

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration Between:

**TOWNSHIP OF IRVINGTON**

-and-

Docket No. IA-2019-010

**IRVINGTON POLICE SUPERIOR OFFICERS ASSOCIATION**

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Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the Employer:

Florio, Perrucci, Steinhardt, & Fader, Attorneys  
(By: Lester Taylor, of counsel)

For the SOA:

Trimboli & Prusinowski, Attorneys  
(By: James Prusinowski, of counsel)

Witnesses:

Charles Capers, SOA President  
Joseph Petrucelli, Financial Consultant

Also Present at the Hearing:

Elijah James, Jr., Irvington Police Lieutenant  
Quaasim Austin-Turner, SOA Vice-President  
Clinton Franks, SOA Negotiating Committeeman

**INTEREST ARBITRATION AWARD**

**BACKGROUND**

On October 17, 2018, the Irvington Police Superior Officers Association ('SOA') filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over its successor collective negotiations

agreement with the Township of Irvington ('Township'). The previous agreement expired on December 31, 2017.

On October 26, 2018, I was appointed to serve as interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This statutory provision requires that an award be issued within 90 days of my appointment. A mediation session was conducted on November 26, 2018 and although the parties were able to narrow the issues in dispute, there was no voluntary settlement of the successor contract. On December 5 and December 10 respectively, the SOA and the Township submitted their final offers.

On December 11, 2018, I conducted an interest arbitration hearing at the Township's Municipal offices. The SOA submitted documentary evidence and testimony including an analysis from its financial consultant. The Township submitted a list of unit employees for 2017, together with their dates of hire, rank, and their total base pay paid for 2017. The SOA posed no objection to the accuracy of this list and to base year costs. Post-hearing summations were filed by December 21, 2018.

#### **FINAL OFFER OF THE SUPERIOR OFFICERS ASSOCIATION**

The SOA submitted the following final offer:

##### **Article I. Terms of Agreement**

The SOA proposes a four-year agreement. The modified provision would read as follows:

The term of this Agreement shall be for the period commencing January 1, 2018 through December 31, 2021.

Article XI. Salaries<sup>1</sup>

Pursuant to the interest arbitration cap, the SOA seeks to receive 2% over the 2017 base salary in equal increments over the life of the contract.

For all current members:

Appendix A - Wage Increase

Effective January 1, 2018 - 4.95% increase.

Effective January 1, 2019 - 4.95% increase.

Effective January 1, 2020 - 4.95% increase.

Effective January 1, 2021 - 4.95% increase.

The new guide will be as indicated in Schedule A.

Article XIII. Uniforms and Equipment

**Revised:** Consistent with the PBA settlement, the SOA proposes to add a new section providing for a new annual uniform allowance of \$300 to be paid to each member. The provision would state the following:

3. Uniform Allowance. Each member shall receive an annual uniform allowance of \$300.<sup>2</sup>

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<sup>1</sup> Additional proposals with regard to this article, including Officer in Charge Pay, Senior Supervisor Pay, Night Shift Differential, Educational Stipend, and college incentive stipend were withdrawn at the beginning of hearing.

<sup>2</sup> In its written final offer submitted on December 5, the Union proposed a \$350 uniform allowance. At the hearing, the SOA modified its proposal to a \$300 uniform allowance, which is consistent with the PBA contract.

Article XXII Miscellaneous<sup>3</sup>**SCHEDULE A**

	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
	<b>4.95%</b>	<b>4.95%</b>	<b>4.95%</b>	<b>4.95%</b>
<b>Sergeant</b>	119,865	125,799	132,026	138,561
<b>Lieutenant</b>	130,468	136,926	143,704	150,817
<b>Captain</b>	141,065	148,048	155,377	163,068
<b>D. Chief</b>	155,947	163,667	171,768	180,271

**TOWNSHIP'S FINAL OFFER****Article I. Term of Agreement: 3 Year Proposal:**

- a. January 1, 2018
- b. January 1, 2019
- c. January 1, 2020

**Article IX. Hours of Work and Overtime<sup>4</sup>****Article XI. Salaries:<sup>5</sup>**

- a. Effective January 1, 2018 – 2%
- b. Effective January 1, 2019 – 2%
- c. Effective January 1, 2020 – 2%

**\*Note:** The 2% salary increase shall be inclusive of longevity payments.

**STIPULATIONS OF THE PARTIES**

The parties entered the following stipulations into the record:

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<sup>3</sup> A new provision under this article providing for health and fitness incentives was resolved between the parties and therefore, withdrawn from consideration by the Union.

<sup>4</sup> The Township's proposal to modify work schedules from 4/3 to 5/2 was withdrawn at hearing.

<sup>5</sup> The Township's proposals to add two additional salary guides for new hires were withdrawn at hearing.

1. The current contractual salaries for unit members is as follows:

	<b>2017</b>
<b>Sergeant</b>	114,212
<b>Lieutenant</b>	124,314
<b>Captain</b>	134,412
<b>D. Chief</b>	148,592

2. "Total base pay" is composed of contractual base pay, plus longevity payments.
3. Increases to longevity as employees reach service benchmarks are implemented on the employee's anniversary date of service. Changes in longevity for those eligible have been implemented in 2018.
4. The Township stipulates that its salary proposals of 2% for each year of the contract, inclusive of longevity increases, would comply with the interest arbitration cap and would not cause it to exceed the tax levy cap or the appropriations cap.

### **BACKGROUND FACTS**

#### **Demographics:**

Irvington was incorporated as an independent village from portions of Clinton Township on March 27, 1874. On March 2, 1898, Irvington was incorporated as a town, replacing Irvington Village. By the end of the 19<sup>th</sup> century, Irvington had been transformed from a country village to a thriving middle-class suburb of Newark. Portions of Irvington are part of an Urban

Enterprise Zone (UEZ).<sup>6</sup>

The Elizabeth River is the chief geographical feature of Irvington, bisecting the Township from north to south. The Garden State Parkway also cuts through the middle of Irvington, going north and south. Irvington Township is in Essex County and is surrounded by the City of Newark to the northeast and east; East Orange to the north; and Maplewood and Millburn to the west.

### **Structure of the Police Department**

Irvington Township's SOA currently represents Irvington police officers holding the rank of sergeant, lieutenant, captain and deputy chief. As of the beginning of 2017, the SOA included 37 members. However, six of these retired during 2017. There were no promotions in 2017 or 2018; none of the 6 retiree positions have been filled. The SOA is responsible for the supervision of approximately 130 rank and file patrol officers, who are represented by the PBA.

### **History of SOA Collective Negotiations Agreements (CNA)**

Irvington's most recent fully-executed 1999-2002 CNA expired on December 31, 2002. Since that expired agreement, there have been several executed MOAs which cover the years 2003-2005, 2006-2010, 2011-2014, and 2015-2017. Subsequently, the parties initiated negotiations for a new contract

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<sup>6</sup> The UEZ Program exists to foster an economic climate that revitalizes designated urban communities and stimulates their growth by encouraging businesses to develop and create private sector jobs through public and private investment.

and met several times without coming to an agreement. Thus, the Union filed this petition to initiate compulsory interest arbitration.

### **STATUTORY CRITERIA**

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

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence

concerning the comparability of jurisdictions for the arbitrator's consideration.

- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of



employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

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

An Arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, in the first year of the collective negotiations agreement awarded by the arbitrator, increases base salary items by more than 2.0% of the aggregated 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% 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 collection negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0% 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 negotiation agreement. (emphasis added)

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

In addition, I note that N.J.S.A. 34:13A-16g (8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying the proposed change. Another consideration is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. I am also required to determine the total net economic cost of the terms required by the Award.

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

Among the other factors that interrelate and require the greatest scrutiny in this proceeding are the stipulations of the parties; the existing salary and benefits of unit employees; and a comparison of wages and benefits of the Township's police superior officers to the Township's rank-and-file police and to comparable municipal police officers in the geographic area. However, the overriding factor in this case is the impact of N.J.S.A. 34:13A-16.7(b) which prohibits – in certain circumstances -- an arbitrator from awarding increases in base pay of more than 2% and awarding any benefits not previously enjoyed by the bargaining unit.

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

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

The parties disagree about the length of the successor contract. The Township favors a three-year contract which would expire December 31, 2020. The Union urges a four-year contract because one full year of the new contract has already passed, and the Union wishes to create stability in its bargaining relationship with the Township for a longer period.

In jurisdictions where there is more than one bargaining unit of police, one would ordinarily consider fixing the contract expiration to match that of the “other” police bargaining unit. It is well settled that having bargaining units with similar interests engage in collective bargaining within the same bargaining cycle is a positive factor -- it discourages leap-frogging as one unit tries to obtain benefits the other has already obtained in negotiations. Here, however, the PBA contract covering patrolmen runs five years - from 2018 through 2022. In this matter, neither party proposed a five-year contract. Therefore, the new SOA contract will end either one year or two years before the PBA contract. Thus, this will create the probability that the SOA will set the pattern for the next round of successor police negotiations.

There is no clear, regular historical pattern in this unit for contract length. Some contracts have been for three years; others have been for four or five years.

The Union makes a good point that a longer contract term will provide a longer period of stability. Negotiations are time-consuming, expensive and put a strain on the parties' relationship. Stability between the parties is in the public interest. Therefore, in the interest of stability, I award a four-year contract to run from January 1, 2018 through December 31, 2021.

### **Salaries**

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

This act shall take effect January 1, 2011; provided however, section 2 of P.L. 2010, c.105 (C. 34:13A-16.7) [the cap provision] shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to negotiated agreements expiring on that effective date or any date thereafter until or on December 31, 2017, whereupon, after December 31, 2017, the provisions of section 2 of P.L. 2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached.

The Act essentially placed a hard cap of 2% on any award after determining the total cost of base salaries paid in the base year. The parties disagree as to whether the hard cap applies here and whether, in any event, the SOA's offer falls within the hard cap .

### The Applicability of the Hard Cap

The SOA argues that I am not bound by the 2% hard cap in this instance, asserting that the statute only applies to agreements that expired prior to December 31, 2017, not to successor agreements whose term begins after that date. The SOA accurately cites caselaw regarding statutory interpretation, namely, that statutes must be given their generally accepted meaning, that every word has meaning, and that interpretations that render the Legislature's words mere surplusage are disfavored. Cast Art Industries v. KPMG LLP, 209 N.J. 208, 222 (2012). Contracts which will expire after December 31, 2017 are not subject to the hard 2% cap. Specifically, the SOA argues that the closing clause of the statute means that the 2% cap applies only to parties seeking a new agreement which would expire on or before December 31, 2017. The SOA argues the contract being negotiated (or, more accurately, arbitrated) in this matter will expire either December 31, 2020 or December 31, 2021, and, thus, no portion of it will have any effect prior to December 31, 2017. It further asserts that the instant new contract will commence on January 1, 2018, and this date constitutes the expiration date. It argues for these reasons the hard cap provision is inapplicable to this matter.

The Commission addressed similar arguments in two prior reviews of interest arbitration awards, Burlington County Prosecutor's Office, P.E.R.C. No. 2012-061, 39 NJPER 20 (¶4 2012) and Borough of Bloomingdale, P.E.R.C. No.

2011-70, 37 NJPER 143 (¶143 2011). In Burlington County, it rejected the argument that because the agreement continued until midnight of December 31, 2010, it actually expired on January 1, 2011. The PBA there had argued the cap contained in P.L.2010, c. 105 did not apply to that arbitration proceeding. In Borough of Bloomingdale, the Borough argued the contract effectively expired on January 1, 2011. However, the Commission observed that the arbitrator's ruling that the contract was not subject to the 2% base salary cap because it expired on December 31, 2010, conformed with the clear directive of the new law. It noted the argument that the contract effectively expired on January 1, 2011 was contrary to the plain meaning of the contract language.<sup>7</sup> Further, it should be noted that in both matters, the Commission looked to the expiration date of the parties' prior agreement – not the would-be expiration date of the successor agreement currently being negotiated – to determine if the hard cap applied. This is consistent with the plain language of the statute.

The SOA's arguments here are similar to those in Burlington County and Bloomingdale and are without merit. Based on the terms of the SOA's contract and the reasoning in those cases, the contract here expired on or before December 31, 2010 and, according to the plain meaning of the statute, the 2% base salary cap applies to this arbitration proceeding.

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<sup>7</sup> The Commission found the Borough's appeal on this issue was untimely but that even if it had been timely, the arguments were contrary to the statute's plain meaning.

### SOA's Demand for 4.95% Annual Increases

The SOA maintains that if the 2% hard cap is found to be applicable to this matter, then the appropriate methodology for calculating the cap limitations begins by finding the aggregate base salary paid to all unit employees in the last year of the expired agreement (here 2017) and multiplying that total base by 2%. The result of this multiplication produces the allowable cap in the first year (2018) of the new agreement. Then, the SOA asserts, the cap allowance should be added to the 2017 total base paid, and this results in the total amount of salaries for the first year of the new contract, 2018. The SOA continues that the arbitrator must then calculate the costs of any salary guide increments and/or any longevity increases. These costs must be subtracted from the 2% allowance in each year to determine what, if anything, is left to apply to across-the-board pay increases.

Applying its methodology to the facts here, the SOA acknowledges that the Township paid \$4,277,859.34 in total salaries paid for all unit employees in 2017. Applying the 2% cap, the SOA contends that the arbitrator may award 2% (\$85,557.18) to the unit in 2018 and in each year thereafter on a compounding basis. It would do this by adding the \$85,557.18 to the 2017 total base -- 4,277,859.34 and using the result (\$4,363,416.40) as the maximum allowable award for 2018. By this methodology, the SOA calculates that there is sufficient money within the hard cap to provide all unit employees with a 4.95% across-the-board increase. In essence, the SOA argues,

The SOA is not expecting a windfall based upon this calculation. Rather, the offsets from those getting a salary increase due to, in this case, artificially decreased salaries [presumably from retirements], offset, to a certain extent, the retirement savings resulting in an equitable award.” (SOA brief at p.13).

The SOA argues that its proposed 4.95% annual increase is consistent with what the PBA received in its recently settled five-year agreement. It asserts that when step increases are added to the PBA’s 2%, 3%, 3%, 2%, 2% for the successor agreement negotiated with the Township covering 2018 through 2022, the PBA effectively will receive salary increases ranging from 3.24% to 5.02% during the lifetime of the new agreement. The SOA suggests that I should maintain this pattern of settlement with the rank-and-file unit.

Moreover, the SOA maintains that the 4.95% increase it seeks equates in actuality to a 2.5% increase, if fixed obligations such as taxes, health insurance premium contributions, pension contributions and other mandatory costs are subtracted from its unit members’ gross pay. Moreover, because the cost of living has been going up at approximately 2.7%, the 4.95% increase only maintains an officer’s standard of living after adjusting for these mandatory deductions and CPI. The SOA also urges that I consider the reasonableness of a 4.95% increase in light of retirements with no promotions into its unit and the resultant increase in workload.



Finally, the SOA suggests that when compared to similarly situated municipalities, specifically the near-urban municipality of East Orange which has more officers (223) compared to Irvington (151) as well as a lower total crime number (1,341 versus 1,778) and with South Plainfield which has a lower crime rate than Irvington, Irvington sergeants are under paid (\$114,212 versus \$125,877). The SOA admits, however, that its sergeants are near the median point for surrounding Essex County police departments but emphasizes the higher crime rates in its municipality to justify a 4.95% increase.

The Township maintains that I am bound by the 2% hard cap in costing out the final award since the parties' collective agreement expired on December 31, 2017 with no successor agreement finalized. The Employer argues that the formula for costing out an award within the 2% cap was set out by the Public Employment Relations Commission (Commission) in the matter of Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012). There, the Commission directed the arbitrator to first determine the total cost of base salaries paid in the base year either by the arbitrator's own calculation or stipulation of the parties. Next, the arbitrator must calculate the costs of the award as follows:

. . . the arbitrator must review the scattergram 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.

\* \* \*

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 these 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.

The Township, therefore, posits that based on the Commission's guidance in New Milford, not only does the 2% hard cap apply here, but I cannot credit any savings from the 2017 retirements to justify raises in excess of the 2% cap, citing also State of New Jersey and FOP Lodge 91, P.E.R.C. No. 2016-112, 42 NJPER (¶42 2015). Further, relying on Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶13 2012), the Township specifically rejects the SOA's assertion that its final offer of a 4.95% salary increase in each year of the successor agreement is within the parameter of the 2% cap based on savings generated by retirements in the base year. In Ramsey, the Commission rejected the Union's contention that the arbitrator should have taken into account a recent retirement as well as promotions, explaining that under the interest arbitration statute, the union is not entitled to be credited with savings that a public employer receives from any reduction in costs in the base year.

Finally, the Township cites City of Atlantic and Atlantic City Police Benevolent Association Local 24, P.E.R.C. No.2013-82, 39 NJPER 161 (2013) wherein the Commission directed employers to provide arbitrators with specific base salary information, such as the cost of increments, longevity, educational costs etc. as well as calculations including the total cost of all base salary items for the last year of the expired agreement. The Commission then wrote:

We further clarify that the above information must be included for officers who retired in the last year of the expired agreement. For such officers, the information should be prorated for what was actually paid for the base salary items. Our guidance in New Milford for avoiding speculation for retirements was applicable to future retirements only.

The Township contends that although Atlantic City requires the arbitrator to calculate base salary information on what the retired officers were actually paid, there is nothing in the decision that entitles the union to any alleged savings from retirements. Therefore, it asserts, the arbitrator must calculate the award based on all employees' placement on the guide as of December 31, 2017, as well as their respective movement through salary scales and longevity entitlement. Additionally, relying on guidance from the cases cited, the Township maintains that when applying the New Milford methodology for calculating the 2% annual increase for the years covered by the new contract, any 2% increase must be inclusive of longevity payments. In other words, the Township urges that the cost of longevity should be deducted from the 2% increases to base salary.

The SOA does not deny that its proposed 4.95% is based upon the use of the nearly \$600,000 in savings from retirements of six unit members in 2017. In response to the Township's assertion that the SOA would garner a windfall by reallocating money from retired members to employed members, the SOA propounds that this is a result of the Township's own inaction. For instance, the Township could have promoted from the rank-and-file unit mid-year, and the scattergram would have carried them through the entire collective negotiations agreement at their full salary but only a portion of their salary would have been allocated to the base year calculation, thus, reducing the total allocated to the unit members. It suggests that the retirements were a savings that should be applied to unit members. In summary, the SOA urges me to award the full salary budget from 2017 (including the savings from retirements) applied to its membership plus the statutory 2%.

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

#### **Comparables**

As to external comparisons, the SOA acknowledges that sergeants' salaries are near the median for Essex County municipalities. However, when compared to South Plainfield, SOA sergeants have a much lower rate of pay (\$114,212 versus \$125,877), while South Plainfield has a lower rate of total crime and

violent crimes. The SOA presents the following salary data for other municipal police superiors in Essex County.<sup>8</sup>

COMPARABLE MUNICIPALITIES' SALARIES FOR SERGEANT								
Rank	Municipality	2015	2016	2017	2018	2019	2020	2021
1	S. Plainfield	121,108	123,409	125,877	128,709	131,605	134,896	
2	City of Orange	112,127	113,697	116,265	118,871			
3	Montclair	111,242	113,467	115,736	118,051	120,412		
4	<i>Paterson</i>	109,691	111,855	113,004	114,134			
5	Irvington*	109,144	111,108	114,212	119,865	125,799	132,026	138,561
6	Maplewood	107,123	109,265	111,450	113,958	116,807		
7	Bloomfield	106,581	108,714	110,888	113,106	115,368	117,676	
8	Newark	105,720						
9	Nutley	104,381	106,469	109,663	112,953	116,342	119,832	
10	W. Orange	98,840	100,450	102,459				
11	E. Orange	88,545	92,545	94,879				
12	Glen Ridge			109,970	112,680	115,444		
13	Roseland **			120,634	124,258	126,731	129,253	
14	Roseland ***			120,327	123,945	126,412	128,927	
	<b>Avg. Salary</b>	<b>106,773</b>	<b>121,220</b>	<b>112,720</b>	<b>118,067</b>	<b>121,140</b>	<b>126,117</b>	

\* Irvington's 2018-2021 salaries are based on a proposed 4.95% increase.  
 \*\* Promoted to any rank before or on January 1, 2013.  
 \*\*\* Promoted to any rank after January 1, 2013.  
 \*\* Source: Collective Negotiations Agreements

<sup>8</sup> It must be noted that South Plainfield is in Middlesex County and, in my view, cannot fairly be considered as a comparable municipal police force.

**COMPARABLE MUNICIPALITIES' SALARIES FOR LIEUTENANT**

Rank	Municipality	2015	2016	2017	2018	2019	2020	2021
1	S. Plainfield	135,641	138,218	140,983	144,155	147,398	151,083	
2	Roseland **			134,207	138,102	140,850	143,653	
3	Roseland ***			133,876	137,764	140,506	143,302	
4	Montclair		130,488	133,097	135,759	138,474		
5	Bloomfield		125,162	127,665	130,219	132,823	135,479	
6	Paterson	121,354	123,781	125,019	126,269			
7	Irvington*			124,314	130,468	136,926	143,704	150,817
8	Newark	116,874						
9	W. Orange	111,277	113,503	115,773				
10	E. Orange	98,203	102,203	105,879				
11	Maplewood		122,377	124,824	127,633	130,824		
	<b>Avg. Salary</b>	<b>116,670</b>	<b>122,247</b>	<b>126,564</b>	<b>134,272</b>	<b>138,479</b>	<b>143,379</b>	

\* Irvington's 2018-2021 salaries are based on a proposed 4.95% increase.  
 \*\* Promoted to any rank before or on January 1, 2013.  
 \*\*\* Promoted to any rank after January 1, 2013.  
 \*\*\*\* Source: Collective Negotiations Agreements

**COMPARABLE MUNICIPALITIES' SALARIES FOR CAPTAIN**

Rank	Municipality	2015	2016	2017	2018	2019	2020	2021
1	S. Plainfield	151,917	154,803	157,899	161,452	165,085	169,212	
2	Paterson	148,800	151,776	153,294	154,827			
3	Montclair		150,059	153,061	156,122	159,244		
4	Bloomfield		142,694	145,548	148,459	151,428	154,457	
5	Maplewood	137,062	139,803	142,949	146,523			
6	Newark	129,742						
7	Irvington*			134,412	141,065	148,048	155,377	163,068
8	W. Orange	125,743	128,258	130,823				
9	E. Orange	110,295	114,295	118,377				
10	Irvington*							
11	Roseland **			145,206	149,319	152,291	155,322	
	<b>Avg. Salary</b>	<b>133,927</b>	<b>140,241</b>	<b>142,397</b>	<b>176,295</b>	<b>194,024</b>	<b>211,456</b>	

\* Irvington's 2018-2021 salaries are based on a proposed 4.95% increase.  
 \*\* Promoted to any rank after January 1, 2013.  
 \*\*\* Source: Collective Negotiations Agreements

COMPARABLE MUNICIPALITIES' SALARIES FOR DEPUTY CHIEF								
Rank	Municipality	2015	2016	2017	2018	2019	2020	2021
1	<i>Paterson</i>	148,800	151,776	153,294	154,827			
2	Irvington*			148,592	155,947	163,667	171,768	180,271
3	W. Orange	142,157	145,000	147,900				
	<b>Avg. Salary</b>	<b>145,479</b>	<b>148,388</b>	<b>149,929</b>	<b>154,827</b>			

\* Irvington's 2018-2021 salaries are based on a proposed 4.95% increase.  
\*\*Source: Collective Negotiations Agreements

In comparing Irvington's pay scale for police sergeants, I find that even at their current salary of \$114,212, sergeants are above the county average. Lieutenants do not fare as well; their current salary of \$124,314 ranks them seventh in Essex County and below average by about \$2,000. Captains are at \$134,412 – the second lowest in the county data presented; only East Orange is lower. Only a few towns have deputy chiefs and Irvington's deputy chief salary is about \$1400 below average.

While I have considered the comparable data, I am constricted by the arbitration 2% hard cap and may not go beyond that limitation to improve Irvington's police superior officers' salaries.

#### Internal Comparables

The SOA maintains that an internal comparison with the Township's rank-and-file unit who recently entered into a five-year agreement (2018 through 2022) demonstrates that the PBA received 2%, 3%, 3%, 2%, 2% in across-the-board raises and, when factoring in step increases and other salary items, a

scattergram illustrates an average of 4.2% per year or a total increase of 21.9% over the five-year agreement. Accordingly, the salary increases sought by the SOA are commensurate with the rank-and-file unit whose members will eventually be promoted into the SOA.

As a result of the recent settlement with the PBA, effective January 1, 2018, top pay for patrolman is now \$105,908.72. By January 1, 2021, (the final year of the contract being awarded to the SOA here) top pay for a patrolman will be \$114,605.73. This, in fact, exceeds current base pay rates for the Township's sergeants. This factor deserves significant weight as the settlement with the PBA is resulting in a salary compression problem between rank and file police and superior officers. It is for this reason that I have determined to award the full 2% available under the hard cap inclusive of longevity increases. It is also the reason I have determined to award a 2% across-the-board increase in the first year of the contract. Therefore, by January 1, 2021, the sergeant's salaries being awarded herein will exceed \$120,000, thus ameliorating the salary compression problem.

#### Private Sector Wages

I give almost no weight to the component of comparability with the private sector, other than to observe the private sector wage increases. There is no particular occupation, public or private, that is an equitable comparison to police officers and detectives. The officers are unique in a variety of ways, including the potential to be called upon to respond to



their assigned mission areas, conducting surveillances, searches, and seizures relative to investigations and related duties as assigned, along with the stress and dangers of the job. Moreover, they are regularly required to work evenings, nights and holidays. The most recent private sector wage report promulgated by the New Jersey Department of Labor was published in July, 2018. It breaks wage increases down county by county and shows that in Essex County, private sector wages increased by 2.7% between 2016 and 2017. Statewide, private sector wages increased by an average of 2.1%. This factor further justifies the awarding of the full 2% available under the cap.

#### PERC Settlement Rates

The most recent salary increase analysis for interest arbitration on PERC's website shows that the average increase for awards issued in 2015 on post-2011 filings with the 2% cap was 1.71%; in 2016 the average increase was 1.94% and in 2017 it was 2.05%. Over the same time period, reported voluntary settlements post-2011 was 1.73% in 2015; 2.69% in 2016, and 1.86% in 2017.

PERC's analysis data for interest arbitration awards for the years 2012 through 2017 show an overall average increase of 1.86% for post-2011 2% cap awards. Likewise, the report shows a 1.86% average salary increase for post-2011 2% voluntary IA settlements or an award for the same time period. The award in

this matter averages 1.83% in annual increases and is therefore, well in line with typical salary increases over the past few years.

### Overall Compensation

The SOA argues that its members, unlike the Township's rank-and-file unit or officers in many other municipalities, do not receive step increases. They only receive pay increases when they are promoted to the next rank in the absence of an across-the-board percentage increase. Moreover, the SOA maintains that its members are required to contribute 10% for pension contributions and 35% of the cost of health insurance premiums, thus, significantly reducing their take-home pay. Finally, the Township's failure to promote from the rank-and-file unit into the SOA has resulted in an increased workload. The SOA urges that all of these factors weigh in favor of awarding the SOA's proposals.

The most recent full contract between the Police Department and the SOA is for the years 1999-2002. Thereafter, the parties executed four separate Memoranda of Agreements covering the years 2003-2005; 2006-2010; 2011-2014; and 2015-2017. Each of the four MOAs increased base salaries to existing 2017 levels as shown below:

<b>Current Salaries 2017</b>	
<b>Sergeant</b>	<b>114,212</b>
<b>Lieutenant</b>	<b>124,314</b>
<b>Captain</b>	<b>134,412</b>
<b>Deputy Chief</b>	<b>148,592</b>

In addition to the annual salary set forth above, longevity pay, and an annual \$1,300.00 detective stipend are included in the gross annual salary of superior officers. Longevity payments are payable upon an employee reaching a five-year benchmark of continuous employment with the Department and are payable in accordance with the following schedule:

- Over 5 years of service – 2% of base salary
- Over 10 years of service – 4% of base salary
- Over 15 years of service – 6% of base salary
- Over 20 years of service – 8% of base salary
- Over 24 years of service – 10% of base salary

All 31 members of the SOA receive some form of longevity ranging from 4% to 10%.

Superior officers assigned to the canine squad receive a \$150 monthly stipend as reimbursement for the expenses incurred in the maintenance of the canines. An annual clothing and maintenance allowance in the amount of \$500 was discontinued effective July 1, 2001. Moreover, an annual weapons maintenance allowance in the amount of \$150 was also discontinued effective July 1, 2001.

I find that the Irvington superior officers' existing working conditions and overall compensation is an important factor and must be weighted accordingly. This bargaining unit at the beginning of 2017, consisted of 37 superior officers. Today, the unit has reduced to 31 thus, increasing workload for those remaining.

The Union argues that this factor weighs in favor of increased compensation.

However, as previously mentioned, the statutory cap does not permit me to award raises greater than the 2% hard cap.

### Stipulations of the Parties

The Township stipulated that its proposal, if awarded, would not cause it to exceed the tax levy cap. The Union notes that although the Township did not stipulate that the SOA's proposal was within the tax levy cap, since the SOA only seeks a 2% increase above the amount paid to all SOA members in 2017, clearly its proposal also falls within the 2% levy cap. Further, by not presenting any economic analysis during the hearing, the SOA maintains that the Township has essentially conceded that the SOA's proposals would not require the Township to violate the tax levy cap or that there is any other legal impediment to awarding the increases sought by the SOA.

Finally, the SOA maintains, the Township clearly has an ability to pay the amount sought by the SOA because it actually paid \$4,277,859.34 in salary items in 2017. It, therefore, can afford to pay at least that much in 2018, 2019, 2020 and 2021.

I have given the stipulations of the parties substantial weight. While the parties have disagreed about the meaning of the facts and the applicability of the statute and relevant case law, they nevertheless do not dispute the facts themselves. Moreover, the employer's stipulation that its proposal is within the

limitations of the tax levy cap means that it has, in essence, agreed that its proposal is within its lawful authority and within the limitations imposed by C.40A:4-45.1. Thus, this satisfies the criteria for the lawful authority of the employer factor as set forth in N.J.S.A.34:13A-16(g)(5) and (9).

#### Financial Impact of the Award

The Union asserts that there is no evidence of financial stress in the Township because the money to fund the SOA's proposed wage increase already exists within the Township's budget. It maintains that by properly allocating regenerated surplus and other funds to the Police Department, the Township will not experience financial stress in adopting the SOA's proposals.

Additionally, the SOA states that the Township has a past practice of having appropriation reserves (in addition to the reserves in the Police Department budget), because the Township spends less money than is budgeted in its overall budget. For instance, in 2016, the Township spent \$334,552 less than budgeted for police salary and wage items, funds which can be carried forward to fund any pay increases. The Union contends that the 2018 budget demonstrates that the Township budgeted \$2,564,044 more than it spent in 2017 for police salaries and wages – a 14.94% increase from 2017. It avers that this indicates that the Township's taxpayers have already been billed for anticipated increases in police salary items.

The Township has also maintained and grown a surplus fund balance in its annual budget at an average annual rate of 139.64% for the period from 2012 to 2018. Its tax revenues have also grown. As a result, the SOA contends that its proposed wage increases will not necessitate a raise in property taxes because the required funds can be allocated from surplus and unanticipated revenues.

The SOA argues that the Township's solid financial health is demonstrated by the fact that the Township has not levied nearly a million dollars in taxes available to it under the tax levy cap, thus, under taxing in the last two years by nearly two million dollars. Taken together with the benefit of a growing tax base attributable to new construction and improvement to properties, the SOA's proposals would have a negligible impact on the taxpayers over the term of the collective agreement - \$17.67 per year.

Finally, the Union maintains that the Township's municipal budget represents 70% of the total property tax allocation, while the police budget represents only 28.1% of the Township's total tax bill. As an Abbott school district, the Township receives state aid which subsidizes its school tax burden, thus significantly reducing the school burden on taxpayers.

The SOA states that although the Police Department constitutes a significant portion of the Township's budget, it is the largest municipal department and is a 24/7 operation. Thus, it is reasonable for it to command a greater portion of the budget pie.

## **FINDINGS OF FACT**

The SOA presented testimony and the written analysis of its expert financial witness, James Petrucelli. The Union offers the following facts and analysis which were not refuted:

### **Revenues Raised Through Taxation**<sup>9</sup>

The Union maintains that the Township on average has raised 70% of annual budgeted revenues through taxation. The 2017 municipal portion of the Township's total property tax bill represents 70% of the tax bill while the county's 10% and the school's 20% represent a combined total of 30% of the total tax bill for Irvington. The Union avers that the Township has historically maintained increasing tax collection levels from 2012 through 2017. It noted that in 2017 the tax collection percentage of 95.7% was the highest collection percentage for the Township for the past six years. In 2018, 68.9% of budgeted revenue will be raised by taxation, which is less than the 2012 through 2016 levels.

### **New Ratables**

The Union states that the value of the Township's ratables has decreased from \$2,430,695,193 in 2006 to \$1,972,852,835 in 2017 or 18.8%. It explains that despite the decrease in the Township's Equalized Valuation Base, residential units have increased by 490 units (206.7%) since 2012. In 2018 there were 727

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<sup>9</sup> It must be noted that the Township's 2017 Unaudited and Audited Financial Statements were not provided to the Union for additional analysis in this matter.

residential properties and 25 apartment complexes in the Township.<sup>10</sup> The increase in valuation within the Township, based solely on application of the preceding year's tax rate to the apportionment valuation of new construction or improvements within the Township (new ratable) was \$318,478 in 2017 and \$326,041 in 2018. This increase in the tax base resulted in an increase to the Township' cap limitation and allowed the Township to increase the overall tax levy.<sup>11</sup>

### Tax Levies

The Township is subject to a spending cap limitation and tax levy cap limitation. Irvington may either increase the spending appropriations by 2.5% or the cost of living index rate, whichever is less.<sup>12</sup> The Township may, by a majority-approved resolution, vote to increase the spending appropriations by 3.5% over the previous year's appropriations. The amount raised by taxation is limited to 2% (with exceptions) of the amount raised by taxation in the prior year.

Among the exceptions to the limitations imposed by the Cap Law are capital expenditures, debt service, and emergency expenditures and certain

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<sup>10</sup> Source: [www.NiTaxRecords.com](http://www.NiTaxRecords.com)

<sup>11</sup> Source: Irvington's 2018 and 2017 Explanatory Statements – Budget Message, Sheet 3b.

<sup>12</sup> The index rate is the rate of annual percentage increase in the Implicit Price Deflator for State and Local Government Purchasers of Goods and Services computed by the United States Department of Commerce.



expenditures for services mandated by law, such as pensions and health care.

Irvington's 2017 Summary Levy Cap Calculation indicates that the maximum amount to be raised by taxation (tax levy) was calculated to be \$72,373,089. The Township elected to utilize \$71,411,354, thereby forgoing \$961,735 of available tax levy. The 2018 calculation indicated that the maximum amount to be raised by taxation was calculated to be \$73,813,059. The Township chose to utilize \$72,839,938, thereby forgoing \$983,121 of available tax levy.<sup>13</sup>

### State Aid

Irvington is an Abbott school district and as such, receives state aid which subsidizes the Township's school tax burden - - while lowering the taxes that would normally be assessed to its taxpayers. Irvington received an estimated \$131,627,997 from the State of New Jersey Department of Education in school aid (Special Education Extraordinary Aid - \$960,231; Preschool Aid - \$17,371,386; and K-12 Aid - \$113,296,380) during the 2017-2018 school year.<sup>14</sup>

Moreover, the Township has consistently received state aid in excess of \$11 million dollars each year for the period 2012 to 2018. The aid comes in the form of Consolidated Municipal Property Tax Relief Aid (COMPTRA) and Energy

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<sup>13</sup> Source: Irvington's 2018 and 2017 Explanatory Statements – Budget Message, Sheet 3b.

<sup>14</sup> Source for data is the State of New Jersey Department of Education, Office of School Finance: 2017-18 Appropriation Act Revised State School Aid (Excluding Debt Services)

Receipts Tax. The aid assists in reducing additional taxation or reduction in services that would be needed to achieve a balanced budget.<sup>15</sup>

### Regenerated Fund Balances

Since 2012 the Township has regenerated its fund balances. The fund balance of \$7,249,609 as of December 31, 2018 is the highest fund balance regenerated since 2012. In 2018, the Township utilized \$2,990,000 of its fund balance as surplus revenue for the first time since 2012; leaving a remaining fund balance of \$4,259,609. The Union maintains that utilizing the surplus revenue in the 2018 budget has allowed the Township to stabilize the tax levy while complying with Chapter 62 laws of 2007's tax levy cap and amendments.<sup>16</sup> The Union states that surplus generated from lapsed appropriation reserve balances (prior year unexpended balances) ranged from \$1,425,465 in 2012 to \$484,905 in 2016.<sup>17</sup> Moreover, the Township has historically generated significant excess results from its operations - - which become available for future years' budgets. The Union contends that the Township is experiencing an improved financial position.

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<sup>15</sup> Source: Township of Irvington, Essex County – 2018 Budget, Current Fund – Anticipated Revenues, sheet 5.

<sup>16</sup> Source: Township of Irvington, Essex County – 2018 Budget, Appendix to Budget Statements – Proposed Use of Current Fund Surplus in 2018 Budget, Sheet 39.

<sup>17</sup> Source: 2012, 2015, 2016 and the 2013 Audits; 2013 Unaudited Financial Statements.

### Township's Borrowing Ability

The 2016 Audited Financial Statements indicate that the Township had a statutory borrowing ability of \$72,721,035.04 (based on 3.5% of equalized value basis) and a net debt of \$72,406,867.76 which results in a remaining statutory borrowing ability of \$314,167.28. The Union states that the maximum 3.5% debt amount should have been \$74,721,035.05 as opposed to \$72,721,035.04 as reflected in the audit. It asserts that using the calculated maximum debt amount of \$74,721,035.05 would result in an adjusted remaining borrowing ability of \$2,314,167.29 or .108% as opposed to the \$314,167.28 amount reflected in the audit. <sup>18</sup>

### Cash Balance

The Union's maintains in its fiscal analysis that Irvington Township has not maintained a consistent cash position. It states that a free cash balance is the balance remaining after deducting all current cash liabilities. The Union explained that in 2016 the Township had a negative free cash balance of \$1,624,713 as of December 31, 2016. The amount reflects an improvement over the Township's 2012 negative balance of \$4,108,410. <sup>19</sup>

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<sup>18</sup> Source: Irvington Township SOA Local 29 Fiscal Analysis (Union's Tab 16 of Supporting Documentation exhibit, pages 49-50).

<sup>19</sup> Source: 2012, 2015, 2016 and the 2013 Audits; 2013 Unaudited Financial Statements.

### Police Department's Salaries and Wages

Since 2012 Irvington's police salaries and wages have met budgeted or modified balances or have resulted in reserve monies. The following chart offers the Department's 2012 – 2018 salaries and wages from Tab 1 of the Union's SOA Fiscal Analysis: <sup>20</sup>

<b>Police Department - Salaries and Wages</b>					
<b>Year</b>	<b>Budgeted</b>	<b>Emer. Approp.</b>	<b>Modified by Transfers</b>	<b>Amount Paid</b>	<b>Reserved</b>
<b>2018</b>	19,724,704	-	-	-	-
<b>2017</b>	17,160,661	-	17,408,016	17,408,016	-
<b>2016</b>	17,846,061	-	18,622,176	18,287,623	334,553
<b>2015</b>	17,430,502	714,696	18,332,637	18,332,022	615
<b>2014</b>	17,057,424	-	18,944,114	18,944,114	-
<b>2013</b>	16,524,808	-	17,918,688	17,893,851	24,837
<b>2012</b>	16,704,949	-	17,085,569	17,027,620	57,949

The Union asserts that the 2018 budgeted police salaries and wages are \$2,564,044 more than the amount budgeted in 2017, or a 14.94% increase (\$19,724,704-\$17,160,661/\$17,160,661) increase. It is the Union's viewpoint that the 2018 increase in salaries would indicate that the Township has made budgetary provisions for anticipated salary increases that have already been billed to the taxpayers.

<sup>20</sup> Source: Current Fund – Appropriations Budget Sheets 15a for 2012 – 2018, and (Tab 1) of the Union's SOA Fiscal Analysis. These numbers have been verified.

I conclude that the Township has sufficient resources in its 2018 budget to meet the obligations being imposed by this award including retroactive payments to unit members for the 2018 increases being awarded. Therefore, this award does not put the Township at risk of violating the local levy cap limitations. Further, the parties have also stipulated that the award being imposed herein does not violate the tax levy cap.

### COLA

The 2019 COLA of 2.8% represents an increase of .8% from January 2018. Social Security states that the history of the COLA is to ensure that the purchasing power of Social Security and Supplemental Security Income (SSI) benefits is not eroded by inflation. The COLA is based on the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical workers (CPI-W) from the third quarter of the last year in which a COLA was determined compared to the third quarter of the current year. If there is no increase, there can be no COLA.<sup>21</sup> The 2.8% cost-of-living adjustment (COLA) with benefits payable to more than 62 million Social Security beneficiaries began in late December 2018 or in January 2019.

The Union avers that a significant component of the cost of living is the cost of home ownership. It explains that in New Jersey, the fifth most expensive state

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<sup>21</sup> Source of data is the Security Social Administration's publication.

to live in in the United States with an overall Cost of Living Index of 127.6, a New Jersey resident pays 27.6% more than average for living expenses.<sup>22</sup> The Union states that the median home value in northern New Jersey is just below \$300,000 and median monthly rent is \$1,800. The Union contends that a police officer in Irvington would require at least \$103,386 to qualify for a mortgage to purchase an average-valued home in New Jersey in 2017. It noted that New Jersey also has the highest property taxes in the nation. The Union maintains that in Irvington Township a police officer would need increased earnings of at least 2.8% to keep up with the increased cost of living going into 2019, which does not account for the member's mandatory 10% pension contribution or the 35% health care contributions.

The SOA is correct that the increases being awarded herein are below the rate of inflation for 2018. While this factor is not unimportant, here the overriding factor is the limitation imposed by N.J.S.A. 34:13A-16.7(b) which limits salary increases to 2% over the prior year.

#### Continuity and Stability of Employment

The SOA maintains that this factor is not in dispute as employment among SOA members ranges between 12 to 24.9 years as of December 31, 2017. However, the remaining unit members have experienced increased workloads

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<sup>22</sup> Source: [www.usatoday.com](http://www.usatoday.com) article dated September 13, 2014.

with retirements and no promotions into the unit. The Union notes that the trend of reduced supervisory personnel undermines the stability of the unit and mitigates in favor of increasing wages to ensure the quality of services provided.

It is true that this bargaining unit has been reduced by 16% since the beginning of 2017, leaving those remaining with a greater workload. The record does not indicate why the Township has not replaced the six retirees. However, there is no evidence in the record which indicates that morale has suffered or that the stability of the bargaining unit has eroded. Although the Union proposes that the workload increase they have endured should be compensated by 4.95% annual raises, I conclude that spending all of the available funds on salary increases will likely impede the Township's ability to promote.

### The Public Interest

The SOA maintains that it is in the public interest to have a stable and appropriately compensated police force in Irvington Township commensurate with its densely near-urban municipality and total crime/violent crime rates. The Union argues that Irvington has a smaller police force than East Orange, a near-urban comparable community, while Irvington has a higher crime rate. Moreover, it states that there has been a significant increase in residential properties from 237 plus 11 apartment complexes in 2012 to 727 residential properties and 25 apartment complexes in 2018. The SOA maintains that this

206% upsurge in properties increases the public need for police services in the community.

The interest of the public is best served when the public's need for police services are adequately met and employees are fairly compensated for their performance. For the most part the Township has been able to accomplish these dual goals and still maintain its property tax rates. As previously noted, an award within the statutory 2% hard cap will not require any increase to the Township's 2018 police budget as the amount awarded does not exceed the 2017 total base pay paid.

#### Analysis of 2% Hard Cap

The Union maintains that, if the 2% hard cap is applicable to this situation then the 2% calculation should be based upon the total aggregate base salary paid to the entire unit in calendar year 2017 - \$ 4,277,859.34. The Union would then increase this budgetary allotment by 2% to be spent among the remaining members of the bargaining unit after the retirees are subtracted out. This mathematical calculation would result in a 4.95% increase for each employee in each year of the contract. In other words, the Union seeks to lay claim to the "breakage" money remaining because the retiree positions were never filled.

In Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), the Commission first established the principle that costs of increases are to



be applied using the bargaining unit census as of the last day of the base year (here, 2017), and carrying those unit members through the successor award. The bargaining unit is therefore, not to be credited for savings through retirements, nor is it debited for the costs of new hires or promotions. In New Milford, the Commission explained that the arbitrator must first determine the total cost of base salaries paid in the base year. This may be done by stipulation of the parties or by the arbitrator's own calculations. Next, the arbitrator must calculate the costs of the award. The Commission stated,

. . . the arbitrator must review the scattergram 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.

PERC continued its discussion of base salary:

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. (emphasis added)

Here, the parties agreed that the total of all base salaries paid to unit members in calendar year 2017 was \$4,277,859.34. The parties also agree that the Township properly prorated the salaries of the officers who retired during 2017, as well the salary of an officer who was on suspension status. Applying the 2% cap to the total salaries of the base year and then compounding it year for year, will result as follows:

2% CAP	
2018	85,557.19
2019	87,268.33
2020	89,013.70
2021	90,793.97
Total Cap	352,633.19

Under the SOA's theory, these amounts would be added to the 2017 total salaries starting in 2018, and that would be the maximum allowable increase to the remaining 31 unit members to be paid in each year of the contract. In other words, the nearly \$600,000 in savings from the retirees not being replaced would be credited to the bargaining unit and would remain available each year of the contract. Under the Union's proposal it would be the budgeted allotment for unit employees that would rise by 2% per year rather than the employees' base salaries. Unfortunately for the SOA, that logic is contrary to PERC's prior holdings starting with New Milford. PERC has instructed that the 2% cap allotment does not get added to the 2017 salary budget but rather is applied to the contractual salaries of the unit employees as of the last day of the base year. To do otherwise

would credit the union with the savings from retirements. Further, the statute itself refers to limitations on salary increases – not budget increases.

There is also no dispute but that on the last day of the base year there were 31 unit members on the active payroll. It is this group of 31 employees that will be moved forward through each year of the awarded contract and longevity costs, as well as across-the-board increase costs will be tracked for each year. In addition, both parties recognize that the costs of increases in longevity entitlements must be included within the 2% cap.

### Longevity

The SOA argues that by including longevity increases in each year of the successor agreement, the SOA would be deprived of the full 2% allowed under the statutory hard cap and misapplies the pre-existing longevity increases already in the expired agreement. The SOA rejects the Township's contention that any salary increases from longevity bumps should be reduced from the arbitrator's award.

The SOA emphasizes that the Township presented no testimony regarding its proposals or calculations as directed by the arbitrator and, therefore, its proposals should be disregarded. Nevertheless, it contends, the arbitrator should consider that the Township's calculation of \$130,000 expended on longevity

increases over a three-year contract term is based on “fuzzy math”, namely, the Township has compounded the increase year after year. The SOA’s expert explained that longevity increases, like savings realized from retirements, are a one-time event or savings realized only in the first year of the collective agreement. Specifically, longevity increases only count against the cap in the first year, not in each succeeding year. The SOA alleges that, unlike what the Township has calculated, the longevity increases over the life of a 4-year agreement are \$30,000, not \$130,000 as the Township asserts.

I disagree with both parties’ estimates of longevity costs. First, the award is for a four-year contract, during which in every year some employees will receive an increase in the longevity allowances. Of the 31 unit members, 27 of them will receive a longevity bump once during the four-year contract; one of the other four are already at maximum and the three others hired in 2002 do not hit a benchmark in this contract period. Longevity ranges from between 2% and 10% depending upon length of service. Each longevity bump increases the value of the longevity amount by an additional 2% of salary. In 2018, 11 officers had their longevity increased from 8% to 10%; 2 additional officers enjoyed an increase from 6% to 8%. In 2019, 2 officers will have their longevity increased from 8% to 10%; 3 additional officers will have their longevity increased from 4% to 6%. In 2020, 6 officers will have their longevity increased from 6% to 8%; 1 additional

officer will have his longevity increased from 4% to 6%. In 2021, 2 officers will have their longevity increased from 6% to 8%.

Longevity increases are based upon a percentage of the employee's current salary. Therefore, as across-the-board increases are implemented the dollar value of the longevity also increases. The cost of longevity increases over the life of the contract are shown in the chart below:

LONGEVITY INCREASES	
2018	34,791.40
2019	13,311.34
2020	20,252.58
2021	6,464.63
Total	74,819.94

Once longevity increases are subtracted out of the 2% cap allowances, the remainder of cap balances available to distribute as across-the-board increases, is \$277,813.25 (\$352,633.19 - \$74,819.94). Further, the statute permits increases to be distributed unevenly throughout the length of the contract. Here, I have determined to provide the largest increase at the beginning of the contract to provide the SOA members with the greatest measure of comparability to the PBA settlement as is possible while still maintaining compliance with the hard cap. Therefore, I award across-the-board increases to the SOA unit members as follows:

2018 – 2%  
 2019 – 1.8%  
 2020 – 1.8%  
 2021 – 1.7%

The resulting new salary guide is as follows:

SALARIES					
	2017	2018 (2%)	2019 (1.8%)	2020 (1.8%)	2021 (1.7%)
Sergeant	114,212	116,496	118,593	120,728	122,780
Lieutenant	124,314	126,800	129,083	131,406	133,640
Captain	134,412	137,100	139,568	142,080	144,496
Deputy Chief	148,592	151,564	154,292	157,069	159,739

### **SOA's Second Alternative Proposal**

The SOA maintains that the savings from the retirees, as decreased by the cost of bringing the suspended employee backup to full pay, should be allocated to the unit members. However, the Union asserts that in the alternative, the arbitrator should award 2.3% in each contract year. The SOA agrees with my calculations above that the total amount of available cap, compounded over four years is \$352,633.19. However, the Union argues that once longevity increases of \$30,694.15 are subtracted from this amount, \$321,939.04 remains to be allocated to the remaining unit members. The SOA avers that the allocable amount averages \$80,484.76 each year or a 2.3% increase each year of the four-year agreement.

I find that for all of the reasons stated above, the restrictions of N.J.S.A. 34:13A-16.7 limit an award to a maximum of 2% for salary increases inclusive of longevity increases. The Union's proposal would exceed this limitation and therefore cannot be granted.

## **Uniform Allowance**

The SOA demands a \$300 annual uniform allowance be added to the contract and placed as Article XIII. The cost of uniform components undoubtedly increased over the past 20 years. Sgt. Capers testified that police officers are provided with one initial uniform upon graduation, a vest, vest covers and embroidery. A class 2 uniform costs \$140, a vest costs \$550, and a vest cover costs \$225.

Until 2001, Irvington's police superiors had a clothing allowance as a contractual benefit. At that time, the contract provided for \$500 annually for each officer. However, in negotiating a successor contract, the SOA agreed to "roll in" the amount of clothing allowance into base pay. This effectively eliminated the separate clothing allowance provision and added \$500 to the base salary of each employee. In effect, the SOA sold the benefit in favor of more compensation in base pay – a move that increases pensionable compensation. Since then, the value of the clothing allowance that was rolled into base (\$500) has appreciated because of the percentage increases that have been negotiated over the last 20 years.

The factor of internal comparables is also worthy of consideration. In comparing the SOA's proposed allowance to the uniform allowance enjoyed by superior officers in other surrounding municipalities, the SOA offers the following information showing the comparison:

Comparable SOA Municipalities' Clothing/Uniform Allowance								
Rank	Municipality	2015	2016	2017	2018	2019	2020	2021
1	S. Plainfield Borough	1,790	1,900	1,950	1,950	1,950	1,950	
2	Montclair			1,125				
3	Irvington*				300	300	300	300
4	Newark	1,000						
5	W. Orange	900	900	900				
6	E. Orange			1,200				
7	Roseland			1,200				

\* Irvington's allowance is based on the Union's 2018-2021 proposal.

It should be noted that the SOA has apparently “cherry picked” the South Plainfield data, as this municipality neither borders on Irvington, nor is it located in the same county.

The Township recently settled terms of a successor contract with PBA Local 29 covering the rank and file on April 9, 2018. Included in that new agreement was a new provision for \$300 annual uniform allowance. The SOA argues that when the Township promotes patrolmen to sergeants, they will now be unfairly asked to surrender their clothing allowance benefits upon promotion. The SOA seeks parity with the rank-and-file.

However, another factor that must be considered here is whether the SOA’s proposal can lawfully be awarded. N.J.S.A. 34:13A-16.7 provides the following:

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



The prior collective negotiations agreement (the 2015-2017 Memorandum of Agreement) did not include a separate provision for uniform allowance. If I were to award one at this time, I would be in violation of Section 16.7.

The SOA argues that I am not being asked to create a new benefit for the parties but rather to increase the existing clothing allowance benefits as rolled into base pay. Either an item is a base pay salary item, or it is a non-salary economic issue (e.g. detective stipend). Clothing allowance is not a separate non-salary economic item and it is not mentioned separately in the contract. And, as previously noted above, the SOA 'sold' the uniform allowance benefit to the Township in exchange for an equivalent \$500 added to base pay. But even if the uniform allowance somehow continues to be a placeholder within base pay, I am not permitted to increase total base pay any more than 2.0% compounded annually, which I have done. There is no more opportunity for additional increases to base pay within the arbitration hard cap.

### **Award Summary**

I award the following terms of the new collective agreement:

#### **Term of Agreement:**

Four-year contract covering the period January 1, 2018 through December 31, 2021.

**Salaries:**

2018:

-Effective and retroactive to January 1, 2018, 2.0% across-the-board increases for all unit employees.

2019:

-Effective and retroactive to January 1, 2019, 1.8% across-the-board increases for all unit employees.

2020:

-Effective January 1, 2020, 1.8% across-the-board increases for all unit employees.

2021:

-Effective January 1, 2021, 1.7% across-the-board increases for all unit employees.

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

**COST OF THE AWARD**

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

COST OF AWARD			
YEAR	ATB	LONGEVITY	TOTAL
2018	74,043.68	34,791.40	108,835.08
2019	67,972.10	13,311.34	81,283.44
2020	69,195.60	20,252.58	89,448.18
2021	66,527.72	6,464.63	72,992.35
Total	277,739.10	74,819.95	352,559.05

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Susan Wood Osborn  
Interest Arbitrator

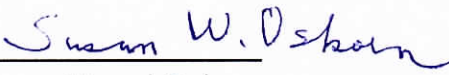
Dated: January 24, 2019  
Trenton, New Jersey

On this 24th day of January, 2019, before me personally came and appeared Susan Wood Osborn known to me to be the individual who executed the foregoing instrument and she acknowledged to me that she executed same.

**COST OF THE AWARD**


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

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 Susan Wood Osborn  
 Interest Arbitrator

Dated: January 24, 2019  
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On this 24th day of January, 2019, before me personally came and appeared Susan Wood Osborn known to me to be the individual who executed the foregoing instrument and she acknowledged to me that she executed same.

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