

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration between) **Before: J. J. PIERSON, Esq.**
) **Arbitrator**
TOWNSHIP OF DENVILLE)
a municipality in the COUNTY OF MORRIS)
STATE OF NEW JERSEY)
) **INTEREST ARBITRATION**
and) **AWARD**
)
)
POLICE BENEVOLENT ASSOCIATION,)
LOCAL 142) **Docket No. IA-2011-053**
)
_____)

The undersigned derives jurisdiction as Interest Arbitrator of this matter from appointment by the Public Employment Relations Commission (“PERC”) through random selection from the special panel of interest arbitrators pursuant to N.J.S.A.34:13A-16e(1).¹ The Township of Denville (as “Public Employer”) and PBA Local 142 (the “PBA” or “Union”) are parties to an Collective Bargaining Agreement (hereinafter, the "Agreement", with effective dates January 1, 2006 through December 31, 2009, Township Exhibit T-4) and seek a determination of economic issues to be included in a successor Agreement. The jurisdiction of this Arbitrator directs the rendering of an Award regarding terms and conditions of the successor Agreement within 45 days of PERC’s designation, with issues determined by conventional arbitration, pursuant to N.J.S.A. 4:13A-16f(5) and 16d. To meet that requirement, this Arbitrator conducted an evidentiary hearing on July 6, 2011, wherein the parties submitted its respective economic proposals and supporting documents. Post-hearing briefs were filed on July 14, 2011 and the Award herein was issued July 31, 2011.

Appearing for the Township
Matthew J. Giacobbe, Esq.
Adam Abramson, Esq.
Steven Ward, Township Administrator
Marie A. Goble, CFO

Appearing for the PBA
Bruce Leder, Esq.
Scott Welsch, PBA President
Scott Revis, PBA
Keith Partin, PBA
Vincent Foti, PBA Accountant

1. As a public employer, the Township is subject to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq and, together with the PBA are subject to the New Jersey Police and Fire Compulsory Interest Arbitration Act, N.J.S.A. 34:13A-14 et seq, which requires contract negotiation disputes involving police and/or fire employees to be resolved through binding interest arbitration.

BACKGROUND

The Township of Denville, a 12.6² square mile municipality located in Morris County, consists of a population of 16,635. The 2010 Census determined there were 5,990 households and 4,312 families residing in Denville, with a median household income of \$76,778 and a median family income of \$90,651. (see T-1).

The Township maintains a wide range of services to its population, including a full-service Police Department.³ The PBA is recognized as the exclusive bargaining agent for the thirty (30) members of the Denville Township Police Department, exclusive of the Chief of Police.⁴ As the PBA described, in addition to serving as police officers, its members are actively involved in the community and provide the public with many volunteer activities.⁵ According to the PBA, the morale of its police officers is measured by the level of activity in non-required community activities.⁶

2. 12.1 square land miles and .5 square water miles (consisting of 11 named bodies of water with the Township boundaries).

3. The Table of Organization reveals a Police Department of three (3) divisions: Administrative, Detective and Patrol. Those three divisions address animal control, records, traffic, community policing, high school security, parking enforcement, traffic safety and juvenile services. (see PBA-3). The PBA noted that from 1992 through 2010, the number of calls for service by the Police Department doubled, the number of arrests have increased from 642 to 739 within the past five years and the number of summonses issued had increased by 50%. (see PBA-9 and PBA-10). According to the PBA, in 2009 and 2010, the Department was involved in the investigations of a murder (and arrest), three armed robberies, three ice rescues and two drownings. (see PBA-12). The PBA describes the municipality as efficient and effective.

4. The PBA noted that there were 35 police officers in 2007.

5. The PBA cited activities which include the Easter Egg Hunt, fishing contest, Junior Police Academy, Denville Sponsor a Family, Rachel's Challenge, ETD classic car show, Joe Valocsik Scholarship, P.A.L. Olympics, Denville Schools Field Day, child seat checks, Look Outs, Denville Blue Angels Football, Denville Friends of the Library, Denville American Legion Post #390, Saint Clare's Foundation, NJ Foundation for the Blind, Dancers Responding to AIDS, Samantha Lorene Calafione Memorial Fund and Joey Bella Fund. (see PBA-21)

6. The PBA also noted that its individual police officers are also involved in, organize and coach the Denville Police Athletic League and maintain programs in basketball, cheerleading, field hockey, ice hockey and softball for over 1200 participants. (see PBA-21).

The present negotiations for a successor agreement revealed a joint effort between the parties continuing over a period of time. The PBA noted there were more than one economic offer made by the Township to the PBA and an agreed-to four-year contract with wage increases greater than the Township's present and final offer.⁷ The Township maintained that the reduction in its offers and final inability to ratify a contract proposal revealed its declining fiscal position. With this background, the parties presented their respective final offers.

FINAL OFFER OF THE PARTIES

TOWNSHIP OF DENVILLE

1. A three (3) year term from January 1, 2010 through December 31, 2012.
2. Salary increases as follows:

<u>January 1, 2010</u>	<u>January 1, 2011</u>	<u>January 1, 2012</u>
2%	0%	1½ %

3. Starting salary for all new hires as of January 1, 2011 shall be \$35,000.
4. Add five (5) new steps to the salary guides and equalize the steps.
(Note: Clarified at hearing to apply to new hires)
5. Upon the expiration of the Agreement, all negotiations are subject to the new 2% cap provisions in the Interest Arbitration law.

PBA LOCAL 142

1. Duration - 5 years - January 1, 2010 - December 31, 2014.
2. Wage (Increases) effective

<u>January 1, 2010</u>	<u>January 1, 2011</u>	<u>January 1, 2012</u>	<u>January 1, 2013</u>	<u>January 1, 2014</u>
3%	3%	3%	3%	3%

7. This Arbitrator noted the Township's objection to the admission or consideration of the referenced documents, contending the documents were used to facilitate settlement and not to represent any agreement between the parties. Since the contract was never ratified (by the Township's governing body), this Arbitrator accepts the document in its limited capacity as a proposal and an indication of the state of negotiations in March 2010.

STATUTORY CRITERIA

Pursuant to N.J.S.A. 34:13A-(g) of the Interest Arbitration Act, the Arbitrator must issue an award “based on the reasonable determination of the issues, giving weight to those factors judged relevant for the resolution of the specific dispute.” The relevant statutory factors are:

(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:4045.1 et seq.).

(2) Comparison of 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, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator’s consideration.

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

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit’s property tax levy pursuant to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers.

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

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and other such factors not confined to the foregoing which are ordinarily or traditionally considered in the determinations 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).

DISCUSSION OF THE STATUTORY CRITERIA and THE RECORD

In the opinion of this Arbitrator, the present matter requires a balance between the fiscal and economic realities recently imposed, not only on Denville, but on all municipalities throughout the State of New Jersey⁸ with the professional expectation of police officers to maintain a level of compensation equivalent to a unique and potentially dangerous occupation.

To meet that requirement, this Arbitrator is mandated by statute to determine that the net economic changes to the successor agreement are reasonable under the nine (9) statutory criteria and that the decision adheres to the limitations set forth in public law P.L. 2010, c. 105 (C:34:A-16.7).

Interests and Welfare of the Public

The PBA initiated its position by emphasizing that the police maintain a unique position in our society. As contended by the PBA, the essential duties in which law enforcement officers (and firefighters) perform for the benefit of and protection of the people of this State are memorialized in statute. As the PBA maintained, police officers commonly confront life-threatening dangers in the daily pursuit of their employment and risk of life. Thus, it is with these statements that the PBA contended that the public's best interest are not satisfied simply by providing police services at the lowest possible cost, but with a well compensated professional police force .

At the same time, the PBA maintained that its service provided to the public and the taxpayers of Denville is outstanding, both in daily performance of their duties and volunteer efforts on behalf of the community. The PBA contended that, when considering the activities of the police officers and the unique and inherently dangerous jobs they perform, the PBA's offer must be viewed as more reasonable and the proposed offer of the Township must be rejected.

8. Specifically, the stringent tax levy imposed in 2011, increases to medical benefits and pension contributions on behalf of police officers, decrease in state aid and a reduction in surpluses previously enjoyed by many municipalities

The Township maintained that its offer is clearly more supportive of the public's interest and welfare than the PBA and will accomplish several important public policy goals. In that respect, the Township argued that its offer will maintain fiscal stability and be able to manage the risk and volatility of the current economy. And, the Township further contended that its economical offer to the PBA will allow it to continue offering insurance coverage to PBA police officers while confronting increasing costs.

The Township also argued that, when facing the PBA's ability to avail itself of the interest arbitration process, it is the Township's responsibility to insure that the higher paid PBA will not receive a "far superior" wage increase greater than its civilian employees who do not have the benefit of interest arbitration.

Finally, the Township asserted that the PBA's offer "blindly ignores" the current economy, increased healthcare costs, pension contribution increases, and the decrease in state aid. The Township concluded that its offer would nevertheless allow the PBA to maintain a competitive position in compensation amongst officers in other comparable police departments

Comparison of Wages, Salaries, Hours and Conditions of Employment

The PBA referred to the August 2010 comparison of Private Sector Wage Changes compiled by the New Jersey Department of Labor and Workforce Development (see PBA-25) to reveal a negative 0.7% wage rate change in the private sector and to .2% increase in Federal, State and Local government. Notwithstanding, the PBA noted that private sector average wages increased by 2.2% in Morris County. The PBA further noted that average annual wages in Morris County was \$68,770, the second-highest in the state.

While acknowledging there is no private sector job comparable to a police officers performing within a highly controlled paramilitary environment, the PBA pointed to the scrutiny and accountability of a police officer, unparalleled in either public or private employment. Accordingly, the PBA maintained that the present criteria of comparability with the private sector deserves little or no weight in this proceeding.

The PBA noted the only other collective bargaining agreement in Denville (with the “Supervisors Association”) concluded with a 2% wage increase in each of two years. As the PBA asserted, if a pattern of settlement were to be considered, the Township’s final offer was less than the settlement with the supervisors.

Likewise, the PBA contested the tactics used in negotiation at the higher levels of State government and the blame attributed to public employees for their compensation. Relying on the study of Jeffrey Keefe, the PBA maintained that police officers are not overcompensated, as individuals employed in inherently dangerous employment are not overpaid.

In comparing compensation with other police departments in surrounding communities⁹, the PBA acknowledged that its top step base salary of \$93,889 (for police officers, as of December 31, 2009 and prior to any prospective increase herein) placed it in a favorable position to other communities. The PBA pointed to Montville, with a base salary of \$94,523. And, while acknowledging a comparable compensation position with other communities, the PBA maintained that Denville police officers receive the lowest amount of longevity.

However with respect to the offer of the Township, the PBA maintained that acceptance of the Township’s offer would place it in the 14th position in base salary for Morris County police officers and if considering longevity added to base salary, Denville police officers would “slip” to the third position in overall compensation (with an average longevity benefit of \$3,487 per year).

In comparing other benefits contained within the agreement, the PBA referenced vacation leave¹⁰, clothing allowance, personal leave, educational allowance, sick leave and holidays. Admittedly, the PBA stands in a comparable position than police officers in its neighboring communities.

9. Mountain Lakes, Montville, Parsippany Troy Hills, Boonton Township, Rockaway and the Town of Boonton.

10. Denville police officers receive 13 days of vacation after 15 years of employment; 25 days of vacation after 19 years of employment; and 30 days of vacation after 19 years of employment. The total number of vacation days between the 15th year of employment and the 30th year of employment is 357 vacation days.

However, the PBA also claimed less vacation days over a 15 employment year period than officers in Montville, Boonton and Parsippany. Over the first fifteen years of employment, Denville police officers earn 357 vacation days. The PBA compared its vacation entitlement to the three other communities, averaging 375 to 380 total vacation days between the years 15 and 30 of employment. Denville police officers acknowledged that they receive \$675 per year in clothing allowance, three personal days per year, 15 sick days, and 12 holidays per year. They can also be compensated \$2170 if they maintain a bachelor of arts education.

The PBA also reviewed salary increases in other communities over the period 2010 of, and effective through, 2012. The PBA noted that the Town of Boonton officers will receive a 3% increase in 2010, 2% increase in 2011 and 2% increases in 2012; the Township of Boonton officers will received a 3.75% and 3.75% increase in 2010 and 2011; the Montville police officers will receive a 2.5% increase in each year of the three year period; and the Rockaway officers will receive 3.75%, 3.75% and 3.85% increases over the three year period.

The PBA acknowledged that, with respect to salary earned by police officers in Denville, they compare favorable to police officers in neighboring communities, with “little remarkable differences.” And with respect to fringe benefits, the PBA maintained that it had similar benefits when compared to police officers in other communities. However, as the PBA contends, there is no justification for awarding police officers a lower salary because there is no distinction in compensation with other surrounding communities. As such the PBA contended that the final offer of the Township must be rejected and the PBA offer accepted.

The Township maintained that its offer will achieve economic and fiscal stability for the municipality in light of the 2% hard tax cap in 2011, the fiscal/economic crisis faced by the State, increases to medical benefits and pension contributions on behalf of its police officers, decrease in state aid and a reduction of surplus for the Township to rely upon.

Analyzing its offer in comparison to other police departments, the Township maintained that Denville police officers are “extremely well compensated”. While maintaining that many interest arbitration awards now contain wage freezes, the Township contended its proposal was far more in line with other contract offers. Likewise the Township maintained that a trend now exists for reduced salary increases below 3%.

In addition, the Township maintained that its police officers receive higher salaries than many police officers throughout the State and Morris County. As the Township argued, the PBA did not justify its requested salary increase of 3% in each of five years. And, to bolster that conclusion, the Township turned to the analysis (by PERC) of interest arbitration awards for period of January 1, 2010 through December 31, 2010. As the Township noted, the average awarded salary increase was at 2.88% while the average salary increase in reported settlements were reported to be 2.65%.

The Township also dismissed “going rate” and “parity’ arguments as no longer blindly accepted. In support of that position, the Township compared the benefits received by its police officers to those in comparable jurisdictions. The Township concluded that comparing all fringe benefits the Denville police officers enjoy, they compare favorably. In addition to the clothing allowance (\$675) paid to police officers “which exceeds the county average” (see T-80), the Township referred to the “exceptional” paid sick leave benefits (averaging 12.78 days per year of the allotted 15 days) and the contractual opportunity to accumulate unused sick time to be paid out upon retirement. (see T-83). Likewise, the Township noted the vacation benefit compared better than the County average. (See T-90, T-91).

The Township the referred to the longevity payments (in addition to salary) enjoyed by Denville police officers. Evidence produced by the Township demonstrated that, at six years of employment, police officers receive an average of \$1799 in longevity payments; at 11 years, they receive an average of \$2082 in longevity payments; at 16 years, they receive an average of \$2921 in longevity payment ; and at 21 years they receive an average of \$3221 added to base salary. (See T-93).

The Township further noted that Denville police officers receive the additional benefit of “special duty pay”, a detective bureau stipend of \$1900 (the County average is \$947) and an educational stipend for both an Associate degree (\$1514) and Bachelors degree (\$2710). According to the Township these benefits exceed compensation earned in other County municipalities. (T-106).

The Township then offered “comparable” police officer salaries in other communities, both minimum and maximum, noting the starting salary for patrol officers in Denville exceed the starting salaries in most of the neighboring communities. In comparing maximum salaries, the Township noted the police officer salaries in Denville are greater than the County average and comparable to the maximum salary averages of other communities in 2011 and 2012. According to the Township, if the Township proposal is granted, the police officer salaries in Denville will match the average County police salary and exceed the lowest salary by nearly \$13,000.

The Township also noted that, since all officers are not currently receiving the maximum base salary, they received a step movement salary increase each year until they reach the maximum step. According to the Township the average increase on each step is equivalent to 9.88% in additional salary.

Finally, the Township also maintained that its final offer was favorable when compared to other Township employees. Noting that the top step employee, excluding any role in such as longevity, was \$93,899.¹¹ According to the Township only 23 patrol officers receive a base salary less than \$90,000. When compared with these figures the Township cites a distinction wherein non-unionized civilian employees maintain an average base salary between \$40,000 and \$60,000 while working for the Township. The Township forthrightly acknowledged that those employees will enjoy a 2% increase in each of the contract years 2010 and 2011.

11. Two lieutenants currently receive a base salary of \$121,622 and six sergeants receive a base salary of \$107,678 .(see T-38).

Financial Impact on the Municipality, its Residents and Taxpayer

The Township presented the certification of Marie Goble, currently the Chief Financial Officer for the Township. She is responsible for managing the annual budgets for the municipal services, recommending and implementing rate increases for various municipal utilities, managing payroll, health benefits and account payable and receivables for the Township . Ms. Goble testified as to her familiarity with the financial condition of the Township and to her assessment that the “Township is struggling financially due to the continual reduction in State Aid, decline in surplus, increases in tax appeals, pension costs, health benefit costs and debt service.” She represented that the lack of revenue in state aid force the Township into using greater amounts of surplus to offset the budget rather than raise taxes.¹² As a result, surpluses have not been replenished, leading to the inability for fiscal strength and stability.

Likewise Ms. Goble referred to the decrease in assessed property valuation (by \$9,928,654) and tax appeals which represent over \$52,903,400.¹³ She noted that property taxes have increased by 38.72% between 2005 and 2011. At the same time, increases to the cost of police and fire pensions have increased, with the Pension Payment from \$276,285 in 2006 to the current estimate in 2012 to the \$1,043,730.

Ms. Goble cited the reduction in State Aid to the Township, noting that aid has been reduced by 25% from \$2,393,594 in 2006 to \$1,804,700 in 2010. As a result, the Township is faced with increased debt service. Finally, in turning to the specific costs of the police salaries, the Township noted that the police department PBA members are budgeted \$3,183,000 per year for salaries including base salaries exceeding \$94,000, total officers’ step movements on the salary guide of \$62,016 in 2010 and an additional \$56,823 in 2011.

12. According to Ms. Goble, the Township’s surplus balance has been reduced by \$381,547 between December 31, 2006 and December 31, 2010, a four year period.

13. According to Ms. Goble, the Township has paid \$280,368 in cash settlements in 2010 to 2011 due to appeals.

Cost of Living

The Township stressed the cost of living statistics in consideration of its offer for a limited wage increase. Relying on statistics established through the U.S. Bureau of Labor Statistics, the Township contended that statistics demonstrate that the PBA will not suffer any detriment in their standard of living should the Township's offer be awarded. As the Township argued, purchasing power between the PBA and the average County consumer will continue to be disparate. According to the Township, Denville police officers are highly compensated when compared to their counterparts in surrounding communities and consumers in the geographic area.

The PBA argued that the Township's proposal, averaging a 1% salary increase in each year over three years, does not address the cost of living, especially when considering the newly required employee contribution to health insurance at a minimum 1.5% of gross salary.

Stipulations of the Parties

The PBA asserted that the only stipulation of the parties was that the PBA ratified the contract proposed and signed by the Mayor in March 2010, but the Township Council did not.

The Township did not comment on stipulations.

Interests and Welfare of the Public

The Township maintained that the award of its offer best meets the interest and welfare of the public by maintaining fiscal stability during the volatility of the current economy, continue to provide insurance coverage to its employees (even in the face of ever-increasing costs) and ensure that the police officers (who are statutorily entitled to interest arbitration procedures) do not achieve far superior wage and benefit contract than civilian employees (who are not privileged to the interest arbitration process).

As in all interest arbitrations, this Arbitrator is charged with considering the interests and welfare of the public, not just as a silent party to the proceedings, but to deliberate the balance between safety of the community, the burden of potential tax increases and the adequacy of compensation for public safety employees.

While this Arbitrator is quite mindful of the Township's attempts to adjust to fiscal uncertainty and prevent an increased burden on the taxpayer, the Township's concern for the public interest is also achieved through an effective and reasonably paid public service force. Here, this Arbitrator recognized that the Denville police officers have achieved superior contractual successes than many of County police forces. Thus, a determination was made to grant a limited wage increases to allow police officers to maintain a relative compensation position and , at the same time, consider the welfare of the public.

Lawful Authority of the Municipality

N.J.S.A. 40A:4-45.1 et seq. is commonly known as the "Local Government Cap Law" and statutorily places a limit on local government as to budgetary increases. It is intended that the law protects homeowners (and enables them to maintain their homesteads) by "capping" the ability for local tax increases".¹⁴ The Township argued that it will have a difficult time generating necessary money to satisfy the PBA's final offer, a wage increase exceeding 15% and averaging an increase 1% above the cap limit. And not surprisingly, while the Township argued that it will have a difficult time generating necessary money to satisfy the PBA's final offer, the PBA asserted that the statutory restrictions are not a factor in the present matter and should not limit its reasonable pursuit.

In fact, to award the PBA its increase of 3% in each of five years would increase the top step base salary by \$14,954 (to \$108,843) and result in a 15.92% increase over 2009 salary levels. And these salary levels do no address fringe benefit additions (longevity, sick leave, vacations, etc.). While fervent in its goals, the PBA has postured an unreasonable and untenable goal. In the opinion of this Arbitrator, the cap levy is an important consideration in the present case, since it supports the arbitral constraint and reasonably imposes a decisional limitation to avoid the cause of generating additional taxes.

14. Section 10 of P.L. 2007, c.62 originally established a tax levy cap of 4% above the previous years tax levy. However, on July 13, 2010, Governor Christie signed P.L. 2010, c.44 into law in order to reduce the allowable tax levy increase to 2%.

Interestingly, the PBA introduced a cost analysis, with comparisons to 3% wage increases, additional employee healthcare contributions and actual retirement “reductions”. The PBA advanced the argument that, as a result of its cost analysis, the “added costs” to the Township would actually be reduced. On its face, the PBA argument may be true. However, when analyzing the wage increase combined with increases in insurance costs and pension contributions and acknowledging that the “new” costs also include other contractual benefits (vacation, sick day and longevity costs also increase with base salary), the analysis does not hold up.

Overall Compensation and Other Economic Benefits Received

The Township contended that the Denville police officers enjoy extended benefits beyond their base salary. Citing payment for court appearances at overtime rates, vacation leave, sick days, comprehensive medical insurance, educational incentive payments, call in pay, holiday pay, clothing allowance, longevity, and personal leave, the Township asserted that officers are more adequately compensated than the majority of the State private sector employees and public employees. In addition the Township notes that a police officer, enrolled in the Police and Fireman’s Retirement system, is permitted to retire after 20 years of service at 50% of final compensation or after 25 years of service at 65% of final compensation. Accordingly the Township asserted that only minimal increases should be afforded the police officers to maintain their strong overall package of compensation and comparable position to other workers in the public and private sector.

Relying on the annual gross salaries of \$3,210,000 (as cited in PBA-2), the PBA maintained that the “new” costs to the Township would be less than \$50,000 in each year of the proposed five-year agreement. As the PBA asserted, annual gross salaries were actually reduced when considering the savings due to retirements in 2010 and its 1.5% employee healthcare contribution. Additional retirements proposed in 2011 and the continued 1.5% employee healthcare contribution result in the proposition that the total 2010 payroll costs would be \$32,000 greater than the 2009 payroll cost and the total payroll costs for 2011 would be \$18,000 less than the 2010 payroll costs and only \$14,000 more than the 2009 payroll costs.

Continuity and Stability of Employment

The Township asserted that this Arbitrator must consider the salary structure, employee stability and the absence of unemployment as indicators of the stability of employment with the Denville Police Department. As the Township further asserted, no police officer has ever been laid off or put on furlough by the employer. The Township finds the support of this Arbitrator.

Salary structure, unemployment rates, employ turnover and the virtual absence of unemployment are factors considered by arbitrators in addressing the stability of employment. The courts have similarly supported this analysis.

Thus, in viewing the salary structure of the police department and the absence of previous layoffs or furloughs, this Arbitrator concludes there is a strong indicators of employment stability in the Township and the Denville Police Department. When considering the actions resulting in other municipalities, the continuity and stability of employment of a police officer in the Denville Police Department has, at the very least, an intrinsic value of permanency.

However, while an active police officer may not have the anxiety for layoff or furlough, the PBA correctly notes that in 2009 there were 34 police officers in the bargaining unit. When two police officers retired in 2010 and two retired in 2011, none were replaced. Thus, while there is permanency in employment, there may be a corresponding permanency in the size of the bargaining unit, now consisting of thirty (30) police officers.

CONCLUSION

In the experience of this Arbitrator, when considering the difference in the two final offers, the distinctions are less than historically encountered. However, since neither offer meets the final acceptance of this Arbitrator when considered under the statutory criteria, the most reasonable determination is for a wage increase found within the boundaries of the two posturing positions. And, in the present fiscal environment of the Township, this Arbitrator determines that a wage increase which provides a reasonable increase in wage levels, yet remains within the Township's statutory limitations and ability to fund, best serves the municipality and bargaining unit.

Protecting the municipality and its residents is a mandate best met with an effective and professionally compensated police department. Given the salary increase awarded below, it is clear that the salaries for patrol officers in Denville for 2010 through 2013 will continue to be a substantial budgetary item, greater than the County average and nearly at the top of all comparable salaries and benefit items in surrounding communities. It is accurate to conclude that, even in difficult fiscal times, Township police officers will have attained a notable salary level. Yet, those who question any increase must also understand that departments are expected to perform more with less officers and accept that individual police officers also face increased living costs and now contribute to their personal health coverage. Thus, while officers are not automatically entitled to wage increases, they are entitled to be compensated for the professional service they individually, and compositely, provide to the Township and its citizens.¹⁵ Moreover, they receive increases through a process (interest arbitration) which legislatively recognizes their actual and intrinsic value to the public.

Of significant consideration, when analyzing the financial impact of the wage increases on the municipality (and considering its residents and taxpayers), this Arbitrator looked to the effect of the award on the municipality's overall budget, the amount attributed to the police department and potential effect on prospective taxing. Also taken into account are the general economic condition of the of the State (since the Township relies on state aid) and the nation's economy to insure the municipality remains fiscally stable. This Arbitrator does not view the economic climate now faced by the Township as the result of budget mismanagement by its administration nor to past indiscretions.¹⁶ In large part, the Township is being controlled by "outside" factors.

15. Let no one fail to consider the extra-service activities of the police officers and PBA organization, as referred to in Footnotes 5 and 6 above. (See page2).

16. As an example, the Township has little effect on the increased costs primarily related to healthcare costs and pension contributions.

As this Arbitrator analyzed the potential impact of the Award, the intention was to hold the salary increase and its effect within the ability to fund and avoid adding to the “fiscal problems” facing the Township as raised through the written certification of Ms. Goble. Her statements were considered informative and the “numbers” relied upon as a basis for determining salary increases.

Most notably, Ms. Goble pointed to the reduction of \$588,894 in state aid (from \$2,393,594 in 2006 to \$1,804,700 in 2010). In the opinion of this Arbitrator, the loss of state aid has impacted this municipality in a significant manner. Likewise, if one looks to the amount of pension contributions required for police officers and the healthcare costs, in general, the fiscal burden becomes apparent.

To insure the opportunity for stability and continuity in both fiscal budgeting and contract negotiations, this Arbitrator concludes that a four (4) year agreement is in the best interest of the Township and the PBA.¹⁷ Thus, the duration of the successor Collective Bargaining Agreement shall be four (4) years, commencing January 1, 2010 through December 31, 2013.

Next, upon review of the factors set forth in the statutory criteria, it is this Arbitrator’s determination the Section 19 and Appendix A of the Agreement shall be amended to include the following wage increases to the salary guide and wages shall be effective:

<u>January 1, 2010</u>	<u>January 1, 2011</u>	<u>January 1, 2012</u>	<u>January 1, 2013</u>
2.0%	2.0%	2.25%	2.25%

While the two per cent increases in years 2010 and 2011 fit squarely within the ability of the Township to fund under its budgetary mandates, the final two increases of 2.25 percent consider the budgetary reduction and salary loss of two retiring police officers (Randall Weick and Michael Lucas) in those respective years. Budget reductions more than outweigh the added .25% increase.

15. The successor Agreement is eighteen months into effective commencement and a three (3) year contract would be concluding in less than 18 months. A contract concluding in December 2012 would necessitate commencement of contract negotiations in approximately one year from this date.

At the direction of this Arbitration, all increases shall be implemented immediately on their effective date and paid retroactively to January 1, 2011 to police officers employed and regularly performing their duties on the date of this Award. There shall no wage rate adjustment nor retroactive payment for a police officer(s) presently on terminal leave and, thus, no retroactive payment is to be made to those police officers. Likewise, there shall be no direct retroactive payment for the 2010 wage increase.

However, to limit the financial impact on the Township and in considering the public interest, this Arbitrator shall limit the retroactive wage payment to January 1, 2010.

[Note: To correctly calculate the base wage rate for retroactive payments intended by this Award, begin with the employee's final base wage rate in 2009 and add 2.% (the wage increase for 2010) for the new baseline wage rate. To calculate the retroactive payment, add the 2.% increase for 2011 (over the 2010 base rate) and determine the payroll difference for the year. To determine the retroactive payment to January 1,2010, consider this award is being issued 7 months into the 12 month year. Using the 2009 top step wage rate of \$93,889, the top step base rate for 2010 is \$95,766.78 and the top step base rate for 2011 is \$97,682.11. The increase for the top step base rate is \$1915.33 and the retroactive payment to January 1, 2010 is \$1,110.90 (7/12 of the retroactive pay period). This calculation is to be used for all steps and pay rates on the salary guide.]

Finally, all other provisions of the parties' collective negotiations agreement, effective from January 1, 2006 through December 31, 2009, which have not been effected by this Award, shall remain in full force. Only those provisions which the parties have reached agreement upon, in writing, are to be implemented in the Collective Bargaining Agreement between January 1, 2010 and December 31, 2013 and all other proposals of the parties not addressed herein, shall be denied.

In consonance with the proofs, and after consideration of the nine (9) statutory criteria, this Arbitrator hereby finds and determines that the economic changes awarded are reasonable under the statutory criteria and adhere to the limitations of the criteria.

Award of Economic Issues

1. The duration of the Collective Bargaining Agreement shall be four (4) years, commencing January 1, 2010 through December 31, 2013.
2. Section 19 and Appendix A shall be amended to include the following wage increases to the salary guide and wages shall be effective:

<u>January 1, 2010</u>	<u>January 1, 2011</u>	<u>January 1, 2012</u>	<u>January 1, 2013</u>
2.0%	2.0%	2.25%	2.25%

All increases shall be implemented immediately as to the effective date and retroactively to January 1, 2010, paid to police officers employed and presently performing their duties as the date of this Award.

3. All other provisions of the parties' collective negotiations agreement, effective from January 1, 2006 through December 31, 2009, which have not been effected by this Award, shall remain in full force. Only those provisions which the parties have reached agreement upon, in writing, to be implemented in the Collective Bargaining Agreement between January 1, 2010 and December 31, 2013 and all other proposals of the parties not addressed herein, shall be denied.

Dated: July 31, 2011
Short Hills, New Jersey

J. J. PIERSON, Esq., Arbitrator

STATE OF NEW JERSEY)
 :SS
COUNTY OF ESSEX)

I, J. J. PIERSON, Esq., on my oath, do attest to being the person who has executed the foregoing instrument and issued the above Award on for delivery to PERC on August 1, 2011.

J. J. Pierson, Attorney at Law - State of New Jersey