

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

TOWNSHIP OF BYRAM

-and-

Docket No. IA-2013-12

SUSSEX COUNTY PBA LOCAL NO.138

Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the Township:

Laddey, Clark & Ryan, Attorneys
(Thomas N. Ryan, of counsel)

For the PBA:

Loccke & Correia, Attorneys
(Richard Loccke, of counsel)

Witnesses:

Daniel Dewald, Byram Township Police Officer
Frank Cavelli, Health Benefits Consultant
Joseph Sabatini, Township Manager

INTEREST ARBITRATION AWARD

On January 18, 2013, the Sussex County PBA Local 138 filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over a successor collective negotiations agreement with Byram Township. The previous agreement expired on December 31, 2012.

On January 23, 2013, I was appointed to serve as the 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 45 days of my appointment with no provision for any extensions.

An interest arbitration hearing was held on February 25, 2013 at the Township Municipal Building. Both parties were offered testimony and documentary evidence. Both parties submitted Final Offers and calculations of financial impact of their respective proposals. Post-hearing briefs were filed by March 4, 2013.

On January 23, the Township filed a Petition for Scope of Negotiations Determination with the Commission asking that the Commission declare a number of the PBA's proposals to be non-negotiable. The Commission referred the negotiability questions to me for resolution.¹ Both parties provided me with their briefs on the negotiability questions.

PBA LOCAL 138'S FINAL OFFER

Term of Agreement: January 1, 2013 to December 31, 2014.

Wage Increases: 2.5% across-the-board increases in each year of the contract.

Sick Leave (Article XXI):

Whenever a member accumulates at least 750 hours of sick leave, then thereafter said member may cash in unused additional sick leave at the end of each year at the then current daily base

¹This matter was not processed through the Commission's new pilot program for expedited resolution of scope of negotiations disputes because the Township did not meet the procedural requirement of filing a brief accompanying its petition. See PERC Website.

rate of pay.

To qualify for any cash out provided herein, the officer would have to notify the Department not later than October 1 of the year in which payout is sought and payout would be by year's end. The officer cannot seek more than 120 hours of payout per year.

Uniforms And Equipment (Article XXIV): Increase current uniform allowance by \$100 effective January 1, 2013.

Overtime, Work Week And Work Day (Article X):

- A. Modify the current "floater" schedule to provide that members will be scheduled to steady assignments for the duration of the shift pick.

- B. Where, during a shift, the Department determines that there is need for overtime on the subsequent shift, then those currently working shall be provided with the first opportunity to hold over and work hours into the subsequent shift.

- C. Where a need for coverage arises late in the shift, then those officers assigned to work the subsequent shift shall be given the first opportunity to work by coming in early on overtime.

Detectives (Article XV):

Permit the detective assigned on call, to take an unmarked police vehicle home for the purpose of response, provided that he lives within five (5) miles of the Township border.

Uniforms of Equipment (Article XXIV):

Members to be given the option of using a part of this allowance for gym membership and/or job related journal membership.

Police Vehicles (Article XXX):

A. Modify section heading to "Police Vehicles and Officer Safety".

B. Add the following provisions for officer safety and security:

1. Require the department to address officer safety and public safety by supplying a secure location for prisoners in custody.
2. Require the Township to provide a safe environment and provision for equipment for officers to load and clean weapons and secure them within the Police Department facility making specific provisions for accidental discharge. For example, the PBA proposes that a "cleaning station" be provided.
3. Township to provide an additional workstation in addition to the current two work stations. This will help an officer to effectively and efficiently perform report writing and other tasks in a secure area.

TOWNSHIP'S FINAL OFFER

Term of Agreement (Article XL):

Four year agreement (Jan 1, 2013- Dec 31, 2016)

Salaries (Article XIII and Schedule A):

0% increase for 2013
 0% increase for 2014
 1% increase for 2015
 1% increase for 2016

Schedule A- Increase number of steps- Top pay in 11 years.

Step Increases- New Schedule	
Police Academy/Remainder	\$43,791
2nd Year	\$47,792
3rd	\$51,793
4th	\$57,992
5th	\$64,191
6th	\$70,390
7th	\$76,589
8th	\$82,788
9th	\$88,986
10th	\$95,466
11th	\$101,945

Longevity (Article XIV):

Eliminate longevity for new employees effective January 1, 2013.

Freeze all existing employees at level of longevity as of December 31, 2012 and eliminate any new longevity steps for existing employees.

Overtime, Work Week, & Workday (Article X):

A. The Township does not support the PBA proposal that the current "floater schedule" provide that members will

be scheduled to steady assignments for duration of shift pick.

B. The Township will agree to a modified approach that when management determines there is a need for overtime on the subsequent shift then those working shall be provided with the first opportunity to holdover and work hours into the subsequent shift as long as the overtime is for four (4) hours or less.

C. The Township will agree to a modified approach that when management determines a need for coverage arises late in a shift then those officers assigned to working the subsequent shift will be given the first opportunity to work by coming in early on overtime as long as the overtime is for four (4) hours or less.

Detective Increment (Article XV):

D. No Change

Educational Incentive (Article XVIII) and Schedule B:

Amend Section B to indicate that approval for reimbursement of tuition and book costs is at the sole discretion and approval of the Township manager with recommendation from the Chief of Police. Approval must be obtained prior to start of classes for which reimbursement will be sought.

New Section D: "A single employee shall in one calendar year receive no more than \$1,500 in required tuition, fees, and textbooks. Reimbursement of tuition, books, and fees shall be made upon presentation of certificates

establishing that a course has been successfully completed as required in Section E and documentation that all other means of payments by outside agencies are unavailable. The total education payments to the police department shall not exceed \$15,000 in any one calendar year.

Sick Leave (Article XXI):

New Paragraph: Upon approval of Township Manager, an employee may request payment for a portion of accumulated sick time during the term of active employment. Such request for cash payment shall be at the employee's current rate of pay, with one additional hour to be deducted from the accumulated sick time bank for each hour paid. Each request shall be individually judged based upon total time accumulated, township financial status, and any other relevant factors. Approval shall be at sole discretion of Township Manager and the availability of budgeted funds.

Uniform and Equipment (Article XXIV):

Amend as follows:

"All unit employees will receive an annual clothing allowance in the amount of \$775 payable April 1st of each year. The clothing allowance is taxable to the employee as income, but is not included in the employee's base pay. The clothing allowance is not pensionable. The clothing allowance is to be pro-rated in the employee's first and last year of employment."

Medical and Dental Insurance (Article XXVI):

Paragraph A - New medical plan design (Patriot V Plan Design) for all active employees with a date of hire prior to December 31, 2012. "All employees accept a newly defined Health/Medical/Prescription Insurance Plan effective 2013 (*as soon as can be implemented*) for all active employees. The Health/Medical Insurance Plan shall be the Aetna QPOS Patriot Plan). For all new employees hired after January 1, 2013 the employee will be required to elect one of three newly adopted Health/Medical/Prescription Insurance plans known as: Aetna Choice High Deductible Plan, Aetna HMO or the Aetna Preferred Choice.

(Paragraph C & E)

Change to reflect NJ statute contributions c.78.

(Paragraph D& E)

Change to reflect NJ statute for medical buyout (Cap of \$5,000) pursuant to Chapter 2.

(Paragraph E)

Amend as follows:

"Employees hired after January 1, 2013 shall not receive post-retirement medical and dental benefits paid for by the Township."

Eliminate the last sentence of Paragraph E:

"In the event of any prohibitions, legal impediment, or deletion of the provision of this benefit, the Township of Byram's obligation under this provision shall be to pay all employees upon retirement an annual sum equal to

the amount of insurance costs in the last full year of active employment."

Paragraph E (5)

Amend language to read:

"Insurance coverage cannot exceed level given at the date of retirement. Employees cannot move down and up a level within retirement."

Police Vehicles (Article XXX):

D. No Change - Township does not believe this is subject to negotiations.

BACKGROUND FACTS

Demographics

The Township consists of approximately 24 miles in area and is located in the southern end of Sussex County (T-1). The County consists of 24 municipalities, eleven of which have police departments (T-1). Byram Township is primarily a residential community with only one major commercial corridor (T-1).

Byram is often referred to as the gateway to Sussex County. It is also known as the "Township of the Lakes", because several lakes are within its borders, including Tomahawk Lake and Panther Lake, which is a campground. The Township is also home to several amusement parks such as the "Wild West", campgrounds, and Waterloo Village, a historical site and meeting hall. It is

also located near the Hopatcong State Park. Further, its several hundred acres of State land attracts hunters and outdoorsmen. All of these sites and attractions results in more than 25,000 vehicles daily going through Byram, and four times that many in the summer.

Below is a snapshot of Byram Township's US Census Bureau's 2010 profile of general population and housing characteristics (T-49):

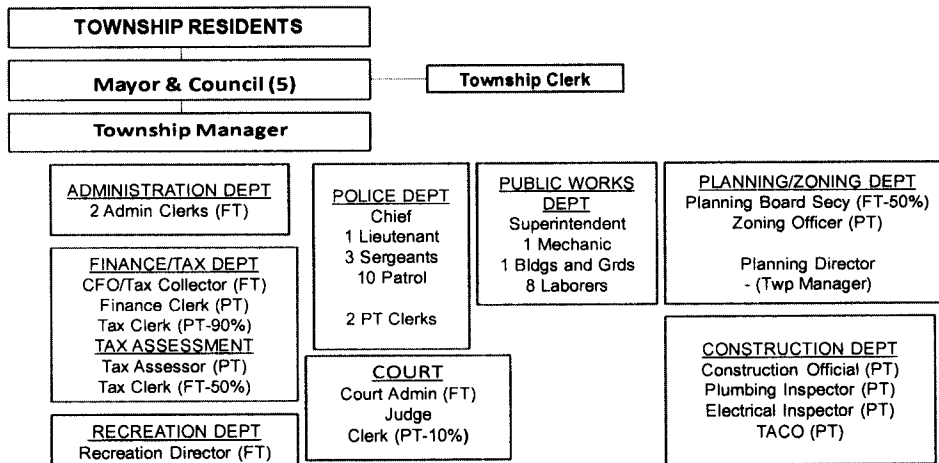
Byram Township, Sussex County, New Jersey		
2010 Demographic Profile Data	Number	%
Total population	8,350	1.0
Persons under 5 years	457	5.5
Persons 16 years and older	6,497	77.8
Persons 65 years and older	843	10.1
Median age (years)	41.2	(X)
Housing units	3,207	100.0
Occupied housing units	2,926	91.2
Vacant housing units	281	8.8
Units for rent	7	0.2
Units for seasonal, recreational, or occasional use	185	5.8
Average household size of owner-occupied units	2.89	(X)
Average household size of renter-occupied units	2.37	(X)

The Township has about 55 employees. The blue-collar employees in the Department of Public Works (DPW) are represented by OPEIU, as are the Town's clerical employees in two separate units. There have been staff reductions over the last four years among civilian employees. The only staff reduction in the police department was one clerical employee that went from full-time to part-time. One police officer who

retired at the end of 2011 and two police officers who retired in 2012 have not yet been replaced.

The following chart reflects the Township's governing organizational structure (T-1):

BYRAM TOWNSHIP, SUSSEX COUNTY



Byram Township Police Department

Byram's Police Department currently consists of a Chief, a Lieutenant, two Sergeants, nine Patrol Officers and two part-time records clerks (T-1; T-7).

Byram's police officers are responsible for patrolling its own roads within the town, including Route 206, and are also first responders to incidents in the State Parks, although State Park Police handle medical emergencies and lost hiker issues. The Police Department has always been committed to delivering professional police services to its residents (T-7).

According to Daniel Dewald, a Byram Township Police Officer, the Township is experiencing population growth. Traffic flow has significantly increased over the past ten years, especially on Route 206, which goes through the town's commercial area. During peak driving periods, the section of Route 206 that goes through the town often experiences gridlock problems and is in the process of being widened. In addition, about two miles of Highway 80 including access ramps, runs through Byram. Due to Route 80's easy access, it is a target area for criminals looking to commit crimes and provides for an easy access and means to elude the police, resulting in numerous police pursuits. In addition, significant populations in the surrounding communities commute through Byram to gain access and exit on and off Route 80.

The following chart shows Route 206 and Highway 80 traffic counts on two (2) typical days in 2009 and 2011² (T-50;P-3):

Traffic Counts	Route 80		Highway 206	
Date	5/20/2009	5/21/2009	3/15/2011	3/16/2011
Total Volume	77,842	84,594	23,675	21,996

In 2012, the Byram Township Police Officers averaged five days of in-service training and traveled more than 143,000 miles during their patrols (T-7). At the June 19, 2012 Byram Township Council Meeting, members of the Police Department received

²Total volume reflects traffic counts for both roads north and southbound.

achievement awards in several categories, such as education, good conduct, military service, honorable discharge, lifesaving, honorable service, and/or exceptional service (T-7).

The following chart depicts the Township's 2011 and 2012 crime statistics (T-7):

<u>Crimes</u>	<u>2011</u>	<u>2012</u>	<u>Difference</u>
Burglaries	15	14	-1
Theft	49	45	-4
Motor Vehicle Theft	0	0	0
Aggravated Assault	1	0	-1
Simple Assault	26	15	-11
Arson	0	0	0
Fraud	26	32	6
Criminal Mischief	38	51	13
Weapons	1	2	1
Fireworks	9	17	8
Narcotic Offenses	20	19	-1
Alarms	259	162	-97
Disorderly Conducts	127	80	-47
Suspicious Vehicle/Persons	343	266	-77
Motor Vehicle Accidents	280	224	-56
Motor Vehicle Stops	2985	3292	307
Medical Assists	349	301	-48
Miscellaneous (other calls)	<u>5391</u>	<u>2504</u>	<u>-2887</u>
Total Incidents Handled	9919	7024³	-2895
Adults Arrested	97	107	10
Juveniles Arrested	8	37	29
Property Value Reported Stolen	\$109,565	\$88,291	-\$21,274
Property Value Recovered	\$7,695	\$2,039	-\$5,656

Existing Salaries and Benefits

The parties' last contract (T-4) covered 2009 through 2012.

³ The 2012 "Total Incidents Handled" number conflicts with exhibits T-7 and T-8. The chart depicts the correct total of 7,024.

Unit members received 2% across-the-board increases in January and again in July of each year of the contract for a net increase, when compounded, of 14.9%. Upon termination of that contract at the end of 2012, the final salary guide, which is the guide from which employees are currently being paid, is:

Step	Salary Guide
Police Academy	\$43,791
Remainder of First Year	\$51,793
Second Year	\$64,191
Third Year	\$76,589
Fourth Year	\$88,986
Fifth Year	\$101,945
Sergeant	\$109,199
Lieutenant	\$116,810

At the end of 2012, the department consisted of the Chief and 14 unit employees: 1 lieutenant, 3 sergeants, and 10 patrolmen, 1 of whom was assigned as the detective. By the end of 2012, all patrolmen are on the fifth year step of the salary guide as set forth above at \$101,945, the three sergeants each earning a base pay of \$109,199, and one lieutenant paid at a base rate of \$116,810.

Employees also receive longevity payments pursuant to the following contractual longevity schedule:

1. In the 6th year of employment
and thereafter, until the 10th year 1.5%
2. In the 10th year of employment

- and thereafter, until the 15th year 3%
3. In the 15th year of employment
and thereafter, until the 20th year 5%
 4. In the 20th year of employment
and thereafter, until the 25th year 7%
 5. In the 25th year of employment
and indefinitely thereafter 8%

Pursuant to the contract, the longevity entitlement is added to base pay, is paid in regular bi-weekly pay and is used for all calculation purposes. Increases in longevity entitlements are implemented on January 1 of the year of the employee's benchmark anniversary. Therefore, as I read this longevity schedule, an employee who, for example, completes nine years of service in 2012 would begin his 10th year in 2013 and be eligible for 3% longevity payment at the beginning of 2013. The Township's calculations in T-9 confirm this application method.

Pursuant to the contract, the officer assigned to the detective unit receives a \$1500 annual stipend, which is not included in base pay for calculation purposes.

In addition to salaries, unit employees also have an educational incentive plan, reimbursement for tuition and books, a \$775 clothing allowance, a generous medical, prescription and dental plan, a stipend for the assigned detective, and a sick leave cash-out benefit upon retirement or resignation.

STATUTORY CRITERIA

N.J.S.A. 34:13A-16.7(b) provides:

An Arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate money value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

The statute also provides a definition as to what subjects are included in "base salary" at 16.7(a):

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

In addition, 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. I consider the public interest to be the most significant of all statutory factors to be considered.

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 by statute to determine the total net annual economic cost during the term of the contract as 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 those factors that interrelate and require the greatest scrutiny in this proceeding are the financial impact of an

award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)] and the Township's statutory budgetary limitations [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)] and, most importantly, the 2% limitation on the total increase of base pay on an arbitration award [N.J.S.A. 34:13A-16.7(b)]. I have also considered wages and economic benefits among other township employees and among comparable police jurisdictions in the County and in the immediate area surrounding Byram. I also deem the impact on employee morale to be a factor worthy of consideration.

Chapter 62, N.J.S.A. 40A:4-45 et seq, provides that a municipality shall limit any increase in its annual budget to 2.5% over the previous year's final appropriations unless authorized by ordinance to increase it to 3.5%, with certain exceptions. This is commonly referred to as the "Appropriations Cap". Chapter 68, N.J.S.A. 40A:4-45.45 prevents a municipality from increasing the tax levy by more than 2% absent a public referendum. This is commonly called the "tax levy cap."

ANALYSIS

Length of Contract:

The PBA seeks a two-year contract covering 2013 through 2014. The Township proposes a four-year contract extending through 2016.

The Township argues that the last agreement was for a four-year period and there is no basis to abandon that practice. It contends that a longer contract will provide predictability and stability and will avoid the strain on morale and focus on the relationship between employees and management that is inherent in the negotiations process.

At the hearing, the PBA argued that a two-year contract is more reasonable given the volatility of economic conditions in the region and the state.

I award a three-year agreement. Although the PBA has negotiated four-year contracts with the Township in the past, there is no basis to necessarily continue that trend, given the state of the economy. Indeed, it is difficult to predict whether economic conditions, including the current restrictions on the municipality's budget, will improve, deteriorate or remain stable. The Township is correct that a period of labor peace and stability is beneficial to the parties and furthers the public interest. If I award a two-year contract, the parties will be back to the negotiations table fifteen months from now for a successor agreement. The record indicates that all of the Township's bargaining units are up for renegotiations in 2013. Therefore, there is no internal pattern in place. Further, only scant data has been provided from other law enforcement groups in the area

concerning comparative wage rates beyond 2014. Accordingly, I find that a three-year contract for 2013-2015 is in the best interest of the public and the parties themselves.

Salary Proposals:

The PBA proposes salary increases of 2.25% in each year of the contract. It notes that the average cost of living increase is 1.7%, which would support comparable increases to the officers' net pay. However, it asserts that the combined impact of the 1.5% increase in employee pension payments, together with the sequenced increases in health care contributions, will result in a net loss in excess of 3% annually. Therefore, the PBA contends, officers' net take home pay will be less in 2013 even if its proposed 2.25% increases are granted. The PBA avers that it is merely trying to mitigate its losses during this contract. It contends that awarding the Employer's proposal would be devastating to employees and seriously impact their ability to meet their family's needs.

The Township has proposed wage freezes for 2013 and 2014, and a 1% increase for 2015. It maintains that this is consistent with the Township's position taken with respect to other bargaining units as well as non-union employees (T-1, pp. 12-14). Its goal is to keep operating costs flat or reduced. The Township asserts that the 2013 proposed budget projects an increase in taxes of \$243,384 or 3.1%, largely

owing to increases in health insurance costs and pension contributions. Further, it points out that the increases given in July 2012 have a flow-through effect into 2013, at a cost to the Township of \$18,963 even if no increase is awarded.

Finally, it notes that Byram's officers have the highest base pay in all of Sussex County and which also exceeds the salaries and other compensation packages of all other Township employees, including the Township Manager, resulting in an adverse impact on employee morale among non-police employees. It further notes that Byram's taxpayers have in vocal in opposing further tax increases.

I have considered the parties' arguments and the facts as developed in the record. The following facts are relevant:

According to Joseph Sabatini, Byram Township's Manager, the Township has an increased reliance on property taxes and its fund balance to support operations (T-1). He stated that other sources of revenue have diminished in the last few years. One such revenue source was investment income, which has declined due to falling interest rates.

The 2012 budget plan had property taxes representing 74.85% or \$7,826,629 in revenues (T-11). The budget plan was a 3.1%

(3.09% rounded) or \$234,616 increase of the tax levy from 2011 (T-11).

Byram Township's 2008 through 2012 and 2013 (projected) property tax increases are depicted as follows (T-1):

<u>Budget Year</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013 (Projected)</u>
Property Tax Increases	9.23%	6.54%	5.48%	2.35%	3.09%	3.10%

The following information compares the proportion of budgeted revenues from 2007 through 2012, excluding public and private revenues (T-11):

<u>Budget Year</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Current Property Taxes	67%	69%	71.1%	74.39%	74.47%	74.85%
Miscellaneous Revenues	18%	16.6%	14%	10.78%	10.43%	10.04%
Fund Balance	11%	10.8%	11.5%	11.41%	11.77%	11.86%
Delinquent Taxes	4%	3.6%	3.4%	3.42%	3.33%	3.25%
	100%	100%	100%	100%	100%	100%

In 2012, the Township's averaged assessed home was \$253,020 and is \$253,116 for 2013 (T-1). The 2012 municipal tax rate was .839 and municipal share of taxes for an averaged assessed home were \$2,111.84 (T-1). The 2012 total tax rate was 3.177 and the total taxes for an averaged assessed home were \$8,038.45 (T-1). A comparison of Byram Township's tax assessments for 2012 and 2013 is provided below. The chart below includes each category/class for assessment, with its corresponding percentage of the property tax base assessments (T-1):

<u>Category/ Class</u>	<u># Line Items</u>	<u>2012 Assessments⁴</u>	<u>%</u>	<u># Line Items</u>	<u>2013 Assessments</u>	<u>%</u>
Vacant Land	496	\$18,175,900	1.95%	476	\$17,057,400	1.83%
Residential	3,221	\$814,978,400	87.55%	3,216	\$814,021,000	87.51%
Farm	156	\$14,982,000	1.61%	162	\$15,580,200	1.68%
Commercial	119	\$79,756,200	8.57%	120	\$80,556,400	8.66%
Industrial	3	\$1,881,100	0.20%	3	\$1,881,100	0.20%
Apartment	3	\$1,115,600	0.12%	3	\$1,115,600	0.12%
	3,998	\$930,889,200	100%	3,980	\$930,211,700	100%

The 2012 municipal budget called for an estimated municipal rate increase of \$.84 for each \$100 dollars of assessed value using the net valuation of \$932,256,721 (prior to tax court appeals) (T-11; T-51). This represents an estimated \$47.74 annual municipal tax increase for the average assessed home of \$253,020 (T-11). A comparison of municipal real estate taxes is summarized in the following table (T-11):

<u>Budget Year</u>	<u>2007</u>	<u>2008</u>	<u>2009⁵</u>	<u>2010</u>	<u>2011 (Est.)</u>	<u>2012⁶ (Est.)</u>	<u>Estimated Increase/ Decrease</u>
Average Assessed Home	\$146,379	\$146,473	\$303,795	\$302,795	\$301,833	\$253,020	
Tax Rate	1.141	1.244	0.631	0.669	0.688	0.840	
Municipal Taxes	\$1,670.18	\$1,822.12	\$1,916.62	\$2,025.70	\$2,077.63	\$2,125.37	\$47.74
Open Space Taxes	<u>\$29.28</u>	<u>\$27.83</u>	<u>\$27.34</u>	<u>\$27.25</u>	<u>\$27.16</u>	<u>\$29.85</u>	\$2.69
Total Municipal Taxes	\$1,699.46	\$1,849.95	\$1,943.96	\$2,052.95	\$2,104.79	\$2,155.22	\$50.43

⁴ The Table of Equalized Valuations 2012 (Prior to Tax Court Appeals) reflects an aggregate ratio assessed to true value of 91.78; aggregate true value real property of \$1,014,261,495; assessed value all personal property of \$1,367,521; and equalized valuation 2012 of \$1,015,629,016 (T-51).

⁵ 2009 was the revaluation year.

⁶ 2012 was a reassessment year. The reassessment is complete and new taxable values have been established for 2012. The value of the average assessed home was reduced by \$48,813 from 2011. Since the overall net valuation of the Township was reduced, an increase in the tax rate was required.

The allocation of the tax dollar in Byram Township for 2012 was as follows:

Allocation of Tax Dollar in Byram Township				
Budget Year	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Municipal Tax with OS Tax	25.81%	26.54%	26.68%	26.40%
County	17.84%	16.75%	16.56%	16.92%
Schools	56.35%	56.71%	56.76%	56.68%

In addition, the Township has been experiencing significant reductions of interest income and State Aid (T-1). In 2012, the Township realized \$5,247.31 in interest income, but had anticipated \$10,500 (T-1). The following chart depicts the reduction in interest income for the years 2007 through 2012 (T-1):

Budget Year	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2007 to 2012 % Decrease</u>
Interest Income Realized	\$210,909.24	\$80,214.34	\$38,051.57	\$15,032.48	\$10,956.29	\$5,247.31	-97.5%

Byram Township's 2012 Municipal Budget expenditures is divided into several categories as follows:

- Municipal Operations
- Capital Improvement Program
- Sewer Utility

Municipal Operations and the Capital Improvement Program are supported by a variety of revenues (T-11). The revenue sources include current property taxes, State Aid, surplus

balance and miscellaneous revenues generated by municipal operations (T-11). The Sewer Utility is supported by fees collected from users of the system (T-11).

The 2012 municipal budget, including the Capital Improvement Program and the Public and Private Offset by Revenues totals \$10,458,631 (T-11). This amount represents a 1.39% increase over the 2011 budget excluding public and private programs offset by revenues (grants) (T-11).

Surplus anticipated for the 2012 budget was \$1,240,102 or 11.86% of the total revenues (T-11). This was a \$40,000 increase from 2011 (T-11). This increase was the result of a "dividend" that was received as miscellaneous revenue not anticipated in 2011 from the North Jersey Health Insurance Fund (T-11). This amount appears to be a refund of premiums paid the prior year. The Township elected to use this surplus as an increase to offset the 2012 healthcare increase (T-11). It is expected the dependency on surplus for the 2013 budget will minimally be reduced by this amount (T-11).

The proposed State Aid for 2012 totaled \$617,395 or 5.9% of the total revenues (T-11). The Governor reported in his February 2012 proposed State budget message for 2013 that all municipalities will be receiving the same State formula aid they received in the FY 2012 budget for Consolidated Municipal Property Tax Relief Aid (CMPTRA) and Total Energy Receipts (T-

11). For the ten year period from 2001 to 2011, the Township's deficit receipts for CMPTRA and Energy Tax exceeded \$1.8 million dollars (T-11).

The Township asserts that since 2008, it has needed to manage a \$388,645 reduction of State Aid (T-1; T-11). State Aid allocations for 2013 were targeted to be announced by the New Jersey Governor in late February of 2013. The Township believes that the 2013 aid will be diverted to the shore towns (T-1). The following chart reflects the downward trend in State Aid funding from 2007 through 2012 (T-1):

Budget Year	2007	2008	2009	2010	2011	2012	2008 to 2012 % Decrease
State Aid	\$1,006,040	\$817,687	\$790,147	\$638,355	\$617,395	\$617,395	38.6%

The following categories of appropriations were adjusted for the 2012 budget as follows:

- General Government - down 2.85% (-\$35,180)
- Public Safety - increased 2.45% (+\$55,085)
- Public Works - increased 2.53% (+\$32,300)
- Community Programs - increased 1.59% (+\$1,650)
- Utilities - No change
- Statutory Expenditures (Pensions & FICA Taxes) - Minimal change - increased .06% (+\$446)
- Group Insurance - increased 10.55% (\$146,127)
- Workers Compensation and General Liability - increased 2.47% (+\$6,347)
- Solid Waste (Garbage Contract) - increased 6.84%

(+\$45,000)

- Debt Service - increased 11.94% (+\$42,341)1).
- Deferred Charges - increased 40.54% (+\$30,000)
- Capital Improvement Fund - down 56.92% (-\$74,000)

The 2013 municipal budget will be introduced March 19, 2013. The Township states that the proposed budget is the best possible representation based on known expenses and anticipated revenues (T-11). The budget has not yet been adopted by the governing body (T-1). This budget plan assumes no changes to salary and wages for all the Township employees and no reduction of revenues including State Aid (T-1). At present, the key budget impacts for 2013 are beyond the direct control of the Township (T-1). The total cost of health benefits (before employee contributions) will increase by \$229,382 and the Township's share of pension costs will be reduced for PFRS by \$14,897 and increased by \$1,443 for PERS (T-1).

The Township avers that there is no public tolerance for an increase in property taxes (T-1). Sabatini testified that the governing body has expressed an interest in freezing the property tax levy, but he explained that this is not possible without cuts to municipal services (T-1).

Anticipated revenues will be adjusted based on final 2012 revenues (T-17). Below is a summary of estimated 2013 expenses

(T-17) :

- Applied no changes to departmental salary and wages⁷; does not include any current contract obligations, i.e. increase for longevity. Budget plan assumes replacement for two retired police officers; salaries have not been reduced and were kept at rate of top pay of retired officers.
- Group insurance costs - estimated increase of \$229,382; increased contributions from CBA unit employees; included cost benefits for prospective new hires (less 1st year contributions); general liability and Worker's Compensation Insurance - applied 2% increase and additional assessment received in 2012.
- Pension costs - estimated increase \$52,203; Township's share was reduced for PFRS by \$14,897 and increased by \$1,443 for PERS.
- Solid waste and Recycling costs - estimated decrease of \$32,500 as result of new contract awarded February 1, 2013.
- Other category of expenses - applied reductions assuming closing of the Consolidated School; decreased deferred charges expense by \$74,000, increased drainage improvements \$4,000 and increased streets and roads by \$70,000.
- Surplus Anticipated - no change
- Miscellaneous revenues - State statute prevents the Township from anticipating more revenues than what was realized in prior year; 2012 interest income was \$5,500

⁷The 2013 proposed budget, exhibit (T-17), reflects a decrease (from the 2012 budget) in the amount of \$2,500 S&W, and \$3,000 O&E for the Police Department.

under what was anticipated; made minor adjustment and offset with an increase to court revenues; there is an option to anticipate new revenue for recycling; estimated revenue is based on 2011 tonnage of \$15,750; an alternative is to wait until 2014 to anticipate based on 2013 actual revenues received; any revenue not anticipated in 2013 will be treated as miscellaneous revenue not anticipated and used to regenerate surplus balance.

- State Aid - no change from 2012 budget; State Aid is estimated at 5.77% of total revenues required to balance the 2013 budget plan.

In 2010, the New Jersey Legislature enacted the 2010 Cap Law that amended the 2007 Cap to a 2% cap with modified exclusions as follows:

- Allowable Shared Service Agreements Increase
- Allowable Health Insurance Cost Increase (in excess of 2% and limited by the increase in State Health Benefit rate increase (10.3% for 2012))
- Allowable Pension Obligations Increase (contributions in excess of 2%)
- Allowable LOSAP Increase
- Allowable Capital Improvements Increase
-
- Allowable Debt Service, Capital Leases and Debt Service Share of Cost Increases
- Recycling Tax Appropriation
- Deferred Charges to Future Taxation Unfunded
- Current Year Deferred Charges: Emergencies (Weather and

A

other "declared" emergencies)

The Township is still subject to the 1977 CAP Law that established the original municipal Appropriation Cap (T-11). The most recent amendments to this Cap in 2003 imposed a 2.5% limit on increases on municipal appropriations (T-11). The Cost of Living Adjustment (COLA) for CY2012 budget is calculated at 3.5% (T-11). Since the COLA is more than the statutory maximum of 2.5%, the cap rate for CY2012 is 2.5% (T-11). For 2012, the Township is under the 2.5% Appropriations Cap by \$41,625 (T-11).

Pursuant to N.J.S.A. 40A:4-45.2, "municipalities 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 statutory permitted 3.5% (T-11).

In 2012, the Township Mayor and Council adopted Ordinance No. 1-2012 titled, "Calendar Year 2012 Ordinance to Exceed the Municipal Budget Appropriation Limits and to Establish a Cap Bank" during the February 7, 2012 council meeting (T-11). This ordinance increased the cap base for 2012 to 3.5% and is used to establish the Cap Bank which is the banking of any unappropriated balance (T-11). Cap Bank balances from 2010 and 2011 are available for use in 2012 (T-11).

The New Jersey Division of Community Affairs accepted the

Township's ordinance (T-11). The Township's professionals recommended this ordinance be adopted each year (T-11). The Township stated that adoption of the ordinance in itself does not define the council's policy for the 2012 municipal budget, but ensures responsible action has been taken for future budget cycles keeping local control without a dependency on the State of New Jersey in the event of an unplanned event impacting the Appropriations Cap (T-11).

A group of taxpayers filed a lawsuit in Superior Court to overturn the above ordinance. The lawsuit was dismissed. An Appeal is pending in the Court's Appellate Division.

In 2012, the Township's allowable appropriations before additional exceptions were \$8,662,010.22 (P-16). The Township's cap bank monies from 2010 of \$165,071.04 and from 2011 of \$121,892.45 were used for the cap calculation along with \$18,850.87 in 2011 local tax rate (P-16). The maximum allowable general appropriations for municipal purposes within "CAPS" were \$8,967,924.58 (P-16). In 2012, the total budgeted appropriations within caps were \$8,536,694 (P-16). This leaves \$429,230 under the appropriation cap which is available for cap banking for future years.

The 2013 Appropriation Cap (1977 Cap Law) or Levy Cap (2010 Cap Law) calculations had not been completed (T-17). The cap calculations will be completed to determine impact once a

proposed budget plan is defined with input from the Council. Byram's 2012 2% tax levy cap calculation resulted in a maximum allowable amount to be raised by taxation of \$7,945,828 (P-16). The amount to be raised by taxation for municipal purposes was \$7,826,629 (P-16). Thus, the Township was under the Levy Cap by \$119,199. This amount will give the Township additional flexibility to be within its levy cap for 2013.

For 2013, the proposed budget has a maximum allowable amount to be raised by taxes of \$8,143,435 and the amount to be raised by taxation for municipal purposes of \$8,077,013, leaving the Township under the Levy Cap by \$66,422 (T-12).

The 2013 preliminary Tax Levy Cap suggests the current budget plan is \$66,422 under the maximum allowable amount to be raised by taxation (T-1). The Township is under the cap because of \$276,014 adjustments to the tax levy prior to exclusions (T-1). The tax levy had been adjusted to balance the budget (T-17). The summary of calculated exclusions is as follows (T-1):

<u>Levy Cap Exclusions</u>	<u>Amount</u>
Allowable Health Insurance Cost Increase	\$108,742
Allowable Pension Obligations Increase	\$41,967
Allowable Capital Improvements Increase	\$74,000
Allowable Debt Service, Capital Leases and Debt Service Share of Cost Increases	\$10,805
Recycling Tax Appropriation	\$10,500
Current Year Deferred Charges: Emergencies	<u>\$30,000</u>
TOTAL	\$276,014

Sabatini noted that without the exclusions, the Township's

budget plan would be over cap and there would be a requirement to cut services (T-1). The current 2013 proposed budget plan would require an increased amount of \$243,384⁸ or 3.1% to be raised by taxes (T-1). It contends that if the available cap of \$66,422 was used in the budget plan, there would be an increased amount to be raised by taxes of \$309,806 or 4.0% (T-1).

In addition to the PBA bargaining unit, the Township has two other employee groups which are unionized. The Department of Public Works employees are represented by OPEIU and the Township's clerical employees are represented by a separate unit, also by OPEIU. Both contracts expired in 2012 and the Township is in negotiations with both groups. According to Sabatini, the Township has proposed a zero wage increase for all Township employees including these units. The Township notes that the police patrolmen are more highly paid than any other Township employee, including the Public Works Director, the Chief Financial Officer and the Township Manager. The Township argues that this pay disparity between police and non-police is having an increasingly adverse impact upon civilian personnel. In addition, the Police Chief had an individual employment contract with the Township which provides that each January the Chief shall be entitled to a minimum of the same salary

⁸The Township's exhibit (T-17), Draft (Estimated) 2013 Municipal Budget, dated January 7, 2013, reflects an amount to be raised by taxes of \$239,579 or 3.1%.

increases as provided to the PBA members (P-11).

The 2012 PBA top salaries in Byram Township, compared to other Sussex County police departments, are provided below (T-1):

<u>Sussex County</u>	<u>2012 Base Salary Top Patrol Officer</u>
Byram	\$101,945.00
Sparta	\$101,181.00
Vernon	\$99,611.00
Newton	\$93,408.00
Hopatong	\$93,267.00
Hardyston	\$92,876.66
Franklin	\$89,100.00
Ogdensburg	\$86,514.00
Andover	\$86,128.68
Stanhope	\$84,299.00
Hamburg	\$78,946.00

As to percentage increases, recently agreed upon or awarded by an arbitrator, a comparison of surrounding communities is summarized in the following chart, submitted by the PBA in its brief but supported by record evidence:

<u>Police Rate % Increases</u>					
	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
-					
Andover	1.75%	1.65%	1.5%		
Mt. Olive	1.3%	1.3%			
Newton	2.00%	2.25%			
Rockaway	3.85%	3.95%			
Roxbury	2.5%	1.7%	1.9%		
Hamburg	2%	2%	3%	3%	3%
Hardyston	2%	2%	2%		
Ogdensburg	1.5%	1.5%			
Sparta SOA	3.375%				
Vernon	<u>2%</u>	<u>2%</u>	<u>2%</u>	-	-

Average	2.228%	2.04%	2.08%	3%	3%
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I note, however, that the Sparta SOA contract (T-31) was signed in 2009, and the Rockaway contracts (P-9-3 and P-9-4) were signed in 2010. It can be said that, over the last five years, salary increases have been trending downward. The later the contract was signed, the more likely the increases are lower. If Sparta and Rockaway were removed from the totals above, then the average settlement for 2013 is 1.88% and for 2014, 1.80%.

Nationwide, the Consumer Price Index for All Urban customers (CPI-U) increased 1.8% for the 12-month period ending November 2012 (T-55). For the New York-Northern New Jersey area, the CPI-U increased just 2.0% from November 2011 to November 2012 (T-55). However, the Chained - Consumer Price Index - for All Urban Customers (C-CPI-U) for December of 2012 was down -0.3% over the month, and up 2.1% over the year, and in January 2013, was 1.6% (P-14). The C-CPI-U is designed to be a closer approximation to a cost-of-living index in that it, in its final form, accounts for any substitution that consumers make across item categories in response to changes in relative prices (P-14). The 2013 indexes are initial estimates and are subject to two revisions (P-14).

As of November 30, 2012, 1,559 homes were in foreclosure in

Sussex County (T-55). There were 56,253 homes in the foreclosure process for the entire State of New Jersey (T-55).

State unemployment numbers for New Jersey as of November 2012 are 9.6% (T-55). During the same period, Sussex County's unemployment number was 8.5% (T-55).

N.J.S.A. 34:13A-16.7(b) provides:

An Arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate money value of the award over the term of the collective negotiation agreement in unequal annual percentages (emphasis added).

Here, the total base salary paid in base year 2012 was \$1,492,986.⁹ 2% of the total base paid is \$29,859. This is the maximum that I can allocate for salary increases for each year of the contract¹⁰. Therefore, for the life of a three-year contract, the maximum increases may not exceed an aggregate of

⁹The Township calculated total base paid at \$1,492,986. It used the correct methodology to arrive at its calculations of total base paid (T-9). The PBA used a scattergram approach and used the final 2012 salary on the step guide, times the number of employees at each step. It arrived at a total base paid of \$1,565,802. This is not accurate because it discounts the fact that employees did not earn this salary until July. The salaries, as well as longevity payments, for 2012 must be pro-rated.

¹⁰The Township incorrectly calculated the 2% for each year beyond the first as a percentage of base for the preceding year. This is inconsistent with the statute which requires a 2% cap for all years calculated on the base year.

\$89,579.16 (\$29,859.72 x 3 years). Moreover, it must include the amounts needed to fund across-the-board increases and increases in longevity payments as well. See, Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012).

I have considered all of the parties' arguments and the facts in the record. In applying the statutory criteria, I find that particular weight must be given to the public interest. This is not only a matter of applying a mathematical calculation to determine whether the award will be within the Township's appropriations cap and levy cap. It is also giving consideration to whether the public (Byram's taxpayers) are able to tolerate the additional funding needed to support my award. The Employer's ability to pay for an award does not mean that the employees are entitled to it. More specifically, the amount available under the 2% arbitration cap (6% over 3 years) is a statutory maximum - it is not an automatic conclusion that the award should be the maximum amount possible.

Further, I have considered the current compliment of salaries and benefits enjoyed by Byram's police officers, and I have given weight to the statutory criteria of comparing those wages and benefits to other Township employees and police officers in other towns in Sussex County and the immediate surrounding area. I have also given weight to the factor of

cost of living, percentage increases in other area municipal police departments, and the State-wide average increases, from awards and voluntary settlements, as reported by the Public Employment Relations Commission for 2012.

On the one hand, the PBA is correct that, because of statutorily mandated health care contributions and pension payment increases, the employees' net take home pay will be less in 2013 than it was in 2012, no matter what I award here. That said, however, I am confident that it was not within the goals of the legislature in passing Chapter 78 that employers "make up the difference" in employees' pay by awarding salary increases to mitigate the cost of employee contributions. Therefore, while the net loss in police officers' earning power is noted, the purpose of this award is not to make employees whole for this contribution. I also note that the cost of living has increased by 1.7% since last year. Further, the evidence shows that the average increase in police and fire contracts County-wide for 2013 is 1.88% and for 2014, 1.80%. Finally, I take administrative notice of the salary increase analysis, periodically published by the Public Employment Relations Commission on its website, that the average wage increase for contracts awarded in calendar year 2012 was 1.77%.

On the other hand, it cannot be ignored that Byram's police have the highest base pay rate in Sussex County. Owing to traffic on Route 206 and Route 80, both of which go through the Township, it is obvious that Byram officers are very busy, although one would not characterize Byram as a particularly high-crime rate area. Byram's longevity program is comparable to the averages in Sussex County. In addition, at the moment, they have a step guide that puts officers at top pay after five years. More importantly, I consider that Byram's police are not only the best paid Township employees, but the only ones with traditional medical coverage and a percentage longevity plan. Further, I note that the Township has offered the same wage freezes for 2013 to its other bargaining units and to its exempt employees. But, at this point, these are proposals, not contracts, which would establish an internal pattern and carry greater weight.

Finally, while the Township is under taxpayer pressure to control tax rates, the fact is that, due to retirements of two top-paid officers with maximum longevity, the Township will spend fewer dollars on police department salaries in 2013 and again in 2014 than it did in 2012. This is true, even if it hires two new recruits in 2013, as it anticipates doing. More specifically, the cost of base pay and longevity for all unit employees in 2012 was an aggregate of \$1,492,985. With the

increases being awarded herein, the 2013 cost for unit employees' base pay and longevity will be \$1,311,146. In 2014, the cost will be \$1,319,649. In 2015, the cost will be \$1,379,223. The projected costs above do not include the costs of new hires as the salaries are speculative.

It must also be noted, particularly in considering the array of cuts in economic benefits the Township proposes, that the salary and benefits earned by these police officers is a result of years of collective negotiations. It is generally an axiom of negotiations, especially in the last few years where concessions are being proposed, that you give something up in exchange for something else. Here, the employer asks for an array of give-backs on benefits, but at the same time, proposes to give virtually nothing in increases. I intend to take a more balanced approach in this award.

In considering the factors specifically enumerated above, I award the following:

Effective and retroactive to 1/1/13: 1.25% across-the-board increase to all employees.

Effective 1/1/14: 1.5% across-the-board increase to all employees.

Effective 1/1/15: 2.0% across the board increase to all employees.

This award will allow Byram's police officer to continue to maintain salaries above the County's average and at the same time provide the Township with the ability to maintain fiscal prudence and respond to taxpayer's demands particularly in 2013, where it will not yet have the full year's benefit of reduced insurance premiums or full employee contributions. In 2014 and 2015, I have awarded increased percentages which I believe the Township will be in a better financial position to afford, as it will then have the full benefit of health benefit premium reductions and an increased employee contribution rate.

Longevity:

The Township proposes to freeze current officers at their current rate of longevity and to eliminate longevity pay for new hires. It argues that longevity is a significant expense which can no longer be accommodated. It notes that the longevity plan, which is expressed as a percent of salary, automatically rises as salaries increase, creating built-in cost increases going forward. The Township observes that its two civilian bargaining units have longevity plans which are set in fixed dollar amounts, with the maximum longevity payment being at \$3,120. It also points to several other Sussex County towns - Franklin and Stanhope - which have eliminated

15th		6%	4%		6%	5%		6%	\$2,150		
16th				4%						\$3,000	
17th							8%				
18th	6%										
20th			6%		8%	7%		7%			
21st				5%			10%		\$2,650		
22nd	8%										
24th				7%							
25th					10%						
27th			8%								

* Franklin and Ogdensburg have no longevity plans.

**Two-tier plan

I am not satisfied that there is sufficient basis to disturb the existing longevity program here. First, the longevity plan is not out of sync with those in surrounding towns as shown above. While I recognize that some towns have eliminated or scaled back longevity, what tradeoffs might have been made for that result are unknown. It could well be that longevity was given up in exchange for increases in base pay, or for other benefits. As to Byram's civilian employees, it is not uncommon for these employees to have a reduced longevity plan expressed in dollars, as their salaries are typically lower, as is the case here.

In 2012, 13 of the 15 unit members received longevity payments:

# Ees	Yrs. Of Service	Longevity %
3	5 + yrs.	1.50%
4	9 + yrs.	3.00%

3	14 + yrs.	5.00%
3	25 + yrs.	8.00%

The total spent by the employer on longevity pay for 2012 was \$49,834. Owing to the retirements at the end of 2012, the Township will actually experience a decrease in its liability for longevity payments in 2013. The following chart shows the number of employees at each longevity benchmark in 2013:

# Ees	Yrs. Of Service	Longevity %
4	5 + yrs.	1.50%
5	9 + yrs.	3.00%
1	14 + yrs.	5.00%
2	19 + yrs.	7.00%

Thus, for 2013, after salary increases are awarded as explained below, the total cost of longevity to the Township will be \$42,775.

In 2014, the Township's liability for longevity pay will be \$46,702, and in 2015, the longevity plan will cost \$55,047. Thus, for the life of this contract, the average longevity cost will be \$48,174 per year - less than the cost in 2012.¹¹

Further, the award must be considered as a whole -

¹¹This factors in officers hitting their next benchmark, and is true even if there are no additional retirements or resignations. New hires will not be eligible for longevity for the first four years of their employment.

the Township cannot reasonably expect to achieve concessions in all benefit areas in one round of bargaining. Here, I have chosen to instead make adjustments to the step guide and the educational incentives provision, as set forth below. The Township's proposal to adjust the longevity benefit is denied.

Step Guide:

The current step guide for patrolmen is as follows:

Step	Salary Guide	Increment
Police Academy	\$43,791	
Remainder of First Year	\$51,793	\$8,002
Second Year	\$64,191	\$12,398
Third Year	\$76,589	\$12,398
Fourth Year	\$88,986	\$12,397
Fifth Year	\$101,945	\$12,959

The Township proposes to expand the step guide to 11 steps as follows:

Step	Salary Guide	Increment
Police Academy/1st Year	\$43,791	
Second Year	\$47,792	\$4,001
Third Year	\$51,793	\$4,001
Fourth Year	\$57,992	\$6,199
Fifth Year	\$64,191	\$6,199
Sixth Year	70,390	\$6,199
7th Year	76,589	\$6,199
8th Year	82,788	\$6,199
9th Year	88,986	\$6,198

10th Year	95466	\$6,480
11th Year	101,945	\$6,479

I note that the proposal consolidates the former academy step and the first year step into a single rate; and it increases the number of years an officer must complete to get to the maximum step - from 4 years to 10 years.

The Township argues that the current guide tops out when an officer reaches his fifth year of employment. It asserts that a five-year officer and an eleventh year officer do not bring the same experience and skills to the job. Quoting from Borough of Seaside Park, Docket No. IA-2012-22 (4/9/12), wherein I said, "a fresh-out of the academy rookie police officer does not have the experience and skills gained from years of police work, and therefore, does not bring as much value to the force as does an officer with year of experience on the job." The Township says that an increase in the number of salary steps would recognize the further increase in experience and skills over the years.

The PBA argues that the Township has not supported this demand with credible evidence in the record. It observes that, Byram is "right about in line" with the number of steps in various guides in the area, which the PBA says averages 6.6 steps.

Looking at all of the contracts in evidence, I make the following finding:

<u>Municipality</u>	<u># of Steps</u>		
Andover	Academy	+	6
Franklin	Academy	+	8
Newton	Academy	+	6
Rockaway	Academy	+	5
Hamburg	Academy	+	6
Hardyston	Academy	+	9
Hopatcong	Academy	+	8
Ogdensburg	Academy	+	6
Sparta	Academy	+	7
Stanhope	Academy	+	6
Vernon	Academy	+	10

Avg = Academy +7 steps

In Byram, an officer reaches top pay after completing four years with the force. While I stand by what I said in Seaside Park about the added value years of experience bring to the force, I also believe there is a point of diminishing returns - when additional years of experience on the force just do not add that much additional value. The real issue here is that the cost of increments to move officers up on the scale is, except for the first year, more than \$12,000 a year. Where a department has a significant percentage of the force moving up through the guide, the cost of paying increments alone is a significant slice of the resources available for raises.

This is really not the case here, however; all current employees are at top pay. I will not impose a new guide on current employees, which would have the effect putting employees back into steps, thus imposing salary reductions.

However, going forward, I award a new salary guide for employees hired after the date of this award. Expansion of the guide to an academy rate plus eight steps will slow the progression of guide movement and pare down the price of annual increments. New employees will be hired with the knowledge that they will reach top pay after completing seven years on the job. After the first year, steps will be equalized as follows:

Salary Guide for Employees Hired After 3/11/13				
Step	2013	2013 Step Differential	2014	2015
Police Academy	43,791		44,448	45,337
Remainder of First Year	48,091	4,300	48,812	49,789
After 1st Year of Service	52,391	4,300	53,177	54,240
After 2nd Year of Service	60,816	8,425	61,728	62,963
After 3rd Year of Service	69,241	8,425	70,280	71,685
After 4th Year of Service	77,666	8,425	78,831	80,408
After 5th Year of Service	86,091	8,425	87,382	89,130
After 6th Year of Service	94,516	8,425	95,934	97,852
After 7th Year of Service	102,964	8,448	104,508	106,599

Educational Incentives (Article XVIII):

The contract currently provides,

In addition to all other wages and benefits provided in this Agreement, each employee shall be entitled to

an additional payment, if the Employee is qualified for same, pursuant to the qualifications and limitations as set forth in Schedule B.

Schedule B provides,

- A. In the event any member of the Police Department completes any Police related college level course, said member shall receive additional compensation based on the following schedule:

After 30 credits - 4.00 per credit
After 60 credits - \$6.00 per credit
After 90 credits - \$8.00 per credit

- B. The Township of Byram will reimburse each member attending any State College, State University, or County College for said member's expenses involving tuition and books once said member has exhausted all other means of payment by outside agencies. Employees covered by this contract shall have the right to attend any college or university with the sole provision that the Employer shall not be obligated to pay tuition rates within excess of the then current resident rate at Rutgers College, New Brunswick, New Jersey.
- C. Payments for newly acquired eligible college credits shall be made as earned upon presentation of a certificate establishing the number of credits earned. Payments for previously earned eligible college credits shall be made annually in one lump sum during January of each year.
- D. Reimbursement of tuition of book fees shall be made upon presentation of certificates establishing that a course has been successfully completed and documentation that all other means of payment by outside agencies are unavailable.
- E. It is further recognized that members attending college must secure a grade of "C" or better to be eligible for financial compensation. Also, courses must be police related and lead to the

degree of A.A., A.S., B.S., M.S. M.A. or J.D.

- F. The Township shall not reimburse Officers for college credits earned in excess of one hundred seventy-five (175) credit hours.
- G. Any Police Officer employed by the Township of Byram before December 31, 1980 shall continue to receive payments for all college credits earned prior to the effective date of this Agreement.

The Township proposes to amend Section B of this provision to add:

Approval for reimbursement of tuition and book costs is at the sole discretion and approval of the Township manager with recommendation from the Chief of Police. Approval must be obtained prior to start of classes for which reimbursement will be sought.

New Section D: "A single employee shall in one calendar year receive no more than \$1,500 in required tuition, fees, and textbooks. Reimbursement of tuition, books, and fees shall be made upon presentation of certificates establishing that a course has been successfully completed as required in Section E and documentation that all other means of payments by outside agencies are unavailable. The total education payments to the police department shall not exceed \$15,000 in any one calendar year.

The Township contends that because there is no advance notice to the administration when courses are being taken and reimbursement will be expected, the Township has no ability to anticipate the expenses. It notes that the civilian employees' contract contains such an advance notice requirement. The Township further points to the costs incurred over the past four years for

cost of tuition and books for unit employees was as follows (T-1, p. 37):

2009 - \$8,745
2010 - \$25,480
2011 - \$22,125
2012 - \$24,767

However, Exhibit T-37 shows that in 2009, one officer¹² took advantage of the program; in 2010, five officers submitted reimbursement requests; in 2011, five officers did so; and in 2012, six officers were paid. I particularly note that a total of \$35,964 was paid out over the last three years to one officer who then retired at the end of 2012. The PBA contends that the problem caused by a single employee should not be the basis for revising the contract provision, particularly since the employee is no longer with the department.

I start with the premise that a better educated workforce is a benefit to the Township as well as to the employee. However, I understand the Township's concern that it needs predictability in anticipating the payout of educational expenses. However, making approval at the

¹²I have not counted the Chief in these figures, as he is not part of the unit.

sole discretion of the Township Manager with the Chief's recommendation may lead to the possibility of favoritism and consideration of factors other than the appropriateness of the course being taken. Therefore, I award the following language as an addendum to paragraph B:

Employees shall be required to obtain preliminary approval from the Chief of Police before taking any course for which reimbursement is expected. Pre-approval will be based upon the criteria set forth in this paragraph and in paragraph C of this Article.

I am not inclined to impose an annual dollar cap on either individual employee expenses or the aggregate for the unit. Insufficient information has been provided in this record to ascertain what the "Rutgers rate" currently is, and how this proposal would affect employees' ability to earn a degree. In addition, a dollar cap on educational expenses would have the potential effect of putting employees in competition for the educational benefit. For example, under the Township's proposal of capping the benefit at \$15,000 annually for the unit, the six officers who attended classes in 2012 would have to share the pot, at \$2,500 apiece or they would have to take turns earning credits. Either possibility could significantly slow progress towards a degree. For this reason, the second part of the Township's proposal is

rejected.

Floaters:

The PBA proposes that the current "floater schedule" provides that members will be scheduled to steady assignments for the duration of shift pick. The Township does not agree to the Union's proposal regarding shift assignment of "floaters."

The Township uses a two-person floater system that allows for floaters to work days or nights as needed to backfill for other officers who are off duty. Officer Dewald explained that a new officer may spend as much as ten years as a floater before they are assigned to a permanent fixed schedule. While acting as floaters, officers may be required to crisscross back and forth between day shifts and night shifts disrupting employee's personal lives and schedules. The PBA seeks to have one floater assigned to cover day shifts and one assigned to cover night shifts.

The Township contends that assigning a floater to steady assignments for the duration of a shift pick will create inflexibility and defeats the purpose of having floaters to cover for time-off. Further, the Township argues that the assignment of floaters to steady assignments would impact staffing levels and the assignment of overtime, and is therefore not mandatorily negotiable and not subject to interest

arbitration. County of Middlesex and PBA Local 165, P.E.R.C. No. 2013-46, (Dec. 13, 2012), citing Borough of Spotswood, P.E.R.C. No. 2007-70, 33 NJPER 128 (¶47 2007); Union Cty., P.E.R.C. No. 84-23, 9 NJPER 588 (¶14248 1983); Bergen Cty., P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983), app. dism. NJPER Supp.2d 143 (128 App. Div. 1984); City of East Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (82 App. Div. 1981), certif. den. 88 N.J. 476 (1981). The PBA argues that the issue is negotiable, as it primarily relates to the employees' hours of work, a subject that has been long held to be negotiable. It states that its proposal has no effect on the employer's management prerogatives to set staffing levels, nor would it dictate any overtime requirements.

Aside from whether the issue is legally arbitrable, I am not inclined to award this proposal. The record contains no specifics concerning the floaters' current pattern of shift assignment or how the assignment of floaters to a steady shift would potentially impact on the Township's ability to use the floaters to provide coverage for officers who are off duty. Therefore, it is impossible to determine whether the proposal would result in overtime costs -- for instance, if two officers called out sick on the night shift, would the Township then be prohibited by such a contract provision from assigning both

floaters to cover the night shift, thus resulting in the shift either "running short staffed" or necessitating overtime? On the other hand, the record does not make clear what existing problem, other than the inconvenience to the two floaters, the proposal is designed to correct. Thus, without more specific information, the proposal cannot be adequately considered, and must therefore be rejected.

Detective's Car:

The PBA proposes a contract provision that would permit the Police detective to take the "detective vehicle" home with him when he is on call. The Township opposes this proposal, asserting that it is a "new economic benefit" and thus, contrary to the provisions of N.J.S.A. 34:13A-16.

The record reveals that this had been the practice until 2011, when the then Chief, at the direction of the Township Manager, determined to prohibit the detective's regular practice of taking the unmarked car home. The policy was changed in 2011 to permit such use only at the discretion of the Township Manager. The detective at that time lived a significant distance from Police headquarters, and the Township was seeking to save the expense of fuel and maintenance on the car.

Since 2011, a new detective has been assigned the position. His work schedule consists of four 10-hour days. The record is unclear about when exactly he is on call. He resides in an

adjacent municipality, about five miles beyond the Byram border. The current practice is that when the detective is called in, say to investigate a crime scene, he must first go the municipal complex to pick up the detective car, which is equipped with crime investigation gear, and then travel to the crime scene. It is entirely possible that he might, in fact, pass by the crime scene on the way to picking up the detective car. Time is wasted, and the risk that evidence is tainted is increased. The testimony established that prompt response was important in many criminal matters and the detective's presence sooner rather than later was much preferred and essential in many situations.

The PBA argues that it is in the public interest therefore, that the detective be permitted to take his assigned detective car home with him when on call. It points out that the offsetting costs to the Township is a mere few gallons of fuel a week. It offers that the detective could be prohibited from using the car for personal use - and that the car would merely be parked in his driveway instead of police headquarters.¹³ At hearing, the PBA also suggested that the contract language could limit such permission to a reasonable radius of perhaps ten miles from police headquarters.

¹³ The chief's individual employment contract with the Township permits him to use his Township car for commuting purposes, to facilitate a quick response if he needs to be called back on duty, and for personal use (check this).

Dewald acknowledged that there is a benefit to the detective in having the detective car to take home, as he can then use it to commute with, and it also eliminates his commuting costs when he's called in. However, the PBA maintains that this proposal is not an economic benefit as it does not inure to the increased earnings of the detective.

The Township opposes the proposal, and seeks to maintain the current arrangement which leaves permission to take a vehicle home in the discretion of management. It argues that the proposal amounts to a new non-salary economic benefit which cannot be awarded in interest arbitration, pursuant to N.J.S.A. 34:13A-16.7(b). The Township also opposes this request "due to budgetary constraints."

N.J.S.A. 34:13A-16.7(b) provides,

An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

N.J.S.A. 34:13A-16(f)(2) defines an "economic issue" as

"those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacations, paid holidays, health and medical insurance and other economic benefits."

In Morris Cty. And Morris Cty Park Commission, 10 NJPER 103 (¶15052 App. Div. 1984), certif. den. 97 N.J. 672 (1984), the Public Employment Relations Commission found, and the court

affirmed, that an employer has a managerial prerogative to decide how best to use its vehicle fleet. But an employee's use of the employer's vehicle for commutation is an economic benefit to the employee. It is for this reason that an employer must negotiate offsetting compensation before taking away an assigned car to take home. I do not agree with the PBA that awarding such a contract provision is not granting a new economic issue just because it does not directly increase the detective's earnings. It is still a new economic benefit (just as tuition reimbursement might be), and therefore, not permitted by N.J.S.A. 34:13A-16.7(b). The proposal must be denied.

However, although I cannot grant the benefit, I recommend that the Township seriously reconsider its position on this issue. The PBA is correct, given the current facts, that its proposal "only makes sense" and is in the public interest to have the detective on the crime scene as quickly as possible. The expense to the Township in fuel and maintenance costs is, given the current scenario, is minimal.

Uniforms and Equipment (Article XXIV): In its final Offer, the PBA proposed the following modifications to this article:

- Increase current uniform allowance by \$100 per year.
- Members to be given the option of using a part of this allowance for gym membership and/or job related journal membership.

The Township responded that it would be willing to agree to the following modified language concerning uniforms:

All unit employees will receive an annual clothing allowance in the amount of \$775 payable by April 1st of each year. The clothing allowance is taxable to the employee as income, but is not included in the employee's base pay. The clothing allowance is not pensionable. The clothing allowance is to be pro-rated in the employee's first and last year of employment.

At hearing, the parties stipulated their agreement to the Township's proposed revised language in concept, except that the amount would be payable by May 1 of each year. This would permit employees who did not spend the full amount on uniform components to use part of the funds for gym membership. On the other hand, it would reduce the Township's obligation to process reimbursement receipts for the employees when uniform components are purchased. Thus administrative costs to the Township would be decreased. This is workable solution for both parties, and I award it.

The parties are in disagreement, however, as to the amount of the uniform allowance. The Township points out that, in addition to this \$775 clothing allowance as provided in Article XXIV, officers also receive a clothing maintenance allowance, which was rolled into their base pay in the most recent contract. That amount, which was \$500 in 2008, has, of course, increased by across-the-board increases over the life of the 2009-2012 contract, and is now worth \$585. The Township also

points out that the police uniform allowance is the same amount as that paid to its Department of Public Works employees.

Dewald testified about the costs of uniform purchases. A full set of uniforms are provided by the Township when the officer is hired. Thereafter, the officer is responsible for purchasing replacement components as needed. Depending on what you had to do in your uniform, the lifespan of a uniform is maybe two years. Currently, employees purchase replacement uniform pieces as needed, submit the receipts to the Township, and get reimbursed. Dewald testified in detail about the costs of replacing uniform components. It appears that the cost estimates could easily exceed the annual allotment. The PBA clarified that it is not seeking to increase the clothing allowance by \$100 in each year of contract; it seeks to increase the amount effective in 2013, to \$875.

Uniform allowance is one employee benefit where parity with employees in other negotiations units is not necessarily appropriate: it is unlikely that the cost of a public works uniform, even with boots, coveralls, and outerwear, would approach the cost of police uniforms. For one, police are required to have at least two different styles of dress: BDU's and Class A's.

The cost of providing this uniform allowance increase to the police unit totals a modest \$1400 annually. It will improve

employee morale and ensure that police officers will maintain a professional appearance. I award the proposal, and increase the uniform allowance as set forth in Article XXIV to \$875 per year.

Health Benefits (Article XXVI):

Byram Township provides its employees with health care benefits through the North Jersey Health Insurance Fund (HIF). Police employees currently have health benefits coverage as well as prescription benefits through Aetna's Open Access Plan. The Township civilian employees, including the public works employees and the clerical employees represented by OPEIU, are covered under Aetna's Patriot V Plan. The Township seeks to require all current active employees hired before December 31, 2012 to be moved into the Patriot V Plan. It also seeks to place employees hired on or after January 1, 2013 in one of three newly-adopted plans offered through Aetna: the Preferred Choice Plan, the HMO Plan, or the High Deductible Plan (HSA). A comparison of the cost of these various plans is depicted in the chart below:

	Open Access	Patriot V	HMO	Preferred Choice	HAS
Family	\$37,932	\$33,816	\$30,264	\$29,424	\$25,704
H/W	\$32,208	\$28,728	\$25,716	\$24,996	\$21,828
P/C	\$21,060	\$18,792	\$16,824	\$16,344	\$14,280
Single	\$15,228	\$13,560	\$12,132	\$11,796	\$10,308

In 2012, police employees were contributing \$1,000 annually to

the cost of their insurance coverage. However, pursuant to Chapter 78 P.L. 2011, employees will now be contributing a percentage of the premium costs. Assuming for the sake of argument that the Aetna Open Access Plan is continued, the premium cost, at today's rates, to the employees will be as follows:

	2013	2014	2015	2016
	8.75%	17.5%	26.25%	35%
Family	\$3,319	\$6,638	\$9,957	\$13,276
H/W	\$2,818	\$5,636	\$8,454	\$11,272
P/C	\$1,842	\$3,685	\$5,538	\$7,371
Single	\$1,332	\$2,664	\$3,997	\$5,329

The cost of providing medical insurance through the Open Access Plan to unit employees is as follows:

Coverage	# of Ees	2013 Rates	Total Cost
Family	9	\$37,932	\$341,388
H/W	1	\$32,208	\$32,208
P/C	0	\$21,060	\$0
Single	1	\$15,228	\$15,228
Waivers	1	\$5,000	\$5,000
Totals	11		\$393,824

The Township provided a power point presentation (T-1, pp. 45 through 57) and the testimony of Insurance Broker Frank Covelli to present the details of the respective plans. All plans are provided by Aetna through the HIF fund. A comparison between the Open Access Plan and the Patriot V Plan shows the following:

The Open Access Plan does not require a referral to see a specialist practitioner; the Patriot V plan requires referrals. Both plans require no deductible and have no maximum Out-Of-Pocket Expenses for in-network care. However, if one chooses to go out of network, the Open Access Plan has a \$250 deductible for the employees of a \$500 deductible for dependents. The Patriot V Plan has an out-of-network of \$2000 deductible for the employee and a \$4,000 deductible for dependents. The Open Access Plan has a maximum out-of-pocket of \$1,000/\$2,000 for out-of-network care, while the Patriot V plan has a maximum out-of-network deductible of \$2,000/\$4,000. As to Co-Pay's, the Open Access plan has a \$10 co-pay for in-network, while the Patriot V Plan has a \$5 co-pay for in-network. If out-of-network, then the co-pays are 80% after deductible, while the Patriot V Plan is 70% after deductible. Pregnancy care follows the same payment schemes. Preventive Care (adults) also have a \$10 in-network co-pay, while the Patriot V Plan has an in-network of \$5, but is limited to one visit per year. Covelli explained that the "1 visit" rule applies to all preventive care, including specialists to which the patient is referred, including tests. For preventive care out of network, the Open Access Plan pays 100% after deductible, while the Patriot V plan provides no coverage out of network. Both Hospital Inpatient Costs and Surgery costs are covered under either plan if in-

network; Open Access pays 80% of such costs if the patient goes out of network, while the Patriot Plan pays 70%. In the Open Access Plan, emergency room visits - either in or out of network -- have a \$50 co-pay which is waived if the emergency room treatment is within 48 hours after an accident or if the patient is admitted. Under the Patriot Plan, there is a \$25 co-pay for emergency room care in-network; out-of-network emergency room visits are paid at a rate of \$70 after the deductible is satisfied.

The Open Access Plan has a \$5 co-pay for generic drugs, and a \$10 co-pay for name brands. The Patriot V Plan has a \$5 co-pay for generic, and a \$20 co-pay for name brands. However, Covelli explained that the premium rates on the prescription coverage can be negotiated with the HIF plan separately.

A comparison of the three plans the Township proposes to offer new employees - those hired in 2013 and thereafter - shows that these plans are marked by lower coverage and/or higher deductibles. All three plans have open access, meaning that no referrals are required. The Preferred Plan has an annual deductible of \$500 for the employee and \$1,000 for dependents, whether one goes in or out of network. The Health Savings Account (HSA), also known as the High Deductible Plan, has an annual deductible of \$1200 for the employee and \$2400 for dependents. The HMO Plan provides that all covered care must be

in network, and there are no deductibles or maximum out-of-pocket limits.

As to co-pays, the Preferred Plan has a \$20/\$40 co-pay for in-network visits, the HAS pays 80% of in-network visits, and the HMO has a \$10 co-pay. If one goes out-of-network, then the Preferred Plan pays 60% after the deductible is met, while the HAS pays 50% after deductible. Preventive Care is covered at 100% under all three plans, and deductible is waived. As to hospital inpatient and surgery expenses, both the Preferred Plan and the HSA pay 80% of in-network expenses after the deductible is met, while the HMO pays 100%. If the patient goes out-of-network, then the preferred plan pays just 60% after deductibles, while the HSA pays 50% after deductibles. Emergency Room visits in-network has a \$100 co-pay under Preferred Care but the deductible is waived, and the HSA will pay 80% after deductibles. The HMO covers emergency room visits at 100%, but only in-network. Out-of-Network emergency room visits are covered by Preferred Plan at 60% after a \$100 co-pay (deductible is waived); while the HSA Plan pays just 50% after the deductible is met. Pregnancy care is covered in-network under all three plans: preferred care has a \$40 co-pay in-network and the number of visits is limited to 30; HSA Plan covers at 80% after the deductible is met, and the HMO Plan imposes a \$10 co-pay per visit; there is a limit of 20 visits.

The out-of-network coverage is 60% covered (after deductibles) under the Preferred Plan, and 50% covered (after deductibles) under the HSA Plan.

As to prescription coverage, both the Preferred Plan and the HSA Plan provides a 20% "co-insurance card." The HMO Plan has co-pays of \$5/10/20 and slightly less for mail-order prescriptions.

In summary, if an employee and his family seeks medical care only in-network, then there is little down-side to switching to the Patriot V Plan, except that referrals are required, and the cost of name brand drugs are doubled.¹⁴ However, there can be no doubt that, if an employee chooses to go out of network for medical care, the Patriot V Plan is significantly inferior to the existing Open Access plan.

Covelli explained that the reason the existing Open Access Plan is so expensive is that it has virtually no incentive to the employee to use in-network practitioners. The Patriot V plan, as well as the three new plans the Town seeks to offer new hires, are geared toward both high deductibles and big disincentives to use out-of-network practitioners.

I note that the cost of medical coverage for newly hired employees will be significant. New hires are required by Chapter 78 to contribute at the maximum tier

¹⁴ A \$20 co-pay for name-brand prescriptions is not out-of-line with averages around the State.

rate of contributions. Under the current salary guide, new officers will, upon graduation from the academy, pay between 12% (family plan) and 20% (single plan) of the premiums costs. For the Preferred Plan, for example, that would be \$3,530 (12% of premiums) to \$2359 (20% of premiums). This is in addition to \$500 to \$1,000 in deductibles annually.

Comparing the impact of the Open Access Plan to the Patriot V plan on existing officers,

Year	EE Contribution Rate	Prem OA Plan	EE Contribution Amount	Premium Patriot V	EE Contribution Amount
2013	8.50%	37,932	3,224	33,816	2,874
2014	17.00%	41,725	7,093	37,198	6,324
2015	23.50%	45,897	10,785	40,918	9,616
2016	34.00%	50,487	17,166	45,010	15,303

Clearly then, by the end of a three-year contract, Byram's police officers will be paying \$1863 more a year for family coverage with the Open Access Plan than it would for the Patriot V Plan. \$15,303 yearly is \$1,275 per month.

The Township's costs to stay with the Open Access Plan, as compared with the Patriot V Plan, are estimated by the Township to be \$393,824 for active employees, and \$354,468 for retirees. After employee contributions of \$31,747 in 2013, the employer will spend \$716,544.78 for

active and retired PBA members' coverage. It is no wonder that the Township is seeking to reduce these expenses. Indeed, it is the interests of both the Township and the PBA to consider alternative health care plans. The current Open Access Plan, which has all the earmarks of traditional plan coverage, is a costly plan and for most employees - both public and private - an option which is no longer available. I am convinced that the parties need to get out of this plan.

However, I am not satisfied that the alternative plans proposed by the Township are the best alternatives that can be found. Quite candidly, the plan costs seem expensive compared to the quality of benefits offered, in comparison to other plans I have been presented with in other arbitrations.

The PBA, at the conclusion of the interest arbitration, made the following proposal: that a study committee, composed of labor and management be formed to study plan alternatives for a period of 60 days. If the parties are unable to agree upon alternative plans, then I would impose a plan from among those offered by the parties.

This proposal has merit, in that it would provide the parties with an opportunity to do a more in-depth analysis

of alternative plans (and carriers) than this arbitration, with its 45-day time limit, would permit. It is in the interest of both parties to seek out the best alternatives.¹⁵ It is also in the public's interest that the Township find alternative plans that will control costs - a benefit to the taxpayers - and yet will allow its workforce to maintain good health.

Second, I have concerns about awarding the Patriot V Plan, and the three new plans in light of the impending passage of a new regulation by New Jersey Department of Community Affairs ("DCA"). The Local Finance Board of that Agency has proposed, and published in the New Jersey Register for comments, the following Rule Section N.J.A.C. 5:30-18.1 through 18.4, which sets forth an approval process for non-SHBP health insurance plans. Section 18.3, if adopted, would provide,

A local unit [defined as a municipality or county] that proposes to enter into a contract with a collective bargain unit to provide medical, prescription drug, dental, or any other health care benefit, or any combination of the above, through a non-SHBP plan, regardless of whether the local unit previously offered such coverage or coverages through the SGBP or a non-SHBP plan, shall first certify to the Division as well as to the Division of Pensions and Benefits in the N.J. Department of Treasury, that, during the term of the CAN, the proposed non-SHBP plan has a net employer cost that generates aggregate

¹⁵ It is not clear from the record whether migrating to a new plan and/or carrier would require the cooperation of the civilian employees' representatives.

employer savings when compared to the net SHBP cost.

. . . (b) The certification of aggregate employer savings shall be approved by the Division before a local unit incorporates a proposed non-SHBP plan into a CNA, even if the proposed non-SHBP plan is identical or substantially similar to the plan of a prior CNA.

I acknowledge that this Rule section has not yet been adopted. However, if adopted, the impact of the approval requirement on any plan I might award today is subject to interpretation. In any event, the underlying purpose of the Rule section, as stated by DCA, is to "...protect the public interest by seeking to control local unit health care costs, providing a process whereby those costs are not only monitored but also measured against an objective benchmark."

I conclude that awarding the Patriot V plan at an annual premium of \$33,816, without the parties having an opportunity to explore alternative plans, is not in the interest of the taxpayers, nor in the interest of the employees. The proposed health care plans for new hires, while more reasonably priced, may or may not prove to be the best alternatives, but alternatives need to be explored. Therefore, I award the following:

The Township and the PBA (together with representatives of the Township's civilian employees, if such participation is required) shall, within ten days of this award, form a joint

labor management committee to study health care plan alternatives to the current Aetna Open Access Plan. The committee shall exercise due diligence to explore options with an objective of reaching an agreement upon alternative plans to be offered to current employees and alternatives to be offered to new employees. In the event that the parties fail to reach agreement upon mutually satisfactory plans, then I will retain jurisdiction to impose alternative plans upon the parties.

Insurance Waiver Payments (Article XXVI):

The Township seeks to modify the language in this provision to reflect the 2010 amendments to the law created by Chapter 2, P.L. 2010. In relevant part, this amendment provides,

Notwithstanding the provisions of any other law to the contrary, a county, municipality or any contracting unit as defined in section 2 of P.L. 1971, c. 198 (C.40A:11-2) which entered into a contract providing group health care benefits to its employees pursuant to N.J.A. A. 40A:10-16 et seq., may allow any employee who is eligible for other health care coverage to waive coverage under the [municipality's] plan to which the employee is entitled by virtue of employment... In consideration of filing such a waiver, a [municipality] may pay the employee annually an amount. . .which shall not exceed 25% or \$5,000, whichever is less, of the amount saved by the [municipality because of the employee's waiver of coverage. (emphasis added)

Thus, the Township's proposal is statutorily required. I award the proposed change in contract language, consistent with Chapter 2.

Retiree Benefits:

Retiring police officers currently enjoy all medical and dental benefits that would have been covered if actively employed, "at the employer's sole cost and expense." Section (E) provides,

In the event of any prohibitions, legal impediment or deletion of the provision of this benefit, the Township of Byram's obligation under this provision shall be to pay all employees upon retirement an annual sum equal to the amount of insurance costs in the last full year of active employment.

Section E(5) provides that,

Upon retirement (as defined by the New Jersey Police and Fire Pension statute and applicable case law) the retiree shall receive retiree medical insurance at the same level enjoyed on said retiree's last day of active employment, without any contribution whatsoever.

Retirees also have an opt-out provision that gives them a cash payment equal to one-half the cost savings to the Township in not providing them coverage for one year.

The Township seeks to eliminate the language in Section E quoted above. It also proposes to eliminate all health care coverage upon retirement for employees hired after January 1, 2013. It also seeks to amend Article XXVI (E) (5) concerning retiree benefits to read:

"Insurance coverage cannot exceed the level given at the date of retirement. Employees cannot move down and up a level within retirement."

The Township explained at the arbitration hearing that, by this proposal, it seeks to "freeze" an employee's benefit

upon his retirement at the level at which he retired, and that, should the retiree's coverage level decrease (e.g, the retiree could go from H/W coverage to single coverage, but could not later go back to H/W coverage.

I believe it appropriate to permit an employee to maintain his/her health benefits upon retirement with the benefit plan and costs which he/she enjoyed while in active duty. This is particularly true of current employees, who were hired and performed years of service to the municipality. Otherwise, employees would have a disincentive to retire - they would simply stay on active duty for the benefits, if benefits were not available through another source. That said, there is no reason that an employee, once retired, should have a better benefit than when on active duty. Therefore, I award the following:

1. The Township's proposal to eliminate all health benefits upon retirement for employees hired after January 1, 2013 is rejected.
2. Employees will, upon retirement, be eligible for the same benefit plans they were upon their last day of active duty, with the cost of such coverage paid by the Township, except that the percentage of premium contribution being made by the employee pursuant to Chapter 78 on his last day of active duty shall continue

into retirement.

3. Retirees shall be permitted to reduce coverage options as circumstances dictate (e.g, a retiree may go from husband/wife coverage to single coverage), but may not opt for a higher level of coverage thereafter.
4. The provision in Article XXVI (E), second sentence, "In the event of any prohibitions..." is eliminated.

Overtime Assignments (Article X):

The PBA proposes to modify Article X as follows:

- E. Where, during a shift, the Department determines that there is need for overtime on the subsequent shift, then those currently working shall be provided with the first opportunity to hold over and work hours into the subsequent shift.
- F. Where a need for coverage arises late in the shift, then those officers assigned to work the subsequent shift shall be given the first opportunity to work by coming in early on overtime.

The Township responds that it will agree to a modified approach to this proposal as follows:

When management determines there is a need for overtime on the subsequent shift then those working shall be provided with the first opportunity to holdover and work hours into the subsequent shift as long as the overtime is for four (4) hours or less.

When management determines a need for coverage arises late in a shift, then those officers assigned to working the subsequent shift will be given the first opportunity to work by coming in early on overtime as long as the overtime is for four (4) hours or less.

The patrolmen in this Department work 12-hour shifts on a "Pitman" schedule. An officer staying four hours into the next shift, or coming in four hours early before his shift, would mean that he would be on duty for 16 continuous hours. I find that the Township's limitation on the length of time an officer is continuously on duty is therefore reasonable. The language as set forth in the Township's proposal is awarded.

Sick Leave Cash-Out (Article XIX):

Article XIX of the expired agreement provides that officers are given 120 hours of sick leave a year. Section A provides,

Upon termination of employment by retirement, any Employee covered by this Agreement shall be reimbursed for accumulated sick leave on the basis of one (1) hour pay for each two (2) hours of accumulated sick leave.

Upon termination in good standing by any means prior to retirement, any Employee covered by this Agreement shall be reimbursed for accumulated sick days on the basis of one (1) hour pay for each four (4) hours accumulated sick leave. Retirement shall be defined pursuant to the New Jersey Police and Fire Pension statutes.

The PBA proposed to add the following provision to Article XXI,

Whenever a member accumulates at least 750 hours of sick leave, then thereafter said member may cash in unused additional sick leave at the end of each year at the then current daily base rate of pay.

To qualify for any cash out provided herein, the officer would have to notify the Department not later than October 1 of the year in which payout is sought

and payout would be by year's end. The officer cannot seek more than 120 hours of payout per year.

The Township responds with this proposed language:

Upon approval of Township Manager, an employee may request payment for a portion of accumulated sick time during the term of active employment. Such request for cash payment shall be at the employee's current rate of pay, with one additional hour to be deducted from the accumulated sick time bank for each hour paid. Each request shall be individually judged based upon total time accumulated, township financial status, and any other relevant factors. Approval shall be at sole discretion of Township Manager and the availability of budgeted funds.

The Township argues first that the PBA's proposal amounts to a "new economic benefit" which N.J.S.A. 34:13A-16(f) prohibits me from considering. The PBA does not address this issue in its brief. I disagree that this is a "new" benefit. The contract already provides for payment of unused sick leave - currently upon retirement or termination of employment in good standing. The proposal simply advances the date on which an employee could cash in. Therefore, I will consider the proposal on its merits.

The PBA argues that its proposal would have a positive impact on staffing and would reduce overtime expenses because officers would have an incentive to save their sick time for cash out at the end of the year. At hearing, the PBA clarified that its proposal would require officers to maintain a 750 hour minimum sick leave bank in

any year that a sell-back is requested.

On its face, the cash out of sick leave sooner rather than later appears to be a win-win for both sides. In December, 2012, two officers retired and cashed out sick leave. The Township paid out \$212,156 on unused leave time (T-18, Annual Financial Statement for 2012, sheet 6b). As per the contract, the officers were paid at their 2012 salary rate. It is noted that this money is taken from a trust fund reserve account, which at the end of 2012, has a balance of \$392,286 (Sheet 6-1). Every year, the cash value of the employee's sick leave bank increases with the employee's salary. Hours of sick leave time will be far more expensive for the Township to cash out 20 years from now than it is today.

However, as Sabatini explained, the Township is concerned about the impact of being required to cash out a significant amount of unused sick leave all in one year, which I recognize could be the case, especially in the first year such a provision is implemented. Currently, three officers have a sick leave bank (at the end of 2012) greater than the 750 hours the PBA proposes as a threshold for cashout purposes. Their balances, (T-1, page 39) as of the end of 2012, together with their number of hours eligible for cashout, are:

<u>Name</u>	<u>Hrs in Bank</u>	<u>Eligible for Cashout</u>
Burke	1500	240.0

Dewald	857.5	107.5
Zabita	1557	240.0

Thus, at most, the Township is potentially liable to cashout 293 hours (120 hours for Burke; 53.75 hours for Dewald; and 120 hours for Zabita). Assuming an hourly rate of \$51.61 (\$103,219/2000 hours per year), and assuming everyone eligible to cash out took the offer), the Township would be liable for \$15,121 in 2013.

The Township also argues that the PBA should not have a better plan than the Township's civilian employees. The OPEIU contracts in both units provide for payment "upon the Township Manager's discretion." The Township seeks parallel language here. However, the blue-collar and white collar units do not have a minimum balance requirement or a 120 hour limit on the amount being cashed out, as is being proposed here. The minimum balance, proposed at 750 hours, must be maintained at all times, even after a cashout. This feature insures that officers will have enough sick leave to cover medical leave, and still provide them with an opportunity to spend down their excess sick time for cash when desired. This is a positive outcome for the officers and for the Township: it will provide a more near-term incentive to officers to conserve their sick days, and the Township will be less likely to have huge payouts upon

retirement, as was experienced in 2012. Therefore, I award the PBA's proposal with the modification that an officer must advise the Township in writing of his intention of cashout sick leave, and how much, by July 1 of the year of the intended cash payment.¹⁶ I agree with the Township that, consistent with the existing cashout benefit of ½ of the number of days on the books upon retirement, officers will have two days sick leave deducted from their sick leave banks for every sick day cashed out.

Police Vehicles (Article XXX):

The PBA has three provisions that it refers to as "officer safety issues" that it seeks to add to this contract provision. For that reason, it asks that the heading of the Article be relabeled "Police Vehicles and Officer Safety". The issues proposed are:

Require the department to address officer safety and public safety by supplying a secure location for prisoners in custody.

Require the Township to provide a safe environment and provision for equipment for officers to load, clean weapons and security them within the Police Department facility making specific provisions for accidental discharge. For example, the PBA proposes that a "cleaning station" be provided.

Township to provide an additional workstation in addition to the current two work stations. This will help an officer to effectively and efficiently perform

¹⁶The award of this language is in addition to, not a replacement for, the provision that permits officers to cash out sick leave upon retirement.

report writing and other tasks in a secure area.

Custody of Prisoners:

Currently, the department's practice is to secure persons in custody by handcuffing them to one of two metal benches - one in the investigation room or one in the hallway. Prisoners might be held there for 20 minutes or up to 10 hours if a felony is involved because the paperwork has to be processed. There is only one bathroom in the Police wing of the municipal building, which is almost directly across the hall from the metal bench in the hallway, which is only about four feet wide. One would have to walk directly past a prisoner handcuffed there is access the bathroom. This creates a dangerous situation if a prisoner is held there; as it is the main hallway used by all police employees as well as persons in custody and witnesses. There was an occasion where a prisoner handcuffed to the bench in the investigation room escaped out the window because there was no secure area to hold him. Further, if a perpetrator in a domestic dispute is brought in, there have been problems keeping the victim and the perpetrator separated because of the limited space. Officers have had to handcuff prisoners to file cabinets and chairs, compromising safety to themselves and

witnesses there to give statements.

The PBA has not proposed any specific solution to the problem. It is aware that space in the police department wing of the municipal facility is limited. I toured the space and it is, indeed, cramped. Township says it is aware of the problem, but has no space to alleviate the situation. However, the Township also argues that the issue is not mandatorily negotiable as it does not "intimately and directly affect the work and welfare of employees", and that negotiations (or an award) would interfere with the exercise of inherent management prerogatives. It cites Township of Hillside, P.E.R.C. No. 83-132, 9 NJPER 271 (¶14123 1983) for the proposition that the treatment of detainees, including prisoners in custody, is a matter exclusively left to management prerogatives.

Although I agree with the PBA that the current method of securing prisoners puts the safety of officers, other police personnel, and the public at risk, I have no solution to the problem, and neither side has offered one. Further, I agree with the Township that, under Hillside, this issue is a mandatory subject of negotiations. The proposal is not awarded.

Weapon Cleaning Station:

This issue has been resolved by the Township providing such a station, and the PBA withdrew the proposal at hearing.

Work Stations:

The PBA proposes the addition of one more work station within police headquarters for officer's use for preparing reports. Officer Dewald testified that there are times when both of the two existing work stations (with computers) are tied up with officers doing reports and officers have had to wait (in police headquarters) for the use of a workstation to write a report or take witness statements. This has led to officers standing around waiting when they could be back out on the road.

The Township disagrees, contending that the facilities are adequately equipped. Additionally, the Township argues that the issue is not mandatorily negotiable. It draws a parallel to the Commission's finding that the number of police vehicles is within management prerogatives. Atlantic County Sheriff, P.E.R.C. No. 93-68, 19 NJPER 605 (¶24288 1993). I agree that this issue is not mandatorily negotiable. The Township has a management right to decide how to equip the police department. I see no impact on the compensation, work hours, safety or other terms and conditions of

employment of officers. The proposal is denied.

COST OF THE AWARD

The cost of awarding across-the-board increases as set forth above, together with the cost of longevity increases (or decreases), over the life of the contract awarded, and is as follows:

<u>Years</u>	<u>Cost of ATB Increases</u>	<u>Cost of Longevity Increases/Decreases</u>	<u>Total</u>
2013	15,658.91	(7,059.54)	8,599.37
2014	19,091.35	4,621.59	23,712.94
2015	<u>25,964.23</u>	<u>7,651.60</u>	<u>33,615.83</u>
Totals	60,714.49	5,213.65	65,928.14

This amount is well below the 2% arbitration cap of \$29,859.72 per year. Further, as explained above, it will cost the Township less in 2013 and 2014 to fund its police salary and longevity payments than what was spent in 2012. Thus, this award will not exceed the Township's appropriation cap and tax levy cap. In addition, I have awarded a \$100 increase per year in the clothing allowance, which for the current bargaining unit of 12 employees will cost the Township an additional \$3,600 over

the life of the contract.

AWARD

Length of Contract:

Three-year contract covering the period January 1, 2013 through January 1, 2015.

Salaries:

Effective and retroactive to 1/1/13: 1.25% across-the-board increase to all employees.

Effective 1/1/14: 1.5% across-the-board increase to all employees.

Effective 1/1/15: 2.0% across the board increase to all employees.

New Salary Guide:

For employees hired after March 11, 2013, the following salary guide shall apply:

Salary Guide for Employees Hired After 3/11/13				
Step	2013	2013 Step Differential	2014	2015
Police Academy	43,791		44,448	45,337
Remainder of First Year	48,091	4,300	48,812	49,789
After 1st Year of Service	52,391	4,300	53,177	54,240
After 2nd Year of Service	60,816	8,425	61,728	62,963
After 3rd Year of Service	69,241	8,425	70,280	71,685
After 4th Year of Service	77,666	8,425	78,831	80,408
After 5th Year of Service	86,091	8,425	87,382	89,130
After 6th Year of Service	94,516	8,425	95,934	97,852

After 7th Year of Service	102,964	8,448	104,508	106,599
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For employees hired on or prior to March 11, 2013, the existing salary guide as modified by the across-the-board increases above shall continue to apply.

Educational Incentives (Article XVIII):

I award the following language as an addendum to paragraph B:

Employees shall be required to obtain preliminary approval from the Chief of Police before taking any course for which reimbursement is expected. Pre-approval will be based upon the criteria set forth in this paragraph and in paragraph C of this Article.

Uniforms and Equipment (Article XXIV):

Delete third sentence of paragraph A. which provides "Thereafter, the Township will pay each employee an annual uniform allowance. The annual uniform allowance shall be \$775." Replace this language with the following:

Thereafter, all unit employees will receive an annual clothing allowance in the amount of \$875 payable by April 1st of each year. The clothing allowance is taxable to the employee as income, but is not included in the employee's base pay. The clothing allowance is not pensionable. The clothing allowance is to be pro-rated in the employee's first and last year of employment.

Health Benefits (Article XXVI):

I direct that a study committee, composed of labor and management, be formed to study health care plan

alternatives for a period of 60 days. If the parties are unable to agree upon alternative plans, then I would impose a plan from among those offered by the parties.

Employee Contributions:

Amend this provision to comply with the contribution requirements as set forth in Chapter 78.

Insurance Waiver Payments (Article XXVI):

Amend paragraph D. to limit waiver payments to 25% of the amount saved by the Township because of the employee's waiver of coverage, or \$5,000, whichever is less, pursuant to Chapter 2.

Retiree Benefits:

I award the following amendments to Article XXVI, paragraph E:

Add the following language:

Employees will, upon retirement, be eligible for the same benefit plans they were upon their last day of active duty, with the cost of such coverage paid by the Township, except that the percentage of premium contribution being made by the employee pursuant to Chapter 78 on his last day of active duty shall continue into retirement.

Retirees shall be permitted to reduce coverage options as circumstances dictate (e.g, a retiree may go from husband/wife coverage to single coverage), but may not opt for a higher level of coverage thereafter.

Delete the following language:

In the event that any prohibitions, legal impediment or deletion of the provision of this benefit, the Township of Byram's obligation under this provision

shall be to pay all employees upon retirement an annual sum equal to the amount of insurance costs in the last full year of active employment.

Overtime Assignments (Article X):

Add to paragraph B. as follows:

When management determines there is a need for overtime on the subsequent shift then those working shall be provided with the first opportunity to holdover and work hours into the subsequent shift as long as the overtime is for four (4) hours or less.

When management determines a need for coverage arises late in a shift, then those officers assigned to working the subsequent shift will be given the first opportunity to work by coming in early on overtime as long as the overtime is for four (4) hours or less.

In no event shall an employee work more than 16 continuous hours as a result of an overtime assignment as set forth in this provision.

Sick Leave Cash-Out (Article XIX):

Add the following provision to Article XXI,

Whenever a member accumulates at least 750 hours of sick leave, then thereafter said member may cash in unused additional sick leave at the end of each year at the then current daily base rate of pay. To be eligible for a sick leave cashout, the officer must maintain a minimum of 750 hours left in the sick bank after the cashout is completed.

To qualify for any cash out provided herein, the officer must notify the Department not later than July 1 of the year in which payout is sought and payout would be by year's end. The officer cannot seek more than 120 hours of payout per year.

* * *

All proposals by the Township and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.

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 the award. My Award also explains how the statutory criteria factored into my final determination.

Susan W. Osborn
Interest Arbitrator

Dated: March 11, 2013
Trenton, New Jersey

On this 11th day of March, 2012, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

taken the statutory limitation imposed on the local tax levy cap into account in making the award. My Award also explains how the statutory criteria factored into my final determination.

Susan W. Osborn
Susan W. Osborn
Interest Arbitrator

Dated: March 11, 2013
Trenton, New Jersey

On this 11th day of March, 2012, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

Pamela Jean Sutton-Browning
PAMELA JEAN SUTTON-BROWNING
ID # 2424173
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires August 20, 2017