	2%	4%	6%
Avon	2%	4%	6%
Brielle	\$1,804	\$3,608	\$5,410
Belmar	2%	4%	6%
Manasquan	4%	5%	6%
Bradley Beach	4%	6%	8%
Sea Girt	None	None	None

**Clothing Allowance Comparison**

Wall Township	\$800	Belmar	\$880
Spring Lake	\$750	Manasquan	\$725
Sea Girt	\$750	Bradley Beach	\$750
Avon	\$800	Spring Lake Heights	\$1,500
Brielle	\$1,000	Lake Como	None

The following is a comparison of the maximum step salary to the total compensation of a maximum step police officer with clothing allowance and longevity included:

	<b><u>2003 Max Step</u></b>	<b><u>2003 Max Step Including Longevity &amp; Clothing</u></b>	
		<b><u>10 years</u></b>	<b><u>15 years</u></b>
Wall Township	\$77,932*	\$83,808*	\$84,966*
Lake Como	\$74,398*	\$77,374*	\$78,861*
Spring Lake	\$74,375*	\$78,125*	\$79,625*
Sea Girt	\$73,979	\$74,729	\$74,729
Avon	\$71,293	\$74,945	\$76,370
Brielle	\$72,600*	\$77,208*	\$79,010*
Belmar	\$71,442	\$75,099	\$76,609
Manasquan	\$70,295*	\$74,534*	\$75,238*
Bradley Beach	\$68,275*	\$73,122*	\$74,487*
Spring Lake Heights	\$67,600	\$73,156	\$75,184
Spring Lake Heights	\$70,723*	\$76,466*	\$78,588*

\*Includes Holiday Pay in Base Salary

The comparison of Spring Lake Heights to the bordering communities of Sea Girt and Spring Lake illustrates the inaccuracy of comparing only one component of salary. The maximum step of a Spring Lake Heights police officer appears to be significantly lower — \$6,379 behind Sea Girt and \$3,652 behind Spring Lake. A different picture emerges when longevity and clothing allowance are included. The total compensation (maximum with clothing and ten year longevity) shows a narrowing of the difference — \$1,573 behind Sea Girt and \$1,659 behind Spring Lake. The total compensation (maximum with clothing and fifteen year longevity) shows Spring Lake Heights higher than Sea Girt by \$458 and a further narrowing of the difference with Spring Lake to \$1,037. Spring Lake Heights picked up nearly \$6,000 in the full comparison with Sea Girt when the 15<sup>th</sup> year longevity and the clothing allowance are factored into total compensation. It appears that Sea Girt included the value of longevity in the salary base in a prior CBA.

The average total compensation (maximum with clothing and fifteen year longevity) for the six communities with holiday pay in base salary is \$78,698. The total compensation (maximum with clothing and fifteen year longevity) in Spring Lake Heights with holiday pay in base salary is \$78,588. The average total compensation (maximum with clothing and fifteen year longevity) for the three communities without holiday pay in base salary is \$75,903. The total compensation (maximum with clothing and fifteen year longevity) in Spring Lake Heights without holiday pay in base salary is \$75,184.

The above comparison of total compensation shows that the maximum patrol officer salary in Spring Lake Heights is competitive with other eastern Monmouth County municipalities. This finding is consistent with my award on salary increases in 2003, 2004, 2005 and 2006 which are consistent with the average salary increases in other eastern Monmouth County municipalities thus maintaining the relative position of the Borough's police officers.

The salary data in the record is consistent with the terms of my award providing for a 4% increase in 2003 and 2004 followed by a 3.75% increase in 2005 and 2006. 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. After all, this is salary data for other police officers in Monmouth County and more specifically eastern Monmouth County. I note that the external Monmouth County comparability data is in line with my experience throughout the State. This data is also consistent with the summary data provided by PERC on the average salary increases achieved by the parties voluntarily and by award.

#### **Other Issues**

I shall now address the other issues. 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 demonstrating a need for such change. I shall apply that principle in my analysis of each issue in dispute. While I am required to evaluate the merits of the disputed issues individually, I am guided by criterion N.J.S.A. 34:13A-16(8) that directs the consideration of factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. An element that must be considered is 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 all of the 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 terms of the entire award.

**Clothing Allowance**

The PBA is seeking a \$50 annual increase in the clothing allowance. The PBA contends that the granting of its proposal will permit a minimal gain in total compensation.

The Borough is opposed to the PBA's proposal to increase the current clothing allowance of \$1,500 to \$1,700.

The following is a summary of clothing allowance payments in other comparable municipalities:

<b><u>Municipality</u></b>	<b><u>2003 Clothing Allowance</u></b>
Wall Township	\$800
Spring Lake	\$750
Sea Girt	\$750
Avon	\$800
Brielle	\$1,000
Belmar	\$880
Manasquan	\$725
Bradley Beach	\$750
Spring Lake Heights	\$1,500

The average clothing allowance in the above municipalities is \$807. The current \$1,500 clothing allowance in Spring Lake Heights is significantly higher than the average clothing allowance in other comparable municipalities.

Accordingly, I find that the PBA has not met its burden to justify its proposal and it is denied.

**Holidays**

The PBA seeks the inclusion of holiday pay in base salary effective January 1, 2005. In addition, the PBA proposed the deletion of Section A of Article VII to be replaced by the following language:

Employees covered by this Agreement shall receive one and one-half (1½) times their regular pay for all time worked on the following actual holidays: New Year's Day, Easter, Independence Day, Labor Day, Thanksgiving, and Christmas.

The Borough is opposed to the PBA's proposal arguing that the PBA has not presented compelling evidence or argument in support of the statutory criteria to justify its proposal. The Borough further asserts that additional economic benefits are not justified based on the demographic and comparability evidence in the record.

Article VII, Section A of the CBA provides as follows:

A. Employees covered by this Agreement shall be granted a total of twelve (12) paid holidays by the Employer. The compensation for all holidays shall be paid by the Borough to the employee in one check which is to be received by the employee with the last paycheck in November of the calendar year. (J-1 at 10).

For the following reasons, I have determined that holiday pay shall be included in base salary effective January 1, 2006:

First, police officers in Spring Lake Heights receive "twelve paid holidays" under the CBA but they do not get the time off unless they happen to be scheduled off on the date the holiday is celebrated. All other Borough employees work a traditional Monday to Friday schedule and do not work on the day the holiday is celebrated. This is the traditional work schedule for the vast majority of all public sector employees except for public safety employees who are required to provide police (and fire) services on a 24/7 basis. These traditional schedule employees enjoy these holidays as days off with pay. These traditional schedule employees work one less day (for each of twelve holidays) when a declared holiday occurs since all such holidays are celebrated Monday through Friday.

Second, police officers do not work a traditional Monday to Friday schedule. Police Officers are required to provide police services on a 24/7 basis. Therefore, police officers

must work on holidays. Police officers work more days than traditional schedule employees. The additional work days are equal to the number of declared holidays in a municipality. In Spring Lake Heights, this is twelve days annually. It has long been recognized that this additional work requires compensation. This compensation is provided in base salary or in an annual "lump sum" payment. This is the common method of providing compensation for holidays to employees who work in 24/7 operations such as police officers and firefighters. This is how employees who work in 24/7 operations receive the same benefits as other employees who work the traditional Monday to Friday schedule.

Third, it is undisputed that police officers in Spring Lake Heights currently receive compensation for twelve holidays annually. This compensation is in the form of a check in November for the value of twelve holidays. This value of the holiday compensation is calculated by dividing an officer's annual salary by the required annual hours to determine the hourly rate (excluding longevity and other stipends). Another method is to determine the percentage value of the holiday hours in relation to the annual hours worked. The twelve holidays equal ninety-six (96) hours. This is equal to 4.62% of the annual work year. The salary for a top step patrol officer in 2002 is \$65,000. The value of holiday pay for a top step patrol officer in 2002 is \$3,003. This is the value that would be rolled into base salary. This is the same \$3,003 required to be paid in annually in November under the terms of the 2000-2002 CBA. It appears that the Borough currently pays holiday pay by including an officer's longevity in the payment. This will be the same cost if the holiday pay is included in base salary since the value of the longevity pay is established as a percentage of base salary.

Fourth, a review of the evidence in the record shows that many neighboring Monmouth County municipalities include holiday pay in base salary. These municipalities include Sea Girt, Spring Lake, Wall Township, Bradley Beach, Manasquan and Brielle.



Three of these municipalities (Spring Lake, Sea Girt and Wall Township) are contiguous communities to Spring Lake Heights. The PBA correctly notes that there is a trend throughout the State of New Jersey to include holiday pay in base salary. Comparability with neighboring municipalities favors the inclusion of holiday pay in base salary.

Fifth, public employers are willing to include the holiday payment in base salary thereby increasing the potential pension of a police officer at a relatively minimal cost. The inclusion of holiday pay in base salary creates a more competitive salary schedule, assists in the recruitment and retention of officers and contributes to maintaining continuity and stability of employment. The inclusion of holiday pay in base salary also provides an additional incentive for senior officers to retire which provides additional savings to a municipality. This savings is achieved by the "breakage" derived from replacing a senior officer. In Spring Lake Heights, the breakage is nearly \$40,000.

Sixth, the financial impact of the inclusion of holiday pay in base salary is the additional pension contribution and the higher costs for overtime and longevity. The Borough's financial certification shows that the Borough is currently including longevity in the computation of holiday pay. This will cease on January 1, 2006 when the holiday pay is included in base salary. In many cases, the parties have factored these additional costs into the cost of the overall settlement. This is done by discounting the dollar value of the holidays before its inclusion in base salary. Another method is to negotiate a "charge" against the annual salary increase. In Wall Township, the parties agreed to reduce the holiday pay by 8.5% before its inclusion in base salary. In this case, I have offset the additional cost to the Borough by discounting the comparable salary increases in 2003, 2004, 2005 and 2006 by approximately 1%. This reduction will offset the Borough's cost associated with the inclusion of holiday pay in base salary in 2006.

For all of the above reasons, I award the inclusion of holiday pay in base salary effective January 1, 2006. The value of the twelve holidays is 4.62%. The 2005 salary schedule shall be increased by 4.62% at all steps and all ranks to be followed by a 3.75% across-the-board salary increase.

The following is the second part of the PBA's proposal concerning holiday compensation:

Employees covered by this Agreement shall receive one and one-half (1½) times their regular pay for all time worked on the following actual holidays: New Year's Day, Easter, Independence Day, Labor Day, Thanksgiving, and Christmas.

The PBA is seeking overtime at time and one-half for the six holidays listed above. The PBA asserts that its proposal is a "give back" since police officers currently receive overtime if required to work on any of the twelve designated holidays. The PBA's proposal is intended to offset some of the cost of including holiday pay in base salary.

A review of the CBAs in the record shows that Brielle pays time and one-half for six holidays, Sea Girt pays time and one-half for all holidays, and Lake Como pays time and one-half for five holidays.

The language in the current CBA is silent regarding the payment of time and one-half on holidays. This payment may be made based on a long-standing past practice. I will award the PBA's proposal subject to verification that police officers are currently being paid overtime if required to work on the twelve holidays. The Borough's obligation to pay time and one-half on holidays will be reduced by 50% providing an additional offset against the cost of inclusion of holiday pay in base salary. This shall be effective January 1, 2006.

### **Grievance Procedure**

The PBA seeks the inclusion of "minor discipline" in the grievance procedure. The PBA asserts that pursuant to N.J.S.A. 34:13A-5.3, public employees may have minor disciplinary matters (5 days or less) subject to the arbitration procedure in the parties' CBA. The PBA submits that the statute mandates its inclusion in the CBA. The Borough is opposed to the PBA's proposal.

I award the inclusion of minor discipline in the grievance procedure. This change is consistent with the major purpose of a grievance procedure which is to provide for an expeditious and cost-effective resolution of grievances. I have been directly involved in nearly 200 interest arbitration matters since 1997. The inclusion of minor disciplinary matters in the grievance procedure is common to the resolution of many of these cases. This change shall be effective January 1, 2006.

### **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. The difference between the cost of my award and the Borough's last offer is \$2,474 in 2003, \$1,123 in 2004, \$6,772

in 2005 and \$7,201 for a total of \$17,570 over four years. The cost difference, while minimal, can be attributed to the Borough's well-below average 2.5% salary proposals in 2005 and 2006. The Borough appears to have budgeted its proposed salary increases in line with the minimum 2.5% CAP in 2005 and 2006. However, there is nothing in the CAP Law, or its recent amendments, that imposes a line item restriction on a public employer. It is well established that the Reform Act does not require an arbitrator to award the amount the employer has budgeted. The Borough is free to budget an amount which it considers sufficient for negotiations of CBAs and that amount is not determined by the CAP Law.

PERC discussed a public employer's obligations under the CAP Law and the Interest Arbitration Reform Act in County of Essex v. Essex County Sheriff's PBA Local No. 183,

PERC No. 2005-52, IA-2003-37 (2005). The following are relevant excerpts:

Accordingly, arbitrators have viewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale. (citing, Teaneck, 25 NJPER at 459.)

The Legislature rejected proposals that would have amended the predecessor statute to limit increases to the statutory CAP rate, or otherwise set a numerical standard for arriving at an award. Instead, the Legislature directed that disputes be resolved by conventional arbitration, thereby vesting arbitrators with the responsibility and discretion to weigh the evidence and fashion an award.

In exercising that discretion, an arbitrator unquestionably must take into account financial constraints and budget caps, and determine that the net annual economic changes for each year of the agreement are reasonable. Hillsdale, 137 N.J. at 86; N.J.S.A. 34:13A-16d(2) However, the CAP law is only one of the many factors an arbitrator must consider. Cf. Irvington, 81 N.J. at 296 (holding that an award that exceeded the CAP rate was reasonable, even though it would force the municipality to effect economies). Moreover, in enacting both the interest arbitration law and local finance statutes, we believe the Legislature understood that negotiations and interest arbitration would require public officials to consider and plan for settlements and awards that might require budget adjustments.

In Essex, The Commission cited the following excerpt from a textbook used in a required course for municipal finance officer certification:

Demands for improved wages and benefits will not always coincide with adopted budgets. Difficulties are often experienced in meeting statutory deadlines. Retroactivity of contract provision may create financing problems. Finance officers have to develop flexible budget timetables, provide for operating reserve funds or contingencies, and make supplemental appropriations (with governing body approval) in order to finance increased salaries and benefits. [Robert Benecke, Municipal Finance Administration in New Jersey, I-18 (July 2004), prepared for Rutgers, The State Univ. of New Jersey, Center for Government Services]

In Essex, the Commission provided further direction:

In sum, an arbitrator must consider the financial evidence and explain how he or she weighed the financial impact and lawful authority criteria, along with the other factors deemed relevant. However, the Reform Act does not require an arbitrator to award the amount the employer has budgeted. Middlesex. Further, an arbitrator does not have the statutory responsibility or legal authority to direct an employer as to how to finance or comply with an award. See, Irvington, 81 N.J. at 296.

As the evidence in the record shows, the average salary increases in Monmouth County and state-wide is approximately 4% in 2005 and 2006. The Borough was certainly aware of these wage trends when it formulated its last offer. The Borough was also aware that contiguous communities had resolved their police negotiations with salary increases consistent with area and state-wide trends. I awarded salary increases of 3.75% in 2005 and 2006. There is absolutely no evidence in the record to show that the 2005 and 2006 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**

The financial impact of the awarded salary increases, while higher than the Borough's proposed salary increases, is not significant when calculated over the four years of the new CBA. As noted under the lawful authority criterion, the difference between the difference between the cost of my award and the Borough's last offer is \$2,474 in 2003, \$1,123 in 2004, \$6,772 in 2005 and \$7,201 for a total of \$17,570 over four years. The funding of the awarded salary increases will have minimal financial impact on the Borough.

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 impact on the Township'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 2.8% in 2003 and 3.5% in 2004. This is below the Borough's last offer and the awarded salary increases in 2003 and 2004. The 2005 CPI data is incomplete. The most recent data shows that the CPI for the year ending July 2005 increased by 3.4%.

I conclude that the awarded base salary increases, while moderately higher than the increases in the cost of living in 2003, 2004 and 2005 (through July) provide for an

acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Borough's police officers. 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. 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. I have given considerable weight to this criterion in awarding the inclusion of holiday pay in base salary. I have determined that the overall compensation is competitive when longevity and clothing allowance is factored into total compensation at ten years and fifteen years. Spring Lake Heights police officers will maintain their current ranking in comparison to their peers in Monmouth County. The terms of my award are consistent with other external settlements in Monmouth County and throughout the State, thus maintaining a consistent level of benefits.

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, 2003 through December 31, 2006.

2. **Salary:**

All steps and ranks on the 2002 salary schedule shall be increased by 4% effective January 1, 2003.

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 3.75% effective January 1, 2005.

All steps and ranks on the 2005 salary schedule shall be increased by 4.62% (the value of twelve holidays) effective January 1, 2006. Following the inclusion of holiday pay, all steps and ranks shall be increased by 3.75% effective January 1, 2006.

All salary increases are fully retroactive. The following is the new salary schedule:

### **SCHEDULE A BASE SALARY**

	<u>1/1/03</u>	<u>1/1/04</u>	<u>1/1/05</u>	<u>1/1/06</u>
<b>LIEUTENANT</b>				
After 1 <sup>st</sup> year (max)	\$77,144	\$80,230	\$83,239	\$90,350
During 1 <sup>st</sup> year	\$73,300	\$76,232	\$79,091	\$85,848
<b>SERGEANT</b>				
After 1 <sup>st</sup> year (max)	\$71,731	\$74,600	\$77,398	\$84,010
During 1 <sup>st</sup> year	\$69,361	\$72,135	\$74,840	\$81,234
<b>CORPORAL</b>				
	\$68,477	\$71,216	\$73,887	\$80,199
<b>PATROL OFFICER</b>				
After 5 years (max)	\$67,600	\$70,304	\$72,940	\$79,172
After 4 years	\$58,718	\$61,067	\$63,357	\$68,770
After 3 years	\$52,847	\$54,960	\$57,021	\$61,892
After 2 years	\$46,975	\$48,854	\$50,686	\$55,016
After 1 year	\$41,103	\$42,747	\$44,350	\$48,139
During 1 <sup>st</sup> year	\$27,144	\$28,230	\$29,288	\$31,791



3. **Grievance Procedure:**

I award the inclusion of minor discipline in the grievance procedure. This shall be effective January 1, 2006 and shall be applicable to disciplinary suspensions of five (5) days or less.

4. **Holidays:**

Article IV, Overtime, shall be amended effective January 1, 2006 by adding the following language:

“Employees covered by this Agreement shall receive one and one-half (1½) times their regular pay for all time worked on the following actual holidays: New Year’s Day, Easter, Independence Day, Labor Day, Thanksgiving, and Christmas.”

The award of the above language is subject to verification that police officers are currently paid overtime if required to work on twelve designated holidays.

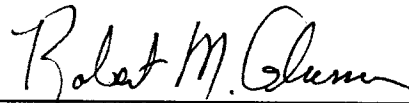
5. **Vacations:**

The parties stipulated to the following modification of Article V, Section B:

“The choice of vacation time shall be based upon seniority in service.”

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 for those provisions modified by the terms of this Award.

Dated: September 1, 2005  
Pennington, NJ

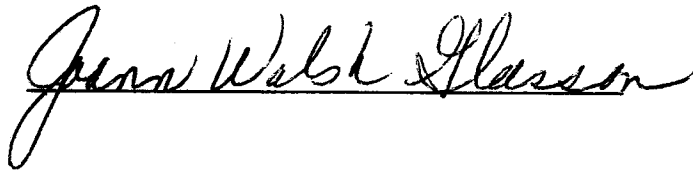


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ROBERT M. GLASSON  
ARBITRATOR

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

On this 1<sup>st</sup> day of September 2005, 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 that reads "Joann Walsh Glasson". The signature is written in black ink and is positioned above a horizontal line.

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