

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration Between:

**TOWNSHIP OF HOPEWELL**

-and-

Docket No. IA-2019-016

**HOPEWELL PBA LOCAL 342**

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Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the Employer:

Ruderman and Roth, Attorneys  
(Mark Ruderman, of counsel)

For the PBA:

Crivelli & Barbati, Attorneys  
(Frank Crivelli, of counsel)

Witnesses:

Elaine Borges, Township Administrator/CFO  
Robert Vorhees, PBA Local 342 President  
Dr. Raphael Caprio, Financial Consultant

Also Present at The Hearing:

Joseph McNeil, PBA Local 342  
Joseph Maccaquano, PBA Local 342  
Leila Sadeghi, Assistant Financial Consultant

## **INTEREST ARBITRATION AWARD**

### **BACKGROUND**

On February 28, 2019, the Hopewell PBA Local 342 (“PBA”) filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over its successor collective negotiations agreement with the Township of Hopewell (“Township”). The previous agreement expired on December 31, 2018.

On March 7, 2019, I was appointed to serve as interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This statutory provision requires that an award be issued within 90 days of my appointment. A mediation session was conducted on April 2, 2019 and although the parties were able to narrow the issues in dispute, there was no voluntary settlement of the successor contract. By April 17, both parties had submitted their final offers.

On May 2, 2019, I conducted an interest arbitration hearing at the Township’s Municipal offices. The PBA submitted documentary evidence and testimony including an analysis of its salary proposal. The Township and PBA submitted a list of unit employees for 2018, together with their dates of hire, rank, and their total base pay paid for 2018. Post-hearing summations were filed by May 17, 2019.

## FINAL OFFER OF PBA LOCAL 342

The PBA submitted the following final economic offer: <sup>1</sup>

Amend Article 7, "Sick Leave" by inserting a new Section F as follows: <sup>2</sup>

### F. Donated Sick Leave Policy

1. The Union recognizes that employees may have a family medical emergency or, resulting in a need for additional time off in excess of their available sick/personal time. To address this need, all eligible employees will be allowed to donate accrued paid sick or personal leave hours from their unused balance to their co-workers in need of additional paid time.

2. An employee shall be eligible to receive donated sick or vacation leave if the employee:

a. has been employed with the Township for a minimum of one (1) year;

b. has exhausted all accrued sick, vacation and administrative leave, all sick leave injury benefits, if any, and all compensatory time off;

c. is currently on some form of approved leave, to include but not limited to Extended Sick Leave, Bereavement Leave, NJFLA/FMLA;

d. has not in the two-years preceding the employee's need for donated leave, been disciplined for chronic or excessive

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<sup>1</sup> At hearing the PBA withdrew the following proposals based upon the agreement of the parties: Article 1, Recognition; Article 5, Non-Discrimination; Article 7, Sick Leave; Article 8, Special Leave; and Article 24, Special Duties Activity.

<sup>2</sup> All proposed additions are in bold face type and underlined herein. All proposed deletions are in bold face type with "strikethroughs" herein.

absenteeism, chronic or excessive lateness or abuse of leave;  
and

e. meets one of the following criteria:

i. suffers from a catastrophic health condition, or injury;

ii. is needed to provide care to a member of the employee's immediate family who is suffering from a catastrophic health condition or injury;

iii. requires absence from work due to the donation of an organ, including, but not limited to, the donation of bone marrow; or

iv. requires absence from work during a period of disability due to pregnancy of the employee which requires the care of a physician who provides a medical verification of the need for the employee's absence from work for thirty (30) or more work days, regardless of whether the absence from work commences before the expected delivery date or after the actual delivery date.

3. The donation of sick/personal time is strictly voluntary. Donated sick/personal time will go into a leave bank for use by eligible recipients.

4. The minimum number of sick/personal hours that an eligible employee may donate is 4 hours per calendar year; the maximum is 40 hours or no more than 50 percent of the employee's current sick/personal leave balance.

5. Employees cannot borrow against future sick/personal time to donate.

6. Employees will be given the opportunity to donate sick/personal time annually during benefits open enrollment. The donated sick/personal time will be transferred from the donor to the leave pool on December 31st.

7. Employees who are currently on an approved leave of absence cannot donate sick/personal time.

8. Employees who would like to request donated sick/personal time are required to complete a Donation of Sick/Personal Time Request Form and submit it to the Human Resources Department for approval.

9. Leave Recipient

a. if the recipient employee has available sick/personal time in his or her balance, this time will be used prior to any donated sick/personal time. Donated sick/personal time may only be used for time off related to the approved request.

b. shall receive at least five (5) sick days or vacation days or a combination thereof from one or more leave donors to participate in the donated leave program;

c. shall receive no more than 260 donated sick/vacation days within a rolling 12-month period, and shall not receive any days on a retroactive basis;

d. while using donated leave time, the leave recipient shall accrue sick leave and vacation leave and be entitled to retain that leave upon the leave recipient's return to work.

10. Leave Donor

a. shall donate only whole sick days or whole vacation days and may not donate more than 30 such days to any one recipient;

b. shall have remaining at least 20 days of accrued sick leave if donating sick leave and at least 12 days of accrued vacation leave if donating vacation leave;

c. shall not revoke the leave donation;

d. any unused donated leave shall be returned to the leave donor on a prorated basis upon the leave recipient's return to work, except that if the proration of leave days results in less

than one day per donor to be returned, the leave time shall not be returned.

11. Nothing in this policy will be construed to limit or extend the maximum allowable absence under the Family and Medical Leave Act.

**3. Amend Article 9 “Insurance Protection” as follows:**

A. In the last sentence of the first paragraph of Section A., change “~~forty-five (45)~~” to “ninety (90)”.

Within the second paragraph of Section A., amend the language of the same as follows:

The Township shall pay the full premium for each full-time Employee, and where appropriate, for dependent insurance coverage, subject to Employee contributions ~~pursuant to Public Laws 2011, Chapter 78 as set forth in this agreement~~, and any Employee contribution towards the payment of the additional premium for premiums in excess of the Base Plan. Effective January 1, 2017, all new employees shall be enrolled in the Direct Access 20/30 Plan. The employee contributions towards the cost of healthcare is set forth in this Agreement under Appendix.

E. Life Insurance.

The Township will provide a policy of Life Insurance and Accidental Death and dismemberment Insurance in an amount equal to one and one-half (1 ½) times the annual salary of each Employee.

The Township shall present the Union with proof of coverage annually during the month that the renewal of the policy is due. Should the Township change insurance carriers, the Township shall notify the Union of the same and

present the Union with proof of coverage once the new policy is bound and secured. Under no circumstances shall the policy be secured with any insurance or indemnity company that does not hold a minimum of an "A" rating.

~~G. The parties recognize that the Township has the right, pursuant to N.J.S.A. 40A:10-17.1, to determine, in its sole discretion, whether to permit Employees to waive health benefit coverage, and to determine the amount of payment to be made to such employees, provided that the amount does not exceed twenty five percent (25%) of the coverage waived or Five Thousand Dollars (\$5,000.00) whichever is less. If the Employer offers waiver compensation to PBA unit Employees, such payments shall be made to the Employee on a per day basis.~~

Upon the presentation of proof demonstrating enrollment in a healthcare plan, the Township agrees to pay a stipend to any employee for the waiver of health benefits equivalent to twenty-five percent (25%) of the cost of those benefits or \$5,000.00, whichever is less.

#### APPENDIX \_\_\_\_\_

#### HEALTH BENEFITS PREMIUM CONTRIBUTION RATES FOR SINGLE COVERAGE AS OF JANUARY 1, 2020

<b>Salary Range</b>	
Less than 20,000	3.375%
20,000-24,999.99	4.125%
25,000-29,999.99	5.625%
30,000-34,999.99	7.500%
35,000-39,999.99	8.250%
40,000-44,999.99	9.000%
45,000-49,999.99	10.50%
50,000-54,999.99	15.00%
55,000-59,999.99	17.25%
60,000-64,999.99	18.75%
65,000-69,999.99	21.75%

70,000-74,999.99	24.00%
75,000-79,999.99	24.75%
80,000-94,999.99	25.50%
95,000 and over	26.25%

HEALTH BENEFITS PREMIUM CONTRIBUTION RATES  
FOR FAMILY COVERAGE AS OF JANUARY 1, 2020

<b>Salary Range</b>	
Less than 25,000	2.250%
25,000-29,999.99	3.000%
30,000-34,999.99	3.750%
35,000-39,999.99	4.500%
40,000-44,999.99	5.250%
45,000-49,999.99	6.750%
50,000-54,999.99	9.000%
55,000-59,999.99	10.50%
60,000-64,999.99	12.75%
65,000-69,999.99	14.25%
70,000-74,999.99	16.50%
75,000-79,999.99	17.25%
80,000-84,999.99	18.00%
85,000-89,999.99	19.50%
90,000-94,999.99	21.00%
95,000-99,999.99	21.75%
100,000-109,999.99	24.00%
110,000 and over	26.25%

HEALTH BENEFITS PREMIUM CONTRIBUTION RATES  
FOR PARENT/CHILD HUSBAND/WIFE COVERAGE AS OF JANUARY 1, 2020

<b>Salary Range</b>	
Less than 25,000	2.625%
25,000-29,999.99	3.375%



30,000-34,999.99	4.500%
35,000-39,999.99	5.250%
40,000-44,999.99	6.000%
45,000-49,999.99	7.500%
50,000-54,999.99	11.25%
55,000-59,999.99	12.75%
60,000-64,999.99	15.75%
65,000-69,999.99	17.25%
70,000-74,999.99	19.50%
75,000-79,999.99	20.25%
80,000-84,999.99	21.00%
85,000-99,999.99	22.50%
100,000 and over	26.25%

4. Amend Article 12 “Annual Leave” as follows:

A. 6. Twenty-one or more calendar years of service

Commencing with the twenty-first year of service, an Employee is eligible to take two hundred ninety-six (296) hours of earned Annual Leave each year. Employees who have attained twenty-one or more years of service are eligible for eight (8) additional hours per year of service for each additional year worked beyond twenty-one years up to a maximum of three hundred twelve (312) hours per year.

5. Amend Article 13 “Salaries and Longevity” as follows:

Section B. Salaries/Movement on Steps

All Step movement shall occur on each successive anniversary date of initial hire for all Employees not at top pay. Cost of living adjustments that have been negotiated herein shall occur on January 1<sup>st</sup> of 2019, 2020, and 2021. All Police Officers not at the top rate of pay shall be guaranteed an annual automatic step movement on each successive anniversary date of initial hire. Officers hired after January 1, 1998 shall be entitled to step movement on said Employee’s respective annual anniversary date of hire.

Step	Effective	Effective	Effective	Effective
	07/01/18	01/01/19	01/01/20	01/01/21
		3.5% ATB	3.5% ATB	3.5% ATB
1	\$ 50,652	\$ 52,425	\$ 54,260	\$ 56,159
2	\$ 57,278	\$ 59,283	\$ 61,358	\$ 63,505
3	\$ 60,898	\$ 63,029	\$ 65,235	\$ 67,519
4	\$ 66,677	\$ 69,011	\$ 71,426	\$ 73,926
5	\$ 70,132	\$ 72,587	\$ 75,127	\$ 77,757
6	\$ 76,075	\$ 78,738	\$ 81,493	\$ 84,346
7	\$ 79,366	\$ 82,144	\$ 85,019	\$ 87,995
8	\$ 85,507	\$ 88,500	\$ 91,597	\$ 94,803
9	\$ 88,602	\$ 91,703	\$ 94,913	\$ 98,235
10	\$ 94,873	\$ 98,194	\$ 101,630	\$ 105,187
11	\$ 97,836	\$ 101,260	\$ 104,804	\$ 108,473
12	\$ 109,567	\$ 113,402	\$ 117,371	\$ 121,479

- 1) The "6 Step Chart" that was appended as Appendix A to the collective negotiations agreement that expired on December 31, 2018 shall be eliminated from this agreement. It is agreed amongst the parties that all officers that advanced on the "6 Step chart" are now at top pay. Based upon the foregoing agreement, as of January 1, 2019, all officers that were at the top step of the "Six Step Chart" shall transition over to the top step of the "Twelve Step Chart" attached hereto as Appendix A.
- 2) Step movement for all Officers hired after January 1, 2013 shall be in accordance with the "12 Step Chart" set forth in Appendix A annexed hereto.

6. Amend the first paragraph of Article 18 "Uniform and Equipment Maintenance and Replacement" as follows:

All initial uniform issue as set forth in General order 22 dated January 28, 1981, and updated to current standards, is hereby incorporated and made a part of this Agreement as Appendix B. Payment of the clothing allowance shall be on or before June 1 of each year. Those Patrol Officers assigned Detective duty shall be subject to a replacement cost of One Hundred Fifty Dollars (\$150) per year for the term of this Agreement. Effective January 1, ~~2010~~ 2019, an annual uniform allowance of ~~Nine hundred twenty-five dollars (\$925)~~ One thousand two hundred dollars (\$1,200.00) shall be paid *per annum* per Employee. All cleaning, maintenance and repair of uniforms and equipment shall be supplied by the Township at no expense to the Employee.

7. Amend Article 19 "Detective Stipend and Detective Clothing and Replacement Program" as follows:

A. Officers assigned to Detective duty shall receive an annual stipend of Two Thousand dollars (\$2,000.00). This stipend is to be paid in addition to the officer's base salary and is to be payable in December of each year. Officers so assigned for only a portion of the year shall receive a pro rata of such stipend.

A. B. The Township recognizes that the Officers assigned to Detective duty will be required to wear his/her personal street/business clothing while performing his assigned duties. The Township agrees to reimburse the Detectives annually for the general wear resulting from the use of their personal clothing in the performance of Township business, in the same manner as provided for uniforms in Article 18. Payment of clothing allowance shall be made on or before June 1 of each year. Effective January 1, ~~2010~~ 2019 an annual clothing allowance of ~~Nine Hundred fifty Dollars (\$950.00)~~ One thousand two hundred dollars (\$1,200.00) shall be paid to each Officer assigned to Detective duty each year.

B. C. It is further agreed that emergency replacement may be authorized by the Chief of Police, for articles of street/business clothing damaged during the performance of duty during an emergency or assigned duty at any time during the year.

9. Amend Article 25 "Absence of Squad Sergeant" as follows:

~~The Procedure to be followed and the responsibility of Patrolmen in the absence of a Squad sergeant shall be consistent with prior practice. In the event~~ At any time during a rank and file Officer's tour of duty, Employee should he or she be assigned the work, duties and/or responsibilities twenty-four (24) hours as a of a Sergeant, that Officer shall be paid at the Sergeant's minimum rate of pay for the entire tour of duty. ~~after the twenty-four (24) hours.~~

10. Proposed New Article:

Conduction of Association Business

A. The Employer agrees to grant the necessary time off without loss of pay to one (1) member of the Association selected as Delegate and one (1) member of the Association selected as President to attend any State PBA Meeting and County Conference Meeting. Convention Leave for members of the Association shall be provided pursuant to New Jersey Statue.

The PBA made the following non-economic proposals:

2. Amend Article 2, "Duration of Agreement", as follows:

A. Duration of Agreement

This Agreement shall be in full force and effective January 1, 2019 through Midnight, December 31, 2021, unless otherwise specified herein.

B. Modification and Successor Agreement

The parties agree that negotiations for a successor agreement, modifying, amending or altering the terms and provisions of this Agreement shall commence on or about September 1, 2021. In the event no successor agreement is completed, ratified and executed

before December 31, 2021, the present Agreement will continue in full force to include the until said successor agreement has been ratified and executed.

It is the specific intent of the parties that officers advancement on the salary guide (step movement) shall expressly survive the expiration of this contract and any and all officers that are not at the top step of the salary guide upon the date of expiration shall continue to advance on their respective salary guides until a new agreement has been ratified and executed.

### C. Binding Agreement (Relocated from Article 1 Section E.)

This agreement shall cover wages and such conditions of employment as set forth herein and shall be binding upon the parties hereto, and their successors, as permitted by law.

### 3. Proposed New Article: "Employee Rights"

All members of this bargaining unit are citizens of the United States of America and the State of New Jersey and, as such, are entitled to all the rights and privileges guaranteed by the Constitution and Laws of the United States and the State of New Jersey. The members of this bargaining unit also hold a unique status as Public Safety Officers involved in the exercise of the Police powers of the State of New Jersey.

The powers and duties given to the State of New Jersey and the Public Safety Officers that are members of this bargaining unit involve them in all manner of contacts and relationships with the public. Out of these contacts may come questions concerning the actions of the members of the Bargaining Unit.

In an effort to ensure that investigations and or interrogations of members are conducted in a manner which is consistent with both of these principles, the following practice and procedures are hereby adopted whenever an Officer is subject to investigation

and/or interrogation by a Superior Officer or the internal affairs division of their respective department.

All investigations that are being conducted by the Department shall be conducted in accordance with the New Jersey Attorney General's Guidelines for Internal Affairs Policy and Procedure as may be amended from time to time (hereinafter referred to as the Guidelines). In no way is this article meant to alter the duties and responsibilities of any investigating officer as they may exist under the Guidelines and furthermore, under no circumstance is this article meant to detract from the rights of any law enforcement officer as may be expressed under the guidelines to wit:

a) Any investigation of a member shall be conducted at a reasonable hour, preferably at a time when the member is on duty, with reasonable notice given, unless the seriousness of the investigation is such that an immediate interrogation is required. If such an interrogation does occur during the off-duty time of the member being interrogated, the member shall be compensated for such off-duty time in accordance with the provision of this Agreement.

b) Any member being investigated shall be informed of the nature of the investigation before any interrogations commences. If the informant or complaint is anonymous, then the member shall be advised of sufficient information to reasonably apprise the member of the allegations being investigated. If it is known that the member is being interrogated as a witness only, he/she should be so informed of this fact at initial contact.

c) A member has the right not to incriminate himself/herself by answering questions, oral or written, propounded to him/her in the course of the investigation. In addition to the foregoing, no member shall be compelled to give a statement, oral or written, relating to said investigation without first being read and having waived his/her Miranda rights if the allegation under investigation is criminal in nature, or has the possibility of being criminal in

nature.

d) Prior to the commencement of the interrogation, or at any point during the investigation, a member has the right to retain counsel of his/her choice, at his/her expense, and to have said counsel present to advise at all stages of the criminal proceeding, the administrative proceeding or investigation.

e) At the request of the member, a Union representative will be present at any interrogation. The Union representative's purpose shall not be to interfere with the interrogation and or investigation, but to witness the conduct of said procedure and to advise the member as to his/her rights under this Article and the law. Under no circumstance does a member's decision to retain counsel infringe upon his or her right to have a Union representative present at any interrogation.

f) Interrogation of a member shall be reasonable in length. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.

g) The interrogation of the Officer shall be either audio and/or video recorded. "Off the Record" questions or conversations shall be expressly prohibited.

h) No member shall be subject to any offensive or abusive language or questions that are meant to do nothing more than belittle or demean the member. No member shall be threatened with transfer, dismissal or other disciplinary punishment during the course of the interrogation or investigation. No promise or reward shall be made as an inducement to answering questions. Nothing herein shall be construed as to prevent an investigating officer from informing the member of the possible consequences of the alleged acts that are being investigated.

i) Prior to the commencement of any interrogation or interview of

any member, the investigating officer shall advise the member if his or her rights as follows:

“I am advising you that you are being questioned as part of an official investigation. You will be asked questions specifically directed and narrowly related to the performance of your official duties.”

“You are entitled to all rights and privileges guaranteed by the laws of the State of New Jersey, the Constitution of this State and the Constitution of the United States of America, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

“I further advise you that if you refuse to answer questions relating to the performance of your official duties, you will be subject to Departmental charges which could result in your dismissal from employment.”

“If you do answer questions, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, the statements that you make in answering these questions may be used against you in relation to subsequent Departmental disciplinary charges.”

j) No employee covered by this Article shall be subjected to any urinalysis or blood screening unless one of the following circumstances exist:

1) Where the employer has probable cause to suspect that there is a job related individualized impact with respect to the specific employee being tested;

2) Random Drug Testing consistent with the applicable Departmental Directive.



k) Any disciplinary action by the Employer against the employee covered under this Agreement must be in compliance with any and all applicable laws.

7. Amend Article 22, “Mutual Recognition of Existing Obligations and Conditions” as follows:

A. Except as this Agreement shall otherwise provide, all terms and conditions of Employment applicable to the signing date of this Agreement to employees covered by this Agreement as established by the Township Ordinances and Rules and Regulations of the Police Department of the Township enforced on said date shall continue to be so applicable during the terms of this Agreement. Unless otherwise provided in this Agreement, it is recognized to be the prerogative of the Chief of Police or his representative to add as the situation demands additional Rules and Regulations, changes or additional Special and General Orders, so long as the intent of these additional orders and/or Rules and Regulations including Personnel Orders, are not to abrogate the terms of this Agreement entered into by both parties of this contract.

B. The Employer agrees to negotiate any changes which it proposes to make to the terms and conditions of employment with the duly designated representative of the P.B.A.

C. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce or otherwise detract from any employee’s benefits existing prior to its effective date.

### **TOWNSHIP’S FINAL OFFER**

Article 2. Duration of Agreement: 3 Year Proposal:

- a. January 1, 2019
- b. January 1, 2020

c. January 1, 2021

Article 9. Insurance and Prescriptions

<b>Article 9 – Insurance and Prescription</b>		
<b>RX Type</b>	<b>Current copay</b>	<b>Proposed copay</b>
Generic	10.00	10.00
Preferred Brand	25.00	25.00
Non-Preferred Brand		50.00
	1x mail order	2x mail order
<b>Medical Plan</b>	<b>Current</b>	<b>Proposed</b>
Primary Care	20.00	20.00
Specialist	30.00	40.00
<b>Out of Network Deductible</b>		
Individual	500.00	1,000.00
Family	1,000.00	2,000.00

New Medical Option – OMNIA with a stipend (in network only)

	<b>Tier 1</b>	<b>Tier 2</b>
Referral Required	None	None
Individual Deductible	None	1,500.00
Family Deductible	None	3,000.00
Max. Out of Pocket Single	2500	4,500.00
Max. Out of Pocket Family	5000	9,000.00
Lifetime Benefit Maximum	Unlimited	Unlimited
PCP Office Copay	5	20
Specialist Office Copay	15	30
Inpatient Hospital Copay	100% after \$150 copay per admission	80% after deductible
Outpatient Surgery Copay	100% after \$150 copay	80% after deductible
Emergency Room	100% after \$150 copay	100% after \$100 copay

Routine/Preventive Care	100%	100%
<b>Coverage</b>	<b>Premium-Monthly</b>	<b>Stipend-Annual Monthly</b>
Employee	544.87	1,000/83.33
Employee & Child	1,097.56	1,250/104.16
Employee & Spouse	1,213.06	1,500/125.00
Family	1,639.26	2,000/166.66

Article 13. Wages, Salaries and Longevity:

A. Top Step:

- 1/1/19 - 1.5%
- 1/1/20 - 1.5%
- 1/1/21 - 1.5%

B. Each Officer shall advance a step each year but not receive the across-the-board raise.

C. Employees hired after January 1, 2019 shall not receive longevity.

D. Employees hired after January 1, 2019 shall work a 16-step guide with 16 equal distant steps between minimum salary and current maximum salary.

Article 15 – Educational Incentive

Employees must complete five years’ service after completion of any tuition reimbursement course. For each year under 5, employees will contribute 1/5 reimbursement to the Township. For example, if employee leave within two years of completion of course, employees shall owe 3/5 of reimbursement to the Township.

## **BACKGROUND FACTS**

### **Demographics**

Hopewell Township encompasses approximately fifty-eight square miles in Mercer County. The Borough of Hopewell, estimated to be one square mile in size, is surrounded by Hopewell Township. The Township has an estimated population of close to 19,000. The rural Township serves as a bedroom-community with little to no major employment center(s) to call its own. However, the Township is home to such leading corporations as Bristol Myers Squibb,<sup>3</sup> Janssen Pharmaceuticals (a division of Johnson and Johnson), and Merrill Lynch Headquarters.

Local residents find ample employment opportunities in Trenton's, Philadelphia's, and New York City's employment bases due to the Township's easy access to the areas via major roadways and rail. Hopewell Township and County unemployment has historically been below the state and national averages, and wealth and income has historically been well above the same averages.

### **Crime Statistics**

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<sup>3</sup> Bristol Myers Squibb has notified the Township that it intends to leave the Hopewell campus by 2020. The Township expects that any loss in associated tax revenue will be replaced through an ongoing redevelopment project.

The PBA states that its patrol officers are the “first responders” to all medical calls, motor vehicle accidents, burglar alarms, fires, domestic disputes, assaults, and a myriad of other calls. More specifically it states that the patrol officers are the ones that first come in contact with crime scenes. As such, they must be able to recognize potential evidence and secure a crime scene for detectives and crime scene teams. Therefore, the PBA maintains that when a patrol officer responds to an incident, he or she will investigate the case as far as possible. The officer will then determine if a detective should be brought in to investigate further or, in some cases, the officers will solve a case themselves.

Patrolman Robert Vorhees, President of PBA Local 342, testified that in the year 2018, the department responded to 28,460 calls for service. He explained that a call for service entailed anything from a wire being down to a domestic issue. Once a call is received the dispatcher creates a call for service in its computer-aided dispatch system at which time a control number is assigned. Vorhees stated that the officer responds to the call by reporting to the area at issue and/or by following up with a report as required. The Township’s crime statistics for 2014 through 2018 are provided in detail in the charts below: (P-3)

<b>Hopewell Township Crime Statistics (2018)</b>					
<b>PART I CRIMES</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Homicide	0	0	0	1	0
Rape	1	0	1	3	5
Robbery	1	0	0	0	1
Aggravated Assault	7	3	2	2	2
Simple Assault	47	42	58	35	44
Burglary	27	26	21	25	18
Theft	70	83	80	74	59
Motor Vehicle Theft	3	3	1	6	0
Arson	1	1	0	0	0
Domestic Violence	73	69	78	66	63
<b>TOTAL</b>	<b>230</b>	<b>227</b>	<b>241</b>	<b>212</b>	<b>187</b>
<b>PART II CRIMES</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Fraud	71	53	44	65	63
Sale of CDS	0	2	3	4	2
Possession of CDS	48	36	50	62	27
Possession Stolen Property	1	0	2	2	1
Other Sexual Offenses	2	1	1	3	3
Weapon Offenses	1	3	3	1	1
<b>TOTAL</b>	<b>52</b>	<b>40</b>	<b>56</b>	<b>68</b>	<b>32</b>
<b>OTHER OFFENSES</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Criminal Mischief	54	43	31	32	26
Liquor Violations	3	3	4	4	1
Harassment	109	71	72	60	69
Trespassing	19	34	18	41	21
<b>TOTAL</b>	<b>185</b>	<b>151</b>	<b>125</b>	<b>137</b>	<b>117</b>
<b>TRAFFIC SERVICES</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Accidents Investigated	832	793	808	783	749
Summonses Issued	5,396	5,233	4,127	4,212	3,163
DWI Arrests	55	52	35	42	41
Fatal Accidents	1	4	1	1	1

Traffic Stops *	N/A	N/A	N/A	9,314	7,194
<b>TOTAL</b>	<b>6,284</b>	<b>6,082</b>	<b>4,971</b>	<b>14,352</b>	<b>11,148</b>
<b>ARRESTS</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Adult Males	256	232	214	216	163
Adult Females	104	105	88	98	65
Juvenile Males	40	11	33	35	18
Juvenile Females	8	2	0	9	1
<b>TOTAL</b>	<b>408</b>	<b>350</b>	<b>335</b>	<b>358</b>	<b>247</b>
<b>EMERGENCY SERVICES *</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Ambulance Calls	898	920	927	888	932
Fire Calls	253	192	213	175	207
<b>TOTAL</b>	<b>1151</b>	<b>1112</b>	<b>1140</b>	<b>1063</b>	<b>1139</b>
<b>*These fire/EMS calls are not associated with another incident; they do NOT accurately represent all fire/EMS activity.</b>					
<b>MISCELLANEOUS</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Alarms	1031	1049	1,007	818	924
Dog Ordinances	347	300	294	226	258
Fish & Game	11	7	9	6	2
Lost Property	27	37	35	28	29
Found Property	36	47	49	48	45
Sudden Deaths	6	19	5	11	15
Suicides or Attempts	1	2	1	3	1
Suspicious Car/Person	369	295	318	299	267
Suspicious Occurrences	329	283	291	288	270
Ordinance Violation	21	17	18	79	65
Mental Subject	N/A	N/A	117	136	80
Firearms Applications	N/A	N/A	N/A	140	138
Other *	23,802	23,704	21,608	13,551	13,378
<b>TOTAL</b>	<b>25,980</b>	<b>25,760</b>	<b>23,752</b>	<b>15,633</b>	<b>15,472</b>
<b>*A new category (Traffic Stops) was created in 2017 accounting for a lower number in the "Other" category for 2017 and 2018.</b>					
<b>STOLEN &amp; RECOVERED PROPERTY</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>

Stolen	\$196,547	\$219,927	\$177,289	\$404,922	\$101,122
Recovered	\$36,518	\$70,831	\$27,169	\$218,631	\$31,777
<b>TOTAL</b>	<b>\$233,065</b>	<b>\$290,758</b>	<b>\$204,458</b>	<b>\$623,553</b>	<b>\$132,899</b>
<b>CALLS FOR SERVICE</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Hopewell Township	28,904	28,302	26,338	27,256	25,151
Hopewell Borough	3,390	3,029	3,373	3,277	3,252
Pennington Borough	3,576	3,468	5,375	6,364	6,726

### **Size & Scope of the Department**

The organizational structure of the Police Department for 2019 consists of a Chief of Police, Patrol Operations, A, B C, and D patrol squads, Traffic Unit, Administrative Office, Detective Bureau Juvenile, and a Communications Office (dispatchers). The Department also provides liaison support with the Township's Office of Internal Affairs, Office of Emergency Management and Public Safety as necessary (E-2).

According to Vorhees, the Department does not have any class one, two or three special officers; however, its officers are sworn and have attended a mandatory PTC certified basic course for training and commission.

By the end of 2018, the Police Department was staffed with 23 patrolmen, including 2 detectives, 1 patrolman in the Traffic Unit, and the remainder in the patrol division. The department also included 2 lieutenants and 5 sergeants, who are represented separately by the Police Superior Officers' Association. Since that



time, two patrolmen have retired (one on a disability) and two patrolmen have been promoted out of the bargaining unit to superior officer slots. The department is currently staffed with nineteen officers - - twelve officers at top step in salary and seven officers moving through the salary guide steps.<sup>4</sup> The Union notes that it anticipates two officer replacements commencing June 1, 2019; and subsequently, two more officer replacements on January 1, 2020.

Hopewell Township's Chief Financial Officer (CFO) and Township Administrator Elaine Borges testified that in 2018 the Township had a lieutenant who retired; the Township promoted a sergeant to the vacant lieutenant slot and promoted an officer to the vacant sergeant slot. It also opened an additional sergeant's slot and promoted a lieutenant to that position. Borges stated that on May 6, 2019, the Township is scheduled to hire two additional officers - - for a total hiring of three officers in 2019.

#### History of Police Negotiations/Salary Increases

The Township notes that the top pay for Hopewell's patrolmen in 2009 was

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<sup>4</sup> The size of the Department as reported by the parties in their respective lists conflicts with Officer Vorhees' testimony, who testified that there are 26 members of the rank and file. According to Table 24 of the Caprio Report, there are currently 19 members in 2019; and 2 additional recruits in 2019. I view the difference between his testimony and my findings to be of little significance since the current staffing of the police department has been discussed several times in other witnesses' testimonies.

\$89,893. It has since risen to the current top pay for 2018 of \$109,567, an increase of 21.9%. The most recent wage increases were awarded to PBA 342 members in the interest arbitration proceeding for the 2016-2018 collective negotiations agreement between the parties as follows:

- All members at top step of salary guide -- a 1% increase effective and retroactive to January 1, 2016;
- All members at top step of salary guide -- a 2% increase effective January 1, 2017;
- All members at top step of salary guide -- a 2% increase effective July 1, 2018; and
- For each year of the agreement, all members still progressing on the step guide received one increment on their respective anniversary date, with the exception of the final year of the agreement wherein which the members received their respective increment three months after their respective anniversary date.

The interest arbitration for the 2016-18 contract was controlled by N.J.S.A.

34:13A-16.7(b) which imposed a 2% hard cap on awards for contracts ending after January 1, 2011 but before January 1, 2018. However, I am not so constrained in the present interest arbitration as the “hard cap” statute has sunsetted.

The parties started negotiations for the successor agreement to the 2016-2018 agreement on November 12, 2018. The PBA submitted a written set of its proposals to the Township on January 17, 2019. The parties met face to face four

times: November 12, December 17, 2018; January 17, and February 19, 2019. Believing that the parties had reached an impasse in negotiations, the PBA filed for interest arbitration on February 28. I was appointed by random selection of PERC on March 7. On April 4, 2019, I conducted a mediation session with the parties, as is required by N.J.S.A. 19:16-5.7(c). The parties were able to resolve some issues between them but were unable to reach a consensus on the full agreement. An interest arbitration hearing was then scheduled for May 2, 2019.

### **STATUTORY CRITERIA**

I am required to make a reasonable determination of the disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g (1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - (a) In private employment in general; provided,

however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

- (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, 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 et seq).
  - (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the

employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers 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 other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

In arriving at the terms of this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. It is widely acknowledged that in most interest arbitration proceedings, no single factor can be determinative when fashioning the terms of an award.

In addition, I note that N.J.S.A. 34:13A-16g (8) requires consideration of those factors ordinarily or traditionally considered in the determination of

wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying the proposed change. Another consideration is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. I am also required to determine the total net economic cost of the terms required by the award.

In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria.

Among the other factors that interrelate and require the greatest scrutiny in this proceeding are the existing salary and benefits of unit employees, a comparison of benefits of the Township's police officers to the Township's civilian employees and a comparison of wages to comparable municipal police officers in the geographic area. Also, I have given some weight to the CPI and COLA, the private sector wage increases, and the PERC settlement statistics.

### **DISCUSSION OF THE ISSUES IN DISPUTE**

#### **The Term of the New Contract**

Both the PBA and the Township have proposed a three-year agreement to

cover the period January 1, 2019 through December 31, 2021. Accordingly, the duration of the new contract shall be as proposed by the parties.

### **Salaries and Longevity (Article 13)**

The PBA and the Township each submitted several proposals concerning compensation. The PBA proposed across-the-board salary increases of 3.5% for each year of the contract. It also proposed annual step movements for the employees who are still moving through the steps of the salary guide. The Township proposed a 1.5% increase in each year of the contract for employees on the top step. It also proposes annual step increases for all eligible employees.

The PBA suggests that the existing six-step guide in the parties' CNA should be eliminated as being obsolete. The Township urges the creation of a sixteen-step guide for employees hired after January 1, 2019. The Township also would like the award to include the freezing of starting salary at its current level for the life of the contract.

The PBA proposes a new benefit which would provide detectives with a \$2,000 annual stipend. The Township objects to this proposal. Further, the PBA seeks to improve the "officer-in-charge" pay so that compensation to perform the duties of acting sergeant would begin in the first hour of the assignment. The Township does not agree.

In addition, the Township proposes to eliminate longevity for new hires.

The PBA does not agree.

Both parties submitted substantial evidence concerning compensation issues and the impact of the respective proposed awards on the Hopewell Township taxpayers. The PBA produced the financial analysis and testimony of its financial expert Dr. Raphael Caprio. The Township produced testimony of the Township's CFO Elaine Borges. Based upon the respective witnesses' testimony, the documentary evidence submitted and the Caprio financial report, I make the following findings of fact:

#### **FINDINGS OF FACT**

The Township provided a copy of the proposed 2019 budget which has not yet been passed by the governing body. It also supplied its Summary Levy Cap Calculation Worksheet for 2019. Those documents show the Township's revenue, appropriations and anticipated tax collections for the budget year.

#### **Shared - Services Revenues**

Hopewell Township's police department provides police protection and services to the Township and to the Borough of Hopewell through a shared-services agreement. The agreement includes provisions for complete police protection (to include calls for service), radio communications dispatching service,



police investigations, maintenance of the Borough's school crossing guard posts, et cetera. This agreement has been in effect since January 1, 2015 and will continue through December 31, 2020.

Vorhees testified that the officers work with other jurisdictions throughout Mercer County. He indicated that in addition to the Borough of Hopewell, the Department assists the Borough of Pennington (who has their own police department) with dispatch services and back-up support as required. The PBA President stated that the Borough of Pennington is also surrounded by the Township. Since 2014, in all but one year (2018), Hopewell's police department experienced shared-service revenues of \$500,000 or more. The Township estimates that it will realize \$518,842 in revenues in 2019 – an increase from 2018 of 10%. (P-6, Table 3)

### **Appropriations Cap**

The Township is subject to a spending or appropriations' cap limitation. Hopewell may either increase the spending appropriations by 2.5% or the cost-of-living index rate, whichever is less. The Township may, by a majority-approved resolution, vote to increase the spending appropriations by 3.5% over the previous year's appropriations. Among the exceptions to the limitations imposed by the cap law are capital expenditures, debt service, emergency expenditures

and certain expenditures for services mandated by law, such as the Group Health Insurance exclusion.<sup>5</sup> The Township’s “Final Allowable Operating Appropriation for 2019 within Cap” is \$16,172,807 (P-7, Sheet 3b (1)). For budget year 2019, the Township budgeted \$14,147,309 (within cap) in general appropriations for municipal purposes; and, leaving a net of \$2,025,498 in future banking for the Township. (P-6, Table 8; P-7, Sheet 3)

### **Property Tax Levy Cap**

The Township is also subject to a tax levy cap limitation. The increased amount raised by taxation is limited to 2%, with exceptions, of the amount raised by taxation in the prior year. Hopewell Township’s 2019 “Summary Levy Cap Calculation” indicates that the maximum amount to be raised by taxation (tax levy) is calculated to be \$16,223,144. (Exhibit P-7, Sheet 30) The Township elected to utilize \$15,754,801, thereby forgoing \$468,343 of available tax levy. (P-7, Sheet 3b (1))

The following chart provides a snapshot of the Township’s Appropriations Cap and Property Tax Levy Cap from 2015 through 2019: (P-6, Table 8)

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<sup>5</sup> The Department of Community Affairs Local Finance Notice 2018-27, dated October 16, 2018 states: . . . The State Health Benefits percentage increase for CY 2019 calculations is 0%, so there is no 1977 Cap exception for Group Health Insurance for CY 2019. . . . As of 2012, pension appropriation increases are no longer a 1977 Cap law exclusion.

Hopewell Township's CAPS Analysis					
Appropriations CAP					
1977	2015	2016	2017	2018	2019
Max	15,647,620	16,204,600	16,244,861	16,494,925	16,172,807
<b>Actual</b>	<b>14,796,033</b>	<b>14,487,816</b>	<b>14,490,911</b>	<b>14,591,152</b>	<b>14,147,309</b>
Net	(851,587)	(1,716,784)	(1,753,950)	(1,903,773)	(2,025,498)
Property Tax Levy CAP					
Levy CAP	2015	2016	2017	2018	2019
Max	15,251,786	15,100,237	15,464,015	15,211,766	16,223,144
<b>Actual</b>	<b>14,353,928</b>	<b>14,395,093</b>	<b>14,685,832</b>	<b>15,050,519</b>	<b>15,754,801</b>
Net	(897,858)	(705,144)	(778,183)	(161,247)	(468,343)

Borges testified that Exhibit (E-29) provides a historical look at the Township's tax levy trends from 2014 through 2018. Borges explained that the tax levy is the amount that the Township could have increased, had their taxpayers been willing to bear any such increase. She stated that in 2018, the Township actually increased its levy within \$.23 cents of the levy cap; but the Township could not have increased its levy in hopes of acquiring more spending money.

Borges testified that just because the Township is \$1.9 million under the Appropriations Cap in 2018 - - the Township cannot add \$1.9 million to its budget without exceeding the 2% Property Tax Levy Cap. She said an increase over the Appropriations Cap would require the State Department of Community Affairs

approval. According to Borges, the Appropriation Cap becomes less relevant because of the Tax Levy Cap.

For 2019, Borges stated that the Township is projecting a 4.6% increase in the levy. She said that the maximum amount to be raised is \$16.2 million; however, \$15.7 million represents what the Township is projecting in 2019 as its tax levy; and, the difference of the maximum allowable under the cap, minus the amount to be raised is \$468,342. Borges explained that the difference of \$468,342 is the amount the Township is able to bank into future years should it choose to use it. She stated that the \$468,000 equates to about a penny and a third in taxes, in the range of a \$40 to \$60 annual increase. Borges maintained that the Township actually struggled to get below the 4.6% tax increase - - an increase, which Borges acknowledged as being questionable, in the Township's view. Borges said that the budget has not been voted on and/or adopted as of the day of the hearing in this matter, and therefore, the tax increase has not yet been finalized.

### **Fund Balance**

Since 2014 the Township has consistently regenerated its fund balance. Since 2014, the Township has reconstituted as much as 110%; and, as low as 67% of the fund. The Township's fund balance as of December 31, 2018 is

\$10,166,911; and, is estimated to be \$10,146,523 for 2019. For 2019, the Township anticipates recovering 98.75% of the amount budgeted. (P-6, Tables 9 & 10)

Dr. Caprio commented,

Hopewell has reconstituted its fund balance in a reliable manner, in part by appropriating less from the fund balance than other Mercer communities, by prior-year cancellations, and by excess revenue, particularly from current property taxes.

Dr. Caprio stated that the Township's fund balance, as a percentage of total revenue, is 44.8% while it allocates 6.2% - - the second smallest amount in the County as operating revenue. He acknowledged that Hopewell Township has a significantly greater fund balance vis-a-vis appropriations than any other Mercer municipality. Hopewell allocated less from the fund balance as a percentage of total revenue proportionally than all but one other municipality in Mercer. Dr. Caprio noted that Hopewell Township's unencumbered fund balance is the highest in the County, further underscoring the Township's robust financial condition. (P-6, Table 12) Moreover, Dr. Caprio testified that Hopewell Township does not have either appropriation or tax levy cap constraints.

CFO Borges stated that in 2018, the Township returned \$1.27 million in surplus - - close to the \$1.3 million it used in the budget. Borges explained that

this was a \$600,000 reduction in overall revenues that simply was not there in the budget. According to Borges, as they tighten their budget, the return from reserve-year budgets goes down; and, the returns are projected to be down substantially next year - - another negative to the Township's revenue returns. She testified that the Township is seeking more revenue opportunities without over anticipating a revenue and taking a hit on the surplus return.

Borges explained that the Township budgets conservatively resulting in a AAA bond rating and which serves the public well when borrowing money. She said that the Township has a robust capital program in support of its roadways. Borges maintained that it can be very expensive to the Township if it has to borrow monies in its efforts to maintain the Township's roads. Borges testified that the Township's surplus (fund balance) is also critical to its schools since there is no time forgiveness when school obligations are due.

Borges testified that at the end of July, the budget's cash flow gets very tight - - but indicated that the Township is able to prepare the budget, without borrowing money at the taxpayer's expense. CFO Borges testified that the Township has experienced a decrease in revenues attributed to an emergency appropriation for \$120,000 in legal fees for substantial affordable housing litigation. She maintained that, in addition, the Township is continuing to pay off

their debt service.

### **Demands on the Property Tax**

The Township has the second lowest demand on the property tax of the twelve Mercer County municipalities. Latest state data<sup>6</sup> indicate only 14.86% of the current property tax levy is required for municipal government. (P-6, Table 13)

Hopewell's average equalized property value is \$520,914 - - third highest value in Mercer County and according to Dr. Caprio generates almost \$21,000 in revenue collections. The Township's average total property taxes of \$12,957 are a little lower and rank fourth highest in the County. Dr. Caprio stated that the Township has a fairly well-off property value. (P-6, Table 14)

Dr. Caprio testified that the municipal component of total property taxes paid in the Township is exceptionally low, second lowest in the County of Mercer. He stated that the Township's county and school taxes have a much greater impact on the total property tax paid by landowners and/or homeowners in the municipality. He stated that the amount of property taxes collected annually from current taxes is about \$650,000 a year; and, in excess of what was budgeted.

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<sup>6</sup> 2018 data at [https://www.nj.gov/dca/divisions/dlgs/resources/property\\_tax.html](https://www.nj.gov/dca/divisions/dlgs/resources/property_tax.html)

Dr. Caprio indicated that the Township has averaged almost a million dollars yearly in cancellations of prior-year appropriations - - money appropriated but never used.

### **Collection of Current Property Taxes**

The Township's collection of current property taxes is robust and it has experienced excess tax collections in every year since 2014. Current collections exceed the amount budgeted by 4% to 5% in excess collections. Hopewell estimates that it will receive excess tax collections in the amount of \$787,740 in 2019. (P-6, Table7)

Dr. Caprio noted that delinquent tax collections are the one area with consistent under-performance versus the amount budgeted; albeit the shortfall is minor. He stated that the underperformance does not materially impact the Township's ability to reconstitute its fund balance, nor its ability to fund the PBA's proposal. (P-6, Table 6)

At the interest arbitration hearing, CFO Borges testified on cross-examination that the 2019 budget included 2% for pay increases for PBA members on the top step of the salary guide, as well as step guide movement.



(Tr-152)<sup>7</sup>

**PBA's Breakage Analysis & Ability to Pay**

Dr. Caprio testified that the Township has experienced a net breakage of approximately \$343,969 going into this arbitration hearing. Dr. Caprio explained that the breakage is attributed to the retirement of one officer on December 31, 2018 and, three officers who worked part of 2019 and were either promoted out of the unit or separated from the unit in 2019. All four officers were at top step in the salary guide (\$109,567 annual salary) and each officer received a longevity stipend of \$1,500 or \$2,000 in addition to base salary. Dr. Caprio explained that the total base salary (plus longevity) for the four officers is \$444,768. Actual salary paid for the three officers who left the unit in 2019 is \$100,799. He explained that base salary and longevity minus actual salary paid to the three officers in 2019 (\$444,768 - \$100,799) is \$343,969 in savings to the Township. (P-6, Table 23) The following chart shows the PBA's calculation for the savings:

<b>2018 and 2019 Breakage</b>					
	<b>2018 Base</b>	<b>Longevity</b>	<b>2018 Total</b>	<b>2019 Base</b>	<b>Projected Paid</b>
<b>GASKILL</b>	109,567	2,000	111,567	113,402	-
<b>GREY</b>	109,567	1,500	111,067	113,402	31,295
<b>KOVELOSKI</b>	109,567	1,500	111,067	113,402	38,209

<sup>7</sup> In its brief, the Township contended that Borges' testimony at hearing was inaccurate when she recited that the budget included a 2% increase for police salaries. The brief claims that the real number is 1.5%. I credit Borges' testimony as it is unrefuted by the record evidence.

<b>VASTOLA</b>	109,567	1,500	111,067	113,402	31,295
<b>TOTALS</b>	<b>438,268</b>	<b>6,500</b>	<b>444,768</b>	<b>453,607</b>	<b>100,799</b>
		<b>2019 Actual</b>	<b>100,799</b>		
<b>Net Savings to Hopewell</b>			<b>343,969</b>		

Dr. Caprio acknowledged that in the face of the existing breakage, the total cost (over the three-year contract period) will be a total increase of approximately \$150,000 - - on a 2018 base of \$2.2 million, averaging out to less than one percentage a year, and all in the third year of the contract. Dr. Caprio testified that salary reductions via breakage also generate reductions in PFRS contributions in 2019 and 2020; however, an increase of \$9,818 is anticipated by the PBA in 2021. (P-6, Table 27) He believes the PBA's wage proposal is extremely cost-effective for the Township on account of the "breakage" described above. To this end, the actual known "breakage" results in a net savings of \$343,969 to the Township in the first and second year of the collective negotiations agreement.

Dr. Caprio concluded that the PBA's proposal will result in an approximate increase of \$18.20 per year or \$1.52 a month property tax, per taxpayer and beginning in 2021; no inability to pay issue; and, no negative impact on the community. He stated that the Township's financials are certainly significantly strong to ensure and enable the municipality to pay the proposal as put forth by the PBA.

Dr. Caprio rendered the following opinions:

- The cost of the PBA's wage proposal is \$145,550 more to the Township in 2021 than payroll costs in 2018;
- The impact of this wage increase if all revenue came from property taxes would be a \$18.20 annual increase in 2021 only, or \$1.52 a month;
- To this end, there could be even decreases in 2019 and 2020 depending on the Township's hiring intentions; and
- As a result, the PBA's wage proposal does not detrimentally impact the community in any way.

The PBA maintains that when the breakage and the savings are taken into account, the cost of the PBA's wage proposal is extremely reasonable and cost-effective for the Township. It states that the "true" cost of the wage proposal mitigates in favor of an award of the same in its entirety.

CFO Borges testified that the Employer's final salary offer of 1.5% at top step only, represents a fair increase within the Township's budgetary constraints. She acknowledged that if the PBA's proposal of a 3.5% salary increase is awarded, the effect of such an increase will have an adverse impact on the Township's tax rate for future years.

Borges acknowledged that less money was budgeted for 2019 in police department salaries than for 2018. She stated that the 2019 budgeted salaries consider a 2% increase for members of the PBA bargaining unit. Borges explained

that the 2% increase was for officers at top step only. While the Township seeks to freeze the dollar value of each step on the guide, it is willing to have employees eligible for step movement to increase to the next step on their anniversary in each year of the contract.

### **Township's Debt Service**

Borges said that the Township has an unwritten, but well-stated policy, of utilizing surplus to the extent it has been replenished. She said that there was a year in which the Township decided to purchase some equipment directly from the surplus balance as opposed to borrowing the money. Borges maintained that purchasing the equipment outright accomplished the Township's initiative to reduce its debt service levels. The Township's municipal debt service was appropriated and paid or charged at \$5,161,648 in 2018; and, appropriated at \$5,645,510 in 2019. (Exhibit P-7, Sheet 30)

### **Bond Rating**

Standard and Poor's (S&P) Global Rating of "AAA" was assigned to Hopewell Township in 2017. The rating signifies the Township's consistent and strong financial performance, supported by its very strong economy, budget flexibility, liquidity, and strong management. The S&P report indicates that historically the Township has raised taxes but not to its full levy - - resulting in

additional moneys in banked tax levy capacity. It further indicates, “We do not expect Hopewell will use any of this [banked tax levy] capacity, but we believe management will let it expire.” (E-31)

### **PERC Stats**

PERC’s analysis data for interest arbitration awards for the years 2012 through 2017 show an overall average increase of 1.61% for post-2011, non-2% cap awards. Likewise, the report shows a 1.87% average salary increase for post-2011 non-2% voluntary IA settlements or an award for the same time period. The award in this matter averages 2% per year and is therefore, well in line with typical salary increases over the past few years.

### **COLA**

An annual Cost-of-Living Adjustment (COLA) is authorized under the original 1977 budget cap law, currently reflected as N.J.S.A. 40A: 4-45.1.a. Current law affecting municipal and county budgets requires compliance with both the 1977 cap law and the 2010 levy cap law.

Under the 1977 cap law, the Director of the Division of Local Government Services must announce the COLA. The COLA is based on the Implicit Price Deflator for State and Local governments, calculated by the U.S. Department of Commerce, Bureau of Economic Analysis. Moreover, Social Security benefits will

increase 2.8 % in 2019, the largest cost-of-living adjustment (COLA) in seven years.

The DCA announced the COLA for CY 2019 budgets is two and one-half percent (2.5%). Pursuant to the statute, “municipalities and counties shall be prohibited from increasing their final appropriations by more than 2.5%” . . . unless action is taken by the governing body to increase their final appropriations subject to the cap to the statutorily permitted three and one-half percent (3.5%). In simple terms, the automatic increase to the 1977 cap law base is 2.5%, which is the statutory maximum.

A municipality may by ordinance increase the COLA percentage up to 3.5% or bank for up to two years, the difference between its final appropriation subject to the cap and 3.5%. Cap banking is not automatic. A single ordinance can be used to accomplish both activities: increasing appropriations and banking any unappropriated balance. Cap balances from 2017 and 2018 are available for use in 2019.

## **CPI**

The Consumer Price Index for All Urban Consumers (CPI-U)<sup>8</sup> increased .04 percent in March on a seasonally-adjusted basis after rising 0.2 percent in

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<sup>8</sup> The CPI-U represents about 93 percent of the total United States' population.

February, 2019. Over the last twelve months, the all-items index increased 1.9 percent before seasonal adjustment. For the month, the CPI-U index rose 0.6 percent prior to seasonal adjustment. (E-41)

### **Private Sector Wages**

I give almost no weight to the component of comparability with the private sector, other than to observe the private sector wage increases. The most recent private sector wage report promulgated by the New Jersey Department of Labor depicts wage increases, county by county, and shows that in Mercer County, private sector wages decreased by 0.2% between 2016 and 2017. However, statewide, private sector wages increased by an average of 2.1%.

My award averaging 2.0% annually over the life of the contract addresses the factor of cost of living and is right in line with average private sector wage increases.

### **Existing Terms and Conditions of Employment**

Hopewell's patrolmen enjoy a reasonable array of existing salaries and benefits. They work 12-hour shifts from 6:30 a.m. to 6:30 p.m. or from 6:30 p.m. to 6:30 a.m. They work three shifts on duty followed by three

shifts off duty and periodically rotate shifts. The detectives work Monday through Friday from 9:00 a.m. to 5:00 p.m.

PBA unit members are paid from a salary guide which consists of 12 steps as follows:

<b>Hopewell Twp. PBA</b>	
<b>Step</b>	<b>Amount</b>
1	50,652
2	57,278
3	60,898
4	66,677
5	70,132
6	76,075
7	79,366
8	85,507
9	88,602
10	94,873
11	97,836
12	109,567

As for additional compensation, PBA members receive acting pay whenever they are required to act in the place of an absent sergeant for more than 24 hours of duty time. Detectives receive one extra hour of compensation per day for each weekend they are required to be on call. Currently all unit members are entitled to longevity pay which begins after an officer completes ten years with the department. Longevity pay ranges



from \$1,000 to \$2,000 per officer. Further, police officers in the Patrol Division receive a clothing allowance of \$925, whereas detectives receive \$950 for the wear and tear on their civilian clothes.

Hopewell's patrolmen also have a wide array of fringe benefits. They are currently covered by a Direct Access 20/30 medical plan and prescription drug coverage, although officers are required to contribute significantly towards the costs of these plans. They are also covered by a life insurance plan at the Township's expense. In addition, they receive a vacation plan with a maximum benefit of 312 hours, sick leave, a donated sick leave plan, and 36 hours of personal leave annually. Further, the Employer provides an educational reimbursement plan which permits employees to be reimbursed for 50% of tuition and the full cost of textbooks for law-enforcement-related courses.

### **POSITIONS OF THE PARTIES CONCERNING SALARIES**

#### **PBA's Salary Positions**

The PBA's perspective concerning this round of negotiations is that they are emerging from a period of legislatively imposed caps on wage increases, and mandated increases in health care contributions. Having made concessions during this time, the PBA seeks to recoup the ground it has lost due to the

combined effects of the two percent cap on base salary increases (hard cap) imposed by N.J.S.A. 34:13A-16.7.

During the eight-year period when the hard cap applied, arbitrators were precluded from issuing awards which increased base salary by more than two percent per contract year, or six percent in the aggregate for a three-year award N.J.S.A. 34:13A-16.7(b); Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶ 116 2012). The PBA notes that during this time period, it made significant economic concessions in negotiations due to the restrictions which the hard cap placed on salary increases. Specifically, the PBA notes that salary guide steps increased from six to twelve during the 2013-2015 contract, which doubled the time for their membership to reach the top step of the guide. The PBA maintains that the expansion of the guide was due to the restrictions imposed by the hard cap. In addition, the PBA notes, the interest arbitration award for the 2016-2018 CNA provided increases only to the top step of the salary guide in order to comply with the hard cap. To address both the issue of a near decade of minimal wage increases, and the significant gap between the top step of the guide and those below it, the PBA urges that all the steps on the guide be increased.

The PBA emphasizes that the impact of the hard cap on the membership was exacerbated by the passage of Chapter 78 of the Laws of 2011 (Chapter 78).

Prior to the enactment of Chapter 78, all local government employees were required to pay at least 1.5% of their base salary for their health insurance benefits. Chapter 78 was a comprehensive health benefit reform law which increased public employee health benefit contribution rates and made the rates non-negotiable for four years from the expiration of any agreements in effect on June 28, 2011. The amount of employee contribution was calculated by a formula which took into account the type of coverage, the employee's base salary and the cost of the coverage. The amount of the employee contribution was phased in over a four-year period; the incremental contributions began in 2013 (Tier 1) and then increased every year through 2016 until full implementation (Tier 4) was reached. From the viewpoint of the PBA membership, Chapter 78 was a legislated wage giveback. As a result of full implementation of Chapter 78, the PBA points out that members experienced a decrease in net wages every year for four years, without any offsetting wage increases, except for those at the top step of the salary guide. It is undisputed that the PBA membership is currently paying health care premium contributions at the Tier 4 rate.

The PBA maintains that the Township is in robust financial condition and is able to pay salary increases to the membership which will enable them to regain the economic ground they have lost due to the combined effects of the hard cap

and Chapter 78. PBA urges that members must have their wages increased in order to maintain their standard of living and purchasing power. The PBA's economic expert Caprio conducted an extensive examination of the Township's financial situation and concluded that Hopewell could afford to provide the salary increase sought by the PBA. Caprio determined that the Township continued to have excess budget appropriations, maintained budget flexibility, and had the capacity to regenerate surplus. He noted that Hopewell's revenue collections are strong, average residential property values are the third highest in Mercer County, and the municipal component of property taxes is the second lowest in the county. Caprio also determined that neither the appropriations nor the property tax levy cap is an issue for the Township, because Hopewell has been below the appropriations cap in each of the past five years, and the property tax levy cap has unused statutory taxing capacity. The PBA further notes that the Township realizes shared-services income from the law enforcement services provided by the PBA membership to Hopewell Borough; in effect, the PBA maintains that it is contributing to the Township's revenue by virtue of this shared services agreement.

The PBA further urges that consideration must be given to the savings the Township will realize due to the departure of four officers from the PBA unit --

two were promoted, one retired, and another is no longer on the Township's payroll. The compensation to which these officers who are no longer on the payroll would have been entitled is known "breakage", and the PBA asserts that this cost saving to the Township should benefit the PBA.

The PBA recognizes that during the period when the hard cap was in effect, the Public Employment Relations Commission issued two decisions which addressed the issue of "breakage" in the context of projecting the cost of an award for its duration to assure that it did not exceed the 2% cap. These decisions, New Milford and Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶13 2012), held that the calculation of costs for successor contracts must be determined by a snapshot of the unit workforce salaries on the last day of the predecessor contract, and specifically precluded the use of "breakage" as part of that calculation. However, the PBA maintains that the above-cited Commission decisions do not preclude this arbitrator from taking "breakage" savings into account in this matter because the hard cap sunsetted for this unit and the cited decisions are based upon an elucidation of a statute which is no longer in effect. Additionally, the PBA notes that the "breakage" at issue here is actual and not speculative. The PBA points out that the Township has utilized the "breakage" in

budgeting for 2019 salaries in its proposed budget; less money was budgeted for law enforcement salaries in 2019 than in 2018.

In order to attract and retain qualified police officers and officer candidates and maintain an effective public safety department with high morale, the PBA maintains that its salary proposal must be awarded. From the PBA's perspective, if the Township's salary offer were awarded, morale would plummet, and Hopewell police officers would likely seek other less dangerous and more generously compensated employment with other agencies such as the Sheriff or the County Prosecutor. In addition, the PBA states, the proposed salary level would discourage the best candidates from joining the Hopewell police department.

### **Township's Salary Position**

The Township recognizes that the hard cap is no longer in place, and that PBA members are currently contributing to the cost of their health benefits at the Tier 4 level. However, Hopewell asserts that the public policy goal of controlling the cost of local government to protect the taxpayers remains as an important consideration and must be taken into account when evaluating the PBA's salary demands.

Hopewell disputes that the PBA has correctly computed the cost of their salary proposal. Noting that both salary and step increases involve compounding costs, the Township points out that in each year of the contract, any increase must be calculated on the prior year's base together with any increase which was realized in that year. By way of example, any salary increases for 2021 must be computed using the 2018 base salary, plus any 2019 increase, plus any 2020 increase. The Township maintains that even its own assessment of the cost of salary increases for 2019 undercalculated the true costs because 50% of the rollover costs from implementation of the of the 2% increase on July 1, 2018 carried over into 2019.<sup>9</sup> Even without an across the board salary increase, the Township observes, total cost of police salaries will increase as officers on step in 2018 proceed through the salary steps in each successive year of the CNA.

The Township also strongly disagrees with the PBA's position concerning the use of "breakage" to assess the cost of salary increases. In Hopewell's view, both New Milford and Ramsey are still good law, despite the sunseting of the hard cap. Hopewell urges that the principles of fiscal prudence which underlay both decisions are still viable. The Township points out that the problem with

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<sup>9</sup> The Township referred to the 2018 salary increase as "across-the-board"; however, that raise was only applicable to the top step.

including “breakage” in any cost analysis is its speculative nature. Over the course of any CNA, Hopewell observes, the size of a workforce expands and contracts in unanticipated ways. Employees retire, leave or are promoted out of the unit. Hopewell observes that the PBA’s “breakage” savings analysis is flawed. For example, when officers are promoted, the employer does not realize attrition savings, because the officers remain on the payroll, and also have a higher rate of pay due to the promotion. Even when police officers retire, payments for accrued but unused vacation time, as well as payment for accrued sick time up to a maximum of \$15,000 and retiree health benefits must be taken into account.

The Township maintains that the only sensible way to calculate the cost of any salary proposal is to use a fixed point in time. PERC provided that fixed point in time in its New Milford and Ramsey decisions. Hopewell points out that it did not take “breakage” into account in calculating the cost of the salary proposals at issue, nor did it consider the cost of hiring additional officers. The costs were calculated utilizing a snapshot of the PBA unit as it existed on December 31, 2018.

The Township notes that the Legislature’s concern about the cost of local government is reflected in the 2010 amendments to the Police and Fire Public Interest Arbitration Reform Act. The Township avers that the 2010 amendments



emphasized the need for interest arbitrators to consider the impact of the New Jersey Local Government Cap Law (Cap Law), N.J.S.A. 40A:4-45.1 et seq., and the limitations it imposes on both increases in appropriations, as well as on the local unit's property tax levy when rendering an award. N.J.S.A. 34:13A-16(g)(5).

According to the Township the cap law controls the cost of local government by prohibiting municipalities from increasing certain appropriations, including the cost of police officers' salaries, by more than the cost-of-living adjustment over the previous year's similar appropriations. N.J.S.A. 40A:4-45.2. When it enacted 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:45.1.

The Township maintains that the cap law also limits the funds which a municipality can raise through taxation. N.J.S.A. 40A:4-45.45. In 2010, amendments lowered the tax levy cap from 4% to 2% and amended exclusions. Hopewell points to this reduction in property tax levy cap as further evidence of the legislative mandate to limit the cost of local government and reduce the tax burden on local residents.

Although the Township does not assert an “ability to pay” argument with respect to the PBA salary demands, it emphasizes that the combined effects of the hard cap and the implementation of Chapter 78 led to relatively moderate municipal tax increases in Hopewell over the past five years. Despite the fact that the hard cap is no longer mandatory, the Township urges that the objective of cost control remains significant and should be taken into consideration when evaluating the cost of police officer salaries.

While it acknowledges that the level of employee health benefit contributions is negotiable since full implementation of Chapter 78 has been achieved in the PBA unit, the Township maintains that any change from the current tier 4 level of contribution could have an adverse impact on the tax rate. Noting that health care premiums continue to rise, and that employer costs for their share of these premiums will increase over the term of the CNA, Hopewell urges that the cost control aspects of Chapter 78 should remain in the forefront when considering any change in the tier 4 contribution level. The Township also notes that the PBA has failed to identify any comparable interest arbitration award which reflected a reduction in Chapter 78 contribution levels from tier 4.

The Township maintains that its salary offer will provide the PBA with a fair wage increase within Hopewell's budgetary constraints. Starting salary for police officers is competitive with other similar communities in the county and will remain above average even without any increase over the three-year term of the CNA. The Township notes that the maximum police officer salary was the sixth highest in Mercer County in 2018; furthermore, both the number of steps on the salary guide and the years to maximum patrol officer salary reflect the county average. The Township urges that it has not experienced an issue with attracting or retaining police officers. The Township maintains that it should not be penalized for its careful use of its financial resources. The Township prides itself on its fiscal responsibility, which has resulted in a AAA bond rating, a prudent surplus, and the ability to deliver quality services to the taxpayers. The Township urges that its salary offer will provide the PBA members with a competitive wage increase while controlling expenditures.

#### **DISCUSSION OF THE SALARY ISSUES**

The PBA's proposal is for a 3.5% across-the-board increase in each year of the contract. It also proposes step movements for eligible employees in each year of the contract. In calculating the cost of its proposal, the PBA used a 2018 base number of \$2,217,546; however, I note that this base year cost did not

include Patrolman Gaskill who retired on December 31, 2018. It also reduced salary information of Patrolman Koveloski who retired on a disability in May 2019. In addition, it added in the cost of two new hires as of June 1, 2019. The PBA's cost calculations of its proposal over the life of the contract are as follows:

	<u>Total Cost</u>	<u>Increase/Decrease</u>
- 2019	1,937,213	(280,333)
- 2020	2,170,632	233,419
- 2021	2,363,096	192,464

The Township's proposal would provide a 1.5% annual salary increase to the top step only on the salary guide. The dollar values of all other steps would remain frozen for the life of the contract, although officers moving through the step guide would continue to receive increments when eligible. The Township calculated that its proposal would cost \$2,291,371 in 2019; \$2,356,264 in 2020; and, \$2,414,088 in 2021. These figures of both parties include prorated increments and longevity increases for the length of the new contract. The Township states that it has actually under calculated true costs because its figures have not included rollover costs from the raise awarded in July, 2018, which would add an additional \$22,470 to the award costs.

The PBA contends that it is looking to "make up lost ground" based upon the years it endured minimal raises because of the 2% hard cap as well as the

significant health benefit contributions required by Chapter 78. The Township also refers to the hard cap and acknowledges that the statute which required arbitrators to stay within the 2% is now sunsetted for this bargaining unit. Nevertheless, the Township urges me to continue to respect the spirit of the 2% cap law in issuing this award. Further, the parties disagree over the method of calculating the costs of the award. The Union proposes that all breakage – including consideration of one employee who retired at the end of 2018 and three additional employees who left the bargaining unit via retirement or promotion in early 2019 – should be calculated as savings and subtracted from the costs of the award. The PBA’s calculations as detailed above have taken breakage savings into consideration.

In 2011, the Legislature passed an Act which was amended in 2014. N.J.S.A. 34:13A-16.9 established limits on the amount an interest arbitrator could award in interest arbitration proceedings and provides:

This act shall take effect January 1, 2011; provided however, section 2 of P.L. 2010, c.105 (C. 34:13A-16.7) [the cap provision] shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to negotiated agreements expiring on that effective date or any date thereafter until or on December 31, 2017, whereupon, after December 31, 2017, the provisions of section 2 of P.L. 2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements

expired prior to or on December 31, 2017 but for whom a final settlement has not been reached.

The Act essentially placed a hard cap of 2% on any award after determining the total cost of base salaries paid in the base year. The purpose of this statute was to provide cost containment for New Jersey property taxpayers. As much as the Township may wish that Chapter 105 continued, the statute has sunsetted for contracts expiring after December 31, 2017. This would include the expired agreement in this matter. Had the New Jersey Legislature deemed it necessary to continue the statutory salary limitations, it could have extended the statute for an additional time period. It did not. Therefore, this matter is not controlled by the strictures of N.J.S.A. 34:13A-16; rather, I am bound by the nine statutory criteria as outlined in the same statute.

The PBA asserts that the breakage money – the savings left over as a result of the four retirements/promotions and their replacement with new recruits at a substantially lower salary – should be used in the formal calculation of costs of the award. The basis of the PBA's theory on this issue is that the 2% hard cap statute has now expired and therefore, all cost methodologies arising out of that statute are no longer applicable. While obviously, the 2% hard cap no longer applies to this bargaining unit, there is no basis to conclude that the Commission's

long-standing caselaw concerning the use of breakage to cost-out awarded salary increases is inapplicable. See, New Milford; Township of Irvington, Docket No. IA-2019-10, S. Osborn (January 24, 2019). In this matter, breakage will not be considered for purposes of formally costing out the award; the award costs will be based upon the compliment of unit employees who were on the payroll as of December 31, 2018. This would not include consideration of employees who retired or new recruits hired after December 31, 2018. New Milford. This group of employees will be moved through the salary guide and attendant salary costs applied for the life of the contract. I note that, contrary to the Township's assertion, the retirements and promotions at issue here are not speculative; they have all actually occurred already. However, I will consider the savings to the Township between 2018's salary costs for this unit and the same costs for subsequent years, as did the Township in its 2019 budget plan. This consideration will be with an eye towards the impact on the taxpayers and the Employer's ability to pay.

The Township's argument that salary costs should be "compounded" from year to year is not persuasive. Although the Township referred to this concept as compounding, I believe the Township really was referring to the concept of accumulating the costs from year to year. For instance, the Township suggests

that an increase granted in the first year of the contract would necessarily continue through the life of the contract and must be added in each year. The Township has not cited any prior Commission decision, court decision, or any other interest arbitration award in which this methodology has been used. Typically, the cost increases for each year of the contract are tracked separately and not double counted in subsequent years.

### **Comparability**

Consideration of comparable salaries and other terms and conditions of employment in jurisdictions which are similar to the police department at hand, is one of the criteria listed in the statute. Here I will consider both internal comparables as well as law enforcement officers in other jurisdictions. The parties have stipulated that the most relevant departments are those in Mercer County and particularly West Windsor Township and Robbinsville Township because those two municipalities are socioeconomically similar and in close proximity to Hopewell Township.

### **Internal Salary Comparables**

The PBA provided a comparison of the wage increases provided to PBA members as opposed to the Township's civilian units in the last round of collective negotiations as provided in the chart below. Here it is noteworthy that



the 2016 round of negotiations, which included three civilian units and two police units, resulted in across-the-board wage increases for all employees 3.0% in 2016, 2.0% in 2017, and 2.0% in 2018. By comparison, the PBA unit went to interest arbitration and received a 1.0% increase to the top step only in 2016, followed by a 2.0% increase to the top step only in 2017, and another 2.0% increase to the top step only in 2018; that final increase was delayed until July 1, 2018. Members of the PBA unit not yet at maximum pay received step increases during this contract but not salary increases.

<b>Unit</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
CWA	3.0% ATB	2.0% ATB	2.0% ATB
AFSCME	3.0% ATB	2.0% ATB	2.0% ATB
Dispatchers	3.0% ATB	2.0% ATB	2.0% ATB
<b>PBA 342</b>	<b>1.0% Top Step Only</b>	<b>2.0% Top Step Only</b>	<b>2.0% Top Step Only</b>

### External Comparables

The following chart shows a comparison among the top pay rates for law enforcement officers in Mercer County jurisdictions:

<b>Maximum Police Officer's Salaries</b>			
<b>Ranking</b>	<b>Municipality</b>	<b>Effective Date</b>	<b>Salary</b>
1	Hamilton	7/1/2018	120,049
2	Ewing	7/1/2018	115,000
3	Princeton	1/1/2018	114,882
4	Lawrence	1/1/2018	112,453

5	West Windsor	1/1/2018	109,640
<b>6</b>	<b>Hopewell Twp.</b>	<b>7/1/2018</b>	<b>109,567</b>
7	Mercer Cty Pros Inv	1/1/2017	100,956
8	Robbinsville	1/1/2018	100,272
9	Hightstown	1/1/2018	99,009
10	Mercer Cty CO	1/1/2017	93,206
11	Trenton	1/1/2018	93,144
12	Mercer Cty SO	1/1/2018	88,697
13	Pennington	1/1/2018	72,037
14	East Windsor	Settlement Pending	
		<b>Average:</b>	<b>102,224</b>
	<b>Hopewell Twp:</b>	<b>7% above average</b>	

As can be seen from the chart, Hopewell Township is slightly more than 7% above average maximum pay for all jurisdictions. It should be noted that all salaries listed above, except two, are based upon 2018 salary rates. Since most of these contracts are still open, salaries will likely increase as a result of negotiations for 2019 and beyond. Currently, Hopewell Township police earn the sixth highest top pay rate among the fourteen police jurisdictions, the highest being Hamilton Township with a top pay rate of \$120,049. Thus, the data on salaries in comparable jurisdictions would indicate that a pay raise to the Hopewell Police is appropriate in order for them to maintain pace with other jurisdictions.

I note particularly that West Windsor Township is within \$100 of the top pay in Hopewell. West Windsor is socioeconomically similar to Hopewell Township and is geographically close in proximity. West Windsor Township PBA has not settled its contract and in fact, is currently in interest arbitration. I note that the West Windsor Township Fire Department have signed a tentative memorandum of agreement, apparently pending ratification, which provides for across-the-board increases of 1.85% in 2019, 1.95% in 2020, and 2% each in 2021 and 2022. It is noted particularly, that this settlement, which averages 1.95% per year applies to all unit employees, not limited to employees at top step only. It may be that the interest arbitrator assigned to hear the police successor agreement will consider this settlement as a comparability factor in deciding increases for the police.

The Township proposes a 1.5% increase to the top step of the salary guide only in each year of the contract. It will agree to the payment of step increments for eligible employees in each year of the contract. The Town asserts that this is a sufficient and appropriate salary increase in that it respects the spirit of the 2% hard cap. This raise would also be fiscally responsible and be in line with the Township's budget for 2019.

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### Freezing the Starting Salary

To control costs, the Township proposes to freeze the minimum starting salary for police officers at the current rate of \$50,652. This starting salary has been in effect since at least 2015. (P-4. d.) However, the chart below shows a comparison between Hopewell's starting salary and the starting pay of other municipalities in Mercer County.<sup>10</sup>

Minimum Police Officer's Salaries			
Ranking	Municipality	Date Effective	Salary
1	Robbinsville	1/1/2018	67,500
2	East Windsor	1/1/2016	62,452
3	Princeton	1/1/2018	57,911
4	Hamilton	7/1/2018	54,000
<b>5</b>	<b>Hopewell Tp.</b>	<b>7/1/2018</b>	<b>50,652</b>
6	Hightstown	1/1/2018	45,000
7	Trenton	1/1/2018	44,124
8	West Windsor	1/1/2018	43,174
9	Ewing	7/1/2018	41,167
10	Pennington	1/1/2018	31,836
11	Lawrence	1/1/2018	30,000
		Average:	47,983
	Hopewell Twp:	5% above average	

<sup>10</sup> Hopewell calculated that it still has the third highest starting salary in the County and it is 9% above the average starting pay of \$46,536. However, the Township did not include data for East Windsor because the parties are assertedly close to a settlement agreement for a successor contract. I included the East Windsor data from the most recent contract which expired in 2016 because that is the current rate.

The Township acknowledges that the savings from this proposal are speculative in the short run but will result in savings over the long term as the Township hires new officers. However, in fact, the Township will benefit in the short run if this proposal is awarded because it has hired two new officers to begin in June, 2019.

The PBA avers that the Township's offer is downright insulting when one considers the importance of the services provided by PBA Local 342 members. It continues that the Township's proposal would destroy the morale of our members and negatively impact the Township's ability to attract, retain, and/or promote current and prospective police officers.

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The Township's proposal to freeze starting salaries for the life of this contract is granted. Hopewell's starting pay is higher than the County average which does not support the public interest. At just over \$50,000 per year, I am confident that the Township will continue to be able to attract qualified police officer candidates. Moreover, after the first year of employment in Hopewell, the new officer advances on the salary guide (even before salary increases are implemented in 2019) to \$57,278 – a 13% increase. Therefore, it can hardly be said that maintaining the current starting salary will damage continuity of

employment. The Township's proposal to freeze starting salaries for the life of the contract is granted.

### **Elimination of 6-Step Guide**

The six-step guide has been in the contract for some time. In 2013 the parties agreed to create a 12-step guide for employees hired after January 1, 2013. The six-step guide continued in effect for those hired before January 1, 2013. Both guides have identical step values at the top step.

The PBA proposes to now eliminate the six-step guide from the contract. It reasons that because all unit members who were moving through the six step guide at now at top step (which is the same salary as the top step on the 12-step guide), there is no longer any need to maintain the six-step guide in the contract. The Township has not objected to this proposal. In the interest of removing unnecessary provisions from the contract and eliminating confusion, the PBA's proposal is granted.

### **Additional Salary Guide Steps**

The Township proposes to create a new salary guide that would contain 16 steps with increments of equal value. It would propose to implement this new guide for all employees hired after January 1, 2019. Presumably the purpose of this revised salary guide would be to make the increments more evenly applied

and to significantly reduce the dollar value of the increment for step movement between step 11 and step 12. That particular step movement, as of 2018, was \$11,731 and after this award is fully implemented that increment value will rise to \$14,485. It is also noted that there are three employees with identical anniversary dates who are currently on step 7 of the guide. Of course, this means that all three employees, if they continue their careers with Hopewell Township, will reach step 11 in 2022.

The PBA argues that adding yet another salary guide to the contract will divide the workforce and create poor morale among the police officers.

I reject the Township's proposal that the new guide includes 16 steps or that it be implemented for new hires only. First, 16 steps in comparison with other law enforcement jurisdictions in Mercer County would be nearly at the top end of the range as shown below:

<b>Salary Guide Steps</b>		
<b>Municipality</b>	<b># of Steps</b>	<b>Yrs. To Max. Sal</b>
Robbinsville	20	19
Ewing	15	14
Hamilton	14	14
Princeton	14	13
Trenton	13	11
<b>Hopewell</b>	<b>12</b>	<b>11</b>

West Windsor	12	10
Hightstown	11	10
Lawrence	10	8
Pennington	9	8
East Windsor	7	6
<b>Average</b>	<b>12.5</b>	<b>11.3</b>

Secondly, it would provide the parties with no relief for the significant increment cost between step 11 and step 12 – \$14,485 following full implementation of this award.<sup>11</sup> Therefore, I decline to award the Township’s proposal. Instead, I award the revision of the 12-step guide by adding one additional step between steps 11 and 12.

### **Salary Increases**

After careful consideration of all of the facts developed from the record evidence, I conclude that the PBA’s proposal calls for excessive raises which are not supported by the record evidence. Similarly, the Township’s proposal is insufficient to address the statutory factors required of an arbitrator to issue an award. I conclude that a more appropriate salary award is as follows:

### **2019**

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<sup>11</sup> It is the inevitable consequence of applying a salary increase to the top step only, that the cost of increments between the top step and the next step will rise disproportionately to the other increment costs.



Effective and retroactive to January 1, 2019, 2.2% across-the-board increases to all employees in salary steps 2 through 12 on the salary guide, plus increments to be paid to all eligible police officers. Effective July 1, 2019, starting salary of \$50,562 will be frozen for the life of the contract.

### 2020

Effective January 1, 2020, 2.0% increase to the top step of the salary guide, plus increments to be paid to all eligible police officers. Effective January 1, 2020, one additional step will be added to the salary guide between the current step 11 and step 12. The dollar value of the step will be equidistant between step 11 and step 12.

### 2021

Effective January 1, 2021, 1.8% across-the-board increases to all employees in salary steps 2 through 12 on the salary guide, plus increments to be paid to all eligible police officers.

### Longevity Elimination

The Township proposes to eliminate the longevity benefit for officers hired after January 1, 2019. The PBA opposes this proposal.

Currently, Article 13 of the expired contract provides at Section C that unit employees will receive longevity benefits in accordance with the following schedule:

10-15 years' service      \$1,000

15-20 years' service      1,500

20 or more years' service 2,000

By the end of 2018, 5 employees had 20 or more years of service and were collecting \$2,000 each; and 7 employees had between 15 and 20 years, collecting \$1500 each. The longevity benefit costs the Township \$23,500 in 2018.

The Township argues that there is a Township-wide pattern of settlement among all of its other bargaining units to eliminate longevity for new hires. The Township points out that it also argued for longevity elimination in the 2016 interest arbitration for the 2016-2018 contract. As the interest arbitrator in that matter, I rejected the Township's proposal, finding that the pattern of settlement was such that all other Township bargaining units continued to enjoy longevity benefits. However, in negotiations for the 2016-2018 contracts, AFSCME, CWA and the 911 Operators' Association all agreed to forego longevity for new hires.

Moreover, one of the statutory criteria is salary and benefits for similarly titled employees in comparable jurisdictions. In Union County, P.E.R.C. No. 2003-

87, 29 NJPER 250 (¶ 75, 2003), the Commission noted that an internal pattern of settlement properly focuses on the terms of economic improvement offered in a given round of negotiations. See also, Somerset County Sheriff v. FOP Lodge 39, Docket No. A-1899-06T3, 34 NJPER 8 (App Div 2008). The parties in this matter have both put forth comparables from other law enforcement agencies in Mercer County. The Township submitted Ex. 12, a chart which shows the status of longevity benefits for new hires. Of the 11 municipal police forces in Mercer County, 8 have eliminated longevity for new hires. Only Hopewell, Hamilton Township<sup>12</sup> and Ewing Township has retained longevity. The PBA asserts that such a proposal is shortsighted and fails to take the public safety interest of the Township's residents into consideration.

The Township has persuaded me to grant this contract proposal. Under the statutory factor of comparability, it is important for employee morale that concessions made by the three civilian groups be seriously considered in awarding a benefit giveback by the PBA. Moreover, it must also be considered that most municipalities in Mercer County have already conceded this benefit. It should also be noted that the loss of this benefit affects none of the current employees.

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<sup>12</sup> Hamilton Township pays \$1350 after 20 years of service.

Therefore, I award the elimination of longevity benefits for employees hired after July 1, 2019.

**Officer-in-Charge (OIC) Pay (Article 25)**

The PBA proposes to amend Article 25, “Absence of Squad Sergeant” as follows:

~~The procedure to be followed and the responsibility of patrolmen in the absence of a squad sergeant shall be consistent with prior practice. In the event At any time during a rank and file officer’s tour of duty, should he or she be assigned the work, duties and/or responsibilities of a sergeant, that officer shall be paid at the sergeant’s minimum rate of pay for the entire tour of duty. an employee shall work twenty-four (24) hours as a sergeant, that officer shall be paid at the sergeant’s minimum rate of pay after twenty four (24) hours.~~

The PBA proposes to amend this language so that OIC payments when a patrolman assumes the duties of a sergeant who is absent would begin at the first hour of such assignment. PBA President Voorhees testified that patrolmen are frequently assigned to perform the duties of sergeants – in fact, several times a week. Because patrolmen, except detectives, work a 12-hour shift, they would have to work two full shifts as an acting sergeant before any compensation would be due for the third shift. Under the current system, unless the assigned shift is concurrent, no OIC pay is due<sup>13</sup>.

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<sup>13</sup> Calculation of the cost of the PBA’s proposal is not possible because the record does not contain information on how frequently patrolmen act as sergeants and receive compensation.

The Township contends that the PBA's proposal would impose significant cost increases on the Township. It calculated the cost of the PBA's proposal using an average sergeant as an example. In 2017, the absences of sergeants totaled 556.5 hours, 98.5 of which were compensated to PBA members. For 2017, the Township paid OIC pay of \$501.58. In 2018, sergeants' minimum hourly compensation was \$58.56 - \$5.09 more than top-pay patrolmen. Had the PBA's proposal been in effect at that time, the Township would have paid PBA members for an additional 458 hours (556.5 total minus 98.5 paid = 458 unpaid), which would have resulted in addition compensation for patrolmen of \$2,331.22 for the year.

It appears that, based upon the Township's evidence, the patrolmen required to serve as sergeants for 98.5 hours with compensation and for 458 with no compensation. In other words, they assumed extra duties, such as running the shift and approving patrolmen's reports, for which they were not compensated anything for 82.3% of the time. The PBA notes that it is seeking parity with the Township's Public Works Department employees, who receive "in charge" compensation for all work assigned as the individual in charge. I agree with the PBA that such compensation is fair and reasonable considering the extra duties assumed by the "officer in charge". Moreover, it is consistent with the concept

of relying on the terms and conditions of employment of other employees of the same municipality to determine such terms for the unit employees at issue.

Such compensation would also improve employee morale as employees would be fairly compensated for the responsibilities to which they are assigned. The costs to the Township are relatively minimal. In light of the foregoing, I award the PBA's proposal concerning OIC pay in its entirety, effective January 1, 2019.

### **Detective Stipends**

The PBA proposes a new benefit for detectives such that each detective would be paid an annual stipend of \$2,000, in addition to the officer's regular base pay and, presumably, in addition to the compensation the detectives receive for on-call pay. The PBA proposes that the stipend would be payable annually in a lump sum in December. It proposes to implement this new provision effective January 1, 2019.

The Township opposes the PBA's proposal. First, it points out that detectives already receive compensation of one hour for each day they are required to be on call. Detectives normally work 9:00 a.m. to 5:00 p.m., Monday through Friday. According to the Township, there are either 2 or 3 detectives on call each weekend (Friday, Saturday and Sunday)<sup>14</sup>. The Township calculated that

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<sup>14</sup> It appears that one detective position is currently vacant.

the current costs of this benefit for the 3 detectives presently assigned is \$2,739 annually per detective (52 weeks x \$52.67 per hour). If there are 2 detectives, the cost per detective would be \$4,108 (52/2 x 3 hours per week x 52.67 per hour).

The Township also notes that the cost of the detective stipend as proposed by the PBA, is an additional \$6,000 per year, when there are 3 detectives, which will continue in 2020 and 2021.

The PBA has failed to justify its demand for detective stipends. Detectives are already compensated, albeit modestly, for being on call. Moreover, they have the benefit of a “weekdays only” work schedule and are not ordinarily required to work evenings, weekends, or holidays. There is, quite simply no justification provided to increase their compensation at this time.

### **Uniforms**

The PBA proposes an increase in uniform allowances. The contract currently provides an annual uniform allowance of \$925.00 to cover replacement costs of uniform components and equipment as needed. However, all cleaning, maintenance and repair of uniforms is provided by the Township at no expense to the employee (Ex. E-17). Further, the Township provides detectives, who wear civilian clothing, an annual clothing allowance to cover the general wear and tear for the use of their personal clothing. This allowance is now \$950.00 annually.

The Township also replaces street clothing damaged during the performance of duty.

The PBA seeks to increase the allowances for both patrolmen and detectives to \$1,200 annually. The PBA justifies this by a form letter from Samzie's Uniforms to all customers alerting them to possible price increases. (P-4) Vorhees testified about examples of the cost of uniform components. He explained that a pair of boots now costs around \$200 and must be replaced yearly; uniform shirts and pants cost about \$100 apiece plus alterations.

The Township points out that the increase of \$275 per officer as requested by the PBA will cost the Township an additional \$5,500 a year for the 21 uniformed patrolmen.<sup>15</sup> As to uniform allowances paid by other jurisdictions, the Township submitted exhibit E-17, which is a chart showing the amount of clothing allowance and clothing maintenance allowance afforded to municipal police officers in Mercer County.

Clothing Allowance Comparables		
Municipality	Uniform Allowance	Detectives
East Windsor	1,386	1,386
Ewing	1,075	1,075
Hamilton	n/a	n/a
Hightstown	850	950
<b>Hopewell Twp.</b>	<b>925</b>	<b>950</b>

<sup>15</sup> As of December 31, 2018, there were twenty-one uniformed officers and two detectives.



Lawrence	1,600	1,600
Pennington	n/a	n/a
Princeton	1900	1,900
Robbinsville	300	300
Trenton	1,525	1,525
West Windsor	n/a	1,000
Average	1,195	1,187
* Several departments' contracts refer to uniform allowance as applicable to "all employees covered under the Agreement". I infer that this includes detectives.		

It is evident from this comparison that Hopewell police officers are more than \$200 below the County average for clothing allowance. In fact, Hopewell's police have not had an increase in clothing allowance since the most recent rate was set in 2010. In light of the cost-of-living increases over the last nine years, I am convinced that it is now appropriate to award a modest increase. However, what the PBA has demanded amounts to a 29.7% increase, which I find to be unjustified by the evidence. Accordingly, I will increase the patrolmen allowance to \$1,050, effective January 1, 2019.

The PBA also proposes to match the detectives' clothing allowance to that proposed for the patrol division. Pursuant to the PBA's proposal, detectives' clothing allowance would increase to from \$950 to \$1,200 annually. The Township's response to this proposal is the same as it was for the proposed

increase in uniform allowance for the patrol division. It believes the increase has not been justified by the record evidence and is unnecessary .

The evidence shows that three other municipalities in Mercer County have separate clothing allowances for plain clothes officers while other Mercer County municipalities have a clothing allowance which covers all unit employees. See the chart above. In light of the foregoing, I conclude that the detectives' clothing allowance should be increased by \$100 for a total of \$1,050 annually, retroactive to January 1, 2019. The cost of this awarded clothing allowance increase is:

- \$125 X 21 patrolmen = \$2,625

- \$100 X 2 detectives = \$200

### **Educational Assistance Plan**

Article 15, "Educational Incentive" currently provides in part,

#### A. Tuition Cost

1. For the purpose of encouraging police personnel to continue their education, the Township will reimburse employees fifty percent (50%) of the cost of tuition for enrollment in courses leading to degrees in law enforcement or criminal justice.

The Article also provides for approval of the course by the Chief of Police and for full reimbursement of textbooks.

The Township proposes to add:

Employees must complete five years' service after completion of any tuition reimbursement course. For each year under 5, employees will contribute 1/5 reimbursement to the Township. For example, if [the] employee leaves within 2 years of completion of course, employee shall owe 3/5 of reimbursement to the Township.

The Township argues that adding this language ensures that the Township receives the benefit of the education it paid for by encouraging the officer to remain in the Township's employ for five years after completion of any tuition-reimbursed course. The Township notes that it is unlikely that this proposal will result in any savings to the Township during the upcoming contract term and savings in the future would be too speculative to calculate.

The PBA contends that this proposal threatens the continuity and stability of the bargaining unit's employment. The PBA further maintains that the Township is attempting to tie in a service component to the incentive being received and thus seeking to drastically alter an existing benefit. The educational incentive provided to PBA members is meant to increase the qualifications and level of education for an officer. The PBA continues that a better educated officer will clearly have a positive impact on the department and the Township.

Therefore, this benefit should remain unencumbered as it is an important component to the compensation package afforded to PBA members.

Additionally, the PBA argues that there is no evidence of any problem created by

the educational reimbursement program that needs curing by this proposal.

Therefore, it urges that the proposal be denied.

The Township submitted evidence of educational benefits in comparable municipal police departments in Mercer County. Of the eleven police departments in Mercer County only four have an educational reimbursement program for tuition and books. However, unlike six in-County municipalities, Hopewell does not have an educational incentive program which would provide any stipend for advanced degrees. Notably, West Windsor reimburses up to \$4,000 annually for courses in police science, criminal justice, or similar police-related courses.<sup>16</sup> I note that none of the departments require employees to repay the municipality if they leave the police department.

As mentioned previously, a party proposing a change has the burden of proving the need for or desirability of such a change. Here, the Township has not submitted any evidence of the costs associated with the tuition reimbursement program, nor how many employees have taken advantage of the program, and especially, whether any problem has been created by officers leaving the department soon after being reimbursed for their coursework. Without supporting facts, it is not possible to apply the statutory criteria to the issue.

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<sup>16</sup> Hopewell reimburses 50% of tuition costs for law enforcement or criminal justice courses.

Further, the comparable data from other Mercer County municipalities do not support this proposal. Therefore, the Township's proposal is denied.

### **Release Time for PBA Business**

The PBA proposes a new article concerning attendance at PBA meetings and conventions, as follows:

#### Conduction of Association Business

A. The Employer agrees to grant the necessary time off without loss of pay to one (1) member of the Association selected as Delegate and one (1) member of the Association selected as President to attend any State PBA Meeting and County Conference Meeting. Convention Leave for members of the Association shall be provided pursuant to New Jersey Statute.

First, the testimony of Vorhees confirms that the president and the delegate already get paid-time off to attend the annual PBA convention in September and the mini convention in the Spring. N.J.S.A. 11A:6-10 and N.J.A.C. 4A:6-1.13(b) guarantees this benefit. Therefore, I will award the language requested by the PBA concerning convention leave.

Several other municipalities in Mercer County grant the local time off for Union business. Some contracts do this by a specific number of days to be allocated between the president and the delegate at the Union's option. Other contracts simply guarantee time off for PBA meetings without limit.

The Township opposes the PBA's proposal. It notes that this proposal to attend an unlimited number of meetings with paid-time off would result in additional costs to the Township.

I find the PBA's proposal potentially creates excessive time off. It must be remembered that patrolmen (except detectives) work a 12-hour shift on a modified Pittman schedule. If a patrolman is granted a full shift off with pay to attend a PBA meeting, the cost might be about \$632.04 (\$52.67 per hour x 12 hours).<sup>17</sup> Depending upon whether minimum manpower quotas have been met that day, the shift may need to be backfilled with overtime, at a cost of time and one half (\$948.06). Further, there are a variety of PBA meetings that might cause the patrolmen to request off, including monthly State PBA meetings and meetings of the State PBA committees, of which there are many. In addition, there are County PBA meetings; the record includes no indication of the number of meetings held by the County conference. In addition, each PBA local has its own meetings periodically; it is typical for the local president and state delegate to attend these meetings.

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<sup>17</sup> This estimate is based upon a patrolman at top pay.

The PBA contends that, all tolled, PBA 342 is seeking an additional 10 days of union leave time to accommodate the above-referenced meeting schedules. However, it is unclear from the testimony whether the PBA is seeking 10 days for the Local or ten days each for the president and the state delegate. I find an unlimited number of days off for both the PBA President and the PBA State Delegate to attend state PBA meetings and County PBA meetings could result to up to 24 days annually off from work, plus the number days off to attend the PBA convention and the mini-convention. If, to fulfill minimum manning requirements, the Township had to backfill these times off with overtime assignments, the cost to the Township would be considerable. In light of the foregoing, I find that giving the PBA representatives carte blanche to attend all State PBA and County PBA meetings, in addition to the existing benefit of attending local meetings would be excessive. While I understand the PBA's interest in keeping up with county and state PBA happenings, there must be some limitations placed on such a benefit. Accordingly, I will award the benefit in part but with limitations as follows:

The PBA will be provided with 10 days per year of paid PBA leave time for the purpose of attending regularly-scheduled NJ State and Mercer County union meetings. The PBA may decide how to allocate the PBA time off between its Local President and its State Delegate. Requests for time off under this provision must be submitted to the Chief of

Police at least five calendar days prior to the requested day off. Convention Leave for members of the Association shall be provided pursuant to New Jersey Statute.

### **Annual Leave**

Pursuant to Article XII of the PBA's 2016-2018 contract, annual leave is provided to employees based upon the number of years of service as follows:

<b>Years of Service</b>	<b>Annual Leave (Hrs.)</b>
1	192
2-5	200
6-10	224
11-15	248
16-20	272
21	296
22	304
23	312

The PBA is proposing to add the following language to Article XII:

A. 6. Twenty-one or more calendar years of service. Employees who have attained twenty-one or more years of service are eligible for eight (8) additional hours per year of service for each additional year worked beyond twenty-one years up to a maximum of three-hundred and twelve (312) hours per year.



The Union's proposal does not appear to seek enhancement of the existing annual leave benefit but rather, merely to make the language clearer.

The Township offers no opposing argument to this proposal. Therefore, for the sake of clarity and eliminating confusion, the PBA's proposal is granted.

### **Donated Sick Leave (New Article)**

The PBA proposes a new article providing for a donated sick leave benefit. It asserts that such a program enhances the security of the entire unit as employees know they have some relief if a catastrophic illness or injury causes them to exhaust all of their sick leave.

The Township argues that there is already a town-wide donated sick leave program which has been in effect for all employees for many years. In fact, the Township notes, one patrolman currently on medical leave has recently applied to participate in that program. The Township argues that it should not have to administer two different donated sick leave programs – one for civilians and one for police.

I agree with the Township. The PBA has not demonstrated that there are flaws in the existing donated leave program, or that the PBA membership was unable to access the benefit. Rather, it seems that perhaps the PBA – at least the leadership – was not aware that there was such a program available to Township

employees. In any event, the PBA has not demonstrated that there is a need to establish a donated leave program for police officers separate from the existing program. The PBA's proposal is denied.

### **Health Benefits**

#### **90-Day Notice**

The PBA seeks to expand the period for notice of any changes in the health benefit carrier. Currently, the contract provides at Article 9(A), in pertinent part, as follows:

The Township will provide at least forty-five (45) days' notice to the employees of any change in carrier.

The PBA wishes to expand the notice period from 45 days to 90 days. It argues that 45 days is insufficient time to evaluate any changes in health care carrier as the Township might propose.

The Township is concerned that 90 days would create an unacceptable delay, impeding it from moving forward with a change in carrier which in turn would cost the Township money.

I note that the sentence in the article before the one in dispute provides that the Township may change the medical benefits provider so long as the benefits are equal or superior to the current coverage. It is not a simplistic

endeavor to evaluate the details of a medical benefits plan with an eye towards determining whether the coverage is equivalent or better than another plan. Often parties must seek the assistance and advice of professionals in the health care field to make that evaluation. The PBA makes a good point that 45 days may not be sufficient time to make that evaluation. On the other hand, I respect the Township's position that once it has the opportunity to move forward with a plan migration that will save it money, delay is not an advantage. Therefore, I will expand the notice period to 60 calendar days.

#### Health Benefit Waivers

The PBA proposes to revise Article 9 concerning health insurance waiver payments. The current contract provides in Article 9, "Insurance Protection", as follows:

G. The parties recognize that the Township has the right, pursuant to N.J.S.A. 40A:10-17.1 to determine, in its sole discretion whether to permit employees to waive health benefit coverage, and to determine the amount of payment to be made to such employees, provided that the amount does not exceed twenty-five percent (25%) of the coverage waived or five thousand Dollars (\$5,000.00), whichever is less. If the employer offers waiver compensation to PBA unit employees, such payments shall be made to the employee on a per pay basis.

The PBA proposes to replace the above language with the following:

Upon the presentation of proof demonstrating enrollment in a healthcare plan, the Township agrees to pay a stipend to any employee for the waiver of health benefits equivalent to twenty-five percent (25%) of the cost of those benefits or \$5,000.00, whichever is less.

The Township objects both to the elimination of the old language and the PBA's proposed new language. It contends that the new language is illegal. It cites Town of Westfield and Superior Officers Association, PBA Local 90A, P.E.R.C. No. 2018-12 (2017) and Barnegat Township, P.E.R.C. No. 2017-74 (2017) 44 NJPER (¶ 10 2017) .

The PBA argues that because the statute left the subject of waiver payments to the discretion of the Employer, the issue is therefore, permissively negotiable.

In the Town of Westfield, and Barnegat Township, PERC found that the employer's determination as to whether to permit waiver payments is set by statute and is therefore not negotiable. N.J.S.A. 40A:10-17.1, which was enacted in 1995 and amended in 2010, provides in pertinent part,

The decision of a county, municipality or contracting unit to allow its employees to waive coverage and the amount of consideration to be paid therefor shall not be subject to the collective bargaining process.

In both Westfield and Barnegat, PERC restrained the parties from proceeding to grievance arbitration over the employer's decision to stop offering waiver payments.

Given the clear language of the statute, and the Commission's holdings that the issue is not negotiable, the PBA's proposed language is problematic in that it commits the Township to providing the benefit at least for the life of the contract. Therefore, this proposal must be denied.

#### Proposed Plan Changes

In an effort to control costs, the Township proposes to increase copays for office visits for specialists from \$30 a visit to \$40 a visit. In addition, it proposes to double the out-of-network deductible so that individuals would pay \$1,000 annual deductible instead of the current \$500. Further, the out-of-network deductible for families would rise from the current \$1,000 to \$2,000. The Township also proposes to add a new plan entitled OMNIA Health Care Plan as an optional choice for unit employees. This plan has higher deductibles but lower premium costs. The purpose of the Township's proposal, it acknowledges, is to create additional savings to the Employer as well as the employee.

The PBA resists these changes in medical coverage and points out that I increased copays and deductibles in the 2016 interest arbitration award. In fact,

in the 2016 interest arbitration award I directed the parties to form a study committee to review proposed plans including the State Health Benefits Plan and the Employer-proposed \$20/\$30 plan. The parties subsequently agreed to the \$20/\$30 plan.

The current plan as compared with the Township's proposal has costs associated with it as follows:

<b>Comparison of 2019 Health Insurance and Prescription Premiums</b>			
<b>Medical</b>	<b>Enrollment</b>	<b>Direct Access \$20/\$30 Monthly Premiums</b>	<b>Direct Access \$20/\$40 Monthly Premiums</b>
Single	4	689.20	678.17
Employee/Child	1	1,388.30	1,366.09
Two Adult	3	1,534.39	1,509.84
Family	13	2,073.50	2,040.32
Waiver	2		
<b>2019 Annual Medical Premiums</b>			
	<b>Enrollment</b>	<b>Direct Access 20/30</b>	<b>Direct Access 20/40</b>
Single	4	33,081.60	32,552.16
Employee/Child	1	16,659.60	16,393.08
Two Adult	3	55,238.04	54,354.24
Family	13	323,466.00	318,289.92
Waiver	2	10,000.00	10,000.00
<b>Total</b>	<b>23</b>	<b>438,445.24</b>	<b>431,589.40</b>
<b>2019 Prescription Coverage Premiums</b>			
<b>RX</b>	<b>Enrollment</b>	<b>\$10/\$25/ .Mail Order</b>	<b>\$10/\$25/\$50/2x Mail Order</b>

Single	4	239.40	217.65
Employee/Child	1	402.93	366.67
Two Adult	3	550.85	501.27
Family	13	744.37	677.38
<b>2019 Annual Prescription Premiums</b>			
Single	4	11,491.20	10,456.80
Employee/Child	1	4,835.16	4,400.04
Two Adult	3	19,830.60	18,045.72
Family	13	116,121.72	105,671.28
<b>Total</b>		<b>152,278.68</b>	<b>138,573.84</b>
<b>Combined Total</b>		<b>590,723.92</b>	<b>570,163.24</b>

The Township acknowledges that its primary goal in seeking this proposal is to save premium dollars. As the chart shows however, the Town would save approximately \$7,000 in medical premiums annually, and about \$14,000 in prescription premiums annually, for a combined savings of just less than \$20,000. The employee's annual savings at a 35% contribution rate would be \$388.54 for single coverage, \$752.60 for parent/child coverage, \$871.75 for husband/wife coverage and \$1,177.97 for family coverage.

Further, the Township proposes to increase out-of-network charges for single coverage from \$500 to \$1,000. Also, it seeks to change the out-of-network

charges for family coverage from \$1,000 to \$2,000. The Township contends that the purpose of this increase is to discourage the use of out-of-network providers.

The Township also proposes to add this optional OMNIA plan which would include a cash-back stipend to the employee who selects OMNIA coverage.

<b>OMNIA with a Stipend: (In-Network Only)</b>		
	<b>Tier 1</b>	<b>Tier 2</b>
Referral Required	None	None
Individual Deductible	None	1,500.00
Family Deductible	None	3,000.00
Max. Out of Pocket Single	2500	4,500.00
Max. Out of Pocket Family	5000	9,000.00
Lifetime Benefit Maximum	Unlimited	Unlimited
PCP Office Copay	5	20
Specialist Office Copay	15	30
Inpatient Hospital Copay	100% after \$150 copay per admission	80% after deductible
Outpatient Surgery Copay	100% after \$150 copay	80% after deductible
Emergency Room	100% after \$100 copay	100% after \$100 copay
Routine/Preventive Care	100%	100%
<b>Coverage</b>	<b>Premium-Monthly</b>	<b>Stipend-Annual Monthly</b>
Employee	544.87	1,000/83.33
Employee & Child	1,097.56	1,250/104.16
Employee & Spouse	1,213.06	1,500/125.00



Family	1,639.26	2,000/166.66
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The PBA opposes the Township's proposals to change medical and prescription coverage. The PBA believes that based upon the significant Chapter 78 contributions to the healthcare plans it has made in the last several years, it would be unfair to reduce the coverage again. The PBA also notes that if this award included the Township's proposed changes, it would be the third time in nine years that medical coverage has been reduced or employee co-pays and other charges have been increased. The PBA opines that the combination of healthcare contributions and increased out-of-pocket expenses continues to reduce officer's take-home pay and amounts to a salary decrease.

I am inclined to award the Township's proposed change in medical benefits, that is, to change the plan from Direct Access \$20/\$30 to Direct Access \$20/\$40 plan. This change does not appear to me to impose a significant burden on employees. Even if an officer saw a specialist once monthly, the additional cost would only total \$120 a year. With regard to the out-of-network deductibles, increasing the deductible will encourage employees to use in-network-providers. However, the Direct Access network is very inclusive and it should not be problematic to find practitioners who participate in the Direct Access network.

Therefore, the employee has control or his/her own costs by using in-network providers.

The PBA does not seriously object to the addition of the OMNIA plan because that plan is an optional choice for employees. It also offers a stipend to participants and has lower premium prices than Direct Access \$20/\$40 plan.

With regard to the changes the Employer seeks in the prescription plan, these changes would include a new category of charges for “non-preferred brand” drugs at \$50 co-pay. Generally, non-preferred brand-name drugs are higher-cost medications that have recently come on the market. In most cases, an alternative preferred medication is available. A \$50 co-pay for these drugs is quite reasonable in light of the significant increased cost of the medication.

I award the Employer’s proposed changes in the medical plans and the addition of the OMNIA plan as proposed, including the stipend. I also award the proposed changes in the prescription plan. I emphasize that the combined savings of these changes is \$20, 560 in premium costs annually. For employees at a contribution rate of 35%, the savings to the employees would be \$1,177 (\$98 a month) for family coverage in the first year. These plan changes will become effective July 1, 2019.

## **Chapter 78 Contributions**

The PBA proposes to reduce its share of healthcare premium contributions from the current tier 4 rates to the tier 3 rates. The PBA argues again that the Chapter 78 contribution rates impose a significant burden on PBA members and substantially reduce their take-home pay. The Township argues that the PBA has not met its burden of proof that this change is necessary or desirable. More specifically, the Township notes that the PBA has not identified one municipality who achieved a reduction in Chapter 78 contributions through interest arbitration. Further, it asserts that the PBA has not been able to point to even one municipality in Mercer County that has voluntarily agreed to tier reductions. The PBA has submitted contracts which have included health benefit contribution reductions in approximately 20 municipalities statewide. However, none of these can be relied upon as comparable data.

The total cost of healthcare premiums for the entire municipality in 2018 was \$3,080,925, which was a reduction from 2017 levels of about \$160,000 dollars. Of the total cost, after employee contributions were subtracted out, the net budgeted cost to the municipality in 2018 was \$2,349,715. The PBA's members currently contribute up to 35% of the premium price; 16 members are at the maximum contribution rate, while 7 members pay a lesser percent based

upon their lower salary. Those members at top pay who elect family coverage are currently paying \$8,708.70 in annual premiums (\$24,882 per person premium for family coverage X 35%). Under the PBA's proposal this contribution would decrease by 25% to a maximum of 26% of premium costs (see PBA's final offer). This amounts to a reduction in contributions of \$2,239 annually for a top-pay officer selecting family coverage. This would be a 25% loss in revenue from PBA member contributions to the Township.

I decline to award the PBA's proposal to reduce healthcare contributions in this contract. While Chapter 78 has sunsetted, employees were left with a current term and condition of employment of the tier 4 contributions. While the PBA sees the Chapter 78 contribution rates as a legislatively-mandated reduction in their take-home pay, there can be no doubt that the legislature intended for public employees to share in the cost burden of health benefits just as is the case in the private sector. Therefore, it is not in the public interest to reduce those contributions at this time. Moreover, there is no data provided in comparable jurisdictions (i.e. Mercer County) which would indicate that tier reductions are being implemented in this geographic area. In addition, as noted above, the decision to award one benefit must be taken in the context of the choice to award or not award other benefits. Here, I have given the PBA members a fair and

reasonable salary award which will increase their take-home pay at top rate by approximately \$8,000 dollars over the life of the three-year contract. This increase to income is pensionable whereas, health benefit contribution reductions are not.

**Life Insurance:**

The PBA proposes to revise the language in Article 9, section E, as follows:

The Township will provide a policy of Life Insurance and Accidental Death and dismemberment Insurance in an amount equal to one and one-half (1 ½) times the annual salary of each Employee.

The Township shall present the Union with proof of coverage annually during the month that the renewal of the policy is due. Should the Township change insurance carriers, the Township shall notify the Union of the same and present the Union with proof of coverage once the new policy is bound and secured. Under no circumstances shall the policy be secured with any insurance or indemnity company that does not hold a minimum of an "A" rating.

The PBA argues that this requirement has no added cost to the Township and would simply ensure that the Employer meets its obligations to provide life insurance as required by the contract. The Employer has posed no particular argument concerning this issue.

I award the first two sentences of the PBA's proposed language. The PBA and its members are entitled to know who the insurance carrier is and to be assured that the policy has been properly renewed. This is akin to the

declarations page commonly received from your personal or business insurer for auto or home insurance. This will cost the Township nothing and poses only a very minimal administrative burden. The third sentence is not awarded because the PBA has not satisfied its burden to justify this proposal with sufficient information or justification.

### **Officers' Bill of Rights (New Article)**

The PBA demands a new contract provision which would replicate the New Jersey State Attorney General's Guidelines on police investigations. The PBA's proposal is comprehensive and detailed, as follows:

All members of this bargaining unit are citizens of the United States of America and the State of New Jersey and, as such, are entitled to all the rights and privileges guaranteed by the Constitution and Laws of the United States and the State of New Jersey. The members of this bargaining unit also hold a unique status as Public Safety Officers involved in the exercise of the Police powers of the State of New Jersey.

The powers and duties given to the State of New Jersey and the Public Safety Officers that are members of this bargaining unit involve them in all manner of contacts and relationships with the public. Out of these contacts may come questions concerning the actions of the members of the Bargaining Unit.

In an effort to ensure that investigations and or interrogations of members are conducted in a manner which is consistent with both of these principles, the following practice and procedures are hereby adopted whenever an Officer is subject to investigation and/or interrogation by a Superior Officer or the internal affairs

division of their respective department.

All investigations that are being conducted by the Department shall be conducted in accordance with the New Jersey Attorney General's Guidelines for Internal Affairs Policy and Procedure as may be amended from time to time (hereinafter referred to as the Guidelines). In no way is this article meant to alter the duties and responsibilities of any investigating officer as they may exist under the Guidelines and furthermore, under no circumstance is this article meant to detract from the rights of any law enforcement officer as may be expressed under the guidelines to wit:

a) Any investigation of a member shall be conducted at a reasonable hour, preferably at a time when the member is on duty, with reasonable notice given, unless the seriousness of the investigation is such that an immediate interrogation is required. If such an interrogation does occur during the off-duty time of the member being interrogated, the member shall be compensated for such off-duty time in accordance with the provision of this Agreement.

b) Any member being investigated shall be informed of the nature of the investigation before any interrogations commences. If the informant or complaint is anonymous, then the member shall be advised of sufficient information to reasonably apprise the member of the allegations being investigated. If it is known that the member is being interrogated as a witness only, he/she should be so informed of this fact at initial contact.

c) A member has the right not to incriminate himself/herself by answering questions, oral or written, propounded to him/her in the course of the investigation. In addition to the foregoing, no member shall be compelled to give a statement, oral or written, relating to said investigation without first being read and having waived his/her Miranda rights if the allegation under investigation is criminal in nature, or has the possibility of being criminal in nature.

- d) Prior to the commencement of the interrogation, or at any point during the investigation, a member has the right to retain counsel of his/her choice, at his/her expense, and to have said counsel present to advise at all stages of the criminal proceeding, the administrative proceeding or investigation.
- e) At the request of the member, a Union representative will be present at any interrogation. The Union representative's purpose shall not be to interfere with the interrogation and or investigation, but to witness the conduct of said procedure and to advise the member as to his/her rights under this Article and the law. Under no circumstance does a member's decision to retain counsel infringe upon his or her right to have a Union representative present at any interrogation.
- f) Interrogation of a member shall be reasonable in length. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.
- g) The interrogation of the Officer shall be either audio and/or video recorded. "Off the Record" questions or conversations shall be expressly prohibited.
- h) No member shall be subject to any offensive or abusive language or questions that are meant to do nothing more than belittle or demean the member. No member shall be threatened with transfer, dismissal or other disciplinary punishment during the course of the interrogation or investigation. No promise or reward shall be made as an inducement to answering questions. Nothing herein shall be construed as to prevent an investigating officer from informing the member of the possible consequences of the alleged acts that are being investigated.
- i) Prior to the commencement of any interrogation or interview of any member, the investigating officer shall advise the member if



his or her rights as follows:

I am advising you that you are being questioned as part of an official investigation. You will be asked questions specifically directed and narrowly related to the performance of your official duties.

You are entitled to all rights and privileges guaranteed by the laws of the State of New Jersey, the Constitution of this State and the Constitution of the United States of America, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

I further advise you that if you refuse to answer questions relating to the performance of your official duties, you will be subject to Departmental charges which could result in your dismissal from employment.

If you do answer questions, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, the statements that you make in answering these questions may be used against you in relation to subsequent Departmental disciplinary charges.

j) No employee covered by this Article shall be subjected to any urinalysis or blood screening unless one of the following circumstances exist:

1) Where the employer has probable cause to suspect that there is a job related individualized impact with respect to the specific employee being tested;

2) Random Drug Testing consistent with the applicable Departmental Directive.

k) Any disciplinary action by the Employer against the employee covered under this Agreement must be in compliance with any and all applicable laws.

The PBA argues that this provision is desirable so that its members have a ready source of reference for their rights in investigatory procedures. It also contends that 8 of the 11 other Mercer County municipalities has included the Attorney General's guidelines on investigation in their collective agreements.

The Township contends that this provision is unnecessary. It also maintains that the PBA's version of the Attorney General's Guidelines is outdated in that the drug testing section has been updated by revised language. It asserts that the PBA's version refers to drug testing based upon an individual reasonable suspicion test rather than the current law enforcement drug testing guidelines which is based upon random testing.

I find no basis for including the PBA's language into the contract. The PBA has not met its burden of proof in showing that this provision should be included in the contract. First, the Attorney General's "Guidelines" are in fact incorporated into the statute. The PBA's proposed language would be inconsistent with the statute as it pertains to drug testing. Second, the PBA has not proven that there is a need for incorporating these provisions into the contract: The PBA has not

pointed to a single example where the Township failed to adhere to the Attorney General's precepts concerning the conduct of a police officer investigation. The Township does not need to pledge in contract language to adhere to the statutory requirements – it is a given that the parties will follow the law. Moreover, the PBA is free to issue its own informational bulletins to its members. In essence, I find that the PBA has not established that there is a problem that needs a cure with regard to this provision. The PBA's proposal is denied. However, instead, I award the following language:

The parties agree that the New Jersey Attorney General's guidelines, N.J.S.A. 40A:14-181, must be followed in investigatory proceedings.

### **Maintenance of Benefits (Article 22)**

The PBA proposes to modify Article 22, "Mutual Recognition of Existing Obligations and Conditions." The Article currently provides as follows:

A. Except as this Agreement shall otherwise provide, all terms and conditions of Employment applicable to the signing date of this Agreement to employees covered by this Agreement as established by the Township Ordinances and Rules and Regulations of the Police Department of the Township enforced on said date shall continue to be so applicable during the terms of this Agreement. Unless otherwise provided in this Agreement, it is recognized to be the prerogative of the Chief of Police or his representative to add as the situation demands additional Rules and Regulations, changes or additional Special and General Orders, so long as the intent of these additional orders and/or Rules and Regulations including Personnel Orders, are not to abrogate the terms of this

Agreement entered into by both parties of this contract.

The PBA seeks to amend the Article to add the following provisions:

B. The Employer agrees to negotiate any changes which it proposes to make to the terms and conditions of employment with the duly designated representative of the P.B.A.

C. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce or otherwise detract from any employee's benefits existing prior to its effective date.

The PBA concedes that, in its collective memory, there has never been an incident when the Township has changed terms and conditions of employment for PBA members without first negotiating with the PBA over the issue. The PBA argues that this proposal is "preventative".

The Township contends that this clause is unnecessary especially in light of the parties' history which is free of complaints that the Township has previously sought to modify existing practices. The Township asserts that there is no particular problem in need of curing with this proposal.

I find that this proposed language change is unnecessary and not supported by the record evidence. The proposal is denied.

### **Continuance of Increments**

The PBA proposes to add the following provision to Article 2, "Duration:"

It is the specific intent of the parties that officers' advancement on the salary guide (step movement) shall expressly survive the expiration of this contract and any and all officers that are not at the top step of the salary guide upon the date of expiration shall continue to advance on their respective salary guides until a new agreement has been ratified and executed.

Currently, once the contract term expires, the Township does not move patrolmen to the next step on the salary guide. Patrolman Voorhees testified that when step increases are withheld, it is demoralizing to bargaining unit members. The Township makes no specific argument about this proposal.

Typically, an employer's motive for not wanting to pay increments once the contract is no longer in effect is to keep some measure of pressure on the bargaining unit to settle the contract. Once increments have been paid, the bargaining unit's incentive to settle quickly is reduced. In Atlantic County, P.E.R.C. No. 2014-40, 40 NJPER 285 (¶109 2013) , the Commission abandoned the dynamic status quo policy concerning payments of increments after contract expiration and instead adopted the "static status quo". Under this policy public employers would no longer be required, as a matter of law, to fund automatic advancement on a salary guide after a contract has expired. PERC further determined that the issue of payment of increments was not a mandatorily negotiable term and condition of employment. Thereafter, PERC

issued a second decision in the matter of Bridgewater Township, P.E.R.C. No. 2015-11 which was in accord with Atlantic County. The parties appealed in both matters and the New Jersey Appellate Division reversed the PERC decisions, finding that PERC lacked jurisdiction to create new policy and that the respective employers had an obligation under existing caselaw to continue the payments of increments beyond contract expiration. 445 N.J. Super. 1 (App. Div. 2016). The matter was appealed to the State Supreme Court which ruled that based upon the parties' contractual commitments in their respective expired contracts, they were obligated to continue increment payments after contract expiration.

I am not convinced that the PBA has met its burden of proof to demonstrate that the proposed clause is necessary or advisable. This is an area of caselaw which is in flux and complicated, especially by the Supreme Court's lack of willingness to directly address the issue of dynamic status quo versus static status quo. Therefore, it would be difficult to conclude that awarding this provision would be in the public interest. Moreover, the awarding of any new benefit must be examined in the context of all other proposals being considered; in short, the award must be taken as a whole. In light of the foregoing, this proposal is denied.

### **APPLICATION OF THE STATUTORY CRITERIA**

This award is in the public interest because it will allow the Township to continue to maintain its fiscal responsibility to the taxpayers. In fact, Borges acknowledged that the Township budgeted less in 2019 for salaries for this unit than it did in 2018. Because some highly-paid officers left the bargaining unit and will be replaced by less expensive entry-level employees, the savings generated will offset some of the costs of salary increases. In addition, the award is in the public interest because it provides a fair and reasonable increase which will in turn boost the morale of the bargaining unit – a goal almost always in the public interest.

This award also comports with the statutory criteria of comparability. I have compared salary and benefits for Hopewell's officers with those of all other law enforcement groups in Mercer County and have compared longevity benefits voluntarily given up in negotiations with Hopewell's civilian bargaining units. Following an established pattern of settlement also furthers the public interest.

There are no stipulations of the parties to consider in this matter. Further, the issue of continuity of employment was not addressed by the parties, except that I do note that the only recent exodus out of this bargaining unit is through retirements and promotions. I have also considered the cost of living increases as

well as the settlement trends identified by PERC and the private sector wage increases. This award is in line with each of these statutory factors.

The impact to the taxpayers is minimal in that the savings generated from the recent retirements and promotions out of the bargaining unit will mean that it is unlikely that the Township will have to raise taxes to fund the cost of the award. Further, the township has conceded that funding an award for this bargaining unit is within its lawful authority under the appropriation's cap and tax levy cap.

### **AWARD SUMMARY**

I award the following:

#### **Duration of the Contract**

January 1, 2019 through December 31, 2020

#### **Salaries (Article 13)**

##### **2019**

Effective and retroactive to January 1, 2019, 2.2% across-the-board increases to all employees in salary steps 2 through 12 on the salary guide, plus increments to be paid to all eligible police officers. Effective July 1, 2019, starting salary of \$50,562 will be frozen for the life of the contract.

##### **2020**



Effective and retroactive to January 1, 2020, 2.0% increase to the top step of the salary guide, plus increments to be paid to all eligible police officers.

Effective January 1, 2020, one additional step will be added to the salary guide between the current step 11 and step 12. The dollar value of the step will be equidistant between step 11 and step 12.

2021

Effective and retroactive to January 1, 2021, 1.8% across-the-board increases to all employees in salary steps 2 through 12 on the salary guide, plus increments to be paid to all eligible police officers.

Eliminate the 6-step guide from the contract as obsolete. The resulting new salary guide is as follows:

AWARDED SALARY GUIDE 2019 – 2021								
Step	2018		2019		2020	2021		2021 Salaries
	Salaries	Incrmt	ATB 2.2%	2019 Salaries	2% Top Step	2020 Salaries	ATB 1.8%	
1	50,562			50,562		50,562		50,562
2	57,278	6,716	1,432	58,538	0	58,538	1,054	59,592
3	60,898	3,620	1,522	62,238	0	62,238	1,120	63,358
4	66,677	5,779	1,667	68,144	0	68,144	1,227	69,370

5	70,132	3,455	1,753	71,675	0	71,675	1,290	72,965
6	76,075	5,943	1,902	77,749	0	77,749	1,399	79,148
7	79,366	3,291	1,984	81,112	0	81,112	1,460	82,572
8	85,507	6,141	2,138	87,388	0	87,388	1,573	88,961
9	88,602	3,095	2,215	90,551	0	90,551	1,630	92,181
10	94,873	6,271	2,372	96,960	0	96,960	1,745	98,705
11	97,836	2,963	2,446	99,988	0	99,988	1,800	101,788
11a				105,983	0	105,983	1,908	107,891
12	109,567	11,731	2,739	111,977	1,825	114,217	2,570	116,273

### **Longevity**

Elimination of longevity benefits for employees hired after July 1, 2019.

### **Absence of Squad Sergeant (Article 25)**

Amend the contract language effective January 1, 2019 as follows:

At any time during a rank and file officer's tour of duty, should he or she be assigned the work, duties and/or responsibilities of a sergeant, that officer shall be paid at the sergeant's minimum rate of pay for the entire tour of duty.

### **Uniforms (Article 18/19)**

Increase the patrolmen allowance to \$1,050, effective January 1, 2019.

Increase detectives' clothing allowance increased by \$100 for a total of \$1,050 annually, beginning January 1, 2019.

### **Insurance Protection (Article 9)**

Implement the following changes to Article 9 effective July 1, 2019:

- Change the plan from Direct Access \$20/\$30 to Direct Access \$20/\$40

- Add the OMNIA plan as an optional insurance coverage.
- Modify out-of-network deductibles to \$1,000 for single coverage and \$2,000 for family coverage.
- Modify prescription drug plan to add “non-preferred brand drugs” with a \$50 co-pay and add 2X mail order.

#### Notice of Changes to Health Benefit Carrier

Modify the last sentence of Section A, “Medical Insurance” as follows:

The Township will provide at least 60 days’ notice to the employees of any change in carrier.’

#### Life Insurance

Add the following language to Section E:

The Township shall present the Union with proof of coverage annually during the month that the renewal of the policy is due. Should the Township change insurance carriers, the Township shall notify the Union of the same and present the Union with proof of coverage once the new policy is bound and secured.

#### Annual Leave (Article 12)

Modify the provisions of Section A.6 of this article as follows:

A. 6. Twenty-one or more calendar years of service. Employees who have attained twenty-one or more years of service are eligible for eight (8) additional hours per year of service for each additional year worked beyond twenty-one years up to a maximum of three-hundred and twelve (312) hours per year.

### **Conduction of Association Business (New Article)**

Add the following language in a new article of the contract:

The PBA will be provided with 10 days per year of paid PBA leave time for the purpose of attending regularly-scheduled NJ State and Mercer County union meetings. The PBA may decide how to allocate the PBA time off between its Local President and its State Delegate. Requests for time off under this provision must be submitted to the Chief of Police at least five calendar days prior to the requested day off. Convention Leave for members of the Association shall be provided pursuant to New Jersey Statute.

### **Employee Rights (New Article)**

Add the following language in a new article of the contract:

The parties agree that the New Jersey Attorney General's guidelines, N.J.S.A. 40A:14-181, must be followed in investigatory proceedings.

\*

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\*

Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making this award. The cost of this award is as follows:

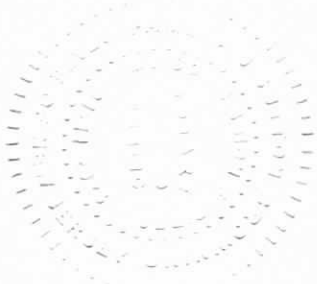
<b>COST OF SALARY AWARD</b>				
	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>TOTAL</b>
Increment	34,747	32,894	32,507	<b>100,148</b>
ATB	49,681	35,833	43,164	<b>128,678</b>
Longevity	500	2,000	1,500	<b>4,000</b>
	<b>84,928</b>	<b>70,727</b>	<b>77,171</b>	<b>232,826</b>

*Susan W. Osborn*

Susan Wood Osborn  
Interest Arbitrator

Dated: June 5, 2019  
Trenton, New Jersey

On this 5th day of June, 2019, before me personally came and appeared Susan Wood Osborn known to me to be the individual who executed the foregoing instrument and she acknowledged to me that she executed same.



*Pamela J. Sutton-Browning*

PAMELA J. SUTTON-BROWNING  
Commission # 50074695  
Notary Public, State of New Jersey  
My Commission Expires  
January 11, 2023