

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between:

TOWNSHIP OF WEST ORANGE

“Public Employer,”

- and -

PBA LOCAL 25

“Union.”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2011-037

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Township:

Of Counsel and on the Brief,
Ramon E. Rivera, Esq.
Christina M. Michelson, Esq., on the Brief
Scarinci & Hollenbeck

For the PBA:

David J. DeFillippo, Esq.
Detzky, Hunter & DeFillippo

This interest arbitration proceeding concerns a negotiations impasse between the Township of West Orange [the “Township”] and PBA Local 25 [the “Union” or the “PBA”]. The Township and the Union are parties to a collective bargaining agreement [the “Agreement”] effective January 1, 2006 through December 31, 2009.

After a lengthy direct negotiations process, a petition for interest arbitration was filed with the New Jersey Public Employment Relations Commission [PERC]. I was designated to serve as interest arbitrator by the parties. Pursuant to that designation, I conducted pre-interest arbitration mediation sessions. Despite a narrowing of issues and positions, the parties were unable to reach final resolution. Thereafter, a formal interest arbitration hearing was scheduled on March 1, 2012. At the hearing, the parties argued orally and submitted substantial documentary evidence into the record. Testimony was received from PBA President Christopher Jacksic and Business Administrator John Sayers. Certifications were received from PBA Financial Expert Joseph R. Petrucelli and the Township’s Chief Financial Officer John O. Gross. Petrucelli and Gross also submitted reply reports. A schedule for the submission of post-hearing and response briefs was provided. In accordance with that schedule, as amended by the parties, response briefs were filed and exchanged on or about July 23, 2012.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

FINAL OFFERS OF THE PARTIES

The PBA

1. **Duration**

- The PBA proposes a five (5) year agreement commencing January 1, 2010 through December 31, 2014. Unless otherwise stipulated, all provisions herein are retroactive to January 1, 2010 and applicable to any and all police officers who may have separated from employment subsequent to that date.

2. **Article VII – Work Week Overtime** (page 8).

- Section 3. Line Detective Stipend shall be increased from \$1 ,000 to \$2,000.
- Section 5. For those officers assigned to a 4 x 2 schedule, annual training days shall be reduced from five (5) to two (2).

3. **Article IX – Holidays** (page 11).

- Currently, each PBA member's holiday compensation is calculated by multiplying his/her gross salary by 5.38%. The PBA seeks to increase this multiplier to 7%.

4. **Article XX – Base Salary** (page 23).

- Salaries shall be increased, retroactive to January 1, 2010, across-the-board by 3% each year.

5. **Article XXII – Court Time** (page 25).

- Section 2. The mileage reimbursement shall be changed from 15 cents per mile to the IRS rate of reimbursement, 55 cents per mile.

- Section 3. Meal reimbursement shall be increased from \$3.50 to \$7.00.

The Township

1. **DURATION** - January 1, 2010 to December 31, 2013

2. **SALARY**

A. January 1, 2010 0.0 % Increase to base pay

B. January 1, 2011 0.0 % Increase to base pay

C. January 1, 2012 2.0 % Increase to base pay

D. January 1, 2013. 2.0 % Increase to base pay

*All salary increases are across the board.

E. New Hires: The Township also proposes to increase salary guide from seven (7) steps to ten (10) steps for new police officers hired after January 1, 2012.

F. Salary guide freeze: Current PBA members shall remain at present step, if still in guide, for duration of the successor agreement.

G. Longevity:

1) Eliminate longevity for employees hired after January 1, 2012.

2) The Township also proposes to freeze the current value of longevity for active employees in the PBA for duration of a successor agreement.

3. **SICK TIME**

A. All accumulated sick time as of December 31, 2011 shall remain fixed at the current value and number of sick days. Any payment for future accumulation (earned after January 1, 2012) of sick time shall be capped at \$7,500, which shall be earned and paid out at 1 days pay for 2 days accrued.

- B. Employees hired after January 1, 2012 shall receive ten (10) sick days per year and shall be permitted to accrue sick leave; however, these employees shall not be entitled to any payment for sick time at retirement or Separation from the Township.

4. **VACATION TIME**

- 1) Vacation time shall not accrue beyond two (2) years and shall be in accord with all Civil Service Regulations and New Jersey Law.
- 2) Employees hired after January 1, 2012 shall be entitled to a maximum of eighteen (18) days and those days shall be used in the year earned.
- 3) Vacation time shall be prorated in final year of employment prior to retirement.

5. **HEALTH BENEFITS**

- A. All PBA members hired after January 1, 2012 shall be required to pay for the cost of all health benefits, which shall include medical, prescription and dental benefits, after retirement from the Township.
- B. PBA members hired after January 1, 2012 shall receive coverage through the lowest tiered HMO plan; however, an individual may select a better plan by paying the difference in costs. After five (5) years, these employees will be permitted to move into higher tiered HMO plans.
- C. For active employees, upon retirement Health Benefit coverage may change after retirement as coverage for active employees is modified by negotiations or change of law.

BACKGROUND

West Orange Township is centrally located in Essex County. There are 46,000 residents over a twelve square mile area. As of 2010, the median

household income was \$69,254, the median family income was \$83,375 and the per capita income was \$34,412. The population of the Township has a diverse ethnic and racial makeup that includes 57.1% Caucasian, 26.6% African American and 8% Asian. Hispanics or Latinos of any race represent 16.2% of the population.

In 2011, Township residences had an average assessed value of \$388,613 and an average tax bill of \$11,464. The total property tax levy was \$199,343,116. The school portion of property taxes was 60%, the County portion was 14% and the municipal portion was 26% or \$51,225,748. The Township's percentage of tax collections was 98.38%. The budgeted amount for police salary and wages was \$11,733,292 in 2011, a reduction of approximately \$2 million from 2009 and 2010 levels. In 2012, the budgeted amount was \$11,688,041. The reductions are mainly attributed to decreases in staffing levels resulting from layoffs and retirements. The Township also maintains a paid fire department and has two collective negotiations agreements with firefighters and fire officers represented by FMBA Local 28 and the West Orange Fire Superior Officers respectively. These agreements were entered into in March and June 2011 respectively.

The Township's police department in 2012 was staffed at a level of 94, including one (1) Chief of Police, one (1) Deputy Chief, three (3) Captains, six (6) Lieutenants, nineteen (19) Sergeants and sixty-five (65) Police Officers. The

Department has downsized since 2009 when, at that time, there were one hundred seventeen (117) sworn officers, including seventy-three (73) patrol officers. PBA Local 25 represents all Patrol Officers below the level of Sergeant. A top step patrolman after ten years of service receives \$84,458 in base pay, for a ranking of 11 out of 20 Essex County municipalities and \$530 below the County average. In 2010, the Township had a crime index total of 670 of which 583 were non-violent crimes and 87 were violent crimes. These figures represent crime rates per 1,000 of 14.5, 12.6 and 1.9 respectively.

As is evident from the parties' last or final offers, the issues in dispute are all economic in nature except for duration. The parties' proposals are in sharp conflict and were not susceptible to resolution. Each party has submitted comprehensive evidence and argument that reflect deep divisions as to the overall financial health of the Township and in the amount of monies that should be expended during the contract term on salaries and benefits. The parties also disagree on whether the terms of the existing labor agreement should be changed to reflect the concessions or reductions in benefit levels sought by the Township or the improvements sought by the PBA. Additional major points of contention concern the relevance and/or weight to be given to internal settlements the Township achieved with both of its fire units as well as to external comparability between the Township's police officers and other jurisdictions within Essex County. The Township and the PBA both contend that their proposals are fully supported by the statutory criteria and must be awarded.

The PBA relies heavily upon the detailed reports of its financial consultant to support its wage proposal seeking annual wage increases of 3%. Based upon the report, as drawn from official budget documents, the PBA concludes that the Township is in very good financial condition and can fund the PBA's proposal without adverse financial impact on the governing body, its residents and taxpayers. The PBA supports this conclusion after comprehensive review of the Township's budgets and more recent expenditures for the police department showing a relative decline in the cost of providing police services to the public.

The PBA points out that while the Township has consistently generated increases in tax revenues, the costs of operating the police department have decreased. The PBA cites that equalized home values between 2000 and 2011 rose by 78.25% or at an annual average of 7.11% during this time period. To emphasize the benefit of this increase in ratables, the PBA submits that the budgeted amount to be raised by taxation grew from \$28,195,194 in 2000 to \$51,075,300 in 2011 and then increased to \$52,049,702 in 2012. These figures represent an 86.4% increase or an average annual increase of 7.05% in budgeted, estimated revenues to be raised by taxation. In contrast to this revenue growth, the PBA emphasizes that the amount of funds budgeted for police salaries have declined between 2007 and 2011. The \$11,688,041 budgeted amount in 2011 was less than the \$11,974,680 amount in 2007 and only slightly above the \$11,625,565 amount in 2006. The PBA points out that

police salaries and wages dramatically decreased by 14.9% from 2010 (\$13,794,848) to 2011 (\$11,733,292). The PBA views the interest and welfare of the public being served by a police department that has placed a decreasing tax burden on the West Orange taxpayer. In support of this conclusion, the PBA points out that the portion of the municipal tax bill allocated to the cost of police services decreased by \$53.20 (from \$856.08 to \$802.88) from 2010 to 2011, representing a decrease from 27.52% to 26.43%.

The PBA submits that the Township has maintained a AA bond rating from Standard and Poor's and utilizes only 25% of its statutory limit on its debt ceiling and has consistently been able to regenerate surplus or fund balances. Based upon a chart depicting this regeneration and the Township's use of surplus, the PBA's financial expert draws the following conclusions:

The schedule on the previous page illustrates that since 2005 the Township has continually been able to regenerate fund balances.

In 2009, the beginning fund balance was \$4,223,907.12 of which the Township utilized \$3,100,000.00 as surplus revenue in the 2009 budget. After utilizing \$3,100,000.00 as surplus revenue the Township ended the year with an available fund balance of \$5,585,602.69 on December 31, 2009. This enabled the Township to stabilize the tax levy while complying with the Chapter 62 laws of 2007's tax levy cap.

In 2010, the beginning fund balance was \$5,585,602.69 of which the Township utilized \$4,550,000.00 as surplus revenue in the 2010 budget. This left the Township with an available fund balance of \$1,035,602.69 (\$5,585,602.69 less \$4,550,000.00). **In 2010 the Township was able to regenerate \$3,380,455.85 of fund balance and the Township ended the year with a regenerated fund balance of \$4,416,058.54 on December 31, 2010.** This

enabled the Township to stabilize the tax levy while complying with the Chapter 62 laws of 2007's tax levy cap.

In 2011, the beginning fund balance was \$4,416,058.54 of which the Township utilized \$3,400,000.00 as surplus revenue in the 2011 budget. This left the Township with an available fund balance of \$1,016,058.54 (\$4,416,058.54 less \$3,400,000.00). **In 2011 the Township was able to regenerate \$1,999,125.00 of fund balance and the Township ended the year with a regenerated fund balance of \$3,015,183.54 on December 31, 2010.** This enabled the Township to stabilize the tax levy while complying with the Chapter 62 laws of 2007's tax levy cap.

The fund balance of \$3,015,183.54 is available for the 2012 budget to hold down taxes and to fund the requested Police Salaries and Wage proposals. The 2012 proposed budget indicates the utilization of \$2,537,253.00 of fund balance as surplus revenue. After utilizing \$2,537,253.00 as surplus revenue the Township will still have a remaining surplus balance of \$477,930.54 (\$3,015,183.54 less \$2,537,253.00) available.

As per the 2011 unaudited Annual Financial Statement, the Township has \$2,420,435.84 (\$2,375,115.57 plus \$45,320.27) (Tab 9) in appropriation and encumbrance reserves. The appropriation reserves are available to lapse into surplus in the second year and the encumbrance portion of the reserves, if cancelled, could include funds available to fund PBA Local No. 25 requested proposal.

The PBA acknowledges that the Township has statutory limitations on its ability to increase appropriations and on the amount that it can increase the tax levy (See P.L. 199, c. 89 and P.L. 2010, c. 44). The former is commonly called the "Cap Law" and provides that a municipality shall limit any increase of its budget to 2.5% or the index rate, whichever is less, over the previous year's final appropriations subject to certain exceptions. The latter, the "tax levy cap", imposes a two (2%) percent cap on the tax levy that municipalities may impose with very limited exceptions and subject to certain adjustments. Notwithstanding the existence of these appropriations and tax levy limitations, the PBA submits

that an analysis of the Township's budgets reflects that neither limitation prevents the issuance of an award that supports the PBA's proposed wage increases. By way of example, the PBA asserts that in its 2011 budget, if the Township had utilized its lawful ability to appropriate funds, its limit would have been \$63,447,634.52. Yet the Township limited appropriations to \$55,477,173. From this, the PBA concludes that the Township had \$7,970,461.52 of available spending in its cap bank for future expenditures. The PBA acknowledges that the tax levy cap would not allow the Township to raise revenues in that amount because of the 2% limitation on the amount by which taxation can be raised. However, it calculates that the Township could legally have increased spending appropriations by an additional \$3,775,014. The PBA's calculations are based upon the 2011 Summary Levy Cap Calculation indicating that the maximum amount that the Township could have raised by taxation was \$52,746,511, yet the Township opted to utilize only \$48,971,497. The PBA also comments that if the Township had opted to tax up to its tax levy limits, it would have had a larger tax levy base to allow the Township to raise additional revenues through taxation in the future.

The PBA also contends that its wage proposal is justified by comparisons between salaries paid to police officers in West Orange with those paid elsewhere in Essex County. It submits that its wage proposal is comparable to the wage increases agreed to or awarded in other municipalities in Essex County during the contract years at issue. In contrast, the PBA asserts that the

Township's proposal would erode the relative standing of the Township's police officers within the County. In this regard, it notes that maximum pay in 2009 was approximately \$500 below the Essex County average of \$85,000. Citing wage increases within the County for 2010 and 2011, the PBA submits that the average increase was 2.89% and 3.01% respectively. It claims that during these two contract years, the gap between unit member's salaries would increase to \$6,000 below the County average. The PBA makes similar claims for 2012 and 2013 asserting that the County average increase was 3.2% in 2012 and an additional 2.5% in 2013. The PBA also cites PERC data reflecting the average increase in interest arbitration awards of 2.5% in 2010 and 2.05% in 2011 with the voluntary settlements averaging 1.86% and 1.87%. Reference is also made to the PERC report on wage increases in the private sector reflecting an average of 2.2% in 2010 with a 2.5% average in Essex County.

The Township disagrees with the PBA's assessment of its finances. It contends that it has established that the Township's budgetary health significantly deteriorated after the onset of the deep recession towards the end of 2008 mainly as a result of losses in revenues and substantial increases in the filing of tax appeals. It submits that its distress was severe as evidenced in the layoff plan that it submitted to the Civil Service Commission that during March of 2011 approved the layoff and/or demotion of 48 Township employees, including the layoff of eight (8) police officers.

The Township disagrees with the assessment and conclusions reached by the PBA's financial expert. While acknowledging its ability to consistently generate a fund balance, the Township submits that the fund balance is used as anticipated surplus in ensuing budgets for the purpose of offsetting the annual tax burden on taxpayers. Thus, when the fund balance is significantly reduced, the reduction has an impact on the amount available in each future budget year and according to the Township, should be used for increased operating expenses. According to budget documents in the record, the Township submits that its fund balance was reduced from \$4,400,000 as of December 31, 2010 to \$3,015,183. Its surplus of \$3,300,000 in 2010 was reduced to \$2,000,000 in 2011 causing the Township to rely upon its reserves to offset the reduction. The net effect of the revenue loss is said to have forced the Township to drastically reduce its expenditures and create pressure to increase taxes. The Township acknowledges that it did not raise taxes in 2009, 2010 and 2011 but was required to increase taxes by 1.9% in 2012.

Additional factors cited by the Township were the requirement to issue a bond for a major redevelopment project in the amount of \$6.3 million which raised the Township's debt from .88% of equalized assessed value as of December 31, 2011 to .98%. Additionally, the Township only received a slight increase in state aid from 2010 to 2011. While it did not receive an aid cut as did many other municipalities, the Township had anticipated an increase of some \$600,000 and claims that it was required to offset this anticipated increase with

expenditure reductions in other areas. The Township further contends that it has suffered a negative budgetary impact from a large increase in the number of tax appeals. It notes that it paid \$650,000 in tax appeals in 2011. While projecting the same amount for 2012, it anticipates an increase in tax appeal payments of \$1 million beyond what it will pay in 2012. Because the Township is primarily a residential community and 17.4% of its residents are senior citizens, the Township submits that it was necessary to adjust operational expenses in order to avoid creating additional tax burdens on its residents during the time of recession.

The Township also disagrees with the PBA's analysis on comparability. The Township contends that its police officers are well compensated and receive competitive salaries and benefits compared to other municipalities in Essex County. The Township cites the overall level of compensation and benefits currently being received. In addition to maximum base salary pay of \$84,458 in 2009, officers are eligible for longevity pursuant to a longevity schedule providing for 10% of base pay after 24 years. In addition, holiday pay of fourteen paid holidays is a supplement to base pay in the amount of 5.38% of base pay adding an additional \$4,544 in base pay for police officers at top step. Additional components of overall compensation and benefits include fifteen (15) days of paid sick leave, three (3) personal days, and twenty-one (21) days of paid vacation after one year of service. The Township also contends that comparison averages are misleading because they do not account for sharply decreasing

wage levels for contracts that were negotiated or awarded after contract expiration in 2009, 2010 and 2011. It points out that wage freezes are not uncommon for contracts negotiated after the recession. Among such contracts noted by the Township: In the Matter of the Township of Neptune and PBA Local 74, IA-2009-048; In the Matter of County of Hunterdon and FOL Lodge 94, IA-2009-103; State of New Jersey and New Jersey Law Enforcement Supervisors Association, IA-2008-017; County of Essex, Essex County Sheriff's Office and Essex County Sheriff's Officers, PBA Local No. 183, IA-2008-098. Turning to Essex County comparisons, the Township points to first step base salary of \$54,478 as being \$9,000 above the County average and a maximum salary of \$84,458 compared to a maximum base salary average of \$82,496 in 2009. It notes that the charts do not reflect holiday pay and longevity pay, both of which supplement the base pay that is reflected on the salary schedules.

Each party submitted a reply response to the other party's financial report. The PBA asserts that the Township has not taken into consideration the significantly greater employee health contributions required by law that have eroded the disposable income of its members. An additional fact ignored by the Township is the increased pension contribution that officers are required to make as a result of legislation. The PBA also notes that actual revenue sources in 2011 exceeded budget limits and that the reduction in the Township's fund balance stems from a conscious effort to utilize fund balance as a revenue source rather than taxation. While acknowledging that the Township issued

bonds that it increased the net debt percentage of .88% to .98%, the PBA notes that the net debt percentage is still far below the statutory maximum of 3.5%. With respect to the impact of tax appeals, the PBA observes that the December 31, 2011 unaudited Annual Financial Statement reflects a reserve account of \$1,420,243. The PBA asserts that the Township's low net debt establishes that it has the ability to finance future tax appeals rather than funding them through current operations revenues. The PBA calculates the difference in the cost of the parties' proposals and estimates that the total cost per residential property owner over a four year period is only \$105.38 or \$26.35 per year on average.

The Township rejects the PBA's reference to reserves left from police salaries from 2010 and 2011 as a source of funding the PBA's salary proposal. It notes that reserves become part of the fund balance and are used as revenue in the subsequent budget year and thus, it does not lapse into the police salary and wage account. It further notes that during each budget year, police reserves, which amount to less than 1% of its appropriations, are used to fund outstanding obligations such as paying overtime in 2012 for overtime that was expended in 2011 or purchases authorized in 2011 that are paid in 2012. The Township also rejects the PBA's reliance on the long-term increase in tax rates. The Township notes that the tax rates have decreased in value and that tax revenue growth, unlike private sector profit, is a negative factor to the public because of the effects of the economic recession on the public's ability to make tax payments. The more recent drop in equalized value is said to be more

relevant to this proceeding than the increase in property values cited by the PBA over a much longer period of time. With respect to the Township's fund balance, the Township notes that the reserve as of May 11, 2012 was only \$605,357 and that the projected amount that would lapse into surplus would be the lowest level in six years. The Township objects to the PBA's reference to increases in receipts from delinquent taxes and tax title liens because such increases are viewed by the Township as indicative of reduced collections of current year and previous years taxes and therefore such receipts cannot serve as a positive metric.

DISCUSSION

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 interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is an appropriate basis to award its proposed change. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. Justification must be presented as to why the status quo on an issue can no longer be deemed appropriate.

Duration

The PBA proposes a contract duration of five (5) years extending through December 31, 2014 while the Township proposes a four (4) year contract with a December 31, 2013 termination date. According to the PBA, a lengthier contract would provide for greater harmony in its relationship with the Township.

The Township contends that its proposal on contract duration would be consistent with the agreements that it reached with FMBA Local 28 and FSOA and would therefore provide labor relations stability by negotiating contracts for

2014 and beyond at a common time. It regards the PBA's proposed five year contract duration as effectively avoiding the provisions of N.J.S.A. 31:13A-16.7 which places a statutory limitation on the amount of increase that an arbitrator can award to base salary items.

I place substantial weight on the contract durations that were negotiated between the Township and FMBA Local 28 and the FSOA. The record shows that public safety agreements have had common expiration dates in the past. I am mindful that the additional year sought by the PBA would allow for a respite in the negotiations process for itself but this point cannot control and is outweighed by the consideration that all negotiations for 2014 should proceed on a common basis based upon circumstances that are common to all public safety units. Accordingly, the contract duration shall be for four years, from January 1, 2010 through December 31, 2013.

Article VII – Work Week Overtime

The PBA proposes two modifications to Article VII. The first is to increase the stipend for Line Detective from \$1,000 to \$2,000. Section 3 currently states:

Section 3. During the term of the within Collective Bargaining Agreement and any extensions thereof, there shall be a distinction between Detectives. More particularly, the distinction shall be one of a Line Detective as opposed to that of any Administrative Detective. Line Detectives and Administrative Detectives, respectively, shall receive annual stipends in the following amounts:

<u>Year</u>	<u>Line Detective Stipend</u>	<u>Administrative Detective Stipend</u>
2006-2009	\$1,000	\$500

The stipends for both line Detectives and Administrative Detective shall be paid in twenty-six (26) equal payments during any period of the within Agreement, and continue thereafter during any period of extension, the distinction between Line Detective and Administrative Detective shall be defined by the Police Director.

According to the testimony of President Jacksic, the amount of the stipend has not increased for many years. He also testified that the workload for detectives has increased dramatically due to an increase in violent crime coupled with the reduction in the number of police officers. The PBA submits a chart reflecting detective stipends in Essex County. While acknowledging that no detective stipend is paid in East Orange, Essex Fells and Fairfield, the PBA notes that the average stipend in the County is \$1,783 and that the only department receiving a lower stipend than West Orange is the Town of Nutley. The Township opposes the proposal based upon its additional costs.

The PBA has established the basis for an increase in the Line Detective Stipend. The stipend has not increased for a substantial number of years while the record shows that the workload has increased. The comparability analysis in Essex County also supports an increase in the stipend. In 2011, a compensation analysis (P. Ex. #109) reflects that there were ten Detectives receiving the stipend. I award an increase in the stipend in the amount of an additional \$250

effective January 1, 2012 and an additional \$250 effective January 1, 2013, thereby increasing the Line Detective Stipend to \$1,500.

The PBA proposes that the number of annual training days for those officers assigned to a 4x2 schedule be reduced from five (5) to two (2). Section 5 currently states:

Section 5. The work schedule for all members of the bargaining unit shall consist of four (4) eight (8) hour and fifteen (15) minute days on duty followed by two (2) days off duty. The fifteen (15) minute referred to in the previous sentence is to be considered lineup time. Additionally, there are to be five (5) training days per year per person working a four (4) and two (2) shift. Excluded from the provisions of this section are those serving in a plain clothes capacity, Tour Commanders, Division Commanders, Safe and Clean Street personnel, those assigned to the Traffic Bureau and other specialized units.

The PBA contends that number of annual training days are unnecessary and are not required for officers who work in the Detective Bureau and Administration who work a 5 x 2 schedule.

I do not award the PBA's proposal. Although it contends that the number of training days are not necessary, the record does not contain sufficient justification for a reduction in the number of work days that are devoted to training. A reduction would effectively eliminate the flexibility of the department in its development and application of training programs.

Article IX – Holidays

Currently, each PBA member's holiday compensation is calculated by multiplying his/her gross salary by 5.38%. The PBA seeks to increase this multiplier to 7%.

Currently, the Agreement, at Article IX, provides for fourteen (14) holidays, each of which are enumerated in the agreement. Article IX also states that "current pay practices with reference to holidays shall be continued for the lifetime of the Agreement." This is an apparent reference to the inclusion of holiday pay as a base salary payment.

The PBA contends that its proposal is justified because the impact of increasing the multiplier would constitute commensurate salary consideration for the increases that the Township voluntarily agreed to with employees in the fire department represented by the two fire units regarding EMT certification payments. The PBA estimates that increase as approximating \$1,300.

Prior to the 2010 through 2013 Agreement, firefighters who possessed an EMT certification received a 2% stipend. The payment was an addition to base salary. The new agreements changed the annual stipend to \$3,000 effective January 1, 2012. At the maximum step in the rank and file unit, the annual EMT stipend under the expired agreement amounted to \$1,608 with decreasing amounts for firefighters with lesser salaries due to the stipend being paid on a

percentage amount. Thus, the newly negotiated stipend added \$1,392 to firefighters at maximum and larger amounts for those with lesser salaries, although in the future, the stipends are to be paid in fixed dollar amounts, thereby eventually decreasing the gap between the old percentage amounts and the new dollar amount.

The PBA's contentions as to the value of the FMBA agreement relative to the Township's offer to the PBA is noted and will be addressed in the salary section of this award. If relevant, based upon internal comparability, they must be given weight when calculating the relative value of the negotiated fire agreements to the value of the award for police officers. However, I do not find it appropriate to award any additional consideration that may be due for the PBA by increasing the percentage of the multiplier for holiday pay as sought by the PBA. Currently, the calculation of holiday pay is based upon the value of the worth of the number of holidays as is provided for in the agreement. The change sought by the PBA would alter that method of calculation and, unlike the EMT certification stipend, require that the increase be given in percentages that compound rather than in flat dollar amounts. Accordingly, its proposal is not awarded.

Article XXII – Court Time

The PBA has proposed two changes to Article XXII. Section 2 concerns mileage reimbursement. It proposes to change the reimbursement level from 15

cents per mile to the IRS rate of 55 cents per mile. Section 3 concerns meal reimbursement. Its proposal would increase that amount from \$3.50 to \$7.00. The remainder of the article would not be changed.

The mileage reimbursement is only required when members use their personal vehicles to attend any court or administrative agency as a witness, and not as a party, except for municipal court. The meal reimbursement is provided within the same scope of eligibility.

The PBA has established that the existing levels of reimbursement are substantially below the levels necessary to provide reasonable offsets in employee costs. For this reason, adjustments are justified. Effective upon expiration of the Agreement, I award a change in the mileage reimbursement rate to 50 cents per mile and in the meal reimbursement rate to \$6.00. Accordingly, Section 2 and Section 3 shall read as follows:

Section 2. When members are required to use their personal vehicles to attend as a witness, and not as a party, any court or administrative agency, with the exception of municipal court, he shall receive 50¢ per mile reimbursement.

Section 3. Members who attend as a witness, and not as a party, any court or administrative agency, with the exception of municipal court, shall receive \$6.00 lunch and \$1.25 parking allowance.

Article XI – Sick Leave

The existing provision concerning sick leave is set forth in Article XI as follows:

Present practice concerning sick leave entitlement shall be maintained as per the 1972 revised General Ordinances of the Township of West Orange as amended and supplemented.

- A. July 1, 1985: 10% of every sick day in excess of \$12,000
- B. July 1, 1986: 15% of every sick day in excess of \$12,000
- C. Sick days converted to sick hours.

The Township has proposed two changes to Article XI. They are as follows:

- A. All accumulated sick time as of December 31, 2011 shall remain fixed at the current value and number of sick days. Any payment for future accumulation (earned after January 1, 2012) of sick time shall be capped at \$7,500, which shall be earned and paid out at 1 days pay for 2 days accrued.
- B. Employees hired after January 1, 2012 shall receive ten (10) sick days per year and shall be permitted to accrue sick leave; however, these employees shall not be entitled to any payment for sick time at retirement or Separation from the Township.

The existing terms and conditions affected by these proposals concern sick leave accrual, accumulation and banking. These existing terms are substantially similar to the terms currently set forth in the FMBA agreement. The FMBA agreement for the same contract duration as here did not alter those terms. I give substantial weight to internal comparability on this issue. Moreover, the public interest is furthered by a sick leave program within the Township that

maintains reasonable consistency for all public safety employees. Accordingly, the changes sought by the Township are not awarded.

Article VIII – Vacations

The Township has proposed three changes to Article VIII – Vacations.

The existing provision in its entirety states:

The present vacation entitlement shall be maintained for the duration of this Agreement.

The proposals offered by the Township are as follows:

- 1) Vacation time shall not accrue beyond two (2) years and shall be in accord with all Civil Service Regulations and New Jersey Law.
- 2) Employees hired after January 1, 2012 shall be entitled to a maximum of eighteen (18) days and those days shall be used in the year earned.
- 3) Vacation time shall be prorated in final year of employment prior to retirement.

According to the Township, the first part of its vacation proposal was intended to conform the manner in which unused vacation is accrued with the legal requirements of N.J.S.A. 11A:6-3(e). The Township cites the language of the applicable statute:

Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only; except that vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the

Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the commission, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining.

The Agreement is silent concerning the amount of time in which unused vacation leave may be accrued. Instead, the issue appears to be governed by the Township's Human Resources Policies and Procedures Manual at Section 3:2. Section 3:2-2(a) states that "accumulation of vacation leave beyond that earned in a two year period shall be permitted only with the consent of the Business Administrator."

The issue raised by the Township was addressed in a scope decision by PERC. [See City of Hoboken and Hoboken Fire Officers Association Local 1076, P.E.R.C. No. 2010-67, March 25, 2010]. That decision held that vacation accumulations must be consistent with that provided for in N.J.S.A. 11A:6-3(e). In that case, unlike here, there was an express contract provision allowing for accumulation beyond two years. PERC found the aforementioned statutory language preempted that express contract provision and that the parties' provision allowing for accumulations beyond two years was illegal and not enforceable. The Hoboken decision is relevant because it interpreted a statute and because statutory criterion N.J.S.A. 34:13A-16g(5) requires the arbitrator to consider "the lawful authority of the employer." The Township's policy may or may not be in direct conflict with the statute because accumulations beyond that earned in a two year period are permitted only with the consent of the Business

Administrator and the statute allows for accumulation at the discretion of the appointing authority but only under limited circumstances. The record is not clear as to the method and manner in which vacation time has been accumulated beyond two years, under what circumstances it has been allowed and whether the practices are consistent with law. Accordingly, I do not award the Township's proposal but, in doing so, the award recognizes the Township's retention of authority to raise a negotiability defense in the event of a dispute over the manner in which vacation time is accumulated and further, to reevaluate whether its existing policy, as administered, is inconsistent with the statutory requirements.

The second part of the Township's proposal is to limit the maximum number of vacation days for new hires to eighteen (18) days and to require that those days be used in the year earned. The PBA opposes the proposal. It submits a review of the current vacation leave entitlement in other Essex County municipalities that reflects that the existing vacation schedule for the Township's police officers is comparable on average. Documents in evidence show that a ten (10) year West Orange Officer receives eighteen (18) days while the County average is eighteen and one-half (18.5). A fifteen (15) year West Orange Officer receives twenty-one vacation (21) days while the County average is twenty-one and six-tenths (21.6). A twenty (20) year West Orange Officer earns twenty-four (24) vacation days while the County average is twenty-four and two-tenths (24.2) days. In general, the contracts in evidence reflect that 50% of Essex County

municipalities provide greater vacation benefits than does West Orange. As such, the existing terms do not conflict with the norm and that proposal is not justified by the comparability analysis. Moreover, no such vacation benefit concessions appear in the Memorandum of Agreement reached between the Township and its firefighter units for the contract that expires on December 31, 2013. Accordingly, I find insufficient justification exists to award this aspect of the Township's proposal.

The third part of the Township's proposal is to require that vacation time be prorated in the final year of employment prior to retirement. It does not appear that this limitation exists in any of the collective negotiations agreements within the police and fire departments, nor that this modification has been proposed or achieved in the 2010-2013 agreements. Further, the Township has not established how its practice on this issue has impacted upon its finances or departmental operations. Accordingly, I do not award a change in the status quo during the term of this agreement.

Article XXI – Health Benefits

The parties currently operate under the terms set forth in Article XXI as follows:

The Township shall continue to provide a prescription plan for all members of the bargaining unit, providing benefits no less than currently in effect. The co-payment shall be increased to \$10.00

generic/\$20.00 name brand effective no later than January 1, 2008. All mail-in prescription orders shall be increased to \$2.00 per order.

All employees hired after January 1, 1996 who wish to participate in the dental and/or prescription plans provided by the Township will contribute fifty percent (50%) of the yearly premium cost, which is to be withdrawn from the Member's pay in equal payroll deductions.

If the Township self-insures these benefits, the participation fee shall be based on experience rate.

The Township shall pass the necessary resolution to the State Health Benefits Plan for participation in paid hospitalization for eligible retired members per rules and regulations of the State Health Benefits Plan to be effective January 1, 1989.

The Township has proposed the following modifications to the above provision:

- A. All PBA members hired after January 1, 2012 shall be required to pay for the cost of all health benefits, which shall include medical, prescription and dental benefits, after retirement from the Township.
- B. PBA members hired after January 1, 2012 shall receive coverage through the lowest tiered HMO plan; however, an individual may select a better plan by paying the difference in costs. After five (5) years, these employees will be permitted to move into higher tiered HMO plans.
- C. For active employees, upon retirement Health Benefit coverage may change after retirement as coverage for active employees is modified by negotiations or change of law.

Prior to evaluating the merits of the Township's proposals, I am compelled to note changes that have been made to employee health contributions as required by law. Both parties have referenced legislation requiring unit members to contribute required amounts of base salary towards health care benefits. The

employees are subject to P.L. 2010, Chapter 105 and P.L. 2011, Chapter 78 effective May 21, 2010 and June 28, 2011 respectively. Chapter 78 provides for specified amounts of employee health benefit contributions pursuant to a percentage schedule based upon a combination of the type of coverage the employee selects and the amount of base salary that employee earns. There is no dispute as to the applicability of these provisions to unit employees because the record did not close until July 2012 and the employees were subject to the statutory provisions at that time. This award must be consistent with law because N.J.S.A. 34:13A-16g(5) and (9) require the arbitrator to consider the Township's lawful authority and statutory limitations. One such legal requirement on the Township was to implement Chapter 78 in accordance with its terms. Thus, Article XXI must contain reference to the level of contributions unit employees have been and are required to make until such time that they are modified by law or negotiations. Accordingly, Article XXI shall add language reflecting that health care contributions for unit employees be consistent with that required by P.L. 2010, Chapter 105 and P.L. 2011, Chapter 78.

The modifications that the Township seeks in this proceeding are not consistent with the changes made to the health benefits provision in the firefighter agreements. The issues proposed by the Township include the elimination of Township paid benefits for active members upon their retirement, restrictions in the selection of the insurance plans offered by the Township's carrier and changes to the terms of coverage for active employees upon their

retirement if their existing terms become modified by negotiations or changes in the law. The Township, as noted above, is obligated to administer its program consistent with law and any such changes required by law would apply to unit members. Beyond that, the modifications proposed are inconsistent with the main theory advanced by the Township seeking substantial weight to be given to internal comparability between the fire and police departments. The weight to be given to internal comparability lends to the rejection of the Township's proposed modifications that are inconsistent with those achieved in the FMBA and FSOA agreements during this contract term. Further, the interests and welfare of the public are served by maintaining reasonable consistency as to medical insurance and retiree health benefits. Accordingly, I do not award the changes sought by the Township.

Article XX – Base Salary

The parties' proposals on across the board increases have been supported with comprehensive evidence. All of the evidence has been thoroughly reviewed and considered but will not be fully summarized within the confines of this analysis. The parties' overall perspectives have been previously set forth and are incorporated by reference into this section. The evidence includes, but is not limited to, workload, crime statistics, financial reports and replies from Chief Financial Officer John Gross and Joseph R. Petrucelli, CPA/CFF, testimony from PBA President Christopher Jacksic and Business Administrator John Sayers, extensive documentary evidence concerning internal

and external salary comparisons, summaries of overall compensation and benefits currently being received, the statutory limitations on increases in appropriations and revenues, the Township's demographics and socio-economic profile, the Township's official budgets and other budget documents including revenues, fund balances, debt, tax collection rates, tax rates, debt levels, state aid and funding, Township expenditures on contract terms, pensions and health insurance, and the general economic climate in the Township, the State and the nation between the expiration of the prior contract and the close of the record.

The entire record of this proceeding on the salary issue will, as required, be evaluated through application of the statutory criteria. All of the criteria are relevant, but not all are entitled to the same weight. The arbitrator must exercise judgment and discretion as to the weight to be given to each criterion.

The interests and welfare of the public [N.J.S.A. 34:13A-16g(1)] is entitled to the most weight because, directly or indirectly, it subsumes many of the other factors and their interrelationships. Overall, an award must further the interests and welfare of the public in order for it to represent a reasonable determination of the issues. This criterion is implicated in the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)], as well as the Township's statutory budgetary limitations (appropriations and tax levy caps) as set forth in N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9). The interests and welfare of the public also obligates the arbitrator to evaluate various types of

wage and benefit comparisons [N.J.S.A. 34:13A-16g(2)(a), (b), (c)] because comparisons to Township employees, employees similarly situated and private employees can be legitimate yardsticks from which to evaluate the reasonableness of the parties' proposals. Any comparability analysis also requires weight to be given to the comparison groups that are determined to be the most relevant. The interests and welfare of the public are also implicated in evaluating all of the contract changes to be made by the award because such changes can contribute to, or adversely impact on, the continuity and stability of the Township's police officers and the delivery of important services to the public. The cost of living criterion also implicates the interests and welfare of the public because it is one indicator measuring the impact of contract terms on a police officer's standard of living and that officer's morale which, in turn, could impact on that officer's motivation and productivity.

The Township places substantial emphasis on the relationship between its offer and the general economic conditions in the nation, the state and in the Township that surrounded the onset of the recession and impacted upon its budget. It points out that these facts were recognized by its other employees who did not receive wage increases in 2010 and 2011.

The record amply reflects that general financial conditions underwent major transition towards the end of 2008, extended into the last year of the parties' last contract year and into the first two years of the parties' proposals for

new contract terms in 2010 and 2011. Unemployment rates in Essex County rose sharply above 10% levels and the public increased its challenge to the existing tax rates in the face of declining home values. The Township's finances going forward showed a sharp departure from what it had experienced between 2000 and 2009. The PBA has established that the Township's finances were on solid footing during this time period because the Township benefited from rising tax rates that created significant revenue growth after 2000. The increasing revenues did enable the Township to increase its expenditures generally. This fact is evidenced by its ability to provide wage increases such as those in the prior agreement of 15.4% plus step movements over the four year contract that ended in 2009.

However, the evidence shows that budget conditions for the Township worsened in 2009, into the first two contract years of 2010 and 2011 and through the time that this record closed in mid 2012. The Township has established that it was forced to address spending and future expenditures based upon circumstances that were present at that time and, based upon those facts, it could not rely upon the assumptions and data that were present during the pre-recession period. As a result, the Township sought to lower expenditures due to sharp declines in its fund balance and because of stagnant or declining tax rates. Inasmuch as personnel costs made up 65% of the budget at a figure of \$45.6 million, the Township decided that it was compelled to make cost reductions in this area. A layoff plan proposing the layoff of thirty-five (35)

employees and the demotion of twenty-seven (27) employees was submitted to the Civil Service Commission in 2011 and approved. As indicated in the rosters in evidence, and in PBA President Jacksic's testimony, eight (8) police officers in this bargaining unit were laid off. The parties' respective final offers and their submissions for change in salaries must be considered within this factual context, as well as the PBA's contentions that the Township's offer is not comparable to the agreements it made in the fire units, that it would erode its external comparability standing in the County and that, in any event, the Township's finances were sufficiently healthy so as not to preclude acceptance of the PBA's proposals.

As previously indicated, one criterion raised by the PBA in its objection to the Township's offer is law enforcement comparability, especially in Essex Court. That evidence reflects wage increases in the range of 2% to 2.5% for contracts with contract years of 2010, 2011, 2012 and 2013. While these statistics appear accurate, they are a composite of contracts were negotiated at time periods not directly related to the same time period that this agreement was up for renegotiation. The more relevant focus must be on new contracts that were negotiated or awarded for 2010 and beyond rather than those that were negotiated prior to the financial downturn and carried forward increases into 2010 and beyond during the time of the robust economy that preceded the recession. The contracts that are more relevant to this proceeding that must be given the most weight are those negotiated in 2009 and beyond that reflect sharply

diminished salary increases, some of which included wage freezes. The PERC data supports this conclusion. Put another way, if the Township's proposals were to be viewed from the perspective of the pre-recession comparability evidence, the PBA's contention that they appear to be unreasonable and unwarranted would be more persuasive.

The Township has cited internal comparability in support of its salary proposals. This factor is a relevant consideration when evaluating the merits of the salary issue. The weight to be given to this criteria is dependent on the overall record. The application of this subsection of the statutory criteria, N.J.S.A. 34:13A-16(g)(2)(c), is well established in prior arbitration awards and PERC appeals. N.J.S.A. 34:13A-16(g)(2)(c) also has relevance that extends to other criteria, including the interests and welfare of the public and continuity and stability of employment. For example, In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008) the County objected to the arbitrator's application of § 34:13A-16(g)(2)(c) wherein he noted that the interest arbitrator must "consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern." In Somerset, internal settlements between the County and other law enforcement units were given significant weight by the arbitrator. The court rejected the public employer's contention that the arbitrator erred in his application of this factor and the weight to be accorded to that factor.

In this proceeding, the Township notes the significance of agreements with other public safety units that include the firefighters and fire officers. This contention warrants close scrutiny because PERC emphasized the requirement to consider internal comparability in a matter involving the County of Union v. Union County Corrections Officers, PBA Local 999, PERC No. 2003-33. In that case, the County appealed an award that did not consider internal comparability and this failure resulted in a remand wherein PERC stated:

N.J.S.A. 34:13A-16g(2)(c) requires arbitrators to compare the wages, salaries, hours and conditions of employment of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with “other employees generally” in the same jurisdiction. Thus, this subfactor requires the arbitrator to consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern. See N.J.A.C. 19:16-5.14(c)(5) (identifying a “pattern of salary and benefit changes” as a consideration in comparing employees within the same jurisdiction). Pattern is an important labor relations concept that is relied upon by both labor and management.

In addition, a settlement pattern is encompassed in N.J.S.A. 34:13A-16g(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. In that vein, interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. Compare Fox v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994) (in applying N.J.S.A. 34:13A-16g(8), arbitrator should have considered the effect of an award on employees in other units); see also Anderson, Krause and Denaco, Public Sector Interest Arbitration and Fact Finding: Standards and Procedures, 48.05[6], contained in Bornstein and Gosline Ed., Labor and Employment Arbitration (Matthew Bender 1999) (citing arbitrators’ statement that their award, which took pattern into account, would prevent disruption of future employer-

wide negotiations and also commenting that arbitrators are generally hesitant to award increases that would disturb a pre-arbitration settlement pattern absent a showing that a break in the pattern is required to address a specific problem).

After the interest arbitrator issued his second award on remand, Union County filed a second appeal. PERC once again ordered a remand explaining:

[T]he arbitrator did not make explicit findings as to whether or not there was a settlement pattern with respect to health benefits and salary – or either of those items. Nor did he make findings as to whether the settlements differed from the offer to this unit or analyze the significance of any differences. These are critical omissions because, as we explained in Union Cty., the existence – or not – of a pattern is an element that should be considered in determining the weight to be given internal settlements and in assessing the effect of an award on the continuity and stability of employment. 28 NJPER at 461. Further, Union Cty. stated that the Reform Act requires the arbitrator to explain the reasons for adhering or not adhering to any proven settlement pattern. Without specific findings as to the existence, nature or scope of an alleged settlement pattern, we cannot evaluate whether the arbitrator fulfilled that function.

There is no dispute that the record reflects that no adjustments were made to the salary schedules in the two firefighter units during 2010 and 2011. In addition, there is no evidence that any Township employee in any bargaining unit received any salary increase in 2010 and 2011 other than step movement. The Township defines its proposal as extending this pattern to the PBA along with across the board increases of 2% in 2012 and 2% in 2013. This was the amount of increases in the fire units for those years. None of the precedent cited above requires that overriding weight be given to internal settlements but it requires that they be examined and weighed. It further suggests that if there is an internal

settlement pattern, any deviation that is awarded must be accompanied by reasons that explain non-adherence.

The first such issue for evaluation is the Township's finances which are said to have contributed to the terms that make up the alleged internal settlement pattern. Despite PBA evidence that provides conflicting claims and interpretations as to the Township's financial health, I am compelled to conclude that the across the board increases offered by the Township more closely reflect its altered financial circumstances and the statutory criteria in general than do the PBA's proposals that primarily cite external comparability statistics without specific regard to the changed financial profile of the Township. The PBA's financial reports do show that the Township had the lawful ability to appropriate more money than it did in 2010 and 2011 and also that it had the lawful ability to raise taxes to fund increased appropriations. The reports also show that the Township could have used some of its declining fund balance to fund a greater salary increase. The fact that the Township did not raise taxes, increase appropriations or use fund balance to support the PBA's proposals were reasonably based upon its decision to not increase the level of taxation on the public at the time, the need to fund the increase in tax appeals, the declines in real estate ratables and the Township's need to draw down on its fund balance to finance its overall appropriations requirements going forward.

In short, I do not find that there is sufficient evidence that would support a deviation or non-adherence to the settlement terms the Township achieved with its fire units as to the across the board increases. However, I also find that the Township's proposal falls short of meeting those settlement terms and contains concessionary demands on the PBA that are also inconsistent with those settlement terms. This award must be crafted to meet a standard that there be reasonable consistency between the public safety units. It is significant that, in the past, the Township sought weight to be given to an internal settlement pattern to contest a proposal that was advanced by FMBA Local 28 in a prior interest arbitration proceeding before this arbitrator. In that proceeding, the FMBA's proposal to achieve a greater salary increase that had been voluntarily negotiated between the Township and PBA Local 25 was primarily rejected because the FMBA proposal deviated from the terms of the PBA agreement. [See Township of West Orange and FMBA Local 28, Docket No. IA-2007-001, June 4, 2009]. Substantial weight was given to the terms of the PBA agreement when determining the salary award for the FMBA and similar weight must be given in this proceeding to the terms of the FMBA agreement when deciding the terms for the PBA Agreement.

The weight that I have given to internal settlements requires that there be substantial similarity, or reasonable consistency between this award and the terms of the internal settlements. Because the PBA and FMBA contracts differ in many key respects such as in their respective work schedules, salary schedules

and stipends and certain comparisons are not easily apparent. The most obvious comparison when evaluating changes to existing contract terms are the changes that are made to base salary and pensionable compensation items, as well as any concessions or reductions in contract terms.

The Township's proposals to freeze PBA members at their present step, to eliminate longevity for new hires and to freeze the current value of longevity for present employees during the term of the Agreement are inconsistent with the terms of the internal settlements and, for this reason, are denied during this contract term. The Township's salary proposals as to across the board increases are awarded. This will result in no changes to the salary schedule in 2010 and 2011 followed by increases of 2% in 2012 and 2013 to each step of the salary schedule. I am persuaded that two (2) additional steps be added to the salary schedule for new hires after the date of this award. This change is warranted in this case based upon the record that shows staff reductions in PBA personnel. The extension of two steps to the schedule will provide an incentive to expanding the police force if that is deemed necessary for the Township to continue to provide effective police services.

I next address the comparability of increases to pensionable items that were negotiated between the FMBA and the Township but have not been proposed to the PBA. The fire settlements included a change from a 2% stipend for an EMT certification to a \$3,000 stipend. This stipend is a pensionable base

salary item and the increase supplemented the across the board salary increases. The Township's last offer to the PBA, although premised upon changes to the prior agreements based upon internal comparability, contains no additional considerations to the PBA beyond across the board salary increases of 2% in 2012 and 2013. The Township cannot reject the PBA's claim for across the board increases beyond what the FMBA achieved while simultaneously failing to provide contract terms containing a similar level of value to the contract terms that it agreed to with the FMBA.

The most appropriate basis to provide such consistency is the award of an equity adjustment stipend of \$1,250 that is pensionable, but not compounded by base salary increases effective in the amount of \$625 on January 1, 2012 and an additional \$625 effective January 1, 2013. This amount is reasonably commensurate with the totality of base salary and pensionable increases by dollar amount stipends comport with the internal settlement pattern.

Accordingly, and based upon all of the above, Article XX shall be revised to reflect the following:

- 1) Effective January 1, 2010, the salary schedule shall remain as is through December 31, 2010. Officers eligible for step movement shall advance to the next step on the salary schedule.
- 2) Effective January 1, 2011, the salary schedule shall remain as is through December 31, 2011. Officers eligible for step movement shall advance to the next step on the salary schedule.

- 3) Effective January 1, 2012, all steps on the salary schedule shall be increased by 2.0%. Those employees eligible for advancement to the next step on the salary schedule shall advance to the next step on the salary schedule.
- 4) Effective January 1, 2013, all steps on the salary schedule shall be increased by 2.0%. Those employees eligible for advancement to the next step on the salary schedule shall advance to the next step on the salary schedule.
- 5) Effective January 1, 2012, all members of the bargaining unit shall receive a \$625 annual stipend as part of their pensionable base salary. This sum shall not be increased based upon any future negotiated increase to the salary schedule.
- 6) Effective January 1, 2013, all members of the bargaining unit shall receive an additional \$625 annual stipend (totaling \$1,250) as part of their pensionable base salary. This sum shall not be increased based upon any future negotiated increase to the salary schedule.

The costs of the award are within the Township's spending and tax levy cap statutory limitations and will not cause adverse financial impact on the governing body, taxpayers and residents.

Accordingly, and based upon all of the above, I respectfully submit the following Award:

AWARD

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

2. **Duration**

There shall be a four-year agreement effective January 1, 2010 through December 31, 2013.

3. **Article VII – Overtime**

The Line Detective stipend shall be increased to \$1,250 effective January 1, 2012 and \$1,500 effective January 1, 2013.

4. **Article XXII – Court Time**

Effective upon completion of the workday on December 31, 2013, Section 2 and Section 3 shall read as follows:

Section 2. When members are required to use their personal vehicles to attend as a witness, and not as a party, in any court or administrative agency, with the exception of municipal court, he shall receive 50¢ per mile reimbursement.

Section 3. Members who attend as a witness, and not as a party, any court or administrative agency, with the exception of municipal court, shall receive \$6.00 lunch and \$1.25 parking allowance.

5. **Article XXI – Health Benefits**

Health care contributions for unit employees be consistent with that required by P.L. 2010, Chapter 105 and P.L. 2011, Chapter 78.

6. **Salary**

Effective January 1, 2010, the salary schedule shall remain as is through December 31, 2010. Officers eligible for step movement shall advance to the next step on the salary schedule. Effective January 1, 2011, the salary schedule shall remain as is through December 31, 2011. Officers eligible for step movement shall advance to the next step on the salary schedule. Effective January 1, 2012, all steps on the salary schedule shall be increased by 2.0%. Those employees eligible for advancement to the next step on the salary schedule shall advance to the next step. Effective January 1, 2013, all steps on the salary schedule shall be increased by 2.0%. Those employees eligible for advancement to the next step on the salary schedule shall advance to the next step.

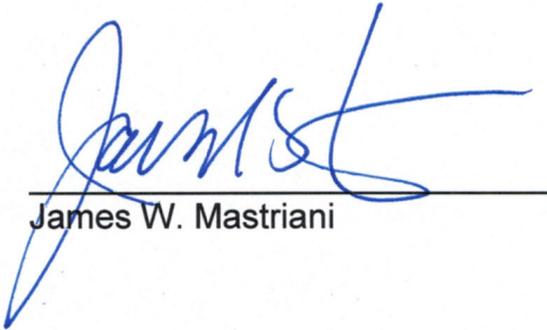
All increases shall be retroactive to their effective dates. All increases shall be at each step of the salary schedule and shall,

except for those who have voluntarily resigned or have been separated from employment without good standing, apply to all unit employees and those who have retired on normal or disability pension.

Effective January 1, 2012, all members of the bargaining unit shall receive a \$625 annual stipend as part of their pensionable base salary. Effective January 1, 2013, all members of the bargaining unit shall receive an additional \$625 annual stipend (totaling \$1,250) as part of their pensionable base salary. The stipends shall not be increased based upon any future negotiated increase to the salary schedule. Officers who separate from employment in good standing during each calendar year shall receive the annual stipend on a prorated basis.

Effective on the date of this Award, there shall be a new hire salary schedule adding two (2) annual additional steps to be calculated in equal dollar amounts.

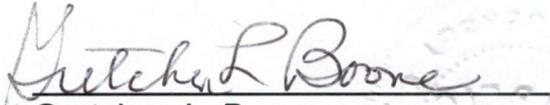
Dated: February 28, 2014
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 28th day of February, 2014, before me personally came and appeared James W. Mastriani 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.



Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2014

