

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

BOUROGH OF BERGENFIELD
“Borough”

- and -

Docket No. IA-2019-007

PBA LOCAL 309
“PBA or Union.”

Before: Brian W. Kronick, Esq., Interest Arbitrator

Appearances:

For the Borough:

John L. Shadonian II, Esq., Joseph Santanasto, Esq.
Chasan, Leyner & Lamparello, PC

For the PBA:

Richard D. Loccke, Esq.
Loccke Correia & Bukosky

PROCEDURAL HISTORY

Police Benevolent Association Local 309 (the “PBA”) and the Borough of Bergenfield (the “Borough”) are parties to a Collective Negotiations Agreement with an effective term of January 1, 2016 through December 31, 2017 (the “Agreement”).

The parties met for negotiation sessions on September 29, 2017, November 1, 2017, and February 15, 2018. The Parties submitted to mediation before Public Employment Relations Commission ("PERC") Director Mary Beth Hennessy- Shotter, on May 9, 2018 and July 9, 2018 which was not successful in resolving the dispute.

The Borough filed a Petition to Initiate Compulsory Interest Arbitration with PERC on August 1, 2018. PERC appointed Ira Cure, Esq. ("Arbitrator Cure") as Arbitrator. Mr. Cure conducted a mediation session with the Parties on September 7, 2018 which was also not successful in resolving the dispute. The Parties attempted to schedule the arbitration, but no mutually agreeable date for a hearing could be scheduled within the 90-day period required by law. The Parties submitted a joint request to withdraw the Borough's initial petition and the Borough re-filed the instant Petition. On October 1, 2018, PERC appointed me as Arbitrator. On October 22, 2018, a mediation session was held as required by the act. Since all issues were not resolved through the mediation, a formal Interest Arbitration proceeding was conducted on November 20, 2018. At hearing both parties were represented by competent and professional counsel and each had an opportunity to present evidence and offer testimony. At the end of the proceedings, the record was closed, and both parties reserved the right to file Post-Hearing submissions. On December 3, 2018 I received the Post-Hearing submissions from both parties and mutually exchanged same via e-mail that same date. I received the

PBA's reply on December 6, 2018, and the Borough's reply on December 10, which were then mutually exchanged via e-mail with the Parties. By letter dated December 11, 2018 the PBA objected to certain exhibits (municipal data related to the Borough's comparables) submitted with the Borough's reply submission. For the record, while typically relevant to the comparability analysis, these exhibits were not particularly relevant in this proceeding due to the impact of the 2% hard cap.

This proceeding is governed by the Police and Fire Interest Arbitration Reform Act as set forth in N.J.S.A.34:13A-16 through N.J.S.A.34:13A-16.9 as amended on June 24, 2014 by P.L. 2014, c.11 (the "Act"). The Act requires the use of conventional arbitration and imposes strict limits on the amount of base salary increases that can be awarded and on the awarding of new non-base salary economic items. The Award must be in compliance with the appropriations and tax levy limitations in P.L. 1976, c. 68 (C. 40A:4-45, *et. seq.*) and Section 10 of P.L. 2007, c. 62 (C. 40A:4-45:45). The arbitrator is also precluded from awarding a non-salary economic issue that was not included in the prior collective negotiations agreement. This Interest Arbitration Award is issued in accordance with the 2% hard cap limitation and the 16g interest arbitration criteria to the extent deemed relevant. See N.J.S.A. 34:13A-16.7(b) and N.J.S.A. 34:13A-16g.

It is important to note that the parties have not agreed to the base salary calculation as of December 31, 2017 that satisfies the requirement in N.J.S.A. 34:13A-16.7(b) of a baseline for the aggregate amount expended by the Public Employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiations agreement that is subject to arbitration. The 2% hard cap on base salary increases is calculated from the gross base salary payments made to unit employees during the year of contract expiration.

Pursuant to P.L. 2014, c. 11, the arbitrator has 90 days from appointment, or by December 29, 2018, in which to render an award. This has resulted in a greatly compressed time period for issuance of the award.

PARTIES FINAL OFFERS

In accordance with the Act, each party submitted a Last and Final Offer (the “Final Offer”).

These Final Offers are set forth as follows:

BOROUGH FINAL OFFER

1. Duration: 2018-2021
2. 0% salary increase.
3. No step increases. All bargaining unit members still in step shall remain at the same step on the salary guide as they were on December 31, 2017 for the duration of the contract.
4. No longevity payments during the term of the contract.
5. Health Insurance Contribution-15% of the cost of premiums. This contribution level is contingent upon agreement to the terms 1-4 above. In the event that an agreement cannot be reached as to items 1-4 above, the Borough maintains that the bargaining unit members must contribute at the levels set forth in N.J.S.A. 52:14-17.28c.
6. All accumulated time paid out each time there is a promotion or, it at top of the salary guide, each time there is a pay increase.
7. Reword Article III, section 4 about lateral hires to reference “police experience” and prior anniversary dates.
8. Article IX, Section 2 Reworded to state that any carry over vacation must be taken by 3/31 of the following year at the Chief’s discretion.
9. Article IX, Section 3, increased vacation because of service time will be prorated in the first year earned based on date of accrual.
10. Eliminate Article XI
11. Add “to the Borough” to all references of years of service in Article XIV.
12. Eliminate 15 additional sick days for lateral transfers in Article XIV.
13. Eliminate Article XIV, Section 3.
14. Appendix A-1, eliminate the “per agreed list” language and add ‘per Agency policy and Academy requirements.
15. Eliminate Appendix B.

PBA LOCAL 309 LAST OFFER

1. Term-The PBA proposes a one-year term to commence January 1, 2018. All items not referenced in the Last Offer Position would continue as set forth in the prior contract.
2. The PBA proposes a 1.8% wage increase applied across the board to the salary schedules.
3. The PBA proposes a Five Hundred Dollar (\$500) annual Clothing Allowance for the purpose of purchasing and maintaining necessary clothing and equipment.

BACKGROUND

The parties to this proceeding are the Borough of Bergenfield and Police Benevolent Association Local 309.

A. Borough Background and Demographics

The Borough is a municipality organized under the Borough form of government and located within Bergen County, New Jersey. Under the Borough form of government, the Borough's governing body consists of a democratically elected Mayor and Borough Council, and the day-to-day administration of the Borough government has been delegated to a Borough Administrator. N.J.S.A. 40:60-2; N.J.S.A. 40A:60-7; N.J.S.A. 40A: 9-136.

As of the 2010 census, the Borough had a population of 26,764 residents. There were 8,852 households of which 35.5% had children under the age of 18 living with them, 58.7% were married couples living together, 13.7% had a female householder with no husband present, and 23% were non-families. The Census Bureau's 2006-2010 American Community Survey showed that (in 2010 inflation adjusted dollars median household income was \$82,546.00 and the median family income was \$99,963.00. The per capita income for the Borough was \$35,034.

New Jersey Monthly magazine ranked Bergenfield as its 211th best place to live in its 2010 rankings of best places to live in New Jersey. NeighborhoodScout named Bergenfield as the safest municipality in the nation in 2012 with more than 25,000 residents and in both 2013 and 2014 named it as the second safest town in the nation.

B. Bergenfield Police Department

The Bergenfield Police Department is a full-service agency serving a large residential population and a significant transient population on a daily basis. The Police Department deals with

virtually every type of criminal activity, routine Borough activity and police services in many forms provided to the public.

The Police Chief's Annual Report for the year 2017 provides as follows:

Members of the Patrol Bureau responded to a total of forty-three thousand three hundred and twenty-seven (43,327) Calls for Service for the year. They effected one hundred seventy-four (174) Arrests for Criminal, Motor Vehicle Offenses and/or active FTA-Traffic/ACS Criminal Warrants.

Patrol Officers also investigated fifty-eight (58) Domestic Violence incident, thirty-five (35) incidents of Criminal Mischief and thirty (30) Incidents of Property Damage. There were forty-six (46) Thefts-Other cases, twenty-nine (29) Theft – from -Motor Vehicles, and thirty-seven (37) Burglaries that were also investigated.

There were thirty (30) Missing Persons reported to our Department. Preliminary investigations were conducted for one hundred and one (101) Identity Theft/Fraud cases. They also completed two hundred and seventeen (217) Resident Welfare checks, five hundred and fifty (550) requests for Assistance and sixty-four (64) requests to make Notifications to residents.

Patrol Officers issued a total of seven thousand six hundred and ninety-nine (7,699) Summonses for Motor Vehicle Violations. They had two hundred nineteen (219) vehicles Impounded for violations.

Officers responded to and completed crash reports for eight hundred and twenty-four (824) Motor Vehicle Crashes. They also had one thousand five hundred and seventy-three (1,573) requests for Medical Aid, and one hundred and eleven (111) Mental Health matters. There were six hundred and ninety-three (693) Alarm Activations and six hundred and seventy-one (671) reports of Fire.

Additionally, Patrol officers responded to and investigated one thousand seventy-two (1,072) Suspicious Incident calls, seven hundred sixty-three (763) Dispute/Harassment calls, two hundred sixty-six (266) Noise Complaints/Other Disturbance calls, two hundred thirteen (213) Animal Complaints (loose animal, animal bite) calls, one hundred eighty-nine (189) Utility Emergency calls and conducted six (120) Escorts.

The Police Department is comprised of a Chief of Police, Deputy Chief of Police, a Captain, Lieutenants, Sergeants and Patrol Officers. The Police Department is an accredited Police Department from the New Jersey Association of Chiefs of Police and maintains services to the public of the highest quality.

C. Prior Contracts and Negotiations

The PBA and Borough have an expired contract that had a duration of one year from January 1, 2017 through December 31, 2017. (Exhibit J-1). The prior contract was from January 1, 2013 through December 31, 2016 (the "2013 CNA"). Pursuant to the 2013 CNA, PBA members were to progress on either a five or six step salary scale, depending on whether the employee was hired before or after January 1, 2014 with a top-step in 2016 of \$126,922. Regarding PBA members' health insurance contribution, the 2013 CNA provided that the Borough would be replacing the "Bollinger Prescription Plan," with one provided by the New Jersey State Health Benefits Plan ("SHBP") and provided that beginning in 2016 the employees would contribute a flat 15% of the cost of their healthcare premiums.

POSITION OF THE PARTIES

The Borough's Position

The Borough's primary issue in this proceeding is health insurance contributions. The Borough argues that the only reasonable determination that can be made in this proceeding is to require PBA members to contribute to the cost of their health insurance premiums at the rates set forth in Chapter 78 ("c.78"). The Borough also argues makes several arguments in support of its Final Offer. The Borough's position is summarized below.

1. The PBA members healthcare contribution must be returned to the levels set forth at N.J.S.A. 52:14-17.28c.

The Borough first argues that c. 78 contributions for PBA members were not fully implemented in accordance with N.J.S.A. 52:14-27.28d(c), and thus negotiations are preempted on this issue. Only after the statutorily mandated healthcare contributions of c. 78 were "fully implemented," the Borough argues were employers and employees free to resume negotiations over this subject matter. N.J.S.A. 52:14-27.28e.

The Borough submits that the Borough and the PBA agreed to the 2013 CNA that provided for c. 78 level contributions and dropped those contribution levels to a flat 15% in 2016. The Borough suggests that the mandatory four-year phase-in period-during which bargaining is preempted-should have lasted until at least July 1, 2017.

Consequently, the Borough maintains that the PBA must by law return to their c. 78 contribution level for at least another eighteen (18) months, as c. 78 makes clear that the obligation to complete the four-year phase-in period survives even the sun-setting of the legislation. N.J.S.A. 52:14-27.28e. The

Borough argues that only then can the Parties re-enter negotiations on the issue of the PBA's healthcare contributions, with c. 78 levels representing the *status quo* at that time. Because the PBA members never completed their statutorily-mandated four (4) years of contribution at c. 78 levels, the Borough argues that the only "reasonable determination" that can be made on this issue is to return them to c. 78 levels so that they can satisfy the obligation imposed upon them by the Legislature.

2. The Borough has implemented a pattern of settlement among its other bargaining units and non-organized workforce that requires PBA members to return to c.78 contribution levels.

The Borough's second point argues that all of its employees other than the PBA make c.78 contributions and it thus has pattern of settlement that requires PBA members to make c.78 contributions. The Borough cites to PERC rules and regulations that speak to identifying "a pattern of salary and benefit changes," among an employer's bargaining units. N.J.A.C. 19:16-5.14(c) and PERC's recognition of the importance of maintaining a pattern of settlement among bargaining units of the same employer.

The Borough submits that it endeavors to foster a harmonious relationship with all labor units by promoting continuity in the benefits offered employee-wide. This pattern, the Borough argues, has been accepted by all Borough employees other than the PBA members. The Borough submits that the Borough's four (4) other bargaining units CNAs with the: (1) F.M.B.A.; (2) Telecommunicator's Assoc.; (3) DPW Employees Assoc.; and (4) R.W.D.S.U. uniformly provide that Borough employees maintain c. 78 level contributions (Exhibits E- 5 to E-8). The Borough's non-union workforce, it submits, continue to contribute at this same rate. The Borough thus argues that it has implemented a pattern of settlement with all bargaining units and employees wherein the c. 78 healthcare contribution levels are maintained.

The Borough argues that the evidence in the record leads to the conclusion that failure to adhere to this pattern of settlement with relation to the PBA will serve to undermine the harmonious work

environment the Borough has worked so hard to cultivate, and which the pattern of settlement principle is intended to promote. The Borough argues that the PBA members are the highest compensated bargaining unit in the Borough, with top step pay for patrol officers reaching \$126,922 in base pay alone. (Ex. J-1). The Borough submits that should the PBA be permitted to remain at 15% contributions, a patrolman at top step making \$126,922 would be contributing less than a Telecommunicator making \$71,222, who contributes 22-32% of the cost of his/her premium, depending on the type of coverage. The Borough argues that this unjust result will sow discontent among the other bargaining units and non-union workforce, thereby discouraging future settlements with those units, which runs directly counter to PERC's policy considerations.

3. The Borough never agreed to reduce the PBA members healthcare contribution to 15% in perpetuity.

The Borough maintains that nothing in Article VIII of the 2013 CNA grants the PBA lifetime contributions at the 15% level. The Borough cites to Article VIII of the 2013 CNA that states that the 15% contribution level was to commence on January 1, 2016 and was only to last "during this Agreement." The Borough argues that the plain language of the 2013 CNA dictates that the 15% contribution level would only to last for the remainder of that contract, i.e., the calendar year 2016.

The Borough contends that the context of the Borough's negotiations with the PBA supports this conclusion. Upon expiration of the 2013 CNA, the Borough and the PBA agreed to the 2017 CNA, which maintained the 15% healthcare contribution for one year in consideration of the PBA members not taking an annual salary increase (J-1). The Borough maintains that the record supports that the PBA member's 15% healthcare contribution was never intended to be permanent but was for a fixed one-year period

that was later extended for another year as set forth in the plain text of the 2013 CNA and the 2017 CNA.

4. The PBA's demand that its healthcare contribution level remains at 15% is unprecedented in comparison to similar departments.

The Borough argues that a comparison to other employees in similar municipalities supports the Borough's position that the PBA must increase its healthcare contribution. Between the Borough and the PBA, twenty-four (24) collective negotiations agreements concerning other police departments have been admitted into evidence. The Borough submits that not a single department affords its members healthcare contributions at a level of 15% of the cost or lower. A majority of the contracts in evidence, according to the Borough, contain clauses mandating that employees continue making contributions as per c. 78. These municipalities include: (1) Englewood (E-13); (2) Cliffside Park (E-14); (3) Fort Lee (E-15); (4) Garfield (E-17); (5) Ridgewood (E-12); (6) Teaneck E-11); (7) Wyckoff (E-9); (8) Paramus (E-10); (9) Edgewater (P-20); (10) New Milford (P- 21); (11) Midland Park (P-23); (12) Wood-Ridge (P-28); and (13) Tenafly (P-25). The Borough submits that this group includes the municipalities that the Borough argues are most comparable to Bergenfield in terms of size and population, such as Englewood, Cliffside Park, Fort Lee, Paramus, and Ridgewood; as well as neighboring municipalities Teaneck-which has a substantially larger population than Bergenfield-and New Milford. The Borough points to Bergenfield's other neighbor, Dumont, that provides for healthcare contributions of 30% of the cost of the premiums.

5. The terms of the PBA's Final Proposal are barred by New Jersey Law and would inure a substantial hardship upon Borough citizens.

The Borough argues that the PBA's Final Offer seeks to receive more in base salary than in 2017, but not give back anything of note-including a reasonable healthcare contribution. The Borough argues that the financial effects of maintaining PBA members 15% healthcare contribution, step increases, and longevity, while simultaneously increasing base salaries by 1.8% would be devastating to Borough taxpayers and is prohibited by law.

The Borough first argues that the 2% cap on base salary increases precludes the Arbitrator from granting the PBA's proposal. The Borough submits that for purposes of calculating the 2% cap the starting point is the total base salary cost in 2017 of \$5,365,227.65 (E-2 at page 13, the "Scattergram"). The Borough submits that under the 2% hard cap the total spend in 2018 is thus capped at \$107,304.55. The Borough submits that the Arbitrator's award in this matter cannot increase base salary items by more than \$107,304.55 during the calendar year 2018. The Borough further submits that the increase in PBA members' salaries from step increases and longevity equates to \$248,815.26 in 2018 which have been paid. Thus, the Borough argues there is no money under the cap for a 1.8% annual increase and the Arbitrator cannot grant such an increase as a matter of law.

The Borough also argues that the maintenance of the PBA members' 15% healthcare contribution will cost the Borough hundreds of thousands of dollars per year throughout the expected term of the next contract. During calendar year 2018, the Borough submits that PBA members' healthcare premiums cost the Borough a total of \$1,170,336.00; of which the PBA members contributed \$175,241.01. (E-2). Under the c. 78 levels the Borough seeks, it argues the PBA contribution during 2018 would have been \$382,912.76. The Borough submits that were the Arbitrator to grant the PBA their requested level of

contribution, the Borough's taxpayers would be forced to cover that remaining \$207,671.75 difference in 2018 and \$223,607.59 in 2019 in costs. (E-2, page 12).

The Borough argues that the PBA's proposed one-year contract with 15% healthcare contribution, step movement, longevity increases, and 1.8% annual salary increase, will cost the Bergenfield taxpayers \$688,173.90 in calendar year 2018. This amount is comprised of e \$248,815.26 in step and longevity increases; \$112,280.86 in annual salary increase; and \$207,671.75 in added health insurance costs to the Borough as a result of the PBA's proposed 15% contribution level in comparison to c. 78 levels.

Based on those arguments and evidence, the Borough argues its Final Offer should be awarded.

The PBA's Position

The PBA argues that it relies upon the statutes, the rules and applicable case law in defending the types of encroachments sought by the Borough in this proceeding.

The PBA argues that interest and welfare of the public is well served by the highly professional and efficient members of the Bergenfield Police Department. They submit that the Bergenfield Police Department is a full-service agency serving both a large residential population and a significant transient population on a daily basis. The PBA argues that the "public" for this Police Department is not just the twenty-six thousand seven hundred sixty-four (26,764) local residents but due to the Borough's geography a significant transient population moving through the Borough throughout the day and particularly during rush hours. The significance of this data they claim is that motor vehicle incidents,

safety demands, accidents, and general duty all spike during these periods when one is serving the greater population served by the Bergenfield Police Department.

The PBA also cites to the Police Chief's Annual Report for the year 2017. The PBA notes that the Chief's Report stressed with pride that this is an accredited Police Department from the New Jersey Association of Chiefs of Police and maintains services to the public of the highest quality. The PBA further cites to the excellence in performance by the Bergenfield Police Department and its many successes as echoed in the Council minutes. The PBA also notes that the cost of operations of the police department have been reduced year-to-year. Citing the Police Chief's Annual Report, the PBA notes that "the police administration stayed well within its budgetary allotment during 2017."

The PBA submits that the Borough has not maintained staffing or career path opportunities consistent with the increases in activity and demands for service. The PBA submits that at the beginning of 2018 there were less sworn Police Officers and supervisory positions on staff in the Bergenfield Police Department than forty (40) years ago. The PBA argues that the reduction in supervisory positions alter the career paths of a Bergenfield Police Officer affecting the ability to advance financially. The PBA argues that now that the career path has been diminished a wage increase is the only way for Police Officers to advance financially. Finally, the PBA argues that the cost of policing in Bergenfield has been reduced because of the reduction in supervisory positions and that many of the senior patrol officers have retired resulting in lesser paid step position police officers. The PBA argues that virtually all the people in the steps are young officers who have been brought into the position to replace senior officers at the top of the wage/longevity guide who have retired. In sum, the PBA argues there is no question that the public is well served by the exceptional level of professionalism and productivity as well as cost efficient services provided by the Bergenfield Police Department.

The PBA argues that an analysis of the proofs submitted consistent with criteria N.J.S.A. 34:13A-16, g (2) provides strong support for an award of the PBA's Final Offer. The referenced statutory criteria stresses comparisons and "conditions of employment of other employees performing the same or similar services...". The PBA submits that the proofs under this criterion illustrate support for an award of the PBA Final Offer.

The PBA notes that there are three police contracts covering Bergenfield Police personnel; the PBA, the Chief of Police and the Deputy Chief of Police. (P-7). The PBA submits that the Borough has a clear and definitive pattern for contract resolution in the contracts with the Chief of Police and Deputy Chief of Police. The PBA notes that both police contracts have a term through December 31, 2020 covering the same timeframe under consideration in this arbitration proceeding. The PBA further notes that the terms set forth in the individual Articles of the Chief and Deputy Chief's contracts replicate the same language in the PBA contract. The PBA also notes the fact that the contracts did not commence at the same time but rather represent two separate yet near identical settlements on two separate dates in different years.

The PBA argues that the two contracts guarantee the Chief and Deputy Chief with at least a two percent (2%) wage increase for the term and guarantee the same fifteen (15%) percent medical contribution rates as the Borough challenges in this proceeding. The PBA notes that the Chief's contract guarantees a pay differential in the form of a rank differential and the Deputy Chief's contract guarantees a minimum of two percent (2%) for 2018 "in addition to raises" for that year. It would appear therefore that whatever increase is received by the rank-and-file will be enhanced by an additional two percent (2%) for the Deputy Chief for 2018.

With respect to medical insurance premiums for the two contracts, the PBA argue they both show a pattern of settlement of 15% health care contribution. In the Chief's contract there is a specific provision that the "Chief of Police shall contribute to her health insurance cost in an amount equal to fifteen percent (15%) of the total cost of health care benefits." In the Deputy Chief's contract, it provides that "The Deputy Chief shall contribute to his health insurance cost in an amount equal to fifteen percent (15%) of the total cost of health care benefits." The PBA maintain that a pattern of settlements within the Bergenfield Police Department with respect to wages and medical contribution is clearly well-established by the Governing Body of the Borough of Bergenfield.

The PBA also argue that the Bergenfield Police Officer is not a highly paid officer using the standard of Top Step Officer Base Pay but in fact is paid below average. They argue that the relative position of the Bergenfield Police Officer is clearly below average among said Officer's peers based upon the evidence presented by both parties in this proceeding. The PBA argues that even the clothing allowance, a common form of reimbursement, and an issue in this proceeding comparisons show, again, a level for the Bergenfield Officer which is below average of the parties' contracts.

The PBA notes that the average rate of increase for 2017 was 1.86% when the Bergenfield PBA took a zero (0.0%). In 2018 and thereafter they argue that the average rates of increase exceed that which is proposed by the PBA in this case.

With respect to the Chapter 78 premium contribution, the PBA notes that the change challenged by the Borough occurred two contracts ago. In the most recent contract, covering the single calendar year 2017, the PBA notes it took a freeze on pay rates with no increases for the wage guide rates for a full year just to continue the prior contract terms and to in part to offset the cost of step movement. The PBA

argues that a modification of Chapter 78 is in fact a trend which is growing in comparable municipalities placed into evidence by the parties at hearing.

Based on the evidence in the record, the PBA argues its Final Offer must be awarded.

DISCUSSION AND ANALYSIS

A. The Arbitrator's Authority

Public employers and public safety unions are statutorily mandated to resolve their labor disputes pursuant to the Police and Fire Interest Arbitration Reform Act, N.J.S.A. 34:13A-16. By enacting the Act, the Legislature recognized the unique and essential duties police officers and firefighters perform and the life-threatening dangers they face. The purpose of the interest arbitration procedure is to promote the well-being and benefit of New Jersey citizens as well as the high morale of employees and the efficient operation of police and fire departments.

B. Statutory Criteria

In rendering an award, the Arbitrator must consider the following nine (9) factors:

1. The interest and welfare of the public;
2. Comparison of wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with 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;
 - b. In public employment in general;
 - 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)
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. The stipulation of the parties;
5. The lawful authority of the employer;

6. The financial impact on the governing unit, its residents and taxpayers;
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 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 arbitrator 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).

The Arbitrator must render an award based on the evidence on the record in light of the statutory criteria set forth above. The opinion and award must clearly address the criteria. It must include a discussion of the evidence as it relates to the statutory criteria, the weight accorded to each criterion and the reason for the decision. The opinion and award must also explain whether any of the criteria were deemed to be irrelevant and why.

This Award will be issued under concept of “conventional authority” pursuant to N.J.S.A. 34:13A-16d; and, N.J.A.C. 19:16-5.7(e). Under conventional authority, an arbitrator’s award is not limited by either party’s final offer. Rather, the arbitrator has the power to select from either party’s last offer or, alternatively, the arbitrator may use his or her judgment and grant an award that he or she feels is more reasonable than any offers made by the parties. See, e.g., Hudson County Prosecutor and PBA Local 232, Docket No. IA-96-178 (July 28, 1997) (Arbitrator did not err by establishing third year salary for Borough prosecutor investigators which was lower than the employer’s offer).

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. The burden must be met by sufficient evidentiary support. No proposed issue can be deemed presumptively valid in the absence of justification that is supported by credible evidence. Moreover, 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. A decision on an individual issue will include consider the reasonableness of awarding that issue in relation to the overall terms of the award. Indeed, while there may be merit to awarding or denying a single issue if it were to stand alone; a different conclusion is reached when considered within the context of the entire award. I am also required by statute to determine the total net annual economic cost of the terms required by the award.

The parties have submitted documents and position statements addressing the statutory criteria which I have reviewed and considered under the 16g criteria. The issues in dispute are both economic and non-economic. Each issue in dispute will be addressed below and will include an analysis of the issue and an award resolving that issue.

APPLICATION OF THE 16g CRITERIA

Public Interest Criteria 16g (1), (5), (6) & (9)

The Interest and Welfare of the Public, N.J.S.A. 34:13A-16g(1); The Lawful Authority of the Employer, N.J.S.A. 34:13A-16g(5); The Financial Impact on the Governing Unit, Its Residence, The Limitations Imposed Upon the Local Unit's Property Tax Levy, and Taxpayers, N.J.S.A. 34:13A-16g(6); and Other Restrictions Imposed on the Employer, N.J.S.A. 34:13A-16g(9).

The Public Interest Criteria is the most significant of all statutory factors to be considered and an Arbitrator must give due weight to the interest and welfare of the public when issuing an award. It is a criterion that includes the financial impact of the awarded increases and the desirability of maintaining employee morale for the Borough's police officers. Indeed, the criteria recognizes the interest of the public in knowing that its police department is staffed by competent, dedicated personnel possessing good working morale, and the interest of the public in avoiding higher taxes and/or diminished services. As Arbitrator Mastriani recognized in Point Pleasant and PBA Local 106, IA-2012-001 (September 19, 2011): "The interest and welfare of the public is entitled to the most weight because it is a criterion that embraces many other factors and recognizes their interrelationships, including the financial impact of an award on the governing body and taxpayers." See also Borough of Seaside Park and PBA Local 182, IA-2012-022 (April 9, 2012) ("The interest and welfare of the public is not only a factor to be considered, it is the factor to which the most weight must be given."). "Arbitrators have reviewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale." See Sayreville and PBA Local 98, IA 2006-047 (November 5, 2008).

The interest and welfare of the public criterion also specifically includes limitations that have been imposed upon the employer by law. The statutory limitations are specifically referenced in other criteria as well, including the lawful authority of the employer and the statutory restrictions upon the employer. Since the enactment of the 2% hard cap, the statutory restrictions on the employer and lawful authority are less relevant since the law requires the award be cap compliant. Here, neither party suggests that an award will impact the lawful authority of the employer or the statutory restrictions upon the employer so these criteria, while considered, are not relevant to this proceeding.

Comparability 16g (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 C.34:13A-16.; provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

Internal Comparisons

Internal comparability can be broken down into two general categories consisting of uniformed and non-uniformed employees within the same jurisdiction. An internal pattern of settlement in the same jurisdiction involving both uniform and non-uniform employees is a significant factor in the determination

of an award because it usually corresponds to a public employer's budgetary capabilities and connotes uniform treatment.

In this matter, the Borough submitted the following internal comparables: Bergenfield Police Department Telecommunicator's Association (January 1, 2018 through December 31, 2012)(E-5); Bergenfield Employee's Association (January 1, 2015 to December 31, 2019)(E-6); Bergenfield Fireman's Association F.M.B.A. Local No. 65 (January 1, 2014 through December 31, 2018)(E-7); and Local 108, R.W.D.S.U., UFCW (January 1, 2017 to December 31, 2020) (E-8). The PBA submitted the Borough's contract with the Chief of Police and Deputy Chief of Police (P-7) for its internal comparables.

External Comparisons

External comparability consists of comparisons between the group subject to the petition and other public safety employees in similar jurisdictions, other public employees, generally, and private sector comparisons. In weighing salary statistics introduced by a party, I observe that PERC has promulgated guidelines that may be broken down into the following five general categories:

1. Geographic comparability, contiguous jurisdiction or nearby, size of jurisdiction, and nature of employing entity;
2. Socioeconomic considerations, basically a comparison of the type of statistics found in the New Jersey Municipal Data Book and the UCR, such as population density, cost of living, crime rate, violent crime rate, fire incident and crime rate, etc.;
3. Financial considerations, such as the tax collection rate, state aid, budget surplus, surplus history, ratios of tax revenue to total revenue, etc.;
4. Compensation/benefits provided to employees of the comparison group; and
5. Any other comparability considerations deemed relevant by the arbitrator.

Salary

Since 2011, comparability of percentage increases for interest arbitration is considered but has been less relevant considering the 2% hard cap. Nevertheless, the Parties submitted the following collective negotiations agreements as external comparables for consideration: Wyckoff (E-9); Paramus (E-10); Teaneck (E-11); Ridgewood (E-12); Englewood (E-13); Cliffside Park (E-14); Fort Lee (E-15); Lodi (E-16); Garfield (E-17); Saddle River (P-17); Cresskill (P-18); Englewood Cliffs (P-19); Edgewater (P-20); New Milford (P-21, P-21A); Teaneck (P-22); Midland Park (P-23); Wood-Ridge SOA (P-24); Wood-Ridge SOA MOA (P-24A); Tenafly (P-25); Paramus (P-26); Fort Lee (P-27); Wood-Ridge (P-28); East Rutherford (P-29); East Rutherford MOA (P-29A); and North Arlington (P-30). These external comparables, while relevant, are given little weight considering the 2% hard cap and the limitations imposed on the arbitrator under the Act.

According to the 2018 Biennial Report on the Police and Fire Interest Arbitration Reform Act issued by PERC, the number of interest arbitration petitions decreased since the implementation of the 2% hard cap. After enactment of the law, there were twenty (20) petitions in 2015, nine (9) in 2016, and twenty-nine (29) in 2017. The number of interest arbitration awards issued over the last two years remained low (8 in 2016; 4 in 2017). For the years 2008 through 2017, the average annual salary increases in interest arbitration awards were: 2008-3.73%; 2009-3.75%; 2010-2.88%; 2011-2.05%; 2012-1.98%; 2013-1.89%; 2014-1.69%; 2015-1.71%; 2016-1.94%; 2017-2.05%.

Private Sector Wage Data

Although an arbitrator must consider the general level of wage increases in the private sector, an arbitrator is not required to accord such statistics any particular weight. Indeed, unless a party presents credible evidence comparing a private sector classification to a public sector classification, the private

sector comparison will be considered but not given much weight. Here, neither party submitted evidence on this criterion and it is afforded little weight.

On July 11, 2018, PERC published its most recent report of private sector wage changes based on data compiled by the New Jersey Department of Labor and Workforce Development. For the fiscal year period July 1, 2016 through June 30, 2017, according to PERC's reporting, private sector wages increased 2.1%; government wages increased 1.9%; and total average annual wages increased 2.1%. Therefore, the PERC study of private sector wage increases supports an award of a 2% or maximum cap salary increase as proposed by both parties.

Overall Terms and Conditions of Employment 16g(3)

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.

The evidence considered by the Arbitrator encompasses the *status quo* terms and conditions of employment and note that that this unit receives: a top-step salary of \$126,922.00, step increases based on year of hire, Senior Officer Differential, longevity, overtime, compensatory time, uniform allowance, holidays, health insurance with 15% contributions, life insurance, dental insurance, vacations, college credit compensation, terminal leave, and sick leave, (J-1).

The Stipulation of the Parties, N.J.S.A. 34:13A-16g(4)

The Parties stipulations in this proceeding were procedural in nature and do not have any impact on the substantive issues being considered nor on the impact of the Award.

Cost-of-Living Criterion, N.J.S.A.34:13A-16g(7)

Cost-of-living statistics can be obtained from a variety of sources. I note that the PBA introduced a copy of a news release from the Bureau of Labor Statistics, U.S. Department of Labor dated September 13, 2018 (P-16) which noted that the CPI for the “New York – Newark – Jersey City” area over the year increased by 2.2%. This is consistent with the same statistic for the national numbers where “All Items Index rose 2.7%.” I note that these indices show increases in CPI greater than the 2% cap limited in this proceeding and give it due weight accordingly.

Continuity and Stability of Employment, N.J.S.A. 34:13A-16g(8)

N.J.S.A. 34:13A-16g(8) provides for consideration of:

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 bargaining between the parties in the public service and in private employment.

The continuity and stability of employment criteria incorporates several concepts. The first providing a competitive compensation and benefits package that alleviates excessive turnover thus maintaining "continuity and stability in employment." The second is the concept of the "relative standing" of a negotiations unit with respect to other units of similar employees. Last, the continuity and stability of employment criteria incorporates the consideration of internal settlements and comparability, since deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability.

ANALYSIS AND AWARD

The Final Offers and Award in this proceeding are analyzed and discussed below. The primary issues for the Parties as articulated in their submissions are health insurance contributions and salaries.

Duration

The Borough has proposed a four-year term from January 1, 2018-December 31, 2021. I note the prior agreement was for a one-year term (J-1) and the 2013 CNA was for a three-and-a-half-year term (July 1, 2013-December 31, 2016)(E-3). I also note that the internal comparables submitted by the Parties have the following terms: Bergenfield Police Department Telecommunicator's Association (January 1, 2018 through December 31, 2021)(E-5); Bergenfield Employee's Association (January 1, 2015 to December 31, 2019)(E-6); Bergenfield Fireman's Association F.M.B.A. Local No. 65 (January 1, 2014 through December 31, 2018)(E-7); and Local 108, R.W.D.S.U., UFCW (January 1, 2017 to December 31, 2020) (E-8); Chief of Police (September 2015-December 31, 2020) and Deputy Chief of Police (June 21, 2016 to December 31, 2020) (P-7).

The PBA's Final Offer is for a one-year term, January 1, 2018-December 31, 2018. The PBA argues that a comparison of wages and terms and conditions of employment support its Final Offer on duration, in part, "to avoid the harsh limitations of the so-called "Hard Cap Law." The PBA also submitted the Chief of Police contract and Deputy Chief of Police Contract (P-7). The PBA argued that the Borough has a clear and definitive pattern for contract resolution in the contracts with the Chief of Police and the Deputy Chief of Police. The PBA noted that both police contracts have a term through December 31, 2020 covering the same timeframe under consideration in this arbitration proceeding. The

PBA also notes the fact that the contracts did not commence at the same time but rather represent two (2) separate yet near identical settlements on two (2) separate dates in different years.

Contract duration has been addressed in Interest Arbitration proceedings on a consistent basis. In City of Asbury Park, and PBA Local 6, 36 NJPER ¶ 126, it was noted that in deciding the issue of contract duration, arbitrators must balance the nature of the employer's financial status, the need to provide harmony and stability in the labor-management relationship, including the need to maintain the department's increased effectiveness and productivity, and the desirability of maintaining the continuity and stability of employment within the department.

Duration and the 2% cap were discussed in In the Matter of the Interest Arbitration between County of Hudson and Hudson County Sheriff's Officers PBA Local 334, Docket No. IA-2014-004 (December 30, 2013) wherein Arbitrator Osborn placed a heavy emphasis on the principles espoused in Borough of Midland Park and Midland Park PBA Local 79, Docket No. IA-2013-013 (2013), and concluded:

There was not much doubt that a longer contract provides a period of labor peace and stability which is beneficial to the parties and furthers the public interest ... However, both in New Jersey and nationally, we are in a period of economic uncertainty. Indeed, it is difficult to predict whether economic conditions will improve, deteriorate or remain stable. ... Because of the extreme impact of the hard cap on my ability to award a salary benefits package which would more appropriately recognize the relevant statutory factors as set forth immediately above, I reluctantly conclude that the parties and the public interest would be better served if the parties were in a position to renegotiate the contract sooner rather than later.

Arbitrator Osborn further noted that "A long-term freeze of members' salary guide movement – an almost inevitable outcome of applying the hard cap over the five-year contract – would be demoralizing and would contribute to further attrition."

An analysis of the evidence and arguments supports the reasonableness of both parties Final Offers. For the Borough, a longer-term agreement provides for labor relations stability and some degree

of cost certainty for future budgeting and financial planning. For the PBA, a one-year deal allows them to avoid the harsh limitations of the so-called “Hard Cap Law.”

On the issue of the duration of the agreement, I gave great weight to the following: (i) the Borough agreements are all multi-year agreements; (ii) the prior one-year agreement between the parties maintained health insurance at 15% and provided a zero (0%) wage increase (J-1); and (iii) the Chief and Deputy Chief’s contracts expire December 31, 2020. I further note that the PBA has stressed that the Chief and Deputy Chief’s contract are the most comparable to the PBA and establish a pattern of settlement.

The PBA’s argument that its term proposal is “to avoid the harsh limitations of the so-called 2% Hard Cap law” does not alone justify an immediate return to the bargaining table next week. This argument was recently rejected by Arbitrator Mastriani, In The matter of Jersey City and Jersey City Police Officers Benevolent Association (Docket No IA-2017-012), wherein he discussed pattern and duration and found:

The City has established that there is a pattern of settlement on the issue of contract duration. Insufficient credible evidence has been provided that would warrant a deviation from the contract period that has been accepted by the City and all of its other public safety bargaining units. The speculation that a two-year contract expiring on December 31, 2018 might provide a more attractive legal environment for which the POBA could engage in negotiations with the City does not justify a deviation given the fact that all four public safety unions, including the POBA, have had full opportunity to engage in negotiations under the existing law and reach agreements that extend over a common time period.

That said, the implications of the 2% hard cap on any step movement or salary increase does not warrant the PBA being financially handcuffed until end of 2021.

Based on the foregoing, I use my authority under conventional arbitration and deny the Borough Final Offer and PBA Final Offer and award a three-year agreement from January 1, 2018 to December 31, 2020. Awarding the PBA proposal would force the parties immediately back to the negotiations table within days of this Award as the

contract would be expiring. The Borough's four-year term and impact under the hard cap as discussed below would be detrimental to PBA members and damage their morale, effectiveness and efficient performance of their mission. A three-year term would not force the parties immediately back to the bargaining table and aligns with the expiration of the Borough's agreement with Chief and Deputy Chief which the PBA expressed was the pattern of settlement. I also note that the first year of the agreement under this award (2018) has passed. In 2018, the step increase and longevity compensation have been paid and the 15% health care contributions were continued. In the remaining two years of the contract awarded hereunder, the impact of the 2% hard cap on step increases and longevity compensation (discussed below) and the Borough's desire to increase medical insurance contributions to ch. 78 levels (discussed below) further supports the duration awarded herein.

Article III, Salaries

The Borough's Final Offer on Salaries is:

0% salary increase

No step increases. All bargaining unit members still in step remain at the same step on the salary guide as they were on December 31, 2017 for the duration of the contract.

Frozen Longevity payments during the term of the contract.

The PBA's Final Offer is:

A 1.8% wage increase applied across-the-board to the salary schedules.

In calculating the statutory 2% hard cap, the arbitrator is dependent upon the parties to provide the necessary information. In City of Atlantic City, P.E.R.C. No. 2013-82, PERC addressed the issue of the parties' responsibilities to produce accurate employee information sufficient to enable the arbitrator to make the calculations:

...the parties may not always agree on base salary information and calculations. In those circumstances, the arbitrator must make a determination based on the evidence presented. . . . We [direct] that all public employers in interest arbitration to provide arbitrators with the required base salary information and calculations, including... (1) a list of all unit employees, their base salary step in the last year of the expired agreement, and their anniversary date of hire; (2) Cost of increments and the specific date on which they are paid; (3) cost of any other base salary items (longevity, educational costs, etc.) and the specific date on which they are paid; and (4) the total cost of all base salary items for the last year of the expired agreement.

In that decision, PERC recommended that the arbitrator push the parties to submit the list before the hearing and to reconcile any disputes at the beginning of the hearing. Here, the Parties have each separately provided a “list.” The Borough has provided the Scattergram prepared by Kent Christner, Borough employee and CPA, that set forth the related data and employee information called for by the statute. The Scattergram represents an analysis of the Borough’s salary expenditure for the calendar year 2017 for sworn Bergenfield police officers. The information underlying the Scattergram was generated from the Borough’s payroll system, Automatic Data Processing (ADP). The Scattergram reflects that in calendar year 2017 the Borough incurred a total base salary cost of \$5,365,227.65. This number is calculated by taking the total base salary cost of \$5,742,448.65 and subtracting the Chief (\$195,527.02) and Deputy Chief (\$181,693.98) who are not members of the bargaining unit. The PBA does not agree with the calculations and presented its own table Chart No. 7 and Chart No. 8 as well as P-31, a payroll report from ADP dated as of January 5, 2018. Chart No. 7 and P-31 submitted by the PBA reflects the bargaining unit in 2018 and any longevity or senior officer differential in 2018. PBA Chart No. 8 sets forth the composition of the bargaining unit by rank and provides salary, longevity and senior officer differential for a total base salary calculation of \$5,950,696.00.

N.J.S.A. 34:13A-16.7(a) and (b) defines the Base salary calculations for the initial calculation, and subsequent years’ calculation of the cap:

“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.

“Non-salary economic issues” means any economic issue that is not included in the definition of base salary.

b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c. 85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, 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. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased 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 immediately preceding year of the agreement awarded by the arbitrator.

The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent increase per year over the corresponding length of the collective negotiation agreement. 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 methodology for the calculation of the 2% hard cap was set forth In Borough of New Milford, 2012-53, 38 NJPER 340 (¶116 2012), where PERC adopted guiding principles concerning the arbitrator’s responsibility in applying the 2% hard cap:

. . . we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how

base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties.

Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year, or 6% in the aggregate...

Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter, added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

With regard to the first component of the calculation, the objective is to determine how much the employer actually paid unit employees for all components of base pay in the last year of the expired agreement. The arbitrator's responsibility to pro-rate pay for new hires and mid- year terminations during the base year was confirmed by PERC in Borough of Byram, P.E.R.C. No. 2013-72, (4/18/13). Once the

total base pay paid in the base year is determined, then the 2% is calculated. This is the maximum amount that can be awarded in the first year of the new agreement. It must include amounts the employer will expend (or in some cases, has already paid out) for step increases and longevity increases.

The 2% hard salary cap sets a strict limit on the amount of base salary that can be awarded, and the Borough and PBA recognize this is what is required in this interest arbitration proceeding. The legal framework, and PERC's interpretation and application of the statute as to the methodology for calculating wage increases has been set forth in Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶ 116 2012) and Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012) and their progeny. A summary of arbitral authority cited in those decisions was recently set forth in State of New Jersey and FOP Lodge 91, P.E.R.C. NO. 2016-11 (2016).

The Borough claims it has adhered to PERC's strict mandates in both calculating the "jumping off" point for the 2% calculation, as well as projecting the costs of step movement and longevity increases throughout the proposed contract period. In this matter, the Borough maintains that the Scattergram sets forth the actual base salary paid to all sworn law enforcement officers for the calendar year 2017 as \$5,365,227.65, which is derived by deducting the salaries of the Chief and Deputy Chief—who are not members of the PBA—from the total listed on Scattergram. Accordingly, the Borough argues that the total base salary in 2017 was \$5,365,227.65, and 2% of this number equates to \$107,304.55.

The Borough submits that the actual cost to the Borough of step and longevity increases for the PBA members in 2018 cost the Borough \$248,815.26 and have been paid. Thus, the Borough argues that the total base salary increases for PBA members in 2018 from step and longevity contractual increases equates to a 4.6% increase, and therefore the arbitrator cannot grant the PBA's proposed 1.8% salary increase on top of step and longevity movement.

The Borough notes that its submission at the hearing (E-2 pages 2-10) included costs and/or cost savings from retirements and/or promotions that should not be included in the 2% calculation per New Milford. The Borough maintains that inclusion of such information leads to a more accurate understanding of the financial cost of the proposed contract and thus included such information in E-2 for illustrative purposes. The Borough instead relies upon the Scattergram and the financial models in Christner Certification Exhibits A-D which do not account for retirements/promotions subsequent to December 31, 2017 as per New Milford.

The Borough submits that the PBA's calculations are flawed. The Borough submits that the PBA's submission purports to identify the step/longevity movement for its members in 2018 but suggests the figures are inaccurate. The Borough argues that PBA Chart No. 7 is not for December 31, 2017 as it has PBA members at their 2018 positions/salaries. The Borough also notes that Chart No. 8 overstates the number of Lieutenants and Sergeants on the payroll as of December 31, 2017, and by extension overstates the amount of that salary cost in Chart No. 8 submitted by the PBA.

The PBA argues that the Borough has not maintained staffing or career path opportunities consistent with the increases in activity and demands for service. The PBA argues that the reduction in supervisory positions alter the career paths of a Bergenfield Police Officer and the only way to advance financially is through wage increases.

The PBA argues that the Borough's analysis of employee costs is flawed. The PBA argued the Borough incorrectly performed a net cost comparison from 2017 to 2018. The PBA also argued that to assess 2018 costs, the Borough mistakenly used the reciprocal of promotions made during the year 2017 which were paid for only part of the year. The PBA argues the same is true with respect to longevity and senior officer differential. The PBA argues that the correct methodology is to establish that rate being paid at the end of December 31, 2017 and annualize it. That annualized value is the basis for computation

going forward says the PBA. The PBA submits that the methodology used by the PBA in its presentation is the proper interpretation and methodology consistent with the statute.

The evidence submitted by the parties on this criterion supports a Final Offer of an award at the maximum amount allowable by law. The cost of living data and wage increases generally in the public sector (1.9%) and in the private sector (2.1%) data support such an award. The other criteria have been considered and do not yield a different result. The overall compensation and benefits criterion reflect that unit employees are reasonably compensated and have a 15% health care contribution. The record reflects that a top step officer in 2016 could earn as much as \$126,922.00. In addition, there are benefits including, but not limited to, step increases, longevity, senior officer differential, overtime, compensatory time, off duty work, uniform allowance, vacations, holidays, health insurance with a 15% contribution, life insurance, dental insurance, college credit compensation, and terminal leave.

The continuity and stability of employment criterion supports the maximum allowable award under the 2% hard cap. As previously indicated, the record reflects that the terms of the award will not compel the Borough to exceed the statutory limitation on it such as the tax levy cap or the spending appropriation cap, or that the amount of money equaling the cap would have adverse financial impact on the Borough.

The Scattergram and Christner Certification Exhibits A-D provide as follows: (1) the gross base salary of amount as of December 31, 2017 is \$5,365,227.65; (2) in 2018, the step increases and longevity compensation (\$248,815.26) increased base salary to \$5,614,042.91; in 2019, the step increases and longevity compensation (\$189,024.48) is projected to increase base salary to \$5,803,067.39; in 2020, the step increases and longevity compensation (\$189,851.00) is projected to increase base salary to

\$5,992,918.39; and in 2021, the step increases and longevity compensation (\$206,874.75) is projected to increase base salary to \$6,199,793.14. Certification of Kent Christner, Exhibits A-D. The PBA's submission Chart No. 7, Chart No. 8 and P-31 is based on 2018 data and does not comport with scattergram called for in City of Atlantic City.

After analysis of the record, I accept the Borough's Scattergram with a "Base salary" as of December 31, 2017 of \$5,365,227.65 as the baseline for calculating the 2% hard cap. Applying the 2% formula equates to a permissible salary expense of \$107,304.55 in 2018. In 2018, the step increases have been paid in the amount of \$248,815.26. These increases are within the definition of base salary increases and are chargeable to the salary cap exceeding the cap by \$141,510.71 in 2018. In 2019, the step increases and longevity compensation amount to \$189,024.48 and exceed the permissible spend of \$109,450.64 by \$79,573.84. These increases are within the definition of base salary increases and are chargeable to the salary cap leaving no additional money to apply under the cap in 2019. In 2020, the step and longevity compensation amount to \$189,851.00 and exceed the permissible spend of \$111,639.65 by \$78,211.35 leaving no additional money to apply under the cap in 2020. In 2021, the step and longevity compensation amount to \$206,874.00 and exceed the permissible spend of \$113,672.00 by \$93,202.00 leaving no additional money to apply under the cap in 2021.

Based on the Scattergram, the total cost of step movements and longevity compensation over the proposed four-year agreement is \$834,564.74. Based on the Scattergram, the total permissible spend over the term of the Borough's proposed four-year term is \$442,267.29 and under the PBA's one-year term has been exceeded. Over the three-year term awarded herein the total permissible spend is \$328,394.84. In 2018, the first-year under this Award, the step increases and longevity compensation in the amount of

\$248,815.26 have been paid leaving \$79,579.58 permissible compensation to be awarded for 2019 and 2020.

As recognized by the PBA, “virtually all of the people in the steps presently are young officers who have been brought in to the position to replace more senior officers at the top of the wage/longevity guide who have retired.” The PBA also recognizes “the harsh limitations of the so-called “Hard Cap Law”” and the prior one-year contract was to “offset the cost of step movement.” The PBA understands the impact of the hard cap on the guide and in the prior agreement bargained for a one-year contract with 0% increase and for continued healthcare at the 15% contribution. They argued for the same result here.

The application of the 2% hard cap formula over a three-year term supports the following Award: 2018-0% salary increase, full step increases, senior officer differential and longevity compensation (which have been paid); 2019-0% salary increase, step increases October 1, 2019 (\$44,751.83), senior officer differential and longevity compensation in accordance with the Agreement in the amount of \$10,017.35; 2020-0% salary increase, no step increases, senior officer differential and longevity increases in accordance with the Agreement in the amount of \$13,888.75.

The Borough’s Final Offer of 0% salary increase, no step increases (frozen steps) and frozen longevity compensation during the term of the agreement is not fully supported by the record and is not awarded. In 2018, the first year under this Award, step movement and longevity compensation has been paid which exceeded the 2% cap. Such compensation would not be permitted to be awarded by an arbitrator under the Act and would force an evaluation of those payments. By extending the term, the 2018 step payments and longevity compensation can be spread out over 2019 and 2020. The Award of delayed step increase and longevity compensation in 2019 and longevity compensation in 2020 is

permissible under the cap and offsets the impact of the cap on the inability to award any salary increase or full step guide movement. The PBA's Final Offer of 1.8% salary increase applied across-the board to the salary guide, however, exceeds the 2% hard cap limitations. Based on a baseline base salary figure of \$5,365,227.65 in 2017, the 2% cap would allow for a spend of \$107,304.55 in 2018. Step increases and longevity compensation in 2018 total \$248,815.26 exceeding the cap by \$141,510.71. Besides the step and longevity increases, the PBA's Final Offer in 2018 of 1.8% (\$96,574.09) exceeds the 2% cap limitation. Due to the 2% hard cap, the PBA's salary proposal is denied.

Accordingly, the Award on salary shall be:

- 2018 0% salary increase, full step increases, longevity and senior officer differential.
- 2019 0% salary increase, step increases October 1, 2019, longevity compensation and senior officer differential in accordance with the terms of the Agreement.
- 2020 0% salary increase, no step movement, longevity and senior officer differential in accordance with the terms of the Agreement.

The salary amounts awarded represent the maximum salary increases that can be awarded under the cap on base salary increases with discretion limited to the distribution of those amounts.

Health Insurance Contributions

Article VIII, Insurance and Dental Benefits provides as follows:

Section 1.

Existing B-Med Blue Cross, Blue Shield and Dental Insurance benefits shall be continued for all active employees and employees who are retired and their eligible dependents during the term of this Agreement.

Section 2.

The Borough agrees to pay the sum of \$10,000 to the estate of any employee killed in the line of duty.

Section 3.

The Borough shall provide as an additional medical coverage at the Borough's sole cost and expense, a full family prescription drug insurance plan for all employees covered by this Agreement. Said prescription program shall have a five-dollar (\$5.00) co-payment on generic prescriptions, ten-dollar (\$10.00) co-payment on name-brand prescriptions and zero (\$0.00) co-payment on mail order prescriptions.

Section 4.

Should the Employer seek to change insurance carriers or if, for any reason, insurance change to any degree then the Employer shall be required to give not less than ninety (90) day notice, whenever possible, to the P.B.A. of any informed change. Such ninety (90) day notice shall include at the time of notice a copy of the proposed changed provisions or policy.

Section 5.

Each active employee shall contribute Two Hundred Sixty (\$260.00) Dollars per year toward medical benefits. Said contribution shall be made on a ten dollar (\$10.00) per biweekly paycheck basis, until Section 6 takes effect.

Section 6.

Effective July 1, 2013, employees covered by this contract shall pay the statutorily mandated percentage of their health benefits pursuant to Chapter 78. Effective January 1, 2016 and during this Agreement employees covered by this Agreement shall pay fifteen (15%) of the total cost of their health care benefits. All such payment referenced herein are to be made by way of payroll deductions.

In the event that Chapter 78 is deemed unlawful or repealed, then employees shall revert to their prior obligations.

The Borough's Final Offer proposes the following on the Health Care Contribution:

Heath Insurance Contribution-15% of the cost of premiums. This contribution level is contingent upon agreement to the terms 1-4 above. In the event that an agreement cannot be reached as to items 1-4 above, the Borough maintains that the bargaining unit members must contribute at the levels set forth in N.J.S.A. 52:14-17.28c.

Notwithstanding its Final Offer of 15% of the cost of premiums as a health care contribution conditioned on the wage and longevity issue, the Borough first suggests that c.78 contributions for PBA members were not fully implemented in accordance with N.J.S.A. 52:14-27.28d(c), and thus negotiations are preempted on this issue.

The Borough submits that the Borough and the PBA agreed to the 2013 CNA that provided for c. 78 level contributions but dropped those contribution levels to a flat 15% in calendar year 2016. The Borough maintains that the PBA must by law return to their c. 78 contribution levels as PBA members never completed their statutorily mandated four (4) years of contribution at c. 78 levels. The Borough's second point argues that all its employees other than the PBA make c.78 contributions and it thus has pattern of settlement that requires PBA members to make c.78 contributions. The Borough cites to PERC rules and regulations that speak to identifying "a pattern of salary and benefit changes," among an employer's bargaining units. N.J.A.C. 19:16-5.14(c) and PERC's recognition of the importance of maintaining a pattern of settlement among bargaining units of the same employer. This pattern, the Borough argues, has been accepted by all Borough employees other than the PBA members. The Borough submits that the Borough's four (4) other bargaining units CNAs with the: (1) F.M.B.A.; (2) Telecommunicator's Assoc.; (3) DPW Employees Assoc.; and (4) R.W.D.S.U. uniformly provide that Borough employees maintain the same level of contribution as they had during the c. 78 period. E- 5 to E-8. The Borough's non-union workforce, it submits, continue to contribute at this same rate. The Borough thus argues that it has implemented a pattern of settlement with all bargaining units and employees wherein the c. 78 healthcare contribution levels are maintained.

The Borough argues that the evidence in the record leads to the conclusion that failure to adhere to this pattern of settlement with the PBA will serve to undermine the harmonious work environment the Borough has worked so hard to cultivate, and which the pattern of settlement principle is intended to promote. The Borough argues that the PBA members are the highest compensated bargaining unit in the Borough, with top step pay for patrol officers reaching \$126,922 in base pay alone. (J-1). The Borough submits that should the PBA be permitted to remain at 15% contributions, a patrolman at top step making \$126,922 would be contributing less than a Telecommunicator making \$71,222, who contributes 22-32% of the cost of his/her premium, depending on the type of coverage. N.J.S.A. 52:14-27.28c. The Borough argues that this unjust result will sow discontent among the other bargaining units and non-union workforce, thereby discouraging future settlements with those units, which runs directly counter to PERC's policy considerations. Fox. v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994).

The Borough maintains that nothing in Article VIII of the 2013 CNA grants the PBA lifetime contributions at the 15% level. The Borough cites to Article VIII of the 2013 CNA explicitly that states that the 15% contribution level was to commence on January 1, 2016 and was only to last "during this Agreement." The Borough argues that the plain language of the 2013 CNA dictates that the 15% contribution level would only to last for the remainder of that contract, i.e., the calendar year 2016. The Borough maintains that the record supports that the PBA member's 15% healthcare contribution was never intended to be permanent but was for a fixed one-year period that was later extended for another year as set forth in the plain text of the 2013 CNA and the 2017 CNA. (J-1 & E-3).

The Borough also argues that a comparison to other employees in similar municipalities supports the Borough's position that the PBA must increase its healthcare contribution. The Borough submits that based on the external comparables in the record not a single department affords its members healthcare contributions at a level of 15% of the cost or lower. The vast majority of the contracts in evidence, according to the Borough, contain clauses mandating that employees continue making contributions as per c. 78. These municipalities include: (1) Englewood (E-13); (2) Cliffside Park (E-14); (3) Fort Lee (E-15); (4) Garfield (E-17); (5) Ridgewood (E-12); (6) Teaneck (E-11); (7) Wyckoff (E-9); (8) Paramus (E-10); (9) Edgewater (P-20); (10) New Milford (P- 21); (11) Midland Park (P-23); (12) Wood-Ridge (P-28); and (13) Tenafly (P-25). This group includes the municipalities that the Borough argues are most comparable to Bergenfield in terms of size and population, such as Englewood, Cliffside Park, Fort Lee, Paramus, and Ridgewood; as well as neighboring municipalities Teaneck-which has a substantially larger population than Bergenfield-and New Milford. The Borough points to Bergenfield's other neighbor, Dumont, that provides for healthcare contributions of 30% of the cost of the premiums.

The PBA argues that interest and welfare of the public is well served by the exceptional level of professionalism and productivity as well as cost efficient services provided by the Bergenfield Police Department. The PBA argues that an analysis of the proofs submitted consistent with criteria N.J.S.A. 34:13A-16, g(2) provides strong support for an award of the PBA's Final Offer. The PBA cites to the Chief of Police and the Deputy Chief of Police contracts and submits that the Borough has a clear and definitive pattern for contract resolution. The PBA argues that the two contracts guarantee those Police Officers the same medical contribution of fifteen percent (15%). In the Chief's contract there is a specific provision that the "Chief of Police shall contribute to her health insurance cost in an amount equal to fifteen percent (15%) of the total cost of health care benefits." The PBA notes that the Deputy Chief's contract provides that "The Deputy Chief shall contribute to his health insurance cost in an amount equal to fifteen percent

(15%) of the total cost of health care benefits.” The PBA submits that the Governing Body has established a continuation in a multi-year contract of the fifteen percent (15%) medical contribution provision. The PBA argues that the pattern of settlements within the Bergenfield Police Department with respect to wages and medical contribution is clearly well-established by the Governing Body of the Borough of Bergenfield.

The PBA argues that the Borough negotiated modifications of Chapter 78 premium contributions two contracts ago. In the most recent contract, covering the single calendar year 2017, the PBA notes it took a freeze on pay rates with no increases for a full year just to continue the prior contract terms and in part to offset the cost of step movement. The PBA submits that the modification of ch. 78 contributions is a trend which is growing in comparable municipalities placed into evidence by the parties at hearing.

Regarding the ch. 78 contribution issue, it is important to note that the 2013 negotiated CNA provided for a reduction from ch. 78 contribution levels to 15% of the cost of premiums. The 2017 CNA continued the contribution levels at 15%. In the context of these proceedings, as noted above, the Borough has offered 15% of the cost of premiums as a health care contribution. To the extent the Borough suggests the issue is preempted from consideration, I note that N.J.A.C. 19:16-5.5 provides for expedited scope of negotiations determinations in interest arbitration proceedings and the failure to file a request for a scope determination “shall be deemed a waiver of the negotiability objection.” N.J.A.C. 19:16-5.5(c). I therefore will not address the ch.78 contribution issue other than in the context of the Borough’s Final Offer to return to ch. 78 levels with respect to the term, wage and longevity issues in this proceeding discussed above.

Based on the evidence and submissions of the Parties, I find that the application of the 16g criteria support an award of the Borough’s Final Offer of Fifteen (15%) percent of the cost of premiums as the

health care contribution. While the Borough argued ch.78 and the return to ch.78 contribution levels, its Final Offer was 15% of the cost of premiums conditioned upon the term, wages and longevity. The impact of the 2% hard cap on my ability to award a salary and health benefits package which would more appropriately recognize and analyze the relevant statutory factors supports the award of the continuation of the 15% of premium cost health care contribution sought by the Borough.

The interest and welfare of the public supports the continuation of the 15% of premium health care contribution. While it may cost the Borough more than ch.78 levels, continuing the 15% of premium health care contribution will help offset the impact of the 2% hard cap on the PBA members inability to see any meaningful increase in salary or longevity in 2019 and 2020. The comparability with the Chief and Deputy Chief contracts that provide for the 15% of premium health care contribution is also given great weight in awarding the Borough's Final Offer. The overall compensation supports the award as the fiscal limitations imposed by the 2% hard cap and its impact on this bargaining unit cannot be ignored. The lawful authority, financial impact on the governing unit, its residents and taxpayers, and statutory restrictions on the employer are not impacted due to the 2% hard cap. The continuity and stability of employment also supports an award of the Borough's Final Offer of 15% of premium health care contribution to offset the impact on salaries under the 2% hard cap formula. As noted by Arbitrator Osborn in Hudson County citing Midland Park, "A long-term freeze of members' salary guide movement – an almost inevitable outcome of applying the hard cap over the five-year contract – would be demoralizing and would contribute to further attrition." In that vein, I note that the term of three-years awarded herein lessens the impact of a freeze of members' salary guide movement and allows the Borough the opportunity to return to the bargaining table in 2020 and seek a return to ch. 78 contribution levels.

Based on the 16g criteria and record, I award the Borough's Final Offer of 15% of premium health care contribution.

The other proposals in the Parties' Final Offers are addressed below.

Article IV, Longevity.

The Parties Agreement in Article IV provides for Longevity compensation based on years of service. The longevity compensation begins in the sixth year of employment with 1% of base pay to twenty-four years or more years of service at 8% of base pay.

The Borough's Final Offer seeks:

No longevity payments during the term of the contract.

At the hearing, the Borough clarified that longevity payments would be frozen during the term of the agreement. The PBA notes that longevity compensation has been paid in 2018 and objects to any freezing or other reduction in this benefit.

The burden is on the Borough to prove the need for the requested freeze on longevity. I have analyzed this component of the Borough's Final Offer in the Salary discussion above. I therefore do not award the Borough's Final Offer.

Accumulated Time

The Borough's Final Offer seeks:

All accumulated time paid out each time there is a promotion or, if at top of the salary guide, each time there is a pay increase.

The PBA submits that this proposal would create an administrative nightmare and build in a cost which is incalculable and unreasonable. The burden is on the Borough to prove the need for the

requested change in the Agreement. The Borough has not submitted evidence enough to meet its burden with respect to the requested change. I therefore do not award this proposal.

Article III, Salaries.

Article III, section 4 of the Agreement provides:

Transfers-Patrolman with N.J. Certificate transferring to Bergenfield will be paid as follows:

First Year- Receive 1st year Patrolman pay scale (until off probation).

Second Year- With five years of experience, receives 3rd year of pay scale

Third Year- With ten years of experience, receives 4th year pay scale

The Borough's Final Offer seeks:

Lateral Hires. Reword Article III, section 4 about lateral hires to reference "police experience" and prior anniversary dates.

The PBA submits that this proposal would require additional information and replacement language which was not provided. The PBA also notes the proposal is hypothetical at best.

The burden is on the Borough to prove the need for the requested change in the Agreement. The Borough has not submitted evidence sufficient to meet its burden with respect to the requested change. I therefore do not award this proposal.

Article IX, Vacations.

Sections 2 and 3 of Article IX Vacations of the Parties Agreement provides:

Section 2

Where, in any calendar year, the vacation, or any part thereof, is not granted by reason of pressure of municipal business, it shall accumulate and be granted in the next succeeding calendar year only. Vacation time accrued but not taken

voluntarily shall not accumulate beyond the calendar year in which it occurs.

Section 3

An employee who is entitled to receive a vacation increase during a calendar year shall be entitled to access to that higher level of vacation at any time during the calendar year.

The Borough's Final Offer requests:

Article IX Section 2 Reworded to state that any carry over vacation must be taken by 3/31 of the following year at the Chief's discretion.

Article IX, Section 3, increased vacation because of service time will be prorated in the first year earned based on date of accrual.

The PBA submits that the change to section 2 would create an administrative nightmare in that entitlements occurring late in the year would be available in a tight timeframe likely exposing the Borough to overtime. As to changes to section 3, they argue this proposal was neither explained nor supported by any evidence.

The burden is on the Borough to prove the need for the requested change in the Agreement. The Borough has not submitted evidence sufficient to meet its burden with respect to the requested change. I therefore do not award this proposal.

Article XI, Miscellaneous.

Article XI, Miscellaneous provides:

All employees attending training seminars shall receive a daily expense allowance in the amount of Three (\$3.000 Dollars).

The PBA argues that the elimination of this benefit requires some sort of evidentiary showing. They further submit that there is no indication in any of the proofs as to what this may cost the Borough, how often it is used, or whether it has been used in the last six (6) years.

The burden is on the Borough to prove the need for the requested change in the Agreement. The Borough has not submitted evidence enough to meet its burden with respect to the requested change. I therefore do not award this proposal.

Article XIV, Sick Leave

Article XIV, Sick Leave provides for sick leave based on “continuous service”.

The Borough seeks to add “to the Borough” to all references of years of service in Article XIV. The PBA submits that this uses the new standard of “to the Borough” for benefit allocation. They argue that this is directly opposite to Proposal #7 in reference to new hires. They submit that someone with four (4) years of military experience prior to coming to the Borough and using that experience as part of the application process would be affected. The PBA maintains that the Borough would be benefited by that prior experience. Those employees who had prior military experience are now advanced using the Pension standard for benefit allocation (creditable pension service under the New Jersey Police and Fire Pension Fund) and would all be reduced in benefits.

The burden is on the Borough to prove the need for the requested change in the Agreement. The Borough has not submitted evidence sufficient to meet its burden with respect to the requested change. I therefore do not award this proposal.

Article XIV, Sick Leave

Article XIV, Sick Leave, section 1 provides:

Lateral transfers receiving first year salary will be credited with 15 additional sick days.

Lateral transfers receiving second year salary will be credited with 30 sick days.

The Borough's Final Offer seeks to "Eliminate 15 additional sick days for lateral transfers in Article XIV."

The PBA's response to this proposal is "nothing but a taking from people who are starting new employment. Why an employer would want to reduce an attractive benefit to a new Employee remains a mystery."

The burden is on the Borough to prove the need for the requested change in the Agreement. The Borough has not submitted evidence sufficient to meet its burden with respect to the requested change in the Agreement. I therefore do not award this proposal.

Section 3 of Article XIV, Sick Leave, provides:

Employees who have four (4) or more years of credited Pension Time (PFRS) shall be considered to have four (4) years of Bergenfield Police Service as required in Section 1.

The Borough seeks to eliminate this section. The PBA objects to this proposal noting that it "is just another unwarranted taking without any evidentiary showing whatsoever."

The burden is on the Borough to prove the need for the requested change in the Agreement. The Borough has not submitted evidence enough to meet its burden with respect to the requested change. I therefore do not award this proposal.

Appendix A-1

Appendix A-1 of the Parties Agreement is a Salary Guide that provides:

*Those employees will also receive a voucher system from the Borough for Academy and Town Uniforms and Equipment per agreed list.

The Borough proposes that “per agreed list” language be eliminated from Appendix A-1 and add “per Agency policy and Academy requirements.” The PBA submits that the Borough’s proposal and reasoning expressed at the hearing is confusing as the Agency policy says the contract is controlling.

The burden is on the Borough to prove the need for the requested change in the Agreement. The Borough has not submitted evidence sufficient to meet its burden with respect to the requested change. I therefore do not award this proposal.

Appendix B

Appendix B sets forth the One-Time Startup Uniforms for Training and After Certification.

The Township’s Final Offer is to Eliminate Appendix B.

The PBA did not comment on this proposal. The burden is on the Borough to prove the need for the requested change in the Agreement. The Borough has not submitted evidence sufficient to meet its burden with respect to the requested change. I therefore do not award this proposal.

Article VI, Clothing Allowance

Article VI, Clothing Allowance provides for a \$950 annual clothing allowance for employees hired prior to July 1, 1992 and a voucher system and allowance for those hired after July 1, 1992.

The PBA propose a Five Hundred Dollar (\$500.00) annual Clothing Allowance for the purpose of purchasing and maintaining necessary clothing and equipment.

The burden is on the PBA to prove the need for this change in the Agreement. The external comparables alone, while relevant, do not justify a change in the Agreement. I therefore do not award this proposal.

Based upon the 16g criteria and record before me, I respectfully enter the terms of this Award.

AWARD

1. Duration. January 1, 2018 through December 31, 2020.
2. Salary. 2018-0% salary increase, full step increases, longevity and senior officer differential; 2019-0% salary increase, step increases October 1, 2019, longevity compensation and senior officer differential in accordance with the terms of the Agreement; 2020-0% salary increase, no step movement, longevity and senior officer differential in accordance with the terms of the Agreement.
3. Health Benefit Contributions. Fifteen (15%) of the cost of premiums.
4. All other proposals by the Borough and the PBA not awarded herein are denied and dismissed.
5. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.
6. 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.
7. I have also calculated the net, annual economic change in base salary over the three-year term of the new agreement, as follows: 2018-\$248,815.26; 2019-\$54,769.18; 2020-\$13,888.75 (pursuant to N.J.S.A. 34:13A-16.7 A and B).

Dated: December 27, 2018
Jersey City, New Jersey

Brian W. Kronick

State of New Jersey }
County of Hudson } ss:

On this ___ day of December 2018, before me personally came and appeared Brian W. Kronick to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.