

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

IN THE MATTER OF THE INTEREST ::
 ARBITRATION ::

DOCKET NO. IA-2013-016

 between ::

CITY OF ATLANTIC CITY, NEW JERSEY ::

 Public Employer, ::

DECISION

 -and- ::

AND

ATLANTIC CITY POLICE BENEVOLENT ::
 ASSOCIATION, LOCAL 24 ::

AWARD

 Employee Organization ::

BEFORE: MICHAEL J. PECKLERS, ESQ., INTEREST ARBITRATOR

DATE OF HEARING: March 18, 2013

POST-HEARING BRIEFS: March 25, 2013

DATE OF AWARD: April 11, 2013

APPEARANCES:

For the City of Atlantic City

 Steven S. Glickman, Esq., RUDERMAN & GLICKMAN, P.C.

For the Atlantic City PBA Local 24

 Mark Belland, Esq., O'BRIEN, BELLAND & BUSHINSKY, L.L.C.
 Jeffrey R. Caccese, Esq. "

I. BACKGROUND CONSIDERATIONS

The City of Atlantic City is a seaside community located in Atlantic County, New Jersey. Union Exhibit 3 Tab 5 contains an excerpt from the OFFICIAL WEBSITE. This confirms that Atlantic City has had a long and varied history. Comprised of roughly 11 square miles, Atlantic City formally opened to unprecedented fanfare on June 16, 1880. According to the census of 1900 there were over 27,000 residents, which was an increase from just 250 recorded in the 45 years before. Entertainers from vaudeville to Hollywood performed on the piers and at Atlantic City's glamorous hotels.

The Miss America Pageant which was held in Atlantic City intermittently from 1930 - 1935, began to be held at Convention Hall in 1940 and became synonymous with it. At the conclusion of World War II, Atlantic City suffered a general deterioration with a decline in tourism. *See generally*, HISTORY OF ATLANTIC CITY, by Barbara Kozek. *Ibid*.

The 1976 adoption of the Casino Gambling Referendum by the New Jersey State Legislature continued the now upward battle that had begun over 100 years earlier. In addition to serving as a resort destination, Atlantic City functions as the gaming capital of the East Coast. Union Exhibit 3. *Id* at Tabs 5 & 9.

Notwithstanding the fact that there are less than 40,000 residents, Atlantic City attracts more than 30,000,000 visitors annually. For 2011, the South Jersey Transportation Authority & NJ Transit reported this included 24,293,056 trips by automobile; 3,223,655 trips by casino bus; 448,756 trips by NJ Transit bus;

282,210 trips by air; and 205,365 trips by rail. *Id.* at Tabs 15-16. Additionally, approximately 40,000 individuals commuted to work in Atlantic City on a daily basis.

There are currently 12 high-rise casino hotel resorts employing 32,823 employees in 2011 and generating \$3,318,000,000 in revenue for 2011 prior to the opening of *Revel* last year. *See* AMERICAN GAMING ASSOCIATION website, *Id.* at Tabs 9, 11, 12, 15. This ranks Atlantic City second to only Las Vegas, on the American Gaming Association's TOP 20 U.S. CASINO MARKETS BY ANNUAL REVENUE. *Ibid.* On February 1, 2011 New Jersey Governor Chris Christie signed into law sweeping legislation that was designed to revitalize the ailing gaming and tourism industries in Atlantic City. Bill S-11 authorized the creation of a tourism district, while S-12 provides for the modernization of New Jersey's casino regulatory structure. *Id.* at Tab 18.

The Atlanticare Regional Medical Center, the Atlantic City International Airport, and numerous heliports are also found within the City's borders. Educationally, there is the Atlantic City High School, public & private elementary/middle schools, as well as the Atlantic City Free Public Library. The Richard Stockton College of New Jersey and Rowan University are within proximity, in addition to several county colleges. Atlantic City additionally has an outlet shopping district, and many restaurants. *Id.*, at Tab 9.

The Atlantic City Police Department is included within the Department of Public Safety, and consists of approximately 330 sworn police officers. *See* City

Exhibit 2, Tab 2 sub tab 2. The Atlantic City Police Benevolent Association, Local 24 ("the PBA" or "the Union") serves as the majority representative for purposes of collective bargaining purposes for those individuals holding the rank of Police Officer, Sergeant, and Lieutenant. The parties are signatories to a Collective Bargaining Agreement, covering the duration of January 1, 2008 through December 31, 2012. *See* Union Exhibit 3, Tab. 4.

Following the City's initiation of an interest arbitration petition which P.E.R.C. ultimately found premature, the parties engaged in negotiations over a successor agreement on October 5, 2012, October 24, 2012 and December 21, 2012. On January 24, 2013, Atlantic City filed the instant PETITION TO INITIATE COMPULSORY INTEREST ARBITRATION per N.J.S.A. 34:13A-15 *et seq.* with "P.E.R.C." The PBA had previously filed an unfair practice charge, which is currently pending.

By letter dated February 25, 2013, P.E.R.C. notified counsel that an interest arbitration petition had been filed and processed, in addition to my random selection and appointment to act as interest arbitrator, pursuant to N.J.S.A. 34:13A-16e (1). A hearing was held at City Hall in Atlantic City, on March 18, 2013, with the parties afforded a full opportunity to engage in oral argument; to introduce comprehensive documentary evidence; and to undertake the direct and cross-examination of witnesses under oath. By virtue of a stipulation crafted in the recent SOA interest arbitration, the testimony concerning Atlantic City's finances provided by Mr. Foti and Mr. Stinson, shall be applied to the instant case.

1

While informal mediation was conducted and failed to resolve all issues, a number of items were agreed to, which have been incorporated into this AWARD. These included: the City withdrew its proposals related to Article III, MANAGEMENT RIGHTS and Article V, GRIEVANCE PROCEDURE; the PBA agreed to the City's proposal on Article XIII, SPECIAL LEAVES, which provided for 5 *consecutive* working days of paid leave commencing between the day of death and the day of the funeral; the City agreed to the inclusion of the words *Domestic or Civil Union partner*, within the definition of "immediate family," and that the 250 miles would be calculated based on vehicular travel using MapQuest; the City withdrew its proposal related to Article XXIV, WORK WEEK; the PBA agreed that the PERSONNEL OFFICER language of Article XXVIII would be incorporated into Article XXII, PERSONNEL COMMITTEE, while the City withdrew its proposal to delete the same; the PBA accepted the City's proposal to delete the Personnel Officer language from subparagraph 6 of Article XXIX, SICK AND INJURED, with Atlantic City withdrawing its proposal related to deleting subparagraph 7e in its entirety; the City withdrew its proposal related to Article XXXII DENTAL PRESCRIPTION AND OPTICAL. An additional stipulation was also reached that the

1

My notes from the March 18, 2013 hearing written on the face of the City's proposals indicate that the Article III, MANAGEMENT RIGHTS as well as the Article V, GRIEVANCE PROCEDURE proposals were withdrawn. The PBA also references the same in its brief. I have accordingly not considered the arguments advanced in this regard in the City's brief. Even were this not the case, they would have been denied as no testimony or evidence was adduced in support of the proffered modifications. Atlantic City additionally withdrew its Article XXIII, OFFICERS ASSIGNED TO INVESTIGATIVE UNIT proposal in its brief.

testimony of Michael Stinson and Vincent Foti from the SOA interest arbitration hearing would be incorporated into the instant PBA case.

Post-hearing briefs were filed on March 25, 2013. In rendering this AWARD as provided for by my conventional authority pursuant to law, I have fully analyzed and carefully considered the respective Final Offers under the required statutory criteria, and issued the same within the 45 day time period prescribed by N.J.S.A. §34:13A-16f(5).

II. FINAL OFFERS OF THE PARTIES WITH SUPPORTING POSITIONS & AWARD ON EACH

The positions of the parties with their Final Offers on all open issues and supporting argument are initially summarized. The reply by the opposing side then follows in italics. Thereafter, my AWARD on each issue is contained in a text box. These considerations are later incorporated by reference and specifically addressed with respect to the identified statutory criteria in Section III, STATEMENT OF THE CASE.

The Atlantic City Police Benevolent Association, Local 24

The Atlantic City Police Benevolent Association, Local 24 (hereinafter "PBA" or "Union") is comprised of employees employed by the City of Atlantic City Police Department in the titles of Lieutenant, Sergeant, and Police Officer, which accounts for the vast majority of the Atlantic City police force. There are currently only approximately 330 sworn police officers in the Department, however, there have been as many as 420 officers. The value of this particular bargaining unit to

the City of Atlantic City as well as its residents is immeasurable. The PBA bargaining unit members are the heart of the Atlantic City Police Department. These members put their lives on the line everyday to ensure that the City residents, employees, and the tourists are safe. Despite the fact that the size of the police force has been reduced, the work has remained unchanged, which places greater stress and more work on these valued City servants.

It is these dedicated law enforcement officers who protect and serve the health, welfare and safety of the City. Nevertheless, the City administration is so vindictive and determined to prove a point that they are attempting to gut the Collective Negotiation Agreement (hereinafter "CNA" or "Agreement") with the PBA to the detriment of the City as a whole. In that regard, it is evident that the City is seeking to payback the PBA by riding the tide of the current attack on public employees in the State of New Jersey and the highly publicized siege on public workers collective bargaining rights in the State of Wisconsin and across the Nation.

The City's draconian final proposals seek concessions so outrageous that, if implemented, would make it improbable that any current law enforcement officer of the City would even consider a promotion in rank and assume the significant responsibilities that go along with achieving that rank. This would leave the City without the necessary law enforcement leadership required to effectively run the Police Department. Such a result would jeopardize the integrity of the Police Department, which, in turn, would make it impossible to properly serve the City,

including the casino and tourism industry that the City and the State so heavily rely upon. Instead, the proposed concessions would dramatically demoralize the current PBA membership making it difficult to maintain the high level of service that these law enforcement officers currently provide. Atlantic City's proposal would, in essence, eviscerate the benefits which have been negotiated over many decades.

Conversely, the PBA's proposals simply seek a modest pay increase in an effort to keep pace with the cost of living (including increased medical cost share) over the term of the CNA as well as to clarify the contract and add one vacation and sick leave day. As set forth more fully below, the PBA has provided the necessary and compelling evidence to warrant granting its more than reasonable proposals. On the other hand, Atlantic City's proposals will only serve as a detriment to the PBA, the City, its residents and the entire casino industry. Accordingly, the City's proposals must be denied.

PROCEDURAL HISTORY

The City's Department of Public Safety operates a Police Department comprised of approximately three hundred thirty (330) law enforcement officers. *See* City Exhibit 2, Tab2, sub tab 2. The exclusive bargaining representative of employees within the City Police Department in the titles of Lieutenant, Sergeant and Patrolman is the PBA. *See*, U Exhibit 3, Tab 1. In that capacity, the PBA and Atlantic City are parties to a CNA which expired on December 31, 2012. *Id.* at Tab 4. Notably, prior to the expiration of the CNA and before the parties engaged

in any significant negotiations whatsoever, on or about November 5, 2012, the City filed a petition to initiate compulsory interest arbitration with the New Jersey Public Employment Relations Commission (hereinafter "P.E.R.C."). In response to the City's untimely petition, the PBA objected to the filing of the City's petition as premature. P.E.R.C. correctly recognized that the petition was premature, and did not process the petition. The PBA additionally filed an unfair labor practice charge with P.E.R.C. asserting violations of the Employer Employee Relations Act (hereinafter "EERA") due to the City's bad faith negotiation tactics and anti-union conduct. That charge is currently pending and will be processed by P.E.R.C.

Nevertheless, in a good faith effort to reach an agreement with the City on a successor CNA, the PBA engaged in 3 negotiation sessions. Unfortunately, the City was unnecessarily, but not surprisingly, inflexible in negotiating or modifying the terms of its outlandish proposals. The Atlantic City position in each session was that it would only accept a negotiated agreement with no salary increases. **The City's position on no salary increases remained steadfast despite the good faith willingness of the PBA to negotiate reasonable modifications consistent with the recent IAFF Interest Arbitration Award.** As a result, on January 16, 2013, the instant petition initiating compulsory interest arbitration was filed by the City with P.E.R.C. *See* City Exhibit 1. Thereafter, final proposals were exchanged by the parties and the arbitration hearing was held on March 18, 2013. *See* Union Exhibit 3, Tabs 2 & 3. [*emphasis supplied in original document*].

STANDARD OF REVIEW

Interest arbitration is a statutory method of resolving collective negotiation disputes between police and fire department employees and their employers. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 80 (1994). The Employer Employee Relations Act (hereinafter "EERA") sets forth nine (9) factors that the arbitrator must consider in issuing an interest arbitration award. N.J.S.A. 34:13A-16(g)(1)-(9); *see also Hillsdale, supra* at 82. The nine (9) factors are as follows:

* * *

In general, the relevance of a particular factor depends on the disputed issues and the evidence presented. Hillsdale, supra at 82. The arbitrator is not required to rely on all of the factors, but only the ones that the arbitrator deems relevant. *Id.* at 83. It is the arbitrator who should determine which factors are relevant, weigh them, and explain the award in writing. *Id.* at 82. However, an arbitrator should not deem a factor irrelevant without first considering the relevant evidence. *Id.* at 83. In issuing an award, arbitrators are required to weigh the relevant factors and explain why the remaining factors are irrelevant. *Id.* at 84. In sum, an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why the other factors are irrelevant. *Id.* at 85.

In this case, the PBA has introduced sufficient evidence to support the award of its minimal final proposals. On the other hand, Atlantic City has failed to

provide sufficient evidence, and in fact offered no evidence, to support its plethora of baseless and vindictive proposals. Therefore, all of the City's proposals must be denied.

LEGAL ARGUMENT

The PBA's good faith efforts to negotiate a successor CNA: sought only to update the Article XIII Investigative Unit Proposal to include all of the appropriate titles covered by the Article, in order to comport with practice and settlement agreements between the parties; minimally add to the vacation and sick leave allotments in order to ensure that all officers are treated equally; and a modest increase that would be below the cost of living. *See* Union Exhibit 3, Tabs 7 & 8.

Atlantic City on the other hand seeks to eviscerate the CNA in its current form by requiring the PBA members to accept a significant pay decrease despite its acknowledgement of the members' hard work and dedication. In that regard, the City took a hard line on their negotiating position and, in essence, collectively slapped the dedicated PBA membership in the face. Incredibly, the City has, in bad faith, proposed to reduce terminal leave benefits, reduce vacation leave, reduce overtime pay, freeze and reduce longevity, reduce educational incentives, and to reduce the wages of current members and further reduce wages for new and promoted members. The City has even gone so far as to seek the elimination of the position of PBA President as it stands today, in an effort to weaken the Union, so the City can run roughshod over the bargaining unit.

If that were not enough, the City seeks to slash the overall compensation of

police officers to a level where their compensation package will be significantly lower than all other comparable jurisdictions. The City's proposals seek to overhaul the entire agreement to the detriment of the PBA in every way, as if there existed no history of bargaining for benefits at any time between these 2 parties. Further, the Atlantic City proposals are not only an insult to the law enforcement officers within the Atlantic City Police Department, but are an insult to all law enforcement officers in the State of New Jersey who risk their lives to protect and serve the citizens of this State.

As the Arbitrator is aware, a little over six (6) months ago the bargaining unit representing Atlantic City Firefighters, IAFF Local 198, was involved with an interest arbitration with the City resulting in an Interest Arbitration Award (hereinafter "IAFF Award"). *See* Union Exhibit 3, Tab 42. Even more recently, one week ago the bargaining unit representing the Atlantic City Superior Officers' Association ("SOA"), which is the bargaining unit representing law enforcement officers in the title of Captain, received an Interest Arbitration Award ("SOA Award"). These two awards when read together have created a roadmap for this case.

Traditionally, the City Firefighters and Police had maintained relative parity in terms of wages and benefits. Notably, as the result of the IAFF and the SOA Awards, both the IAFF and the SOA received the maximum increase permissible under the statutory hard cap of 2%. *See* N.J.S.A. 40A:4-45.45; N.J.S.A. 34:13A-16(g)(9); Union Exhibit 3, Tab 42. In comparison to this matter, the City's

proposals in the IAFF and SOA arbitrations related to benefits such as vacation leave, education incentive, wage scale and other contractual benefits were similar, if not identical. Therefore, the IAFF Award and the SOA Award have created a fairly comprehensive template for nearly all of the City's proposals in the current arbitration.

Significantly, however, the IAFF Award was modified by mutual agreement between the IAFF and the City through a subsequent Memorandum of Understanding ("IAFF MOU"). See Union Exhibit 3, Tab 43. The IAFF MOU revised the IAFF Award in order to avoid compression between the ranks within the Department that ultimately would serve as a disincentive for employees seeking promotions. The focus of the IAFF MOU was Education Incentive, Longevity, Vacation Leave, and Wage Scale and clearly articulated the City's position that the modifications in these areas by the Award applied only to new hires who were later promoted. *Ibid.*

Importantly, the Arbitrator deemed it appropriate to incorporate the IAFF MOU into the SOA Award. By doing so, it would be inconsistent and in direct contravention of established precedent not to incorporate the same terms into the PBA Award as well. Thus, if the Arbitrator deems it appropriate to follow the IAFF Award and the SOA Award template, it is imperative that the IAFF MOU be incorporated as was done in the SOA Award. This will maintain parity, avoid potential inequities, and steer away from disincentives for promotions, which would decimate the rank structure. **Simply stated the IAFF MOU and its**

incorporation into the SOA Award constitutes compelling precedent and a binding pattern of settlement which cannot be ignored. [*emphasis supplied in original*].

Lastly, the City's attempts must fail because the City is unable to or flatly failed to produce any evidence to support its draconian proposals. If implemented, the proposals would undoubtedly destroy the morale of the current membership and make it much more difficult for the Police Department to recruit highly qualified Police Officers to effectively serve Atlantic City and the businesses that support the City. In fact, even the City acknowledged its ability to pay the PBA's wage proposal during the hearing. This shows that the City's proposals, which seek to slash and burn the PBA compensation package, are not based on need, but, rather, are nothing other than vindictive. Accordingly, the Arbitrator should award the PBA proposals and strike down each of the City's proposals. Alternatively, the Arbitrator should follow the IAFF Award, with the IAFF MOU incorporated, and the SOA Award.

1. **PBA's FINAL PROPOSAL SHOULD BE AWARDED AS IT IS IN THE BEST INTEREST OF THE MEMBERSHIP, THE CITY, AND THE PUBLIC.**

A. *The PBA's Article XXII Investigative Unit Proposal Seeks Only To Memorialize The Current Practice And Agreement Between The Parties. Therefore, It Should Be Granted.*

The PBA's Investigative Unit Proposal is meant only to clarify any ambiguities by memorializing in the CNA the job titles that are permitted to receive additional compensation resulting from being in an investigative title. In particular, the PBA is seeking to add Forensic Investigators, Accident Investigators, and

Special Investigators to the list of titles already set forth in Section A of Article XXII. Furthermore, in an effort to memorialize the agreement between the parties, the PBA is proposing to add language to Section E of the Article providing officers the continued right to receive the additional pay for investigative duties when those officers are returned to uniform duty but still perform their investigative duties.

By way of explanation, the parties entered into a Settlement Agreement on October 7, 2008, in which the City agreed that an Accident Investigator was entitled to the salary differential under Article XXII, since he was assigned to an investigative unit. In pertinent part, the Settlement Agreement states that "the parties agree that Officer Cupani is entitled to the 3% salary differential under Article XXII of the parties' collective negotiation agreement entitled Officers Assigned To The Investigative Unit, as modified by the agreement between the parties dated 7 October 08."

As PBA President Paul Barbere explained during the arbitration hearing, Officers who perform investigative duties have specialized training and skills for which they are compensated. If these officers perform the additional, specialized investigative duties, they have the right under the contract to be compensated for performing those duties. There is no question that the bargaining unit members in the title of Forensic Investigator, Accident Investigator, and Special Investigator all perform these investigative duties. Furthermore, the uncontroverted testimony established that all of these titles currently receive the additional pay for performing such duties. As such, the PBA is only clarifying the Article XXII language by adding

these titles to the list of titles entitled to pay under the Article, understanding that they already receive the pay and the parties have previously agreed they should, in fact, receive the pay.

Moreover, President Barbere explained that the situation arose in the past in which Officers were returned to uniform duty but continued to perform their previous investigative duties. The parties resolved the issue by agreeing that the officers would be paid. The PBA by proposing to amend Section E of Article XXII, is attempting to avoid a similar scenario, in which the City in an effort to save money and do an end around the requirement of the CNA, returns bargaining unit members in investigative roles to uniform duty, but continues to utilize their specialized training to have them perform investigative work. This proposal is accordingly only meant to memorialize the understanding of the parties and to prevent the City from trying to avoid its responsibilities based on technicalities. Based on the foregoing, the PBA's Investigative Unit proposal must be granted.

The City acknowledges that the PBA demands additional language be added to the Collective Bargaining Agreement incorporating the parties' agreement with respect to the investigative differential. Atlantic City contends that the demand allegedly purports to incorporate the parties' existing agreement into the CBA. The City agrees to incorporate the parties' understanding into the successor agreement. However, the Interest Arbitrator cannot do anything but suggest the parties incorporate their agreement, since there has been no specific language proposed or evidence presented on specific language.

AWARD: This proposal is not awarded. I have no issue with the common sense nature of the same. However, as the proponent of this modification, only cursory testimony was provided by President Barbere as to justification. The record reflects that the parties entered into a Settlement Agreement on October 7, 2008 regarding the Article XXII 3% differential. As the City has agreed to incorporate the parties' understanding into the CBA, I recommend they do so.

B. The PBA's Article XXIX Sick Leave Proposal Should Be Granted To Allow All Bargaining Unit Members To Be On Equal Footing.

The PBA is proposing to increase the number of sick hours to 120 annually for all members not currently receiving that many hours. Currently, a portion of the membership (those hired before March 22, 1999) receive 120 sick hours per year, but others hired after that date only receive 100 sick days per year. In an effort to avoid the inequities that arise from one police officer performing the same duties as another police officer but receiving a greater sick leave benefit, the PBA is seeking to place all bargaining unit members on equal ground.

President Barbere ably explained that it would create a difficult environment for police officers who are performing the same duties to receive different benefits. It follows that morale issues will result when an officer receives lesser benefits. For that reason, the PBA is seeking to level the playing field in order to avoid such acrimony, in an effort to create a more harmonious police force. Such a result benefits both the bargaining unit and the City, and therefore should be granted.

Atlantic City counters that no argument may be made based on comparability that would justify the need to increase the number of sick days received. With respect to the Union's position that "two-tiered" benefits create a morale problem, the City submits that the PBA failed to present any evidence in support of this argument. And if the PBA is correct, then virtually every municipality whose contract was introduced for "comparability", as well as the vast majority of municipalities in the State have morale problems and problems with recruiting, since most municipal police contracts have two-tiered benefit and compensation packages.

AWARD: This PBA proposal is denied, as it was not supported by substantial, credible evidence. The City argued that many if not all of the municipalities cited have two-tiered benefit plans, and no comparability necessity has been demonstrated. The arbitral trend is toward a reduction of emoluments, and the SCI Report frequently cited by the City discusses perceived exorbitant benefits received by the public sector. Our legislature has also made its feelings clear.

C. Similar To The PBA Sick Leave Proposal, The Article XXX PBA Vacation Proposal Should Be Granted In Order To Avoid The Resulting Inequities.

Similar to the Sick Leave Proposal, the PBA Vacation Proposal seeks to even the playing field by adding 1 vacation day per year. This proposal only affects police officers who reach their sixth year of employment. Accordingly, the PBA is only seeking to revise Section B of Article XXX by changing "24 days per year" to "25 days per year" on the sixth year of employment and thereafter.

Seeking to add 1 vacation day for certain employees is essentially a de minimus proposal. Moreover, the reasoning behind the proposal is sound. There are certain police officers who receive 25 vacation days per year while other police officers receive 24 vacation days per year. President Barbere credibly testified concerning the inequity between police officers performing exactly the same duties but receiving different benefits. Frankly, such a scenario creates tension between employees and does not serve to benefit either the employee or the employer. Accordingly, in order to create a more equitable work environment, the PBA's Vacation Proposal should be granted.

AWARD: This PBA proposal is not awarded for the reasons previously expressed concerning the sick leave proposal. That reasoning, as well as the arguments advanced by Atlantic City in opposition to the same, are incorporated by reference herein, as if set forth at length.

D. The PBA Salary Proposal Concerning The Salary Guide Must Be Granted Because The City Has The Ability To Pay And It Falls Within The Statutory Requirements.

The PBA Salary proposal is a 2 part proposal. The first part reflects the PBA's proposal for salary increases over the life of a successor CNA. The second proposal is the PBA's proposal concerning the salary guide for new hires in the wake of the IAFF Award and SOA Award. More specifically, the PBA is seeking that the salary guide for all employees, including new hires, remain intact. However, if the Arbitrator revises the salary guide for new hires, as was the case with the IAFF Award, the alternate salary guide of the PBA should be implemented. Finally, as discussed during the hearing, there is a group of new recruits who were recruited and agreed to employment based on the terms of the now expired CNA, who should be red circled in terms of salary and benefits in the event it is determined that the salary guide and benefits for new hires must be changed. The current salary guide for the PBA is as follows:

POLICE OFFICERS

<u>Step</u>	<u>Salary</u>
1	\$58,883.00
2	\$61,208.00
3	\$63,532.00
4	\$70,311.00
5	\$77,090.00
6	\$83,870.00
7	\$95,231.00

SERGEANTS

\$108,983.00

LIEUTENANTS

\$118,385.00

While the PBA does not believe the salary guide should be changed for new hires, in the event the Arbitrator deems it appropriate to do so, the below salary guide proposed by the PBA will provide the City an immediate and long term cost savings while allowing Police Officers to maintain the same top end wages, with Sergeants and Lieutenants remaining at the current rates.

POLICE OFFICERS' PROGRESSION2013

<u>Step</u>	<u>Salary</u>
1	\$45,000.00
2	\$50,739.00
3	\$56,586.00
4	\$62,379.00
5	\$68,172.00
6	\$73,965.00
7	\$79,758.00
8	\$85,551.00
9	\$91,344.00
10.	\$97,137.00

2014

<u>Step</u>	<u>Salary</u>
1	\$45,900.00
2	\$51,753.00
3	\$57,717.00
4	\$63,626.00
5	\$69,535.00
6	\$75,444.00
7	\$81,353.00
8	\$87,262.00
9	\$93,170.00
10.	\$99,077.00

2015

<u>Step</u>	<u>Salary</u>
1	\$46,818.00
2	\$52,788.00
3	\$58,871.00
4	\$64,898.00
5	\$70,926.00
6	\$76,952.00
7	\$82,980.00
8	\$89,077.00
9.	\$95,033.00

10. \$101,059.00

Sergeants

<u>2013</u>	<u>2014</u>	<u>2015</u>
\$110,662.00 (No Change For New Hires)	\$112,875.00	\$115,133.00

Lieutenants

<u>2013</u>	<u>2014</u>	<u>2015</u>
\$120,753.00 (No Change For New Hires)	\$123,168.00	\$125,631.00

As the 2013 chart demonstrates, not only is the starting salary for new hires lower, but there are 10 steps as opposed to the current 7 steps. The increase in steps is also a cost savings to the City because it takes employees longer to reach the top of the scale. However, it is imperative that the top end salary for new hires remain the current salary because Police Officers should be compensated the same for performing the same duties. If Police Officers do not receive the same wages for performing the same work, animosity and disharmony will soon follow. Such a result does not benefit the City, the employee, or the residents. Accordingly, if it is determined that the wage scale for new hires should be modified, the PBA's proposed wage scale should be adopted.

Significantly, it was discussed at the arbitration hearing that there is a group of new recruits that were recently offered employment, and expected to begin in March 2013 ("March recruits"). These recruits were offered employment while under the terms of the current CNA. Not only were these recruits offered

employment, many of them left other employment in order to accept employment with the City. In the interest of fundamental fairness, these recruits should not be forced into a position in which they will receive a salary significantly lower than anticipated and relied upon. Even under the PBA's wage scale proposal, the March recruits would receive pay of \$45,000 instead of the current entry level rate of \$58,883.00. This would result in a salary difference of almost \$14,000.00. That is a significant pill to swallow for the March recruits after they had already accepted employment and ostensibly left other employment in reliance that they would receive certain salary and benefits associated with employment with the City. With that understanding, these recruits should be carved out of any award to receive the same benefits as current employees.

E. The PBA Salary Proposal Concerning The Salary Increase Must Be Granted Because The City Has The Ability To Pay And It Falls Within The Statutory Requirements.

As will be discussed more fully below, the PBA is seeking a salary increase of 2% each year of the successor agreement inclusive of increment, longevity, education and all other salary increases. The PBA proposal requests that the full 2% increase be achieved by providing the aforementioned scheduled increments, longevity, and education increases over the life of the CNA along with a 1.72 % across the board ("ATB") increase in the first year of the contract for all bargaining unit members. *See* Union Exhibit 5.

The PBA has proposed salary increases for 2013, 2014, and 2015 in the

amounts of 2%, 2%, and 2%, respectively, which fall within the hard cap provisions as set forth in N.J.S.A. 40A:4-45.45 ("hard cap"). Pursuant to the hard cap, an arbitrator has the ability to award increases of two percent 2% of the base salary items. N.J.S.A. 34:13A-16.7(b). "Base salary" is defined by the EERA as follows:

The salary provided pursuant to a salary guide or table and any amount, including any amount included for longevity or length of service. It shall also include any other items agreed to by the parties, or any other item that was included in the base salary as was understood by the parties in the prior contract.

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

With that understanding, the PBA proposes that the award be provided within the bounds of the law. Accordingly, based on the information and documentation provided by the City, it is evident that there are sufficient funds within the hard cap to fund the full two percent (2%) increases for the PBA membership. Moreover, there is sufficient flexibility within the tax levy cap and the appropriations cap to grant such a proposal. *See City Exhibit 3.*

Here, the calculation of base salary must include the salary, longevity, holiday pay (already included in salary), and education incentives, which were used for the base salary calculations in the IAFF Award and the SOA Award. *See Union Exhibit 3, Tab 42*). Additionally, the salary should include the Investigative Unit Differential and Shift Differential, which comports with the SOA award.

- 1) *The PBA's Proposal Is Within The Statutory Hard Cap. Therefore, The Arbitrator May Award The PBA's Proposal.*

The PBA's proposal does not violate the hard cap. The 9th statutory criteria requires that an increase must not violate that statutory restrictions imposed on the employer by N.J.S.A. 40A:4-45.45. N.J.S.A. 34:13A-16(g)(9). Here, it is evident that the PBA's proposal is within the statutory limits. On the other hand, the City did not present any evidence to refute the PBA's calculations, and, furthermore, the calculations are based on the same formula utilized by the parties as part of the IAFF and the SOA Awards.

The PBA respectfully submits that the Arbitrator must consider the fact that prior to the expiration of the CNA, the PBA membership did not contribute toward the costs of health care. However, after the expiration of the CNA, and throughout the term of the next CNA, the PBA membership will increasingly contribute to the cost of their health care costs. In fact, the PBA membership will pay an additional 25% toward their portion of the insurance premium each year of the contract, which is clearly a cost saving to the City. It should also be noted that in addition to health care cost sharing, PBA members must pay an additional 1 ½ percent toward their pension contributions, which further reduces their net wages.

In determining the statutory limitations on increases, the PBA's calculations accurately reflect the hard cap analysis. Both parties essentially agreed on the 2012 base salary with only minor differences. The definition of base salary specifically requires "[t]he salary provided pursuant to a salary guide or table," which it appears both parties agreed upon. N.J.S.A. 34:13A-16.7 (a). The City, however, illogically and without any mathematical support inflated the salary

increments, longevity, and education incentives for 2013, 2014, and 2015.

The City and the PBA were able to arrive at a 2012 base salary figure within approximately \$14,000 of each other. The only difference in base salary appears to be the methodology utilized to calculate the proration of 2012 retirees. With that said, the only significant difference between the parties is the calculation of the increases of salary increments, longevity, and education pay for the next 3 years. During the hearing, the City agreed to rely on the PBA's scattergram and it was agreed that the salaries would be prorated. *See* Union Exhibit 4. Although the Arbitrator directed the parties to prorate retiree salaries for 2012, the PBA still asserts that full retiree salaries should be calculated as part of the 2012 base salary. The PBA followed the statutory mandates by including the employees who were employed in 2012 in the base salary, utilizing the salary guide salaries each employee received. *See* Union Exhibit 1. In that regard, the chart below sets forth the amount of money necessary to fund the maximum increase.

Total 2012

Base Pay		\$30,202,438.00
Longevity		\$1,566,241.00
Education		\$1,461,408.00
Incentive		
2012 Total Base Salary		\$33,230,087.00
X 6%		
(Total Available)	\$	\$1,993,805.22
Amount Required	To	\$1,464,645.00

Satisfy Existing
Step/Longevity/
Education
Increases

Available ATB **\$529,160.22**
Increase

Base Salary of Current Employees As Of 1/1/13

<u>2012</u>	<u>2013</u>	<u>2014</u>	
\$30,736,394	\$31,487,746	\$31,999,236	
<u>ATB Increase Requested Each Year</u>		<u>Amount Necessary To Fund</u>	
1.72%	0%	0%	(\$529,160)

The amount for 2012 represents the total salary, including longevity and education, for existing employees and therefore does not include 2012 and 2013 retirees. It has only been used to correctly calculate the percentage ATB that each employee will receive. The 2012 (prorated) and 2013 retirees were included in the total 2012 base salary and were included in any increment, longevity, and education increases used to determine the total amount available to spend.

The chart below sets forth the per year amount used to calculate the total amount required to satisfy the current salary increments, longevity increases, and education increase obligations of the City.

ATLANTIC CITY POLICE OFFICERS' SUMMARY OF INCREASES

	2013	2014	2015	3 Year Total
Base Salary	\$644,734	\$302,434	\$111,037	\$1,058,205
Education	\$ 20,706	\$ 4,312	\$ 1,704	\$ 26,722
Longevity	\$ 85,913	\$204,744	\$ 89,061	\$ 379,718
Total	\$751,353	\$511,490	\$201,802	\$1,464,645

The PBA scattergram illustrates that there are more than sufficient funds available under the hard cap to fund the requested 1.72 % ATB increase in addition to the increment, longevity, and education increases during the term of a successor CNA. *See* Union Exhibit 1. The City has the burden of proof in this case, and no testimony was provided other than the stipulated testimony in which the City acknowledged they had the ability to pay the full SOA salary increases.

Accordingly, there is no evidence and no reason to believe the City similarly would not be able to pay the PBA increase. Notably, both the IAFF and the SOA Interest Arbitration Awards permitted the maximum allowable increase under the hard cap. *See* Union Exhibit 2, Tab 42. The same should apply in this case. To find otherwise would be precedentially inconsistent and fundamentally unfair to the PBA. Therefore, the PBA should be awarded the maximum amount allowable under the hard cap for ATB increases.

The proposals by the PBA do not have an adverse effect on the public. Quite to the contrary, the public receives a benefit from this proposal. Indisputably,

the public is a silent party to the interest arbitration process. Hillsdale, *supra* at 82. The public is affected by police and fire salaries in many ways, but, most notably, by the cost and adequacy of police and fire protection. *Id.* at 82-83. The fire and police presence is particularly important in the City of Atlantic City considering the City is primarily supported by tourism and the casino industry. In order for Atlantic City to remain a viable tourist attraction, the City must be safe for visitors to the City.

In that regard, as was noted in the SOA Award, SOA President Frank Brennan testified that it is well-documented that the State has recently created a Tourism District of the City, which requires more intensive policing due to the State's focus on Atlantic City tourism. As a result, the demand on the Police Department has remained, while the manpower has decreased. Importantly, SOA President Brennan testified that, in order to properly police the Tourism District, it would require over 500 police officers. However, the Police Department continues to police the Tourism District without any State assistance in terms of manpower.

For these reasons, the morale and the quality of the City's Police Department is critical. In order to attract top tier talent to the Police Department, and maintain an effective and efficient Department, the salary and benefits of the entire police force must be a means of recruiting such talent. Otherwise, potential recruits will simply seek other Departments with better wages and benefits. In order for the City to continue to provide a high level of service vital to the casino industry, the casino patrons, and other tourists, the City must continue to provide adequate

wages and salaries to recruit Police Officers and maintain the morale of the existing members in order to effectively lead the City's Police Department. For that reason, it is in the interest of the public to award the ATB increases to the PBA.

In addressing the second and third criteria of the statutory analysis, the evidence undoubtedly demonstrates that the PBA bargaining unit has a wage and benefit package that is in line with and, in certain circumstances, less than the wage and benefit package of internal bargaining units and external bargaining units that most closely compare to Atlantic City. N.J.S.A. 34:13A-16(g)(2) and (3).

While the statute requires that the bargaining unit be compared to a similar private sector employer, the PBA submits that it would be patently unfair and a waste of resources to attempt to compare the Atlantic City Police Department to any private entity. *See* N.J.S.A. 34:13A-16(g)(2(a)). It has been routinely held that police work cannot be compared to private sector employment. Borough of River Edge and PBA Local 201, PERC No. IA-97-20. Similarly, the Arbitrator should not consider private employment as part of the analysis of the proposals under the statutory criteria.

While internal and external comparability in the public sector should be considered, it is difficult to place great weight on this criterion because Atlantic City is a unique municipality. *See* N.J.S.A. 34:13A-16(g)(2(b) and (c)). As previously stated, Atlantic City is less than eleven (11) square miles and is home to less than 40,000 residents. (U-3, Exs. 6 &9). Yet, there are more than thirty million (30,000,000) visitors each year to the City and there are 12 high rise

casinos. *Ibid.* In addition to being a tourist attraction for its casinos, Atlantic City is a beach community bordered by the Atlantic Ocean. (U-3, Ex. 5). Frankly, it would be difficult to point to another community like it in the country.

Nevertheless, the PBA compared Atlantic City to the other municipalities in Atlantic County that have a paid police department. Also, the PBA compared the Police Department to other large municipalities that have tourist attractions such as Camden, Trenton, Newark, Point Pleasant, Barnegat, and Asbury Park. In these comparisons, the PBA wages and benefits are equal to or less than the external comparables, especially the larger municipalities, despite the unique situation that exists in Atlantic City. As addressed more fully in the "Pay Scale Proposal" section of this brief, the PBA's salary range is the same, similar, and in many instances less than comparable municipalities outside of Atlantic County.

Furthermore, P.E.R.C.'s salary analysis reflects an average increase resulting from interest arbitration awards in the amount of 1.82 in 2012 and 2.05 in 2011. *See* U-3, Ex. 20. The analysis also reflects an average increase of 1.83 in 2012 and 1.87 in 2011 for settled agreements. *Ibid.* Critically, it demonstrates that, even under a hard cap analysis, other public sector municipalities are able to fund ATB increases. Based on the fact that other comparable employees and departments are equal to or greater than the PBA in terms of salary, and, in general police and fire bargaining units receive increases in the range that the PBA is requesting here, the PBA's proposal is appropriate and should be awarded.

Moreover, a review of the internal settlements reflects the reasonableness of

the PBA salary proposal. In this regard, the City and the Supervisors' Union have entered into an agreement providing for a four percent (4%) salary increase in 2012. However, the increase will be paid in 2012 and 2013 in the amount of two percent (2%) each year. It should be noted that it is not known whether both parties have ratified this agreement, therefore, there is still the potential that the Supervisors will negotiate an even greater increase.

Further, the City and the AWCPA have entered into a Memorandum of Agreement providing for four percent (4%) salary increases for 2011 and 2012 the increases paid as follows:

2011- 2%
2012- 2%
2013- 2%
2014- 2%

The City and IBEW have also entered into an agreement providing for a four percent (4%) salary increase in 2012. However, the increase will be paid in 2012 and 2013 in the amount of two percent (2%) each year. It should be noted that it is not known whether both parties have ratified this agreement, therefore, the IBEW may negotiate higher wage increases.

As is evident above, and regardless of the City's position that other bargaining units are receiving no wage increases after 2012, it cannot be refuted that the City is effectively providing two percent (2%) wage increases to other bargaining units beyond 2012 while offering the PBA no wage increase whatsoever. This is further compelling evidence of a pattern of settlement which must not be ignored. Finally, the SOA Award provided for the full 2% per year

increase for the Captains and the IAFF Award allowed for a full 2% increase per year for the firefighters. In order to avoid inconsistency and maintain parity, the PBA should similarly receive the full 2 % annual increase.

2) The City Is Within Its Lawful Authority To Provide For The Proposals Of The PBA And The City Will Not Suffer Any Significant Financial Impact By Awarding The PBA's Proposals, Therefore, The PBA's Proposals Should Be Awarded.

The only proposal of the PBA that must be considered in regard to the 5th statutory criteria is the ATB increases. The other PBA proposals involve contract clarifications and a one day increase in sick and vacation leave, which will have a negligible additional economic impact on the City. Among the factors to consider are the limitations imposed upon the employer by N.J.S.A. 40A:4-45.1 et seq.; N.J.S.A. 34:13A-16(g)(5).

The Arbitrator must also take into account, to the extent 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 required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and

services for which public monies have been designated by the governing body in a proposed local budget. Hillsdale, supra, at 82.

Importantly, in this case, the City did not provide any testimony, but instead relied on the testimony of its financial expert, Michael Stinson, during the recent SOA interest arbitration. Interestingly, during that hearing, Mr. Stinson acknowledged that **the City was able to pay** the SOA salary increases. [*emphasis supplied in original*]. In addition, the City admitted during that hearing that it has the ability to pay based on the budget and within the statutory tax levy cap and appropriations cap limits, which is borne out by the City's 2013 introduced budget. The calculations below demonstrate the City's ability to pay under the levy cap and the appropriations cap.

CAP EXPENDITURE CALCULATIONS (Budget sheet 3c 2013)

<i>Expenditure CAP Total Allowable</i>	\$211,321,934.29
<i>Actual Budget Sheet 19</i>	<u>189,306,967.00</u>
<i>Available</i>	<i>\$ 22,014,967.29</i>

CAP LEVY CALCULATIONS (Budget Sheet 3b(A) 2012)

<i>Levy CAP Maximum Allowable</i>	\$ 223,901,584.00
<i>Amount to be Raised by Taxation</i>	<u>204,195,412.00</u>

Below Allowable CAP Levy ***\$ 19,706,172.00***

Here, the credible testimony of the PBA's financial expert, Vincent Foti, which was also incorporated by stipulation, was that the City had the ability to fund the proposed increases and the City's expert, Michael Stinson, acknowledged that the City was within the limits of the statutory tax levy cap and appropriations cap. Mr. Foti summarized his testimony regarding the City's financial condition and

ability to pay as demonstrated in the charts below with explanations based on the documents he reviewed:

Results of Operations (AFS Sheet 19)

<i>YEAR</i>	<i>AMOUNT</i>
<i>2012</i>	<i>\$200,495</i>

Mr. Foti explained that the Results of Operations indicates the ability to re-generate surplus, which is the equivalent of the "bottom line" in the private sector. With that understanding, the City without a doubt has this ability.

Unexpended Balance of Appropriation Reserves (AFS Sheet 19)

<i>Year</i>	<i>From</i>	<i>Amount</i>
<i>2012</i>	<i>2011</i>	<i>\$5,375,598</i>

As noted by Mr. Foti, the City continues to generate excess budget appropriations. This affords them budget flexibility. Any agency would have negative numbers if they had serious financial problems. The City undeniably has excess budgeted funds. Additionally, Mr. Foti noted that AFS Sheet 19 provides for "miscellaneous revenues not anticipated" in the amount of \$1,986,318 which goes back to surplus. Finally, the evidence during the hearing demonstrated that the City's surplus as of December 31, 2012 was \$2,257,629.00, which further indicates that the City has the ability to pay the modest wage increase for the PBA. See City Exhibit 3, Sheet 39.

It is also important to note that the City's main argument regarding its ability to fund the wage increases in the IAFF and SOA interest arbitrations was the

pending tax appeals. Despite these tax appeals, the Arbitrator in both the IAFF and the SOA arbitrations found that the City had the ability to pay. Since the IAFF award, the City has conceded that the financial picture has not changed except for the fact that in December 2012 the City was able to bond for \$100,000,000.00 in order to pay the tax appeals over the next twenty (20) years. Mr. Foti gave the City credit for the bonding acknowledging that it was a sound financial strategy. Additionally, the testimony of Mr. Stinson revealed that the aforementioned bonds sold at a premium resulting in the City realizing an additional \$9,000,000.00 for 2013, which provides more than enough flexibility to fund the PBA increases.

All other tax appeals and pending settlements are merely speculative, and, therefore cannot be considered as part of this arbitration. To do so, would open the door to suggest an arbitrator should speculate about potential non-recurring revenues (i.e. "one shot deals"). The parties are required to present evidence based on the facts at hand at the time of arbitration. It is an impossible task to base an award on potential future debt that may not occur during the term of a CNA just as it would be to speculate upon future growth. To even suggest that prospective tax appeal costs should be considered as part of this arbitration borders on desperation by the City.

Although the tax appeals are speculative, as are one shot revenue deals, the City has actually demonstrated the ability to effectively handle the tax appeals through bonding and there is no reason to believe the City will not be able to continue to do so going forward. Since the City has shown the ability to

effectively resolve the tax appeal issues, the pending and potential tax appeals are purely speculative. Moreover, the City has the ability to pay increases despite the previous tax appeals. For these reasons the tax appeal argument proffered by the City should be disregarded as meritless and speculative.

Amazingly, the City claims financial distress yet it deemed it appropriate to give raises to several high level, non-bargaining unit employees in November 2011, including the Director of Revenue and Finance, who testified on behalf of the City as to the alleged economic condition of the City. (U-3, Ex. 42, pg. 42-43). Not only did the City increase the Director of Revenue and Finance's salary (\$10,000.00), it also raised the salary of the Director of Public Works (\$15,798.12), Director of Planning and Development (\$3,021.79), Director of Licensing and Inspection (\$6,012.91) and the Director of Health and Human Services (\$5,945.07). *See* Union Exhibit 3, Tab 42. In total, the City saw fit to increase the aforementioned employees' salaries in the amount of \$40,777.89 in 2011. *Ibid.* Additionally, on February 28, 2013 The Atlantic City Press reported that Atlantic City Mayor Lorenzo Langford recently received a salary increase of almost \$16,000.00 in April 2012. *See* Atlantic City Press dated February 28, 2013 "Christie Renews Verbal War With Langford." *Ibid.*

In sum, the City cannot credibly suggest it does not have the ability to pay, which is why the City attempted to divert the Arbitrator's attention with a specious tax appeal argument. When pressed, however, Atlantic City acknowledged, and Mr. Foti confirmed, that the City has the ability to pay. Since that testimony was

incorporated into this hearing, and the City presented no other evidence to suggest it cannot pay the PBA increases, the evidence overwhelmingly demonstrates that the City has the ability to fund the full PBA increases.

3) The Cost Of Living Must Be Considered And The Consumer Price Index (hereinafter "CPI") Demonstrates A Cost Of Living Increase Above The Hard Cap.

The statutory criteria used in making a determination of the financial impact of an interest arbitration award requires that the arbitrator consider the cost of living. N.J.S.A. 34:13A-16(g)(7). In this case, the analysis is simple. The CPI rose 3.2% from 2010 to 2011 and 2.1% from 2011 to 2012, which means that the cost of living has increased at a rate that exceeds the proposed increases. See Union Exhibit 3, Tabs .7 & 8. Yet the City is seeking to cut the overall wages of the bargaining unit in the face of the rising cost of living. Even if the PBA were to receive the maximum allowable percentage ATB increase, it would fall below the rise in the cost of living.

4) The Continuity And Stability In Employment Is A Significant Concern For The PBA, Which Could Affect The Membership If The PBA's Proposal Is Not Awarded.

An arbitrator must consider the continuity and stability of employment when determining whether to award a proposal. N.J.S.A. 34:13A-16(g)(8). In this case, it is of great concern to the PBA that any failure to award the PBA's proposal, and, conversely, award any of the City's proposals, will make it more difficult to fill vacant positions with the level of candidates necessary to effectively perform the

duties of an Atlantic City Police Officer. In fact, it is a grave concern of the PBA that if the City's proposals are granted it will become virtually impossible to recruit high level candidates. Moreover, it will wreak havoc on the rank structure because current employees will not apply for promotional opportunities because of the compression that will result.

Additionally, it is necessary for the casino patrons, tourists, and casino industry to have faith that they are able to be competently protected by the City's Police Department. It is vital to the City, the casino industry, the tourism industry, and the public in general that the City maintains a top notch Police Department. If the City cannot present a salary and benefit package that meets or exceeds other police departments in the State, the City will invariably be unable to recruit "the best and the brightest" to the Police Department. Such a result could have a significant and lasting impact on the City, its residents, and the PBA. Furthermore, a cut in the salary and a reduction in benefits of existing PBA members can only result in a loss in morale, which will unfortunately have an adverse impact on the community. In sum, the PBA has overwhelmingly demonstrated that after evaluating the statutory criteria, the maximum available ATB increase is appropriate for and deserved by the PBA membership.

The respective positions of the parties with regard to both wage issues as well as my AWARD on both have been addressed in greater detail in the STATEMENT OF THE CASE portion of this INTEREST ARBITRATION AWARD, as well as # 11 of the City's proposals, "Schedule of Salary."

CONCLUSION

The City's attempt to eradicate a generation of negotiated benefits at once should not be countenanced. Instead, the SOA's reasonable proposals should be adopted. Those proposals are well within the City's ability to pay and will serve the interest of all parties – particularly the public.

THE CITY OF ATLANTIC CITY

I. PROCEDURAL HISTORY

On December 21, 2010 the legislature passed P.L. 2010, c. 105, codified at N.J.S.A. 34:13A-16, 16.7, 16.8 and 16.9 ("the 2010 Amendments"), which amended the interest arbitration process effective January 1, 2011. More specifically, the 2010 Amendments, among other things, revised the procedure for selection of the arbitrator. It eliminated the parties' ability to mutually select an arbitrator and vested the Public Employment Relations Commission ("P.E.R.C.") with the exclusive authority to appoint the interest arbitrator.

The City and the Association held several collective bargaining negotiation sessions in an attempt to reach an agreement upon a successor Collective Bargaining Agreement to the C.B.A. between the City and the PBA, to be effective from January 1, 2013 to December 31, 2015. In January, 2013, the City filed a Petition To Initiate Compulsory Interest Arbitration ("the Petition") with P.E.R.C., which assigned docket number IA-2013-016 to the interest arbitration. Thereafter, P.E.R.C. randomly appointed Arbitrator Michael J. Pecklers from its special panel of

Arbitrators, pursuant to N.J.S.A. 34:13A-16(e). The parties held an interest arbitration hearing before Arbitrator Pecklers on March 18, 2013. The City timely submits this brief, due on March 25, 2013, in support of its offer.

II. THE POSITIONS OF THE PARTIES

A. COST OUT OF THE PBA'S DEMANDS

1. 2013, 2014 AND 2015 SALARY DEMANDS

The PBA proposes a three-year agreement and demands the following salary increases for 2013, 2014 and 2015, exclusive of incremental and longevity increases:

a. 2013 SALARY DEMAND

The PBA demands an across the board salary increase of one point seventy-two (1.792%) percent.

b. 2014 SALARY DEMAND

The PBA demands no increase in 2014.

c. 2015 SALARY DEMAND

The PBA demands no increase in 2015.

d. SALARY GUIDE

The PBA proposed a 2013 salary guide for new hires:

<u>Step</u>	<u>Salary</u>
1	\$45,000
2	\$50,739

3	\$56,586
4	\$62,379
5	\$68,172
6	\$73,965
7	\$79,758
8	\$85,551
9	\$91,344
10.	\$97,137

The PBA proposed a 2014 salary guide for new hires:

<u>Step</u>	<u>Salary</u>
1	\$45,900
2	\$51,753
3	\$57,717
4	\$63,626
5	\$69,535
6	\$75,444
7	\$81,353
8	\$87,262
9	\$93,170
10.	\$99,077

It must be noted that until the hearing, the PBA recognized and agreed that "new hires" were defined as anyone hired after January 1, 2013. At the hearing,

for the first time, inconsistent with its previous "final offers," the Union submitted that any new salary guide not be applied to the prospective recruiting class. However, at the hearing, the Interest Arbitrator indicated that any issue involving individuals not yet hired is beyond his "jurisdiction."

Since the issue was unilaterally raised at the hearing, the City had no ability to present any exhibits or testimony regarding this matter. Therefore, all the City can do at this point is represent that all applicants/recruits were informed that the City and the PBA were in negotiations, and therefore no promise of a certain starting salary was made.

e. STEP INCREASES

The parties agree that there are step increases during the life of the successor Collective Bargaining Agreement, but disagree as to the amount. In calculating the step increases, the City used the PBA's document enumerating the individual bargaining unit members including retirees, to calculate the 2012 base salary and the City's documents submitted in conjunction with the SOA Interest Arbitration to calculate the step increases. The City's calculations which were previously e-mailed to the Interest Arbitrator, determine step increases to equal 1.96% ($\$650,308 \div \$33,217,262$) in 2013; 1.38% ($\$470,679 \div \$34,062,777$) in 2014 and 0.75% ($\$259,537 \div \$34,654,163$) in 2015.

In calculating the total base salaries expended for 2012, the City utilized the PBA's submission to avoid any discrepancy. In determining the dollar amount of

step increases for 2013, 2014, 2015, the City used the computer printout from the City's Department of Revenue and Finance. There was no testimony as to where the Union's figures originated or how they were calculated. Therefore, the City submits that any discrepancy between the City's and the PBA's calculations of step increases must be resolved in favor of the City.

f. LONGEVITY INCREASES

The parties agree that there are longevity increases during the life of the successor C.B.A., but disagree as to the amount. In calculating the longevity increases, the City used the Union's document enumerating the individual bargaining unit members including retirees, to calculate the 2012 base salary and the City's documents submitted in conjunction with the SOA Interest Arbitration, to calculate the longevity increases. The City's calculations, previously e-mailed to the Interest Arbitrator, determine longevity increases to equal 0.53% ($\$174,675 \div \$33,217,262$) in 2013, 0.32% ($\$104,170 \div \$34,062,777$) in 2014 and 0.49% ($\$170,419 \div \$34,654,163$) in 2015.

In calculating the total base salaries expended for 2012, the City utilized the Association's submission to avoid any discrepancy. In determining the dollar amount of longevity increases for 2013, 2014, 2015, the City used the computer printout from the City's Department of Revenue and Finance. There was no testimony as to where the PBA's figures originated or how they were calculated. Therefore, the City submits that any discrepancy between the City's and the PBA's calculation of longevity increases must be resolved in favor of the City.

g. EDUCATION INCENTIVE INCREASES

The parties agree that there are education incentive increases during the life of the successor agreement, but disagree as to the amount. In calculating the education incentive increase, the City used the Association's document enumerating the individual bargaining unit members including retirees, to calculate the 2012 base salary and the City's documents submitted in conjunction with the SOA Interest Arbitration to calculate the education incentive increases. The City's calculations, previously e-mailed to the Interest Arbitrator, determine education incentive increases to equal 0.06% ($\$20,532 \div \$33,217,262$) in 2013, 0.05% ($\$16,537 \div \$34,062,777$) in 2014 and 0.02% ($\$6,316 \div \$34,654,163$) in 2015.

In calculating the base salaries for 2012, the City utilized the PBA's submission to avoid any discrepancy. In determining the dollar amount of education incentive increases for 2013, 2014, 2015, the City used the computer printout from the City's Department of Revenue and Finance. There was no testimony as to where the Union's figures originated or how they were calculated. Therefore, the City submits that any discrepancy between the City's and the PBA's calculations must be resolved in favor of the City.

2. TOTAL COST OF THE PBA'S DEMANDS

The PBAs demands cost out as follows:

	<u>2013</u>	<u>2014</u>	<u>2015</u>
Salary Increase	1.72%	0%	0%

Step Increases:	1.96%	1.38%	0.75%
Longevity Increases:	0.53%	0.32%	0.49%
Ed. Incentive Increases:	0.06%	0.05%	0.02%
Totals:	4.27%	1.75%	1.26%

TOTAL STEP, LONGEVITY, ED. INCREASES: 5.55%

THREE YEAR TOTAL: 7.27%

ANNUAL INCREASE: 2.42%

3. OTHER PBA DEMANDS

a. Vacation Days

The Union demands one (1) additional vacation day.

b. Sick Days

The Union demands one (1) additional sick day.

c. Investigative Differential

The PBA demands additional language be added to the C.B.A. incorporating the parties' agreement with respect to the investigative differential. While the City will address all other Union demands later in this brief, the City will respond to this demand herein. This demand allegedly purports to incorporate the parties' existing agreement into the C.B.A. The City agrees to incorporate the parties' understanding in the successor Collective Bargaining Agreement. However, the Interest Arbitrator cannot do anything but suggest the parties incorporate their agreement, since there has been no specific language proposed or evidence presented on specific language.

B. COSTING OUT OF THE CITY'S PACKAGE**1. 2013, 2014 AND 2015 SALARY PROPOSALS**

The City proposes a three-year agreement. (originally the City proposed a two year agreement). The City proposes the following salary increases for 2013, 2014 and 2015:

a. 2013 SALARY PROPOSAL

The City proposes no salary increase for current employees for calendar year 2013.

b. 2014 SALARY PROPOSAL

The City proposes no salary increase for current employees for calendar year 2014.

c. 2015 SALARY PROPOSAL

The City proposes no salary increase for current employees for calendar year 2015.

d. SALARY GUIDE

The City proposes to lower the salaries for Association members. This proposal will only affect new employees hired on or after January 1, 2013. The City reiterates that until the hearing, the PBA recognized and agreed that "new hires" were defined as anyone hired after January 1, 2013. At the hearing, for the first time, inconsistent with its previous "final offers," the Union submitted that any new salary guide not be applied to the prospective recruiting class.

e. STEP INCREASES

[Please see the City's arguments contained in the prior Section A1.e.]

f. LONGEVITY INCREASES

[Please see the City's arguments contained in the prior Section A1.f.].

g. EDUCATION INCENTIVE INCREASES

[Please see the City's arguments contained in the prior Section A1g.].

2. OTHER CITY PROPOSALS

The other City proposals do not decrease the compensation of current bargaining unit members. While future compensation for current employees and compensation for future employees will be effected, this has no impact on the costing out of the City's proposals. These proposals will be addressed below with respect to the statutory criteria.

3. TOTAL COST OF THE CITY'S PACKAGE

The City's package costs out as follows:

	<u>2012</u>	<u>2013</u>	<u>2014</u>
Salary Increase:	0.00%	0.00%	0.00%
Step Increases:	1.96%	1.38%	0.75%
Longevity Increases:	0.53%	0.32%	0.49%
Ed. Incentive Increases:	0.06%	0.04%	0.02%
Totals:	2.55%	1.74%	1.26%
TOTAL STEP, LONGEVITY AND ED. INCREASES:			5.55%
THREE YEAR TOTAL:			5.55%
ANNUAL INCREASE			1.85% :

C. COMPARISON OF THE TWO PACKAGES

The City and the PBA disagree on significant elements of the successor contract, including the amount of the wage increase, whether to increase the number of steps on the salary guide for new hires, whether to cap sick leave at \$15,000 for existing employees, whether to freeze longevity benefits at present dollars, whether to eliminate longevity for new hires, etc.

III. LEGAL ARGUMENT

Before providing its argument, the City will first address the “general” argument of the PBA presented at the hearing in response to virtually every City proposal. In response to the City’s “two-tiered” proposals for salaries, longevity, vacations, education and terminal leave, the Association’s response is that two tiers creates a morale problem and is a detriment to recruitment. First, the PBA failed to present any evidence in support of its argument. Second, if the PBA’s argument was accurate, virtually every municipality whose contract was introduced by the PBA for “comparability” as well as the vast majority of the municipalities in the State have morale problems and problems with recruiting, since most municipal police contracts have some two tiered compensation/benefit package! [*emphasis in original document*].

A. CONVENTIONAL INTEREST ARBITRATION

The New Jersey Employer-Employee Relations Act (“the Act”), N.J.S.A. §34:13A-1 et seq., includes a compulsory interest arbitration procedure for public police departments and the police officers’ exclusive representatives who reach impasse in collective bargaining negotiations. On January 10, 1996, the legislature

passed the Police and Fire Public Interest Arbitration Reform Act (the "Reform Act") which implemented significant amendments to New Jersey's compulsory interest arbitration process. On December 21, 2010, the Legislature again passed significant amendments to the compulsory interest arbitration process (the "2010 Amendments"). This section describes New Jersey's compulsory interest arbitration process.

The Reform Act established conventional arbitration, instead of final offer interest arbitration, as the terminal procedure applicable to resolve impasses between parties who fail to agree upon one (1) of six (6) terminal procedures available under the Reform Act. N.J.S.A. §34:13A-16(d)(2). Conventional arbitration applies to this interest arbitration. The Interest Arbitrator must, therefore, determine "whether the total net annual economic changes for each year of the agreement are reasonable under the nine (9) statutory criteria," discussed below. N.J.S.A. §34:13A-16(g)

B. THE STATUTORY CRITERIA

N.J.S.A. §34:13A-16(g) states that the Interest Arbitrator must determine the dispute based upon "a reasonable determination of the issues." Because reasonableness requires the Interest Arbitrator to apply a subjective standard, the Legislature enumerated nine (9) statutory criteria which the Interest Arbitrator must give "due weight" in determining the appropriate award. More specifically, N.J.S.A. §34:13A-16(g), as amended, provides,

The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged

relevant for the resolution of the specific dispute. In the award, the arbitrator . . . shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award:

* * *

N.J.S.A. §34:13A-16(g) [*emphasis added in original to highlight language added by the 2010 Amendments*]. A review of the enumerated factors reveals three underlying themes: (1) the financial ramifications of the offer; (2) comparability; and (3) the public interest. **The City will divide its arguments into these three “themes”.** [*emphasis supplied in original document*].

Before the Legislature passed the Police and Fire Public Interest Arbitration Reform Act, the New Jersey Supreme Court decided two (2) companion cases that significantly impacted the interest arbitration process. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994); Township of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994). The Reform Act incorporated the principles set forth in these decisions. [*emphasis added in original*].

Specifically, in Hillsdale and Washington, the Court examined the sufficiency of the evidence which the parties must present to an Interest Arbitrator and the relevance of the various statutory criteria. In Hillsdale, the Court instructed that “[i]n general, the relevance of a factor depends on the disputed issues and the evidence presented.” Hillsdale, 137 N.J. at 82 (*citing N.J.S.A. §34:13A-16(f)(5)*;

N.J.A.C. §19:16-5.9). The Court also directed the Interest Arbitrator to “determine which factors are relevant, weigh them, and explain the award in writing.” *Id.* Further, the Court cautioned that the Legislature did not intend that any one (1) factor would be dispositive. *Id.* The Court further explained:

[a]s the statute states, an arbitrator need rely not on all factors, but only on those that the arbitrator deems relevant. An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence. An arbitrator who requires additional evidence may request the parties to supplement their presentations.... [T]he arbitrator need not require the production of evidence on each factor. Such a requirement might unduly prolong a process that the legislature designed to expedite collective negotiations with police and fire departments.

Id. at 83-84.

Moreover, even if the parties do not introduce evidence on a particular factor, the Interest Arbitrator's decision must explain the Interest Arbitrator's rationale for deeming that factor irrelevant. *Id.* at 84. “Without such an explanation, the opinion and award may not be a ‘reasonable determination of the issues.’” *Id.* In summary, “an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant.” *Id.* at 84-85.

The Reform Act, among other things, codified the New Jersey Supreme Court's rulings in Hillsdale and Washington. The Reform Act expressly added the following requirement:

In the award, the arbitrator . . . shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not

relevant, and provide an analysis of the evidence on each relevant factor.

Therefore, the Interest Arbitrator's award must address all nine (9) statutory criteria.

The 2010 Amendments dramatically changed the interest arbitration process. Among other things, they emphasized that Interest Arbitrators must consider, among the other statutory factors, the impact of the New Jersey Local Government Cap Law (the "Cap Law"), N.J.S.A. §40A:4-45.1 et seq. in rendering an award and the limitations imposed upon the local unit's property tax levy. N.J.S.A. §34:13A-16(g)(6). The tax levy cap limits the funds that municipalities can raise by taxation. The 2010 Levy Cap Law (the "2010 Cap") enacted on July 13, 2010 revised the 2007 Levy Cap Law (the "2007 Cap"). More specifically, to control cost increases, it reduced the 2007 Cap from four percent (4.0%) to two percent (2.0%) and amended exclusions. The 2010 Cap excludes pension contributions in excess of two percent (2.0%) and health benefit cost increases in excess of two percent (2.0%) and limited by the State Health Benefits rate increase (16.7% for 2011).

The 2010 Amendments addressed the Interest Arbitrator's duty to consider all the statutory factors. The law continues to require the Interest Arbitrator to consider each of the elements. The Interest Arbitrator can determine that a factor is not relevant, and if so, explain why it is irrelevant. The 2010 Amendments imposed one exception: paragraph 6, the financial impact on the governing unit, its residents; the limitations imposed by the local units property tax levy and

taxpayers. As to this sub factor, the 2010 Amendments require that the parties introduce evidence that addresses this sub factor. It further mandates that the Interest Arbitrator analyze and consider the elements of subsection 6 in any award. The remainder of this section of the brief will analyze the statutory criteria as they apply to the present interest arbitration and will show that the City's proposals reflect a more reasonable approach than the PBA's demands. Other than the "Lawful Authority of the Employer", which will be addressed separately immediately below, repeating what was presented before and in the City's exhibits at the hearing due to the significance of this criterion, each of the City's proposals will be discussed separately with each of the applicable statutory criteria identified with each proposal.

1. FINANCIAL RAMIFICATIONS

This section incorporates the statutory criteria of N.J.S.A. §34:13A-16g (3) overall compensation; (5) lawful authority of the employer; (6) financial impact on governing unit; and (9) statutory restrictions.

The City has submitted that in the narrow sense, "financial ramifications" is a relatively insignificant issue in that the significant percentage increase in step increases leaves little discretion for the Interest Arbitrator. The most significant issue in this matter is comparability with other municipal police departments and other City employees. With respect to "overall compensation", there is no dispute that PBA members enjoy the emoluments of virtually every possible contractual benefit, reasonable and otherwise.

N.J.S.A. §34:13A-16g(5) requires the Interest Arbitrator to consider the “lawful authority of the employer” in determining a conventional award. The “lawful authority of the employer” similarly relates to the employer’s “statutory restrictions”. The Reform Act specifically requires the Interest Arbitrator to consider, in evaluating this factor, “the limitations imposed upon the employer by [The New Jersey Local Government Cap Law (the “Cap Law”), N.J.S.A. 40A:4-45.1 *et seq.*]” N.J.S.A. 34:13A-16(g)(5). The Cap Law restrains the lawful authority of the employer by limiting overall budget increases. It thereby restricts a municipality’s ability to grant wage increases to its employees.

In enacting the Cap Law, the Legislature declared it to be “the policy of the [State] that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads.” N.J.S.A. §40A:4-45.1. The Legislature also recognized, however, that “local government cannot be constrained to the point that it would be impossible to provide necessary services to its residents.” *Id.*

The Cap Law controls the cost of local government by prohibiting a municipality from increasing certain appropriations, including the cost of police officer salaries, by more than the “cost of living adjustment” over the previous year’s similar appropriations. Several amendments to the Cap Law placed even tighter caps on spending to control local government expenditure. In 2007, Governor Corzine signed into law Chapter 62 of the Laws of 2007 (the “2007 Cap”). This law implemented a property tax levy cap which limited municipalities

to a four percent (4.0%) increase over the previous year's amount to be raised by taxation. This change in the law eliminated significant flexibility in municipal budgets by creating a strict limit on increases on the major revenue sources, making it more difficult to balance the budget.

On July 13, 2010, Governor Christie signed into law Chapter 44 of the Laws of 2010 (the "2010 Cap"). The 2010 Cap reduced the 2007 Cap of four percent (4.0%) to two percent (2.0%) and modified exclusions, further increasing the limitation on major revenue sources. The 2010 Cap added several general exclusions. These include increases in debt service and capital expenditures, extraordinary costs related to emergencies, such as inclement weather, pension contributions in excess of two percent (2.0)% and health benefit cost increases in excess of two percent (2.0)%, but limited by the State Health Benefits increase (16.7% in 2011). These limitations directly impact the City's ability to pay for the salary increases and accompanying increases in benefit costs for this bargaining unit.

Significantly, the 2010 Amendments demonstrate the Legislature's recognition of the need to control costs. The 2010 Amendments imposed a two percent (2.0%) cap on base salary increases. N.J.S.A. §34:13A-16.7. The two percent (2.0%) cap on base salary increases reflects the permissible two percent (2.0%) 2010 Cap under the Local Government Cap Law. More specifically, the law prohibits an arbitrator from rendering an award,

which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer

on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.

N.J.S.A. §34:13A-16.7(b). While the law precludes arbitrators from issuing more than a 2.0% increase in base salary, it does not bar unequal annual percentages.

Id.

“Base salary” is defined as “the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. . . .” N.J.S.A. § 34:13A-16.7(a). “Base salary” also includes “any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract.” N.J.S.A. §34:13A-16.7(a). “Base salary” does not include “non-salary economic issues, pension and medical insurance costs.” Non-salary economic issues are defined as “any economic issue that is not included in the definition of base salary.” N.J.S.A. §34:13A-16.7(a). Therefore, “base salary” includes salary increments and longevity increases but does not include pension or health and medical insurance costs. N.J.S.A. §34:13A-16.7(a). Additionally, “[a]n award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.” N.J.S.A. §34:13A-16.7(b).

The salary limitation applies to all collective negotiations between a municipal employer and the exclusive representative of its police department that relate to a collective bargaining agreement that expires on or after January 1, 2011

but before April 1, 2014. N.J.S.A. §34:13A-16.9. Because the collective bargaining agreement at issue in this interest arbitration expired on December 31, 2012, the salary limitation applies to this interest arbitration.

Because the PBA's package averages more than two percent (2.0%) per year, inclusive of salary increment, longevity increases, and education incentives, the Interest Arbitrator must reject the Union's demands. The PBA's package exceeds the six percent (6.0%) maximum increase on a three (3) year contract. The Legislature worded the statute in the obligatory. It provides, "An arbitrator shall not render any award . . . which, on an annual basis, increases base salary items by more than 2.0 percent." N.J.S.A. §34:13A-16.7(b). The language of the statute leaves no room for interpretation: any award must average not more than six percent (6.0%) inclusive of compounding, salary increments and longevity increases. In contrast to the PBA's demands, the City's proposed increase does not exceed the two percent (2.0%) statutory cap. Any award that exceeds the two percent (2.0%) statutory salary cap will be vacated on appeal. Therefore, unlike the PBA's demanded package, the City's offer reflects the restraints imposed by the 2010 Amendments.

The City's proposals obviously seek to "reign in" both compensation and the benefit package received by the PBA membership without reducing current compensation. It is the position of the City that it can no longer afford the excesses of the past based upon current legislation, the economy, and the interest and welfare of the public.

a. Introduction

Traditionally, a municipality's "ability to pay" argument has focused on the Current Expense Budget appropriations. If a municipality was budgeted up to "cap", there was no need to consider long-term versus short-term budgetary strategies, capital expenditures, debt service, revenues, etc. If a municipality was budgeted up to "cap" it could appropriate no additional monies within its Current Expense Budget. The sole focus was on whether the municipality had reasonably appropriated monies on each and every line item in the Current Expense Budget.

If a municipality was not budgeted up to "cap", this did not mean that the municipality had the "ability to pay." In the narrow sense, if a municipality was not budgeted up to "cap", there was room in the Current Expense Budget to appropriate monies for additional expenditures. However, to narrowly focus on this fact excluded the necessary considerations of long-term versus short-term budget strategies, necessary capital improvements, debt service and revenues.

However, the "traditional" analysis became virtually obsolete when Governor Corzine signed into law Chapter 62 of the Laws of 2007, which implemented a property tax levy cap limiting municipalities to a four percent (4.0%) increase to the previous year's amount to be raised by taxation. Previously, municipalities had discretion and flexibility in dealing with budgetary issues. So long as a municipality had room within the "Cap", it had discretion and flexibility in the expenditure side of the budget. Without a tax levy cap, a municipality had greater discretion and flexibility in the revenue side of the budget because of its ability to raise revenue

through taxes.

With the implementation of the tax levy cap the discretion and flexibility of municipal budget strategies changed dramatically, with revenues playing a more significant role and expenditures becoming reactionary to the impact of revenues. This situation has been magnified for 2011 and beyond with the modification of the tax levy cap downwards from four (4.0%) per cent to two (2.0%) per cent! Revenue inflexibility has also caused municipalities to consider long-range revenue projections when formulating current budgets.

Previous revenue analyses reviewed a municipality's surplus history, State Aid, and "one-shot deals", indicating that the inability of these revenue sources to fund budgetary expenditure increases left the remaining revenue burden to be shouldered by municipal taxes. With the statutory limitation on tax levy increases, there is virtually no revenue source over which the municipality has any control, discretion or flexibility to counter budgetary shortfalls in other revenue sources. This lack of control, discretion and/or flexibility requires municipalities to curtail expenditures in order to balance their budgets.

Due to the restrictions in New Jersey's "Cap" law, PL 1976, Ch. 68, as revised by PL 1990, Ch. 89 and PL 1990, Ch. 95, limiting increases within the Current Expense portion of the municipal budget to two and one-half (2.5%) per cent (three and one-half [3.5%] per cent with municipal approval), and due to the above-referenced recent legislation limiting municipal tax increases to four (4.0%) per cent and two (2.0%) per cent beginning in 2011, the traditional analysis does

not apply to the City's ability to pay. As outlined below, the City's "ability-to-pay" argument centers around the revenue portion of the City's budget. Additionally, there is no need to differentiate between Current Expense budgetary line items and expenditures excluded from the "cap", since the City's revenues are generated to cover both within "cap" and excluded from "cap" expenditures. Before providing the revenue analysis, it is critical to recognize that the City was required to enter into a Memorandum of Understanding with the State, providing for State Supervision. (City Exhibit Book, Tab 1, Sub tab 1). This document, drafted by representatives for the State, documents the "extraordinary pressures on the tax base in Atlantic City and the tax rates applicable to its residents and businesses" due to tax appeals. To emphasize its position, the State requires the City to provide Interest Arbitrators with a letter confirming that the City has "been directed to seek appropriate concessions" and to "realistically acknowledge the unprecedented level of fiscal stress caused by unprecedented tax appeals". (City Exhibit Book, Tab 1, Sub tab 1, Attachment E).

b. Revenue

There are five (5) basic revenue sources: (1) surplus; (2) local revenues; (3) State Aid; (4) "one-shot deals", or non-recurring revenues; and (5) taxes. Since the economic downturn and its impact began in 2008, the revenue comparison will compare 2007 revenues to 2013 revenues.

Surplus history is illustrative of the City's financial woes. As of January 1, 2007, the City's surplus balance was \$14,395,615.00, allowing the City to

anticipate \$13,800,000.00 as revenue in its 2007 budget. (City Exhibit Book, Tab 1, Sub tab 2). Due to the economic downturn beginning in 2008, the City's surplus balance as of January 1, 2013 was only \$2,257,629.00, or a reduction of \$12,137,986.00, or in excess of eighty-four (84%) percent. This forced the City to eliminate its surplus anticipated in 2013! (City Exhibit Book, Tab 1, Sub tab 5).

Just to maintain revenue anticipated in 2013, the City had to generate \$13,800,000.00 more from other revenue sources than only six years ago in 2007! Revenue from local revenues further illustrates the City's revenue woes. In 2007, the City anticipated \$11,401,000.00. (City Exhibit Book, Tab 1, Sub tab 1). By 2013, local revenues had decreased by approximately \$2,100,816.00, or in excess of eighteen (18%) percent, to \$9,300,184.00. (City Exhibit Book, Tab 1, Sub tab 5). With no anticipated surplus, the remaining revenue sources had to cover this \$2,100,816.00 revenue slack.

State Aid is another revenue deficiency. From 2007 to 2013, State Aid was reduced by \$1,781,979.00, or in excess of twenty-two (22%) percent, from \$8,042,693.00 to \$6,260,714.00. (City Exhibit Book, Tab 1, Sub tabs 1 and 5). Therefore, State Aid is another revenue deficiency, in the amount of \$1,781,979.00, which remaining revenue sources must overcome.

While dedicated Uniform Construction fees are offset by appropriations and therefore have no impact on the remainder of the budget, to complete the analysis it must be recognized that from 2007 through 2013, this revenue source decreased by \$2,100,000.00 from \$4,100,000.00 to \$2,000,000.00. (City Exhibit Book, Tab

1, Sub tabs 1 and 5).

It is dangerous for a municipality to rely on "one-shot deals" (Section G) to balance its budget since these revenues, by their very nature, do not regenerate. A steady increase in reliance on "one-shot deals" by increased contributions from the capital fund surplus resulted in a \$13,902,580.00 increase in "one-shot" revenues from 2007 to 2013 (City Exhibit Book, Tab 1, Sub tabs 1 and 5). All in all, the City's anticipated revenue in 2013, other than from municipal taxes, decreased by \$5,880,215.00. (City Exhibit Book, Tab 1, Sub tab 5).

With respect to municipal taxes, from 2007 through 2013, revenue from municipal taxes increased from \$193,167,083.00 to \$209,455,419.00, an increase of \$16,288,336.00, or 8.43%, which translates to an annual increase of less than one and one-half (1.5%) percent! (City Exhibit Book, Tab 1, Sub tabs 1 and 5). The most significant issue facing the City transcends from revenue into appropriations: Debt Service.

The City was placed under State supervision by the New Jersey Local Finance Board ("Board") in November, 2010. The action of the Board was due in large part to extraordinary fiscal stress caused by the impact of tax appeals filed by casinos. A Memorandum of Understanding (City Exhibit Book, Tab 1, Sub tab 1) was executed by the State and the City to clearly delineate the parameters of State supervision and, in pertinent part, it required that fiscal distress be clearly communicated to Interest Arbitrators.

The City is unique amongst the 566 municipalities in that approximately

seventy percent (70%) of its ratable base has come from only twelve (12) casino properties (2011 assessments totaled approximately \$13 billion). These properties were assessed in 2008 and the subsequent economic downturn resulted in every casino filing tax appeals from 2008 to the present. Eleven (11) of those appeals have recently been settled or are pending settlement and one (1) remains in litigation. These appeals/settlements cause fiscal distress in two ways: 1) large refunds are due for past years; and 2) the assessment value is greatly decreased moving forward. As the chart below demonstrates, of the eleven (11) tax appeals recently resolved or pending settlement, the City must refund \$185.5 million. The remaining Borgata appeal in litigation has the potential to increase the obligation to approximately \$200 million.

<u>Property Owner</u>	<u>Court Ordered Refund</u>	
Resorts (DGMB)	\$ 10,600,000	
Pinnacle	\$ 8,200,000	
ACE Gaming	\$ 1,700,000	
Prior Settlements	\$ 14,000,000	(compilation of old appeals)
Ceasars	\$ 28,000,000	
Trumph	\$ 54,000,000	
Hilton	\$ 19,500,000	
Tropicana	\$ 49,500,000	
Revel	none	
Borgata	pending	
Sub-Total	\$ 185,500,000	

This unprecedented tax refund forced the City to obtain special permission from the State Local Finance Board to execute Tax Appeal Bonds to borrow the money in order to pay the refunds. These bonds will take twenty (20) years to pay

off. As a result of the Tax Appeal Bonds, the City's debt service has increased from \$16 million in 2011 to \$37 million in 2013. The refunds due Tropicana and Borgata have not been included in any tax appeal bonds due to timing and still have to be paid, which will further drive up debt service.

In addition to the fiscal stress of the above refunds, the decreased casino assessments, as the below chart demonstrates, have had a devastating effect on the City's total ratable base from which taxes are collected. In 2010, the City's ratable base totaled \$20.4 billion. In 2013, the ratable based totaled only \$14.4 billion, a decrease of \$6 billion, or approximately 30%, in taxable real estate!

<u>Name of Taxpayer</u>	<u>Property Assessed</u>	<u>Original Assessment</u>	<u>Post-Appeal Assessment</u>
Settled:			
Marina Associates	Harrah's Casino/Hotel	\$ 1,900,000,000	\$ 1,469,980,700
Adamar of New Jersey	Trop World Casino/Hotel	\$ 1,259,000,000	\$ 680,000,000
Bally Park Place, Inc.	Ballys Park Place Casino/Hotel	\$ 1,492,289,800	\$ 700,000,000
Boardwalk Regency	Caesars Casino/Hotel	\$ 1,698,906,000	\$ 1,048,906,000
Revel	Revel Casino/Hotel	\$ 1,475,000,000	\$ 1,150,000,000
Pinnacle	Former Sands Casino Site	\$ 224,331,800	\$ 70,000,000
Resorts International Inc	Resorts Casino/Hotel	\$ 475,000,000	\$ 165,000,000
RIH Acquisitions	Hilton Casino/Hotel	\$ 539,991,900	\$ 165,000,000
Golden Nugget (was Trump)	Golden Nugget Casino/Hotel	\$ 653,500,000	\$ 175,000,000
Trump Plaza Corp	Trump Plaza Casino/Hotel	\$ 725,100,000	\$ 250,000,000
Trump Taj Mahal Assoc	Trump Taj Mahal Casino/Hotel	\$ 1,655,353,800	\$ 1,000,000,000
		\$ 12,098,473,300	\$ 6,873,886,700
Appeal Still Pending:			
Marina District Dev. Corp	Borgata Casino/Hotel	\$ 1,845,715,900	pending

The negative effect of both increased debt service from the casino tax appeals and the dramatic decrease in taxable ratables is reflected in the proposed 2013 Municipal Budget. These two items are the driving force in a proposed thirty (\$0.30) cent local tax increase from \$1.13 to \$1.43, a 26.5% property tax

increase. With the current average home assessment at \$210,000.00, the average homeowner is going to see their tax bill increase by \$630 per year!! [*emphasis supplied in original document*]. Only approximately \$35 million of the above refunds have been accounted for in the 2012 budget (and even then, the \$35 million is being paid through a borrowing that is payable over five [5] years). The remaining refunds are not accounted for and still have to be paid. As of 2007, the City's debt service was \$21,464,470.00 (City Exhibit Book, Tab 1, Sub tab 2). Debt service increased by only approximately \$205,000.00 through 2011 to \$21,669,817.00 (City Exhibit Book, Tab 1, Sub tab 3), virtually the same as in 2007.

However, due to the above-referenced tax appeals, the City's debt service in 2012 jumped to \$32,510,182.00, an increase of approximately \$10,500,000.00, or approximately fifty percent (50%)! (City Exhibit Book, Tab 1, Sub tab 4). In 2013, it is anticipated that debt service will increase by at least an additional \$4,242,148.00, or in excess of thirteen (13.0%)! Even though these increased appropriations are outside the "cap", the City must still consider debt service when attempting to balance its budget.

This leaves the City with three (3) options: (1) reduce appropriations by the amount of the increased debt service; (2) maintain the same level of municipal taxes by shifting the tax burden, which will be discussed below, or: (3) a combination of (1) and (2). The City is attempting to implement the second option.

Even if the City is able to keep its spending perfectly stable with no increase

in its levy, the City tax levy would remain the same and the tax burden would shift from casinos to residential home owners and other non-casino, commercial properties. Assuming the City budget stays the same and doesn't increase at all between now and 2014, taxes for all non-casino properties are going to increase by nearly twenty-six (26.0%) percent, as referenced by the Atlantic City Press article dated March 21, 2013, attached as Exhibit No. 1.

The State and the City are working together to try to control costs. However, with escalating debt service on recent and projected borrowings to facilitate resolution of tax appeals, it will be extraordinarily challenging to even keep the overall levy at its current level.

In summary, despite positive improvements, the City and its taxpayers face an unprecedented financial struggle because of the casino tax appeals. Even with no increases in the current operational budgets, non-casino taxpayers are facing an approximate twenty-six percent (26%) tax rate increase. This will be made even more challenging with a need to deal with additional refunds for Tropicana (\$49.5 million) and Borgata (yet to be determined).

It is easy to mistakenly hold that the City has dealt with this fiscal crisis because it bonded the tax appeals. However, this is incredibly inaccurate. The bonding of the tax appeals resolves the City's past debt due to the tax appeals by increasing future debt service as discussed above. However, in addition to the increase in debt service, the City currently and in the future loses revenue from the significant decrease in ratables. [*emphasis supplied in original*].

The criterion of "cost of living" is informative with respect to the PBA's salary demand. To look at only the CPI for 2013 when considering the Union's wage demand is myopic at best. When considering the CPI versus the PBA's wage increases over the five (5) year term of the previous Collective Bargaining Agreement, the PBA's wage increases nearly double the CPI!!! [*emphasis supplied in original document*]. Therefore, there is no need to "chase" for wage increases to "chase" the CPI over the term of this collective bargaining agreement.

2. COMPARABILITY

The Act requires the Interest Arbitrator to consider a 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: (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions. The Act also requires the Interest Arbitrator to consider the overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received. As discussed below, the comparable and overall compensation exhibits submitted at the interest arbitration hearing demonstrate that the City extends more reasonable proposals than the Association.

In Hillsdale, the Court criticized the Interest Arbitrator for over-emphasizing

comparability with police departments in similar communities in rendering an award. Hillsdale, 137 N.J. at 86. The Court noted that the Legislature did not intend any one factor, including comparability to other police or fire departments in similar municipalities, to be dispositive. *Id.* In fact, section 16(g) "invites comparison with other jobs in both the public and private sectors." *Id.* at 85. As a result, the Interest Arbitrator should compare the City's police superior officers' compensation package not only to other municipal police compensation packages, but to other public and private sector jobs.

The amendment implemented under the Reform Act changes the weight the Interest Arbitrator should attribute to the consideration of compensation packages in private employment, public employment and in public employment in the same or similar comparable jurisdictions. Prior to the Reform Act, the Act required the Interest Arbitrator to consider a:

- (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 public employment in the same or similar comparable jurisdictions.
 - (b) In comparable private employment.
 - (c) In public and private employment in general.

Under the Reform Act, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions.

Therefore, the Legislature altered the order of the three sub factors, moving comparability to employees in the private sector from the third sub factor to the first sub factor and moving comparability to public employment in the same or similar comparable jurisdictions from the first sub factor to the third sub factor. This amendment evidences legislative intent to reduce Interest Arbitrators' over-reliance on wage and benefit comparability to public employees in the same or similar jurisdictions -- an over dependence criticized by the Court in Hillsdale and Washington -- and increase Interest Arbitrators' under emphasis of comparability to private employees in general. Consequently, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions without unduly emphasizing comparability to public employment in comparable jurisdictions and without minimizing comparability to private employment in general.

As a result, this section compares the wages, wage increases and benefits demanded by the Association and the wages, wage increases and benefits offered by the City with the wage increases and benefits received by private and public employees in general. It also compares the wages, wage increases and benefits demanded by the Association and the wages, wage increases and benefits offered by the City with the salary and benefits the City provides to its other unionized employee groups and to its non-unionized employees. Additionally, it compares the wages, wage increases and benefits demanded by the Association and the wages,

wage increases and benefits offered by the City with those provided by similar municipalities to their police officers.

a. WAGES AND BENEFITS IN THE PRIVATE SECTOR

Wage and benefit packages in the private sector highlight the reasonableness of the City's proposals in contrast to the PBA's demands. Wage increases in the private sector fall significantly below the annual increases demanded by the Union. All the City needs to support its proposal compared to wages and benefits in the private sector is its first exhibit in the City Exhibit Book, Tab 3. This article cites a New Jersey Business & Industry Association Business Outlook survey. **In 2011, less than fifty (50.0%) of private employers gave raises, with six percent (6.0%) implementing pay cuts. In 2012, less than fifty percent (50,0%) of private employers projected wage increases, with four percent (4.0%) implementing pay cuts.** The City's proposal, unlike the Association's wage demands, is comparable with private sector wage and benefit actions.

While it could be argued that there are no comparable private sector jobs to that of police officers, that argument is irrelevant. When passing the Interest Arbitration Reform Act, the legislators knew the dissimilarities to private employment, but still required the Interest Arbitrator to consider this factor.

b. WAGES AND BENEFITS IN THE PUBLIC SECTOR

Wage increases in the public sector highlight the reasonableness of the City's proposals. Voters have sent a strong message to local government that they will not support increases in property taxes to fund, among other things, salary

increases for public employees. In 2011, under new law, municipalities who needed to exceed the two percent (2.0%) property cap have to put the issue before the public. Previously, local governments appealed to the State for approval if they needed to raise property taxes above the four percent (4.0%) cap. On April 27, 2011, in the first referendum of its kind, voters sent a strong message to local government when they voted down proposals to increase the tax levy above the two percent (2.0%) cap in twelve (12) out of fourteen (14) municipalities. Almost all of the municipalities that voted the referendum down voted no by more than double digits. In two (2) municipalities, voters rejected the proposal by more than eighty percent. Only two (2) municipalities, Brick and Lambertville, passed the measure, which enabled residents to avoid the privatization of garbage collection. Although voters were aware that municipal jobs and services were at stake, the overwhelming defeat of the referendums emphasized the need to control public salaries. The recent deep economic recession caused a call for the reconsideration of public sector compensation packages.

3. PUBLIC EMPLOYMENT IN THE SAME JURISDICTION

It is axiomatic that benefit packages granted to non-public safety employees at best equal benefit packages granted to public safety employees. To the same degree, this holds true in Atlantic City.

The excessive annual salaries of PBA members as compared to non-public safety City employees is astounding. As demonstrated (City Exhibit Book, Tab 3, sub tab 1), Police Officers have greater base salaries than all employees other than

higher ranking Police Superior Officers, Fire Chief, Business Administrator, Deputy Fire Chief, Battalion Fire Chief, Fire Captain, Tax Assessor and Mayor, including Construction Official, Municipal Clerk, Assistant Planning Director, Municipal Attorney, Municipal Department Head, and Director of Public Safety, all of which require advanced degrees! Sergeants and Lieutenants also have greater base salaries than Fire Captain, Municipal Court Judge, Tax Assessor and Mayor! [*emphasis added in original*]

To properly evaluate the statutory criterion of comparability, it is necessary to look at the “big picture”. The City has established a pattern of contractual settlements based upon the Interest Arbitration Award with the City’s firefighting employees (City SOA Exhibit Book, Tab 5). Along with the firefighting employees, virtually all civilian bargaining units have settled for no wage increase for 2013 and 2014 (City SOA Exhibit Book, Tab 3, sub tabs 4-6). For PBA members to receive a wage increase while all other City employees have their salaries frozen is unconscionable, unreasonable and contrary to the statutory criterion.

In its SOA presentation, the Association introduced exhibits entitled “internal comparables.” Suffice it to say that other than salaries, which was discussed above, economic benefits granted to PBA members far exceed that of civilian employees, and should be equal to other public safety employees – those employed in the Fire Department – both current and those hired after January 1, 2013. Terminal leave for all other employees is limited to a payout of \$15,000. Education

incentives for civilian employees are significantly lower. Vacation and personal leave at best is equivalent.

Based on the above comparisons **as presented by the PBA**, the City submits that its proposals are reasonable, consistent with this statutory criterion, and should be granted by the Interest Arbitrator.

4. **PUBLIC EMPLOYMENT IN "COMPARABLE" JURISDICTIONS**

It is common for each side in interest arbitration to create its own "universe" of allegedly comparable municipalities. It is presumed that each universe is skewed to support the position of the party developing that universe. The City contends that due to the uniqueness of the City, there are no comparable municipalities. Very few municipalities in New Jersey have to deal with a "summer surge" of residents and tourists. No municipalities in New Jersey need to supply services for a casino industry. Certainly, no municipalities in New Jersey are faced with the significant revenue loss as is faced by the City due to the above-referenced casino tax appeals.

Examining the PBA's "universe" in documents entitled "External Comparables", the City does not compare in size to Camden, Paterson, Elizabeth, Jersey City, Linden, Hamilton Twp. (Mercer County), Wall, Piscataway, Ewing or Newark. The City does not compare in wealth to Brigantine, Cherry Hill, Linwood, Longport, Marlboro, or Ventnor. Without extensive argument, it is apparent from these exhibits that the PBA has attempted to "cherry-pick" additional municipalities in an attempt to support its positions.

Using the PBA's "comparability" exhibits, the City submits that the only somewhat justifiable universe is those municipalities also within Atlantic County. By doing so, it is impossible to "cherry-pick." In addition thereto, to emphasize the Union's attempt to skew the "comparability" criterion, the City will also discuss the "non-Atlantic County" universe presented by the PBA. Since relatively few municipalities have resolved their contracts for 2013 and beyond, the City will use 2012 salaries for comparison purposes.

With respect to Atlantic County, the PBA referenced ten (10) municipalities. The City's exhibit (attached as Exhibit 3) demonstrates that the City has the highest starting salary of all these municipalities, and that the City's starting salary for Police Officer exceeds the next highest starting salary by more than twelve thousand (\$12,000.00), with an average starting salary of \$40,964! [*emphasis supplied in original*].

With respect to "non-Atlantic County," the PBA referenced fifteen (15) municipalities. The City's exhibit (attached as Exhibit 4) demonstrates that even though the PBA "cherry-picked" these municipalities for their maximum patrolman salaries, the City still has the highest starting salary of all these municipalities, and that the City's starting salary for Police Officer exceeds the next highest starting salary by almost six thousand dollars (\$6,000.00), with an average starting salary of \$43,619! [*emphasis supplied in original document*].

With respect to Atlantic County municipalities, the City's exhibit (attached as Exhibit 5), demonstrates that Atlantic City has the highest maximum Police

Officers' salary of all those municipalities, and that the City's maximum salary for police officer exceeds the next highest starting salary by almost eight thousand dollars (\$8,000.00), with an average starting salary of \$83,472.00! [*emphasis supplied in original document*].

With respect to "non-Atlantic County" municipalities, the City's exhibit (attached as Exhibit 6) demonstrates that even though the PBA "cherry-picked" these municipalities for their maximum patrolman salaries, the City still has the ninth ranked maximum salary for patrolman of all these municipalities, with an average maximum salary of \$97,647! It is important to note that every non-Atlantic County municipality used for comparability exceeds the highest maximum salary of every Atlantic County municipality, other than Atlantic City!! It is for this reason that the City submits that the only reasonable "universe" to be used for this "comparability" criterion is the Atlantic County "Universe." [*emphasis supplied in original document*].

With respect to Sergeants, the City's exhibit (attached as Exhibit 7) demonstrates that even though the PBA "cherry-picked" municipalities for Sergeant salaries, the City still ranked third out of the thirteen (13) municipalities, with an average salary of \$97,184.00 for all municipalities and an average salary of \$91,769.00 for Atlantic County municipalities, between eleven thousand (\$11,000.00) and almost seventeen thousand (\$17,000.00) dollars lower than the City pays its Sergeants! [*emphasis supplied in original document*].

With respect to Lieutenants, the City's exhibit (attached as Exhibit 8)

demonstrates that even though the PBA "cherry-picked" municipalities for Lieutenant salaries, the City still ranked third out of eight (8) municipalities, with an average salary of \$112,008.000 for all municipalities and an average salary of \$104,364.00 for Atlantic County municipalities, between six thousand (\$6,000.00) and fourteen thousand (\$14,000.00) dollars lower than the City pays its [Lieutenants].

In response to the salary guide presented for the first time by the PBA at the hearing, recognizing a starting salary of \$45,000.00 and a ten (10) step salary guide, and in response to the PBA's comparability exhibits, the City has revised its proposed salary guide (attached as City Exhibit 9). Consistent with the Interest Arbitrator's Award with the IAFF and consistent with all other proposals, the City proposes that this salary guide be effective for all bargaining unit members hired on or after January 1, 2013.

With respect to longevity, while a majority of these municipalities still provide for longevity on a percentage basis, the pattern clearly shows lessening of longevity for newly hired employees and, in the case of neighboring Pleasantville, as proposed in this case, current employees receive longevity on a percentage basis while employees hired after 1998 receive longevity on a flat rate basis.

With respect to terminal leave, it must be assumed that the other municipalities cited by the PBA do not provide for terminal leave. While the City's current terminal leave package is at least equal to those other municipalities, the City submits that none of these municipalities comply with the recommendations of

the State's Commission of Investigation, the State legislature, and the Governor. With respect to education, other than Ventnor, no other municipality provided for education compensation on a percentage basis. Furthermore, an insignificant number of municipalities provide for educational incentives for anything but degrees. While not fully addressed in the PBA's comparisons, it only makes sense that the education compensation be tied to degrees in Police Science or a related degree approved in advance by Administration.

With respect to sick leave, there is no argument based upon comparability to increase the number of sick days as proposed by the PBA.

Finally, combining vacation and personal days, virtually no municipality equaled the time off granted to the City's Police Officers. Comparing these municipalities to the City's proposed time off for newly hired Police Officers, the City's Police Officers' time off would still exceed that granted by other municipalities.

Based on the above comparisons **as presented by the PBA**, the City submits that its proposals are reasonable, consistent with this statutory criterion, and should be granted by the Interest Arbitrator.

5. PUBLIC CONSIDERATIONS

This section incorporates the statutory criteria of N.J.S.A. §34:13A-16g (1) interest and welfare of the public and (8) continuity and stability of employment. These statutory criteria are most applicable to the City's economic proposals providing for cost containment. As discussed above, the City is in the midst of a

fiscal crisis due to the loss of substantial revenue from significant tax appeals by the casino industry. For the City to survive financially, it cannot continue to provide compensation and benefits to the same extent as presently. This was recognized by the Interest Arbitrator in the Firefighters' Association Interest Arbitration Award. (City Exhibit Book, Tab 5). That is why the City proposed a wage freeze for current employees; a reduced salary for employees hired on or after January 1, 2013; a freezing of longevity for current employees; the elimination of longevity for employees hired on or after January 1, 2013 (although the City has indicated it would accept the same longevity schedule as awarded to the Firefighters' Association); a new education and training incentives article (although the City indicated that it would accept the application of its proposal for employees hired on or after January 1, 2013, as with the firefighters); limiting terminal leave to a \$15,000 payout (although the City indicated that it would accept the application of its proposal for employees hired on or after January 1, 2013, as with the firefighters); revision of the overtime eligibility calculation; a reduction of vacation time for Police Officers hired on or after January 1, 2013; elimination of personal days; elimination of full release time for the PBA President; and elimination of the shift differential.

If the City cannot counter its budgetary restrictions with respect to revenue by cost containment in the area of appropriations, it will have to reduce appropriations. Since personnel comprises the largest segment of the City's current expense budget, and since Public Safety is the largest component on

personnel expenditures, it stands to reason that appropriation reductions would manifest themselves in Public Safety reductions. Such reductions would not be contrary to the statutory criteria of interest and welfare of the public and continuity and stability of employment.

Based on the above, the City submits that its proposals are reasonable, consistent with these statutory criteria, and should be granted by the Interest Arbitrator.

**6. CITY PROPOSALS (OTHER THAN WAGE INCREASES/
PAY SCALE)**

1. ARTICLE XIII – SPECIAL LEAVES

At hearing, the PBA agreed to this proposal, accepting the City's language of 5 *consecutive* days for funeral leave. Atlantic City correspondingly accepted the inclusion of *Domestic or Civil Union partner* into the definition of "immediate family," and the calculation of the 250 miles based on *vehicular travel using MapQuest*. These changes have been incorporated into the AWARD.

2. ARTICLE XV – LONGEVITY

The City's proposal seeks to revise this Article by maintaining and freezing the current longevity schedule for all employees hired before January 1, 201[3] and eliminating longevity for all employees hired after January 1, 201[3].

The PBA characterizes the City's longevity proposal as outrageous, as it seeks to freeze longevity benefits for current employees and eliminate it for new employees. In the Union's view, considering that every other City employee receives longevity benefits akin to the PBA, the City's proposal is simply outlandish. Moreover, the longevity benefits received by PBA members are identical to the longevity benefits received by the SOA, less than the Deputy Chiefs' longevity payments, and very similar to other bargaining units in the City. Notice is taken by the Union, that while

the SOA Award modified this benefit consistent with the IAFF Award, the SOA Award is subject to appeal, and therefore the PBA has not included the revised benefit into the chart. Furthermore, the PBA asserts that its longevity benefits are similar to and often less than longevity benefits received by other external police departments, both inside and outside of Atlantic County. The PBA goes on to argue that as demonstrated in the chart appearing at pages 41-42 of its brief, police departments such as Camden, Newark, Jersey City, Elizabeth, Paterson, Marlboro, and Northfield all receive longevity benefits greater than those received by the PBA in Atlantic City. Therefore, understanding that the City's bargaining units are receiving greater, identical, or similar longevity benefits as the PBA and municipalities of similar size and scope are often receiving longevity benefits greater than Atlantic City, it would be unfair to the PBA, and detrimental to the public, to freeze longevity benefits for current employees and eliminate longevity benefits for new employees. Such a devastating blow to the compensation package of Police Officers in Atlantic City would make recruiting new officers difficult and destroy the morale of current members. In addition, it would likely result in bargaining unit members not seeking promotions because they would lose benefits as a result of a promotion. In that regard, if the Arbitrator determines it is appropriate to revise the longevity scale for new hires, the model of the IAFF Award and the IAFF MOU incorporated, as well as the SOA Award should be followed for the PBA to allow existing employees to maintain their current longevity scale even if promoted. To find otherwise, would be a detriment to both the PBA and the City. It would further affect the parity between the police and fire. Accordingly, the City's proposal must be denied, or alternatively, the SOA and the IAFF Award with the IAFF MOU incorporated should be followed.

AWARD: Atlantic City's proposal is awarded in part. By virtue of the IAFF and the SOA Interest Arbitration Awards, the City has essentially conceded that it would accept the same two-tiered longevity schedule that was awarded. As I previously found in those cases, the freezing of longevity at existing levels for current bargaining unit members finds no support in either the internal or external comparability data that has been presented by the parties. Moreover, as the chart at page 41 of the Union's brief illustrates, AFSCME Local 2302, AFSCME Local 2303C (Lifeguards), the Supervisors, and the ACWCPA all receive longevity on a percentage basis, although the required time periods are greater. The PBA correctly argues that larger cities like Jersey City, Camden, Newark, Elizabeth and Paterson receive greater longevity benefits, while others are similar. The City has accurately argued in reply, however, that the trend is clearly toward eliminating percentage based longevity in lieu of a flat dollar amount, as was done with the Atlantic City IAFF and SOA new hires. Notice is also taken that such a result is consistent with the approach undertaken by Asbury Park, Linwood, and Pleasantville, as the City has urged. On these bases, I conclude as I did in the IAFF and SOA cases, that the City of Atlantic City and its taxpayers are no longer able to sustain the payment of this exorbitant longevity package, that results in an increase in longevity each time there is an underlying salary award. Accordingly, based upon the guidance provided by the Legislature, as well as the outcry cited in the SCI Report, the IAFF model will be implemented for all Atlantic City Police Officers hired on or after January 1, 2013.

3. ARTICLE XVII – CONTINUATION OF BENEFITS NOT COVERED BY THIS AGREEMENT

Since this is a non-economic proposal, the statutory criteria do not apply. (City Exhibit Book, Tab 4, sub tab 5). While not proposed by either party, the City would agree to the same language as in the Firefighters' Association Collective Bargaining Agreement, which reads "[a]ll provisions of the January 1, 2013 through January 1, 2015 collective negotiations agreement which are not modified by agreement of the parties and/or interest arbitration are to be carried forward and included in the new contract with changes in the date where appropriate." This would help create consistency within the public safety collective bargaining agreements.

The PBA charges that by seeking to eliminate this language in the CNA, the City is essentially seeking to eliminate past practice. The Union argues that moreover, this language is critical because it is a catch all that allows employees to retain benefits they have traditionally received, even though the parties may not have included such benefit in the agreement. Frankly, it is virtually impossible to include every benefit of employment in the CNA, so such a catch all position is essential to ensuring that the City continues to provide the benefits the bargaining unit has enjoyed in the past, according to the PBA. The argument follows that currently, for example, employees enjoy many benefits that are not incorporated into the CNA. It is the established past practice between the parties to provide bargaining unit members with their full allotment of leave time at the beginning of the calendar year, as long as they work during that calendar year. This practice and understanding is not reflected in the CNA and if this language is deleted the City could make the argument that this practice no longer applies and the PBA could not longer rely on this clause in arbitration. In closing, to delete this Article, would remove the employees' rights to these long standing benefits.

AWARD: The City's proposal is not awarded. As the proponent of this contractual modification, Atlantic City had the burden of justifying the same with substantial, credible evidence. No such evidence was adduced at hearing that would justify the effective elimination of past practice in the PBA Collective Bargaining Agreement. Furthermore, there is no indication that there has been any difficulty with regard to the past application of the language that would warrant changing it.

4. ARTICLE XVIII – EDUCATION AND TRAINING INCENTIVES

The City's position was addressed above in the "comparability" and "public considerations" sections and seeks to impose language similar to the IAFF and SOA Awards.

The PBA cautions that the City's Education proposal must be denied for two reasons. First, the City is putting less value on the need for the education of its police force, and second, it is reducing the salary of the employees who currently receive the benefit. Currently, the education incentive is a component of base salary on which longevity and pension are calculated. To eliminate the education incentive would reduce the employees' salary and longevity. Furthermore, the City has not offered any evidence to support this proposal, so there is no rationale for the change. The PBA avers that it cannot be stressed enough that the City must maintain a perception of safety for casino patrons and tourists, in order for the City to maintain its current status in the marketplace. If the City cannot recruit high level talent for police and fire positions it will create havoc and potentially destroy the casino and tourism industry on which the City so heavily relies. For that reason, educated police and fire personnel are essential. Furthermore, the incentive associated with the education is a benefit that will assist in the recruitment of high quality candidates. A proffer is offered that the City must be aware of this fact, as the police bargaining units receive a slightly better education incentive as is demonstrated in the chart at page 49 of the PBA's brief. The Union acknowledges that Atlantic City will surely point to the recent change in the educational incentive of the City Firefighters as part of the IAFF Interest Arbitration Award and IAFF MOU as a basis for changing the structure of the PBA. Importantly, the City and the IAFF agreed in the MOU that the educational incentive should remain the same for all firefighters hired prior to the expiration of the CNA, but would change only for firefighters hired after the expiration of the CNA. To be clear, the Union reiterates, the MOU revised the IAFF Award, so that employees promoted into the position who were hired prior to the expiration of the CNA (January 1, 2012) would not lose the benefit of the prior educational incentive system. And although the PBA does not believe the educational incentive should be revised for newly hired Police Officers, it allows that if I decide to amend the educational incentive, it should only apply to employees hired after January 1, 2013, which would be consistent with the IAFF Award as revised by the MOU, as well as the SOA Award.

AWARD: The City's Education and Training Incentive proposal is awarded in part. My reasoning applied in the IAFF and the SOA Interest Arbitration Awards is equally applicable herein. There is no question that enhanced education benefits the ACPD and the City of Atlantic City. These extremely generous education benefits are percentage based and roll over into the base salary. They are therefore utilized in the computation of longevity, as well as for pension purposes. I recognize that educational incentives are common in education and uniformed services contracts. It continues to amaze me, however, that under the existing C.B.A. language, credit hours unrelated to police science or a related field may be aggregated in 15 credit increments for a percentage of the base salary. On the question of comparability, Atlantic City has correctly observed that with the exception of Ventnor, no other municipality provided for an educational incentive on a percentage basis. Furthermore, an insignificant number of municipalities awarded educational incentives for anything other than a degree. The City follows with the cogent argument, that it only makes sense therefore, that the education compensation be tied to a degree in police science or a related degree approved in advance by the administration. Based on the foregoing, and consistent with the IAFF Award/MOU and SOA Award, I will award a new incentive program which will reward future unit members for credits and courses that relate to police work. And as I found in the IAFF and SOA cases, while other AC employees receive an educational incentive, it is a flat dollar amount. The benefit will therefore be reduced to a fixed dollar amount as in the IAFF Award. The Union has however raised a potent argument that reducing the benefit for the current unit members would affect their base pay, and for that reason it will remain intact. All of the other language proposed by the City is substantially awarded, however.

5. ARTICLE XIX- TERMINAL LEAVE WITH PAY

The City's position was addressed above in the "comparability" and "public considerations" sections.

The PBA recognizes that the City's proposal seeks to cap terminal leave benefits for all employees, including existing employees, at \$15,000.00, and after January 1, 2015, only allows employees to be paid for half of their accumulated sick leave. The City further seeks to reduce the sick pay at retirement for every sick day taken in the employee's last year of employment. The Union concludes that the concept of deducting from sick pay at retirement is an absurd concept. Rather, an employee should not be punished for legitimately using sick leave they have accrued over the years of service to the City. Moreover, the City should not dissuade employees from using sick leave when they are legitimately ill or injured. The other portion of the proposal seeking to cap sick leave at \$15,000.00 is in direct response to the SOA's arbitration victory in which Arbitrator Thomas Hartigan granted the SOA's

grievance and ordered the City to pay the terminal leave. See U-3, Exs. 60-62. This terminal leave proposal is accordingly the City's attempt at retribution for the SOA challenge to the City's failure to pay terminal leave benefits. Notably, the City has so steadfastly refused to pay the terminal leave benefits required by the CNA, that it necessitated an application by the PBA inter alia to the Atlantic County Superior Court seeking to confirm the award. Currently, the terminal leave provision caps the terminal leave benefits of the PBA membership between six (6) months and eighteen (18) months, which is determined by the hire date. Such a cap comports with the IAFF terminal leave provision in the City and is similar to and less than other comparable municipalities, as reflected by the chart setting forth external comparability. The Union notes that notably, neighboring Brigantine has no terminal leave cap except to limit the leave to seventy-five (75%) of unused sick leave, which is much more generous than the PBA terminal leave cap. Furthermore, more comparable municipalities in size and scope, such as Camden have significantly higher terminal leave caps than Atlantic City. Internally, the SOA and IAFF bargaining units receive terminal leave similar to the PBA. Moreover, non-law enforcement bargaining units also receive terminal leave. In fact, the Supervisors bargaining unit receives terminal leave benefits arguably greater than those received by the PBA.

AWARD: Atlantic City's Terminal Leave proposal is awarded in part. An observation was made in the IAFF and the SOA cases, that this issue is controversial and contentious. Our Legislature has entertained a bill that would cap the benefit at \$15,000, which the Governor promised to veto. As the City has argued, the State Commission of Investigation ("SCI") previously issued a scathing report in May 2012, which criticized municipalities and school boards for failing to rein in this perceived inflated benefit. See UNION WORK PUBLIC PAY, City SUPPLEMENTAL BINDER at Tab 17. The PBA has accurately recited the City's proposal, and noted that Atlantic City's terminal leave provision is not unusual and is in fact eclipsed by other municipalities as shown by the chart at pages 52-54 of the brief. Parenthetically, as I found in the SOA Award, the reason why the bargaining unit accumulated sick leave is that they diligently reported to work throughout their years on the job, rather than "banging in." As such, the ACPD and the taxpayers of Atlantic City realized a significant savings in overtime. I went on to find perhaps most critically, that many individuals had carefully planned their entire retirement around this benefit. I accordingly refused to disturb this benefit for current bargaining unit members or Police Officers subsequently promoted. This pattern as memorialized in the IAFF MOU will be continued in the instant award, to require that in addition to current Police Officers hired before January 1, 2013, any of them subsequently promoted to Sergeant or Lieutenant will also be governed by the existing Article XIX language. In closing, the unvarnished reality is that terminal leave payouts in excess of \$15,000 are the relic of a bygone era.

6. ARTICLE XXV – CALL BACK

The City submits that it is unreasonable and unwarranted for the City to pay bargaining unit members at a premium rate for work performed during their regularly scheduled shift simply because they were called in before the start of the shift. The proffered language provides that in the event there is a call back, the employee shall receive a minimum of four (4) hours at 1 ½, but that the guarantee shall not apply if the four (4) hour minimum is contiguous with the regularly scheduled work day.

Similarly, the City submits that it is unreasonable to require the City to guarantee bargaining unit members four (4) hours at the overtime rate without allowing the City to require bargaining unit members to work all four (4) hours. The proposed language of Section B. accordingly seeks to pay overtime only for the time worked if the employee requests and the immediate supervisor agrees to release the employee early.

The Union characterizes this as a two part proposal that seeks to redefine and effectively disembowel the original intent of the Article. According to the PBA, the intent of the Article was to guarantee employees a minimum number of hours when they are called back to work. The purpose of such a guarantee was to acknowledge the fact that employees had already taken the time to get ready for work, commuted to and from work, and returned to their home. By being called back into work, not only is their home life intruded upon, but the employee in many circumstances, has to get ready for work again, as well as commute to and from work again. If the City only had to pay for the time actually worked when an employee is called back to work, there would be no consideration for the additional commute or the time necessary to prepare for work again. Furthermore, there must be consideration for the fact that the employee's home life is being severely disrupted. The City's proposal would require the employee to work the entire four (4) hours even if there is no need to do so. In other words, the City is seeking to have the bargaining unit members unnecessarily disrupt their home lives for no apparent reason. Paragraph (B) should be denied because of the long standing past

practice between the parties.

AWARD: The City's call back proposal is denied. While the proposal has surface appeal, no testimony in support of the same was adduced by Atlantic City. Moreover, the only related testimony was provided by President Barbere. This explained the PBA's opposition to the City's proposal and stressed the emergent nature of the process and its disruptive effect on the unit members' private lives. And while the Union claimed that there is a past practice governing the call back procedure, the nature of the same was unclear. The bottom line is that the justification for the modification was not well developed by the City.

7. ARTICLE XXVI – OVERTIME

The City's proposal seeks to delete the opening paragraph replace it with the following language: "[o]vertime shall consist of all hours worked in excess of the maximum number of hours worked allowable pursuant to the Fair Labor Standards Act with a twenty-eight (28) day work period."

The PBA contends that once again the City has failed to offer any evidence to support such a change to the CNA. Rather, as with the vast majority of the City's proposals, no testimony or evidence was offered to support the radical changes. For this reason alone, the PBA concludes that the proposals, including overtime, must be dismissed as baseless. The Union counters that frankly, the proposal does not appear to make sense and would only serve to confuse the current overtime system, as well as the other provisions of the contract such as the Call Back provision of Article XXIV, and the Continuation of Benefits provision of Article XVII. The only logical conclusion is that Atlantic City is seeking to eliminate bargaining unit members' ability to receive OT for working in excess of 8 hours per day. Currently, Police Officers work eight (8) hour days and a total of forty (40) hours per week. Pursuant to the Fair Labor Standards Act, the City is required to pay OT for all hours in excess of 40 in a workweek. 29 U.S.C. 207. The current CNA calls for OT for hours worked in excess of 8 hours in one day. The City has articulated no reason and presented no evidence for seeking a change in this Article. Finally, this is yet another Article in the PBA CNA that is identical to the SOA CNA that the City is attempting to eliminate. However, the City's attempt to eliminate this Article of the SOA CNA was denied by the SOA Award. Yet, the City has not acquiesced, and, instead, continues to attempt to unnecessarily eliminate this provision despite the precedent established by the SOA Award. If nothing else, by so steadfastly seeking to eliminate this Article in the face of the SOA, the City

has succeeded in creating further animosity between the parties. Since there is no reason to grant the City's proposal, and the identical proposal was denied as part of the SOA Award, the City's nonsensical proposal must be denied.

AWARD: The City's proposal is denied. Per my prior observation made in the SOA Award, this proposal is confusing, notwithstanding counsel's explanation at the February 19th hearing. No rationale of any kind has been offered, nor evidence of difficulty with the existing CBA language presented. This provides for the payment of overtime after 8 hours in a given day or 40 hours in a week. These benefits should not be disturbed arbitrarily, in the absence of substantial, credible evidence.

8. ARTICLE XXIX – SICK AND INJURED

The City's proposal seeks to delete subparagraphs 1a, 2a. and 4 from Article XXIX. The City submits that its proposal for Section 2 should be modified to comport its terminal leave proposal or the Firefighters' Association Interest Arbitration Award in that it should apply only to bargaining unit members hired on or after January 1, 2013.

The City's proposal with respect to Section 4 was modified during discussion at the hearing. The proposal was modified to be consistent with the Firefighters' Association Collective Bargaining Agreement, in that a bargaining unit member must exhaust his or her sick leave prior to being eligible for extended sick leave. To grant bargaining unit members additional sick leave without having exhausted their own accumulated sick leave makes no sense and grants bargaining unit members a benefit not enjoyed by any employee outside of uniformed members of the City's Police Department.

The PBA submits that the City essentially seeks to eliminate the extended sick leave provision. Currently, both the PBA and IAFF have an extended sick leave

benefit, which permits employees up to one (1) year for injury or illness if it is determined by the City that the injury or illness requires convalescing. It should be noted that the bargaining unit does not have short term disability benefits other than the limited benefits provided by the State. The Police Department has also recently instituted a light duty program which has drastically reduced the need for employees to utilize this benefit. However, on some occasions it remains a necessary and important benefit. Although the City has not provided any evidence to support this proposal, the City cannot realistically be claiming that this provision is being abused, because the City under the provisions of paragraph 4 of Article XXVIII, has the right to review the illness or injury and determine if it requires convalescing. If the City reasonably determines that the illness or injury does not require convalescing then the leave will not be granted. Moreover, this provision is expressly provided for by N.J.S.A. 40A:14-137, and many municipalities in the area offer extended sick leave, such as Brigantine, Galloway, Linwood, Pleasantville, and Longport. Asbury Park, Elizabeth, Jersey City, and Paterson are also examples of comparable jurisdictions outside of Atlantic County that offer similar extended sick leave benefits. In sum, the City failed to offer any reason to eliminate this necessary benefit. The City has not pointed to any abuse of the benefit. Likely because Atlantic City has the ability to control and monitor the use of extended sick leave. As was the case for previous Articles, the City similarly attempted to eliminate such an Article during the SOA interest arbitration. The City's attempt failed in that case, and therefore, must fail here as well. For these reasons, the City's proposal must be denied. Additionally, the City is seeking to eliminate Section 1a and Section 2a, which ostensibly allow unit members the ability to receive their allotment of sick leave at the beginning of the year. As the City provided no basis for this proposal and, furthermore, has provided no alternative in the event this language was deleted, this proposal must be denied. .

AWARD: The City's proposal is denied. This seeks to eliminate subparagraph 1a and 2a, which provide for one hundred twenty (120) and one hundred (100) hours of sick leave to be credited per year, with no employee entering the present contract year with less than that. According to the PBA, this permits unit members to receive the benefit on January 1st. Thereafter, the City seeks to delete paragraph 4, which permits the awarding of advanced sick leave not to exceed one (1) year. The City maintains that this is a benefit only enjoyed by the ACPD, and the PBA has provided examples of similar provisions within and outside of Atlantic County. The City goes on to maintain that the language of paragraph 4 should be modified to comport with that of the IAFF Agreement, in that unit members should be required to exhaust their own accumulated sick leave before accessing up to one (1) year of additional time. No evidence of abuse or testimony concerning the justification for these contractual modifications was offered by Atlantic City, which has not satisfied its burden of demonstrating such entitlement. The PBA has also made the argument that the onset of a new light duty policy initiated by the Police Department, has dramatically reduced the need to access this benefit. There are also safeguards in place for this discretionary benefit which Management controls.

The City's position was addressed above in the "comparability" and "public considerations" sections. In addition thereto, the City submits that this proposal must be granted to be consistent with the Interest Arbitrator's Award with the Superior Officers' Association.

The City's position is to delete this Article and replace it with the following:

A. 1. The vacation schedule for all bargaining unit members hired on or after January 1, 1985 shall be as follows:

<u>Years of Service</u>	<u>Annual Vacation Days</u>
First twelve (12) months	One (1) day per month by anniversary date
2 through 4 years	Twelve (12) days
5 through 9 years	Sixteen (16) days
10 through 20 years	Twenty (20) days
20 years through retirement	Twenty-five (25) days

2. The vacation schedule for all bargaining unit members hired on or after January 1, 1999 shall be as follows:

<u>Years of Service</u>	<u>Annual Vacation Days</u>
First Twelve (12) months	One (1) day per month by anniversary date
2 through 4 years	Twelve (12) days
5 through 9 years	Sixteen (16) days
10 through 20 years	Twenty (20) days
20 years through retirement	Twenty-four (24) days

3. The vacation schedule for all bargaining unit members hired on or after January 1, 2013 shall be as follows

<u>Years of Service</u>	<u>Annual Vacation Days</u>
First twelve (12) months	One (1) day per month by anniversary date
2 through 9 years	Ten (10) days
10 through 20 years	Fifteen (15) days
20 years through retirement	Twenty (20) days

4. The term "days" shall be defined as eight (8) hours.

B. 1. The vacation schedule for Sergeants promoted before January 1, 2013 shall be twenty-eight (28) days of vacation working eight (8) hour days (224 hours), or twenty-two (22) days of vacation if working ten (10) hour days (220 hours).

2. Sergeants promoted on or after January 1, 2013 shall receive an additional sixteen (16) hours if they are working eight (8) hour days and twenty (20) hours if working ten (10) hour days over and above their vacation entitlement at the time of their promotion.

C. 1. The vacation schedule for Lieutenants promoted before January 1, 2013 shall be twenty-nine (29) days of vacation working eight (8) hour days (232 hours), or twenty-three (23) days of vacation if working ten (10) hour days (230 hours).

2 Lieutenant's promoted on or after January 1, 2013 shall

receive an additional eight (8) hours if they are working eight (8) hour days and ten (10) hours if working ten (10) hour days over and above their vacation entitlement at the time of their promotion.

The PBA asserts that the City's Vacation Leave proposal serves no purpose other than to negatively affect the morale of the employees. Once again the City has offered no testimony or other evidence to support it. In the Union's view, the proposal is particularly disconcerting because it strikes at the heart of the bargained-for benefits necessary to maintain morale in this high stress occupation that is potentially life threatening on a daily basis. As such, police officers need the opportunity to decompress by having time away from the job. The PBA insists that it is difficult to compare vacation leave with other municipalities' vacation policies due to varying work schedules and methods for calculating the amount of time that constitutes a vacation day, all of which vary from municipality to municipality and even rank to rank. A better comparison therefore is to bargaining units within the City that receive vacation leave. Based on the chart at pages 63-64 of the PBA's brief, it is evident that the PBA bargaining unit members' vacation leave certainly is aligned with other bargaining units in Atlantic City. The Blue Collar and White Collar units both have more vacation leave as they accumulate more years of service despite the fact that the positions cannot be considered as stressful, or as dangerous as that of Police Officers. In the event the City contends, or it is deemed appropriate that the vacation proposal comport with the IAFF Award, the Arbitrator must consider that the IAFF Award was modified by the MOU between the City and the IAFF as it related to vacation leave. The MOU modified the Award, to provide that only employees hired after January 1, 2012 would be subject to the new vacation schedule. In fact, the parties clarified that employees hired prior to January 1, 2012 but who were promoted after January 1, 2012 would continue to receive the vacation leave schedule as set forth in the previous CNA. The reason behind the agreement in the IAFF MOU is that the IAFF Award created a compression issue for both parties. In particular, the IAFF Award created a concern that there would be no incentive for employees to seek promotions understanding they would take on more responsibility but would receive the same or less benefits if they accepted the promotion. That is precisely the problem the parties would once again have if the City's proposal was adopted or the IAFF Award was implemented. In this case, the City is seeking to reduce the vacation days for new hires. This would result in significant loss in vacation days. Such a result is not in the best interest of either party. With that understanding, if the Arbitrator deems it appropriate to issue an Award similar to the IAFF Award, the MOU should be incorporated to avoid an inequitable situation and maintain parity with the IAFF.

AWARD: The City's vacation proposal is awarded in part, but modified. This seeks to grandfather current unit members at existing levels, while establishing a new schedule for those hired on or after January 1, 2013. As I remarked in the SOA Award, I credit the PBA's argument that due to variations in schedules and the computation of eligibility, external comparability comparisons with other police departments is imprecise. The Union has also properly concluded that the vacation days received are roughly internally equivalent with the Fire Department and to those received by other Atlantic City employees. In the case of the Blue and White Collar units, they are in fact inferior, as the AFSCME Local 2303, Supervisors and ACWCPA C.B.A.'s provide for 30, 31, & 30 vacation days per year for an employee with 21+ years of service. I continue to endorse the proposition that police work is inherently dangerous and stressful. However, in the balancing of the equities, the reality of the situation is that distressed municipalities such as Atlantic City can no longer afford to bestow such lavish benefits. I have accordingly reduced this benefit for new hires who become employed on or after January 1, 2013, while utilizing the IAFF MOU provision to account for any current unit members who are subsequently promoted. The time period for the accrual of vacation time has been retained from the current schedule. And while I have included the City's language which awards additional vacation days upon promotion, based upon an eight (8) or ten (10) hour work day, I have included an escalator clause to prevent inequity, where a Police Officer is promoted earlier in his career but would have gotten more vacation days had he not been promoted.

10. ARTICLE XXXI - PERSONAL DAYS

The City's position was substantially addressed in the "comparability" and "public considerations" sections. The proposal seeks to delete this provision in its entirety.

The PBA submits that all other law enforcement personnel in Atlantic City receive personal days. Yet, the City is looking to eliminate these leave days for the bargaining unit. Importantly, the City sought to eliminate the personal days from Captains, but the proposal was denied in the SOA Award. If the Arbitrator somehow deemed it appropriate to eliminate this benefit from the Police Officers, both the Captains and the Deputy Chiefs would still receive 2 personal days, the PBA reasons. Moreover, other comparable jurisdictions receive personal days, as reflected by the chart on page 67 of the Union's brief. And as the chart further indicates, many jurisdictions such as Linwood, Longport, Marlboro and Paterson

receive more personal days than the Atlantic City Police Officers. There is accordingly no basis to eliminate these days, which are an important benefit that permit the unit members to utilize a personal day for unanticipated life events that require a day off from work. In addition, only one (1) personal day may be carried over per year otherwise the member will lose that time. Finally, the CNA allows the PBA to be paid for personal days at retirement, and to eliminate this benefit would reduce the current employees retirement benefits. For these reasons the PBA submits that it must be permitted to continue to receive personal days, so the ability to use a leave day other than sick or vacation may be preserved.

AWARD: The City's proposal is denied. The PBA has identified the need for personal days to permit unit members to address the expected and unexpected contingencies of daily life. The external pattern for law enforcement officers within the State of New Jersey, and the internal pattern for Atlantic City Public Safety and civilian employees demonstrate that the two (2) personal days the unit receives per year is in line with the same. Only one (1) of the days is accumulative and may be carried over. Personal days are also payable at retirement. The City has not provided a scintilla of evidence that the current personal day scheme has been a problem or must be changed, and awarding this would foster labor relations instability.

11. ARTICLE XXXIV – SCHEDULE OF SALARY

The City seeks to revise this Article as follows:

- A. 1. Effective January 1, 2013 through December 31, 2014, the pay scale for Police Officers hired prior to January 1, 2013 shall be as follows:

<u>STEP</u>	<u>2013</u>	<u>2014</u>
1	\$58,883.00	\$58,883.00
2	\$61,208.00	\$61,208.00
3	\$63,532.00	\$63,532.00
4	\$70,311.00	\$70,311.00
5	\$77,090.00	\$77,090.00
6	\$83,870.00	\$83,870.00

C. 1. For the life of this Agreement, the pay scale for Sergeants promoted to Lieutenant who were hired prior to January 1, 2013 shall be \$109,021.00.

2. For the life of this Agreement, the pay scale for Sergeants promoted to Lieutenant who were hired on or after January 1, 2013 shall be \$82,426.00

The PBA determines that the City's Pay Scale proposal is detrimental to the City and the PBA. The Union acknowledges that the City is seeking to maintain the salary of current bargaining unit members without an increase. Notice is taken that the proposal for current PBA bargaining unit members is addressed in the discussion on the PBA proposal for a total salary increase of two percent (2%). Based on the analysis, the PBA offers that the City's proposal to not provide a salary increase to current PBA members is without merit. Furthermore, a lower pay scale for new hires will be detrimental to the PBA, the City, the casinos, and the public because it would create a situation where other municipalities would attract more desirable recruits. As demonstrated by the chart at pages 69-75 of the PBA brief, the current pay scale for new hires in Atlantic City is comparable to the pay scale for new hires in other larger municipalities and is often less than in other jurisdictions. The Union submits that the chart demonstrates that Atlantic City in terms of salary for similar bargaining units is in the same range or receives a lesser salary than comparable jurisdictions outside of Atlantic County such as Mount Laurel, Elizabeth, Cherry Hill, Hamilton, Jersey City, and Marlboro. In Atlantic County, the Atlantic City PBA rank second in terms of salary behind Galloway Township, despite being the largest municipality in the County. According to the PBA, the internal comparables highlight the inequities that would result if the City's outrageous proposal was adopted. There would be no real incentive for any law enforcement officer to seek to be promoted with the increased responsibilities associated with a promotion. Furthermore, any parity that existed between the Police Department and the Fire Department would be destroyed. Furthermore, the lifeblood of Atlantic City rests in the casino and tourism industry. In order for both to survive, patrons and tourists must feel and be safe when visiting the City, which makes the need for the City's Police and Fire Departments to be among the best, if not, the best and most efficient in the State of New Jersey. If however, the Arbitrator seeks to implement an equitable version of the IAFF Award, the IAFF MOU must be incorporated as was done as part of the SOA Award. As stated in previous sections, the IAFF MOU allowed the current pay scale to apply to employees promoted after January 1, 2012, so the Award only applied to new hires who might later be promoted. The MOU is especially necessary as it relates to

wages because an Award cannot create a situation that would serve as a disincentive to employees seeking promotion. Lastly, but no less significantly, the March recruits should not be considered new hires for the purpose of any revised wage scale. As stated above, the March recruits were hired under the terms of the existing CNA, and therefore, ostensibly had an expectation that they would receive the current wages and benefits associated with employment with the City as a Police Officer. To reduce those wages is akin to a reduction of their compensation package, which is essentially disconcerting because the March recruits relied to their detriment that they would receive a certain level of salary and benefits when accepting employment. To find otherwise, would be a grave injustice and fundamentally unfair. In sum, the City has presented no evidence in support of its proposal to reduce the salary of the bargaining unit. For that reason alone, the City's Pay Scale proposal must be denied. In the event the Arbitrator determines it is necessary to revise the pay scale, it should only be revised to comport with the SOA Award and the IAFF Award with IAFF MOU incorporated, in order to retain parity and equity. Furthermore, in the interest of fundamental fairness, the March recruits should be red circled as they were hired under the existing CNA.

AWARD: The City's proposal is awarded in part. At the outset, as is discussed more particularly in III. STATEMENT OF THE CASE, the record evidence demonstrates that based upon the pattern of settlement established by the IAFF and SOA Interest Arbitration Awards, coupled with Atlantic City's financial flexibility under all caps to fund the Award, the PBA is entitled to the full 2% per year under the hard cap. That said, by virtue of the substantial costs of step increases, longevity and educational incentives over the life of the successor agreement, only a reduced amount remains to fund any ATB increase for unit members. With respect to new hires, I believe that the City has made a compelling argument for a two-tiered pay scale, as is common in many municipalities throughout the State of New Jersey and within Atlantic County. Consistent with the IAFF MOU, however, that will be applied only to new hires. The definition of *new hire* is any Police Officer hired on or after January 1, 2013. The PBA has made seductive if unpersuasive arguments that the current recruits should be red circled at the current wage rate and benefit level. A number of factors prevent me from endorsing this position, however. Initially, and perhaps most critically, neither the initial proposal of the Union memorialized in its February 4, 2013 correspondence to P.E.R.C. at Union Exhibit 1, nor its Final Proposal made at the March 18, 2013 hearing at Union Exhibit 2, mentions the recruits. There is no evidence in the record as to the number of recruits; their start date; whether they were actually hired at all; and any representations purportedly made to them by Atlantic City officials. As such, the PBA's equitable estoppel arguments are more properly heard by a grievance arbitrator in the event of a contractual violation. I indicated that I had no jurisdiction to entertain them. These individuals are accordingly *new hires* in the eyes of the C.B.A. As to the appropriate salary guide, I believe that neither party has succeeded in crafting one that is in keeping with the statutory intent, so I have modified the proffers to comply with the guidance provided initially by the IAFF Interest Arbitration Award, and thereafter by the SOA Interest Arbitration Award.

12. ARTICLE XXXVIII – PBA PRESIDENT

Since this is a non-economic proposal, the statutory criteria do not apply. (City SOA Exhibit Book, Tab 4, sub. Tab 6).

The City proposes to limit the amount of time off granted to the PBA president for the purposes of performing union business. (City SOA Exhibit Book, Tab 4, sub tab 16). While at first blush this may seem insignificant and “petty”, it is of major concern. The taxpayer cost of compensation and benefits for public employee union leave is so significant that the issue was investigated and addressed by the State of New Jersey Commission of Investigation (“SCI”), which issued a report on the matter. *Ibid.* In its report, the City of Atlantic City was specifically identified as a municipality granting this excessive benefit. On page 24 of its report, the SCI’s first and foremost recommendation is to “Eliminate or Substantially Curtail Taxpayer Funded Union Leave.” The SCI’s Report represents the interest and welfare of the public. The City’s proposal is consistent with the SCI report and the interests and welfare of the public.

The Union urges that there is no reason for the City to seek to eliminate this Article. The accusation is made that as usual, the City has offered no evidence to support the need to eliminate the Article, which makes it impossible to understand the City’s reasoning for such a proposal. Moreover, the PBA President serves a vital function in that the President is integral for establishing and maintaining a harmonious and productive labor-management relationship. President Barbere’s uncontroverted testimony illustrated that the PBA President position is a full-time job that cannot be performed in conjunction with law enforcement duties. It is evident that the City has no concern about the well being of Police Officers that serve the City or the residents themselves, when the City makes such proposals. Rather, the City focuses directly on retribution. If the City had concern about Police Officers or residents, it would not create a situation in which the PBA President would constantly be pulled out of his or her assignment to attend to union business. This would create a dangerous situation for the PBA President and his or

her fellow Police officers. It may also likely increase overtime costs resulting from the City being short staffed due to the PBA President's absence. It is evident that the City is seeking to eliminate this Article because the PBA has filed for arbitration as the result of the City removing the PBA President from his office. This proposal is nothing more than retribution for the PBA exercising its protected rights. To eliminate this Article, which causes no harm to the City, would not only be a blow to the PBA, but would also undermine the grievance and arbitration process. Moreover, it would effectively moot the PBA's pending arbitration case if the same provision is removed from the PBA contract. Similarly, the City sought to delete the PBA President Article in the SOA CNA. However, the Arbitrator rightly decided to deny the proposal. In order to maintain parity and stay consistent with precedent, the Arbitrator must not award in favor of the City. Such a result cannot stand especially understanding that the Article itself does not cause harm to the City. Accordingly, the City's proposal must be denied.

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AWARD: The City's proposal is not awarded. As I observed at page 71 of the IAFF Interest Arbitration Award in P.E.R.C. Docket No. IA-2010-045, "[m]y analysis starts with the proposition that the taxpayers and residents of the State of New Jersey are the silent partners to every collective bargaining agreement that is entered into between a municipality and majority representative. No serious argument may be made that the misuse of union release time is not a pernicious impediment to good government, which adds to the financial bottom line of the governing unit and ultimately the public. That said, as with any proposal, there must be a satisfactory demonstration of the need for change and not a scintilla of proof has been provided. Such is not found in the *State of New Jersey Commission of Investigation UNION WORK PUBLIC PAY* document upon which Atlantic City relies. Rather, the majority of the report addresses full-time leave without accountability." As I also discussed in the IAFF Award, the SCI Report identified Atlantic City as providing paid union leave. This focused however, upon the IAFF president and the Atlantic City Education Association. The City has noted this specific reference herein. One of the SCI's criticisms was the lack of uniform rules governing paid union leave, and attendant accountability. In denying a parallel proposal by the City in the IAFF case, I found that there were ample procedural safeguards in the Firefighters' C.B.A. The same is true of the PBA contract. In that regard, Article XXXVIII, Number 3 requires the president to sign-in at the beginning and end of his shift in the Chief of Police's Office, while Number 4 requires that the Chief of Police be kept informed of the president's whereabouts during the shift, with the president available for urgent public safety needs. Number 2 focuses on a critical Union argument: "[h]e will help establish and maintain a good employer/employee relationship in the Department." Even a cursory glimpse of the moving papers in this case provides ample evidence of the toxic relationship that currently exists between Atlantic City and the PBA, with protracted litigation the norm, rather than the exception. In the absence of *any* evidence whatsoever of current abuse, my awarding of this sweeping proposal would be an abuse of my discretion, as the consequences would be predictable. At hearing, the City allowed that it had no difficulty releasing the president for required meetings, etc., but has proposed no language to that effect. It is also curious to me that the Atlantic City Police Department would desire to create a situation where it would perhaps have to find coverage for the president on short notice, in the event his presence was required on an emergency basis. Such a result would be disruptive at best, and could result in increased overtime costs, as the Union has speculated. In closing, and I reiterate, the City has provided no justification for this proposal and on that basis, it has not been awarded.

13. ARTICLE XLIII – SHIFT DIFFERENTIAL

The City's seeks to delete this article in its entirety. The City's position was addressed above in the "comparability" and "public considerations" sections.

The Union rejects the City's Shift Differential proposal as devoid of any merit, which would create an inconsistent practice in the Police Department. The PBA recognizes that shift differential is meant to compensate employees who work on undesirable shifts. It is not a significant amount (\$400 to \$500 once per year depending on the shift), but it serves a real purpose. The shift differential is an incentive for employees to work on those shifts. This proposal clearly does not benefit either party. It would create chaos within the Police Department because no employee would have an incentive to work an undesirable shift. Therefore, to permit such an abusive proposal cannot be tolerated, and the City's proposal must be struck down.

AWARD: The City's proposal is denied. The PBA has advanced persuasive arguments related to the intent of shift differential. President Barbere also touched upon the same during his March 18, 2013 testimony. The PBA is also quick to remind me that because the SOA receives a shift differential, the elimination of the benefit may create disharmony within the ranks. The bottom line is that as with many of its proposals, the City has adduced no evidence or provided any justification which would warrant the removal of such a modest benefit that operates as an incentive to work the afternoon and evening tours. There is also no indication that a problem exists with the application of the current shift differential.

CONCLUSION

The City's proposals more reasonably reflect the statutory criteria than the PBA's demands. The City's proposals comply with the two percent (2.0%) statutory cap, and consider the impact of the Cap Law on the City's ability to grant wage increases, and the financial impact on the governing unit, its residents and taxpayers.

The City's proposals also consider the interest and welfare of the public, the

PBA members' overall compensation package, salaries and benefits in the private sector, salaries and benefits in the public sector and the salaries and benefits provided to employees in the same jurisdiction and Captains in "comparable" municipalities.

The City's proposals further consider the modest increases in the cost of living. The City's proposals take into account its impact on the PBA's continuity and stability of employment. On the other hand, the PBA's demands fail to comply with the two percent (2.0%) statutory cap; fail to consider the impact of the Cap Law on the City's ability to grant wage increases, and the financial impact on the governing unit, its residents and taxpayers; fail to consider the interest and welfare of the public, the PBA members' overall compensation package, salaries and benefits in the private sector, salaries and benefits in the public sector and the salaries and benefits provided to employees in the same jurisdiction and Police Officers in other comparable municipalities; fail to consider the modest increases in the cost of living, and; fail to take into account its impact on the PBA's continuity and stability of employment.

Because the City's proposals more reasonably reflect the statutory criteria than the Association's demands, the City respectfully requests the Interest Arbitrator to issue a decision supporting the elements of the City's offer.

III. STATEMENT OF THE CASE

With the adoption of P.L. 2010, c. 105, as referenced in N.J.S.A. 34:13A-16 (2011) which was effective January 1, 2011, the processing and adjudication of

interest arbitration petitions was significantly modified. Subsection d provides that: "[t]he resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria as set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L. 2010, c. 104 (C.34:13A-16.7)." *See also, Hillsdale PBA Local 207 v. Borough of Hillsdale*, 137 N.J. 71, 644 A.2d 564 (1994); Township of Washington v. New Jersey State Policeman's Benevolent Association, Inc., 137 N.J. 88, 644 A.2d 573 (1994).

By virtue of the December 31, 2012 expiration date of the subject CBA, this interest arbitration case falls under the "hard cap" provisions of P.L. 2010, c. 105, with N.J.S.A. 34:13a – 16.7, as amended. This instructs:

a. As used in this section:

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

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

b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer for base salary items for the members of the affected employee organization in the twelve months

immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

The current statute was enacted by the New Jersey State Legislature to address escalating and elevated property tax obligations. Governor Chris Christie has in fact made the reduction of perceived exorbitant public sector benefits one of the cornerstones of his administrative policy. In hearing these cases, it is axiomatic that all interest arbitrators must buttress their awards with *substantial, credible evidence* or be exposed to a collateral attack upon appeal. *See In the Matter of Borough of New Milford and PBA Local 83*, P.E.R.C. No. 2012-53; *In the Matter of Borough of Ramsey, and Ramsey PBA Local No. 155*, P.E.R.C. No. 2012-60; *see also In the Matter of Teaneck Tp. v. Teaneck FMBA, Local No. 42*, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd.* p.b. 177 N.J. 560 (2003), citing *Cherry Hill Tp.*, P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 P.E.R.C. No. 2012-53). I have endeavored to abide by this imperative in the case at bar, and while I have determined that all of the statutory criteria are relevant, they are not entitled to equal weight.

P.E.R.C. issued its *New Milford* decision on April 9, 2012, P.E.R.C. No. 2012-53, *supra*, which for the first time provided arbitral guidance for the necessary calculations in ensuring that any economic award does not exceed the

2% "hard cap." At pages 12-13, P.E.R.C. opined that:

[t]his is the first interest arbitration award that we review under the new 2% limitation on adjustments to base salary. Accordingly, we modify our review standard to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the 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 the base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

The Commission went on to say at page 15:

**** Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. *The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise,*

as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

In calculating the total base salaries expended for 2012, the City utilized the PBA's Union Exhibit 4 submission to avoid any discrepancies. This reflected the following:

2012 SALARIES:	\$28,035,697;
2012 LONGEVITY	\$ 1,341,914;
2012 EDUCATION INCENTIVE	\$ 1,358,783

A bench ruling was issued at the hearing that directed the parties to prorate the retirees based on their length of service during that year. The Union disagreed with that directive, but such a result is consistent with the uniform arbitral practice in interest arbitration cases. The retirees are listed in Union Exhibit 4 by name, retirement date, base pay, education incentive, and longevity.

The totals derived at the bottom columns, however, do not take the actual retirement dates into account and are accordingly not prorated. The City's spreadsheet did that, and lists the name, the base which includes salary, longevity and educational incentive, the number of months worked, and the resulting credit based upon proration. I have independently verified the accuracy of the City's spreadsheet against the Union's, resulting in a total of \$1,788,264. Accounting for the 2013 retirees, who should have been included in the 2012 number, the City correctly arrived at the figure of \$692,604, which is in keeping with the figures on

Union Exhibit 4. When these are included, the City's 2012 base salary calculation equals \$33,217,262. The Union's March 21, 2013 revised retirees figures contain the names of the affected individuals on the cover sheet, then split out the new prorated salary, longevity and educational incentive. However, I have been unable to independently verify the PBA's figures, which total \$1,854,005. I therefore utilized the City's numbers, which as previously mentioned, I have cross-referenced with Exhibit U-4

The PBA agrees that it was within approximately \$14,000 of the City's figure, which it ascribes to the different computational methods for the proration of the retirees. The breakdown in the chart at page 26 of the PBA's brief arrives at a 2012 base salary amount of \$33,230,087. The variance from Atlantic City's number is due to the Union's retiree calculation. In any event, and based on the foregoing, I find that the 2012 Base Salary for the Atlantic City PBA is **\$33,217,262**. The maximum amount that could be awarded under the statutory hard cap of 2% per annum or 6% in the aggregate is accordingly **\$1,993,035**. *See* P.L. 2010 c. 105; N.J.S.A. 34:13.a.16-7.b.

The evidence of record does not support Atlantic City's posture that beyond the payment of the considerable existing step increases, longevity, and educational incentive for the life of the successor agreement, a 0% ATB raise is appropriate. In the IAFF Interest Arbitration Award, In the Matter of the Arbitration Between City of Atlantic City and IAFF Local 198, P.E.R.C. Docket No. IA-2012-045 (Pecklers, 2012), I awarded the Firefighters the full statutorily permitted 6% aggregate

award. A careful reading of that Award reveals that were it not for the ballooning incremental and longevity costs with which the bargaining unit was saddled that must be included under the Act the IAFF would have received much more than the 1.22 percent in 2012. Realistically, that was all the room I had left for a salary increase under the 2% hard cap. Such was not the case with the SOA Interest Arbitration Award, which also resulted in a 6% aggregate award, as incremental and longevity costs were constant and all unit members at maximum. See In The Matter of the Arbitration Between City of Atlantic City and the Atlantic City Police Superior Officers' Association, P.E.R.C. Docket No. IA-2013-011 (Pecklers, 2013).

In awarding the IAFF 1.22%, I cited the well-developed internal pattern of settlement with the uniformed services within Atlantic City for over a 30 year period. An editorial comment was also included regarding the fact that the City could choose to voluntarily give the PBA and SOA 4% for 2012, while then relying upon the 2% hard cap to essentially squeeze the firefighters. I also took the City to task for awarding \$10,000 raises to some administrators, while endorsing fiscal austerity for the uniformed services. In the instant case, the PBA has highlighted the harsh criticism Governor Christie heaped upon Mayor Langford for accepting a \$16,000 salary increase in 2012, as reported by the *Press* in an early 2013 article.

In the recent SOA Award, I shared the Union's skepticism with respect to the Atlantic City civilian population, that the 4% increase in 2012, which was deferred 2% into 2103 and 2% into 2014 some how amounted to 0 % and 0 % on the back end. On these bases, I rejected the City's proffer that the internal pattern

of settlement within Atlantic City's Public Safety uniformed services and civilian employees required 0% in 2013 and 2014. Moreover, I will awarded the SOA 6 %, which was consistent with the IAFF award and the other statutory criteria. The PBA is entitled to the same under the hard cap.

There is sharp divergence between the parties at this point, with respect to the cost of step increases, longevity, and educational incentive. The City offers the common sense argument that its figures have been taken from the Department of Revenue and Finance printouts that were introduced during the SOA interest arbitration. The PBA on the other hand, accuses the City of inflating the numbers.

In utilizing this document, the City's numbers are as follow:

	<u>2013</u>	<u>2014</u>	<u>2015</u>
INCREMENTS	\$650,308	\$470,679	\$259,337
LONGEVITY	\$174,675	\$104,170	\$170,419
EDUCATION	\$ 20,532	\$ 16,537	\$ 6,316
	<hr/>	<hr/>	<hr/>
TOTALS	\$845,515	\$591,386	\$436,072
GRAND TOTAL	<u>\$1,872,973</u>		

The PBA counters by reference to its own figures:

	<u>2013</u>	<u>2014</u>	<u>2015</u>
INCREMENTS	\$644,734	\$302,434	\$111,037
LONGEVITY	\$ 85,912	\$204,745	\$ 89,061
EDUCATION	\$ 20,706	\$ 4,312	\$ 1,704

TOTALS	\$751,352	\$511,491	\$201,802
GRAND TOTAL	<u>\$1,464,645</u>		

In resolving the dueling scattergrams, I would admittedly ordinarily use the municipality's document, which is kept in the ordinary course of business, and would presumably be the most accurate. However, the figures contained in the exhibit in the SOA binder upon which the City relies are at variance with the above numbers. Despite a significant amount of time, I have been unable to decipher them. Such may not be said of Union Exhibit 4.

Moreover, while it did not separately break out the guide movement, I was able to accomplish that calculation by finding the number of individuals not at maximum, with their corresponding advancement during the life of the successor agreement. For example, eight (8) individuals moved from \$58,883 to \$70,311; twenty-two (22) individuals moved from \$77,090 to \$95,231; five (5) individuals went from \$70,311 to \$77,090; and thirty-nine (39) individuals moved from \$83,870 to the maximum of \$95,231.

I then merely took the cost of increment between steps and plugged it in. This amounted to \$2,325; \$2,324; \$6,779; \$6,779; \$6,780; \$11,361, respectively. The longevity and educational incentive figures were individually broken down by year. I understand the City's argument that we do not know where the PBA's figures came from, but it strikes me as curious that they would be acceptable for the purposes of calculating the base salary, then suddenly become suspect. Because all of the Union's figures prove, I have used them in all future

calculations.

As required by P.E.R.C.'s New Milford decision, the following computations of the AWARD are offered:

2012 PBA BASE:	\$	33,217,262
(Total Potentially Available Over 3 Years	\$	1,993,035 (6% of base)
Step Increases	\$	-1,058,205
Longevity Increases	\$	- 379,718
Educational Incentive	\$	- 26,722
	\$	<u>528,390 (1.59% of \$33,217,262)</u> (Available for ATB Wage Increases)

The computations prove as follows:

\$ 528,390	Available \$\$ to Finance Salary Increase;
+ 1,464,645	Step Increases, Longevity & Education Costs For 3 Year C.B.A.
<u>\$ 1,993,035</u>	Maximum Aggregate Amount of 6% Under Hard Cap

I have determined that the evidence of record requires a two-tiered salary guide to be implemented in Atlantic City for all Police Officers hired on or after January 1, 2013. The caveat to this is that the IAFF MOU will be implemented, so that any current bargaining unit members later promoted to Sergeant or Lieutenant will be covered under the existing guide as amended by the terms of this Award. As previously discussed, the PBA's able argument related to the new recruits is rejected, and I leave them to other available remedies under law to rectify any perceived inequity by virtue of my Award. They are accordingly classified as *new*

employees herein.

In crafting a new salary schedule, the parties have expressly recognized that due to Atlantic City's unique characteristics external comparisons with other police departments around the State fall somewhat short of the mark. While I have relied less heavily upon this information, the available data buttresses the City's contention that even within the PBA "universe" found at the charts on pages 69-75 of the Union's brief, Atlantic City still has the highest starting salary at \$58,883.00. This includes large municipalities such as Asbury Park (\$54,379), Camden (\$45,472), Elizabeth (\$50,539), and Jersey City (\$45,578). The maximum salary at Step 7 of \$95,231 enjoyed by the Atlantic City also exceeds those cities. These figures include Jersey City (\$91,755), Asbury Park (\$89,308), Elizabeth (\$91,375), Camden (\$77,293). It should be noted that the Elizabeth numbers are for 2013 and Camden from 2008. The PBA has understandably stressed that it nevertheless lags other municipalities statewide and even in Atlantic County at maximum. For example, Marlboro (\$98,468); Mount Laurel (\$103,456); Hamilton (\$109,806); Galloway Township (\$100,441).

As to Sergeants and Lieutenants, both ranked third out of 13 and 8 municipalities cited for external comparability purposes, respectively. The former fell behind Cherry Hill (\$118,629) and Piscataway (\$111,575), while the latter also trailed these municipalities with Cherry Hill at \$127,457 and Piscataway \$122,744.

Atlantic City has observed that while the PBA ranks 9th in maximum salary

for Patrolman in the statewide sampling, it is important to note that every non-Atlantic County municipality used for comparability exceeds the highest maximum salary of every Atlantic County municipality, other than Atlantic City. The proffer is made that therefore, the only true comparison for the Atlantic City Police Officers is with other Atlantic County municipalities. Such a yardstick is consistent with a persistent theme in the PBA's brief, *i.e.* the City's perceived inability to attract quality candidates to become sworn Police Officers in this world class resort community, who later seek promotion. The current Atlantic City 2012 guide includes:

PATROLMAN

<u>STEP</u>	<u>SALARY</u>
1.	\$58,883
2.	\$61,208
3.	\$63,532
4.	\$70,311
5.	\$77,090
6.	\$83,870
7.	\$95,231

SERGEANTS

\$108,983

LIEUTENANTS

\$118,385

Based upon this 2012 salary guide, Atlantic City ranks as follows within Atlantic County:

PATROLMAN STARTING SALARIES

<u>MUNICIPALITY</u>	<u>SALARY</u>
1. Atlantic City	\$58,883
2. Hammonton	\$46,580
3. Pleasantville	\$44,461
4. Galloway Township	\$43,268
5. Brigantine	\$42,297
6. Hamilton	\$40,000
7. Linwood	\$40,000
8. Longport	\$39,585
9. Ventnor	\$38,000
10. Mullica (after 6 months)	\$35,350
11. Northfield	\$35,153
12. Mullica	\$30,300

Based on the proposed 10 step salary guides offered by the parties in the context of their final offers, I found that both were deficient. The PBA proposed a starting salary of \$45,000 at Step 1, with increments of roughly \$5,700 culminating in a Step 10 salary of \$97,137. I recognize that as the Union has argued, the City will realize savings because the top rate is extended over a number

of years. The fact remains, that my goal which I have deemed to be consistent with the statutory requirements, is to reduce the overall compensation received by new hires and this proposal does not accomplish that.

The City also initially offered a guide with a starting salary of \$45,000, which increased in \$3,000 increments to a maximum salary of \$72,000. That figure was artificially low, and awarding it would have resulted in the Atlantic City PBA being catapulted from at our near the top for 2012 Atlantic County maximum salaries behind Galloway Township to last after Mullica Township. This would surely be an impediment to recruitment as the PBA argues, since the surrounding municipalities would offer a more desirable career option, with higher salaries and a fraction of the service calls of Atlantic City. That was my concern in the IAFF Award, and the revised guide provided by Atlantic City is comparable to what I imposed in that case. It will therefore be awarded as follows:

PATROLMAN HIRED AFTER JANUARY 1, 2013

<u>Step</u>	<u>Salary</u>
1	\$45,000
2	\$50,000
3	\$55,000
4	\$60,000
5	\$65,000
6	\$70,000
7	\$75,000

8	\$80,000
9	\$85,000
10	\$90,000

SERGEANT

\$100,000

LIEUTENANT

\$110,000

This salary guide will permit Atlantic City to remain competitive going forward and to roughly retain its comparability standing both on a statewide basis, and within Atlantic County. As to the Sergeants and Lieutenants, these salaries are abundantly better than the \$76,320 and \$82,416 the City had initially proposed and will accomplish that same goal. Notice should be taken that I recognize in not freezing future Lieutenants at the existing salary of \$118,335, I have increased the traditional gap between Lieutenant, Captain and Deputy Chief, but believe that is worth it to provide the City with greater cost savings and not skew the differential between ranks within this bargaining unit.

The parties' Final Offers as to all other open issues have previously been discussed in Section II, followed by my AWARD on each. Those findings are incorporated by reference into this section, which more particularly discusses the same in the context of the statutory criteria, and the relative weight accorded each under N.J.S.A. § 34:13A-16 (2011):

* * *

g. The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor; provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of the subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award:

(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-45.1 et seq.).

There is a general recognition among my arbitral colleagues that this is perhaps the most important of the statutory criteria. Atlantic City has provided numerous newspaper articles generally lamenting the perceived state of public sector employment, and the seemingly inexorable nexus to escalating property taxes. *See generally* "TRULY HISTORIC REFORM;" "CAP PUBLIC SALARIES;" "PAY FREEZES, ROUND 2;" "HIGH COST COPS;" "SANITY IN TRENTON;" "BLIND ARBITRATION;" "SALARY SANITY;" "TWO GOOD IDEAS;" "A GOOD START;" "THE CHRISTIE ERA;" "UNFINISHED BUSINESS." City Exhibit 2, Tab 2, sub tab 2.

As I concluded in my Atlantic City SOA Interest Arbitration Award, the record evidences that the roughly 40,000 residents and taxpayers of Atlantic City and the 30,000,000 annual visitors are well-served by the unit members of PBA Local No. 24. The Union suggests that they are the heart of the Police Department that answers over 100,000 calls per year. PBA President Paul Barbere provided credible testimony on the Union's case-in-chief, and allowed that in light of the fluctuating number of Police Officers, currently around 330, the bargaining unit is

being asked to do more with less.

The PBA highlights the fact that an Atlantic City Tourism District has been established by Governor Christie, which the Atlantic City Police Department is responsible for patrolling. The unique characteristics of policing the City were also cited, which includes the fact that it is a barrier island; has a significant homeless problem; with a high unemployment rate. There is also a needle exchange program.

Regarding the issue of an economic increase, the PBA desires to receive the statutory maximum of 2% for each of the three (3) years of the successor agreement. The City in response has adopted the position that given the inflated costs of step increases, longevity, and educational incentive, the awarding of the additional ATB increase would violate the 2% hard cap. Moreover, the City counters with 0% for each of the 3 years, which it believes to be consonant with the statutory scheme.

Upon full and careful analysis of the financial data with consideration given to the stipulated testimony of Mr. Stinson and Mr. Foti from the SOA hearing, as well as based upon the pattern provided by the IAFF and the SOA Interest Arbitration Awards, I utilized the entire 2% available each year, as well as awarded an increase of \$528,390 or 1.59% (2013), 0% (2014), 0% (2015). This AWARD is consistent with my obligations under the hard cap, and translates to a cost to Atlantic City of \$1,993,035 for the duration of the contract. This includes the cost of additional increments, longevity and education incentives in the amount of

\$1,464,645. This result is consistent with the maximum permissible 6% hard cap figure of \$1,993,035.

In awarding these increases, I have very carefully reviewed the financial data and found that Atlantic City had sufficient flexibility to finance it. That proposition was demonstrated by the PBA without challenge from the City. Rather, the counter argument focused upon the long term implications of the bonding for the casino tax appeals in the form of lost ratables occasioned by tax credits going forward. See "CASINO TAX APPEALS COULD COST TYPICAL ATLANTIC CITY HOMEOWNER ABOUT \$618 IN PROPERTY TAXES." City Exhibit 1. I have taken that into account in a global perspective, and believe it is a material consideration, but not ultimately dispositive.

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

I acknowledge and credit the City's argument that the Reform Act moved the question of comparability to employees in private sector employment from the 3rd criteria to the 1st. This evidenced the intent of the Legislature that interest arbitrators not continue the pattern of essentially *reading out* this statutory requirement. Atlantic City goes on to correctly argue that after Hillsdale, interest arbitrators must no longer afford cursory reference to comparisons with the wages and benefits of private sector employment.

The evidence of record does lend credence to the City's claim that the PBA bargaining unit has salaries and emoluments that are far superior to those of private sector workers. To that end, a New Jersey Business & Industry Association BUSINESS OUTLOOK SURVEY is cited. This provided that in 2011, less than 50% of private employers gave raises, with 6% implementing pay cuts. In 2012, less than 50% of private employers projected wage increases, with 4% implementing pay cuts. *See CITY EXHIBIT BOOK, Tab 3.*

These facts are instructive and have been given appropriate weight. That said, I continue to believe that the inherent dangers associated with police and other public safety positions make any meaningful comparisons with private sector employees inapposite for interest arbitration purposes. I do not share the City's perspective that this fact is irrelevant, as when passing the Interest Arbitration

Reform Act, the legislators knew the dissimilarities to private employment, but still required the interest arbitrator to consider this factor. I have done so, but the legislative intent of the Reform Act, which codified the teaching of Hillsdale and Washington stands for the proposition that with the exception of g(6), the interest arbitrator must consider each statutory criteria, and then determine whether or not it is relevant. If not determined relevant, an explanation must be provided for that conclusion. In the instant case, private sector comparability is certainly relevant, but not dispositive. *See generally Hillsdale*, 137 N.J. at 82-84, *supra*.

Moreover, subparts (b) and (c), which relate to public employment in general, and public employment in the same or similar jurisdictions are far more germane and have been afforded more weight, as there were no private counterparts to Police Officers cited by Atlantic City. The PBA persuasively argues that it would be patently unfair and a waste of resources to attempt to compare the Atlantic City Police Department to any private entity. Instead, it has been routinely held that police work cannot be compared to private sector employment. *See Borough of River Edge and PBA Local 201*, PERC No. IA-97-20.

Section g.2.(b) requires the comparison of the Atlantic City PBA Local 24 wages, salaries, hours and conditions of employment with those of other public sector employees in general, and again the best evidence relates to police departments. As Atlantic City has loudly and correctly argued, the external comparability data abundantly establishes that the subject bargaining unit is well compensated in comparison to most if not all categories.

As previously discussed, the Atlantic City PBA was first in terms of starting salary in the cited municipalities, and ranked ninth overall in maximum salary in the Union's statewide universe. It was second in Atlantic County in that regard, behind Galloway Township. The bargaining unit's longevity schedule lags those of larger municipalities such as Jersey City, Elizabeth, Paterson and Camden, for example, but is consistent with most other reported municipalities. And vacation days, while an inexact measure due to varying police schedules, do compare well. That may be said of terminal leave and the education incentive. On these bases, a finding must issue that the wages, salaries, and conditions of employment for the PBA favorably compare with the other Atlantic County and major city police departments from around the State of New Jersey that have been referenced by the Union.

Section g.2. (c) mandates a comparison of the wages, salaries, hours and conditions of employment of PBA members with those of other public sector employees in the same or similar jurisdictions. The City makes the observation that the PBA bargaining unit members make more than many previously identified all Atlantic City employees except the Fire Chief, Police Chief, Deputy Police Chief, Business Administrator. They also make more than many positions that require advanced degrees, the City complains. These positions include the Mayor, Municipal Clerk, Municipal Court Judge, Municipal Engineer, Municipal Attorney.

As I remarked in the SOA Award, however, the City exhibited its tacit understanding that the best evidence of internal comparability is frequently the relationship between uniform services Collective Bargaining Agreements and

awards.

I previously found in both my prior interest arbitration awards that a lockstep pattern of settlement was present between the Police & Fire Departments in Atlantic City and cited the finding of my colleague Arbitrator Gifford, that the same was dispositive. *See* In the Matter of the Interest Arbitration Between the Township of Springfield and PBA Local 76, PERC Docket No. IA-2012-003 (Gifford, 2011). That said, I do share similar concern with respect to the same exorbitant benefits enjoyed by the PBA, as the Firefighters and SOA. For that reason I have sharply reduced them for new hires, using the FIREFIGHTERS' MOU as a template.

Regarding the increases received by the Atlantic City civilian employees, it may hardly be argued that any clear pattern has been established by the City. Exhibit C-2, Tab 3, sub tabs 4 contains the un-ratified MEMORANDUM OF UNDERSTANDING between the City and the White Collar Professional Association, for the duration of January 1, 2011 through December 31, 2014. This provides that effective January 1, 2011, all current employees are to receive a 4% wage increase, of which 2% shall be added to the base at that time, and 2% which shall be retroactive to January 1, 2013. Then, effective January 1, 2012, there is another 4% increase, with 2% rolled into the base then and the other 2% implemented January 1, 2014.

Sub tab 5 contains the un-ratified MOU between Atlantic City and the IBEW. This reflects a duration of January 1, 2012 through December 31, 2014 and provides a 4% wage increase. Two percent is to be effective January 1, 2012,

with the other 2% added to the base salaries effective January 1, 2013. Finally, Sub tab 6 is the MOU between Atlantic City and the Atlantic City Supervisory Employees, a 2 year agreement covering January 1, 2012 through December 31, 2014. Again, 4% is agreed upon for 2012, with 2% applied to the base salary retroactive to 2012 and the remaining 2% implemented on January 1, 2013.

On these bases, the City argued in the SOA arbitration that all other employees accepted a wage freeze of 0% for 2013 & 2104. From my perspective however, the PBA properly protests that the City is at once making payments to other bargaining units during 2013 and 2014 while at the same time offering the PBA 0% each year. That a result is not contemplated by the statute.

(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 other economic benefits received.

The SCHEDULE OF SALARY which is found at Article XXXIV of the CBA consists of a 7 step guide for police officers, which for 2012 starts at \$58,883 and rises to \$95,231 at maximum. Sergeants receive \$108,493, while Lieutenants get \$118,385. Article XV contains a percentage based longevity schedule, reflecting the following: 5 years (2%); 10 years (4%) 15 years (6%); 20 years (10%).

Article XXX's vacation schedule has several tiers according to the date of hire. For those Police Officers not mentioned in Section A or B, they are entitled to 200 hours of vacation leave of either 25 days of 8 hours or 20 days if working a 10 hour shift. Sergeants receive 28 days of vacation leave if working an 8 hour

tour or 22 days if working a 10 hour shift. Lieutenants get 29 and 23 vacation days, respectively. All unit members receive 2 personal days, per Article XXXI, with a shift differential of \$400 or \$500, depending on whether the 4:00 p.m. to 12:00 a.m. or 12:00 a.m. to 8:00 a.m. tour is worked appearing in Article XLIII. A clothing maintenance allowance is also present.

PBA members receive hospitalization (which the Union has emphasized that they will begin paying an escalating portion of), prescription, dental and optical coverage. The CBA contains a comprehensive terminal leave pay-out plan, with an accumulated sick leave option, and funeral leave benefits. Finally, unit members are enrolled in the PFRS, which allows retirement after 20 years of service at 50% of base pay, or at 25 years with 65% (and the Union has emphasized that these contributions also must now be made). See, N.J.S.A. 43:16A-11.1.

Notwithstanding any health benefits or pension contributions unit members are now required to make, the record underpins the notion that PBA unit members are very well compensated in terms of both salary and emoluments that are received. Parenthetically, I share the view of my colleague Arbitrator Susan Osborn, who opined at page 40 of her Interest Arbitration Award in Township of Byram and Sussex County PBA Local No. 138, P.E.R.C. Docket No. IA-2013-12 that

[o]n the one hand, the PBA is correct that, because of statutorily mandated health care contributions and pension payment increases, the employees' net take home pay will be less in 2013 than it was in 2012, no matter what I award here. That said, however, I am confident that it was not within the goals of the legislature in passing Chapter 78 that employers 'make up the difference' in employees' pay

by awarding salary increases to mitigate the cost of employee contributions.

(4) Stipulations of the parties.

During mediation conducted at the March 18, 2013 hearing, the PBA and Atlantic City entered into a number of stipulations, which must be memorialized. These included: the City withdrew its proposals related to Article III, MANAGEMENT RIGHTS, & Article V GRIEVANCE PROCEDURE; the PBA agreed to the City's Article XIII, SPECIAL LEAVES proposal, which provided for 5 *consecutive* working days of paid leave commencing between the day of death and the day of the funeral; the City agreed to the inclusion of the words *Domestic or Civil Union partner*, within the definition of "immediate family," and that the 250 miles would be calculated based on vehicular travel using MapQuest; the City withdrew its proposal related to Article XXIV, WORK WEEK; the PBA agreed that the PERSONNEL OFFICER language of Article XXVIII would be incorporated into Article XXII, PERSONNEL COMMITTEE, with the City withdrawing its proposal related to the same; the PBA accepted Atlantic City's proposal to delete the Personnel Officer language from subparagraph 6 of Article XXIX, SICK AND INJURED, with Atlantic City withdrawing its proposal related to deleting subparagraph 7e in its entirety; the City withdrew its proposal concerning Article XXXII DENTAL PRESCRIPTION AND OPTICAL. One further stipulation was also entered into the record, that the testimony of Michael Stinson and Vincent Foti from the SOA interest arbitration hearing would be incorporated into the instant case. Any contractual modifications

were incorporated into the AWARD. Thereafter, the City withdrew its proposal on Article XXIII, OFFICERS ASSIGNED TO INVESTIGATIVE UNIT in its post-hearing brief.

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

At the outset, it must be recognized that the original 1977 municipal appropriation and county levy cap, as amended, still remain in effect. The Local Government Cap Law is codified at N.J.S.A. 40A:4-45 et seq. and states that: "[i]t is hereby declared to be the policy of the legislature that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to maintain their homesteads." Section 10 of the P.L. 2007 act originally established a Tax Levy Cap of 4% above a municipality's prior year tax levy.

The 2007 cap was thereafter amended to 2% under legislation that was signed into law by Governor Christie in July 2010. The exclusions were also modified. But while Chapter 44 changed the 2007 cap, there was no change to the 1977 cap. Municipalities are accordingly subject to both the 1977 Appropriations Cap of 2.5% (3.5% upon municipal approval) as well as the 2010 Tax Levy Cap of 2%. The evidence in the record illustrates that Atlantic City has the necessary flexibility to accommodate the awarded increases for the PBA under both of these statutory constraints.

Union Municipal Finance Expert Vincent Foti provided credible testimony on

behalf of the SOA at the March 4, 2013 hearing, which the parties have stipulated will be applied herein. This initially offered the caveat that his comments with regard to the introduced 2013 budget were purely speculation, as the City Council could choose to make numerous changes to it. Mr. Foti submitted that Atlantic City does not have either an Appropriations Cap or Tax Levy Cap issue that would operate as an impediment to the awarding of the Union's financial proposal. Moreover, the EXPENDITURE CAP TOTAL ALLOWABLE amounts to \$211,321.29, with the ACTUAL found on Budget Sheet 19 \$189,306,967.00. These figures indicate a total of \$22,014,967.29 of available Appropriations Cap room. *See* City Exhibit 3, BUDGET SHEET 3c, 2013.

Under the TAX LEVY CAP, the maximum amount available to be raised through taxation is indicated as \$223,901,584.00, with the ACTUAL amount \$204,195,412.00. This shows that Atlantic City is therefore \$19,706,172.00 below the permissible statutory maximum. *See* City Exhibit 3, BUDGET SHEET 3b(A) 2012. The FOTI testimony was consistent with that of the City's Expert, Director of Finance and Budget Michael Stinson, upon cross examination.

Mr. Foti later pointed to RESULTS OF OPERATIONS for 2012, which amounted to \$200,495. An explanation was provided that this is a reflection of the City's ability to regenerate surplus, and is the public sector equivalent of the bottom line in the private sector. *See* AFS SHEET 19. The Union expert similarly highlighted the UNEXPENDED BALANCE OF APPROPRIATION RESERVES. This amounted to \$5,375,598 for year 2012 (from 2011) *Ibid.* My observation made in

the SOA case remains constant that, nothing in the record contradicts the further FOTI testimony that AFS Sheet 19 additionally provides for MISCELLANEOUS REVENUES NOT ANTICIPATED of \$1,986,318. Mr. Foti urged that this returns to surplus, which as shown by City Exhibit 3, Sheet 39, was \$2,257,629.00 as of December 31, 2012. Furthermore, Union Exhibit 3, Book 3, Tab 30, Sheet 3, indicatives TAXES RECEIVABLE in the amount of \$10,434,162, and PROPERTY ACQUIRED FOR TAXES of \$27,606,400, establishing that these are viable assets acquired at some time, which at a later point will be realized.

None of these figures were disputed by the City of Atlantic City, and Mr. Stinson verified some of the same during his SOA cross-examination. Therefore, in conclusion of this g(5) criteria discussion, the foregoing findings illustrate that the subject INTEREST ARBITRATION AWARD complies with this critical statutory criteria.

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget.

In each interest arbitration with its uniformed services, Atlantic City has made the contention, which I credit, that its surplus history is illustrative of its financial woes. As of January 1, 2007, the surplus balance was \$14,395,615.00, permitting the City to anticipate \$13,800,000.00 as revenue in its 2007 budget. *See* City Exhibit 2, Tab 1. sub. 2. As a result of the economic downturn starting in 2008, this surplus balance as of January 1, 2013 was only \$2,257,629.00, representing a reduction of \$12,137,986, or in excess of 84%. This forced the City to eliminate its surplus anticipated in 2013.

To maintain the revenue anticipated in 2013, the City had to generate \$13,800,000.00 more from other revenue than it did in 2007. The City urges that revenue from local revenues further establishes its revenue woes. In 2007, the City anticipated \$11,401,000. *See* City Exhibit 2, Tab 1, sub tab 1. By 2013, local revenues had decreased by approximately \$2,100,816.00 or in excess of 18 per cent, to \$9,300,184.00 *Id.* at sub tab 5. With no anticipated surplus, the remaining revenue sources had to cover this \$2,100,816 revenue slack.

There also has been a palpable diminution in State Aid, which was reduced from 2007 to 2013 by \$1,781,979.00, in excess of 22 percent. Atlantic City asserts that therefore, State Aid is another revenue deficiency that remaining revenue sources must overcome. While dedicated Uniform Construction fees are offset by appropriations and have no impact on the remainder of the budget, to complete the analysis it must be recognized that from 2007 through 2013, this revenue source decreased by \$2,100,000 from \$4,100,000 to \$2,000,000. *See*

City Exhibit 2, Tab 1, sub tab 1 and 5. Atlantic City cautions against reliance on "one shot deals" to balance the budget, and allows that from 2007 to 2013 it nevertheless did so by utilizing the capital fund surplus. This resulted in a \$13,902,580.00 increase in "one shot deals," which are not regenerative.

According to the City, all in all, anticipated revenue, other than from municipal taxes, decreased by \$5,880,215.00. *See* City Exhibit 2, Tab 1 sub tabs 1 and 5. With respect to municipal taxes, from 2007 through 2013, revenue from municipal taxes increased from \$193,167,083 to \$209,455,419.00. This is an increase of \$16,288,336.00 or 8.43%, which translates to an annual increase of less than 1.5 percent. *Ibid.*

Characterizing it as the most significant issue facing the City, Atlantic City undertakes an emphatic financial argument that is linked to successful tax appeal decisions and settlements with virtually every casino, except Borgata, which is pending. These figures are provided for in the chart on page 27 of the City's brief, and cumulatively equal \$185,500,000.00. In that regard, Atlantic City has been ordered or agreed to both refund prior payments and issue future tax credits. These include *e.g.* \$10,600,000.00 to Resorts; \$8,200,000.00 to Pinnacle; \$1,700,000.00 to ACE Gaming; \$28,000,000.00 to Caesars; \$54,000,000.00 to Trump.

Atlantic City advises that these unprecedented tax refunds forced the City to obtain special permission from the State Local Finance Board to execute Tax Appeal Bonds to borrow the money, in order to pay the refunds. As a result, the

City's debt service increased \$16,000,000.00 in 2011 to \$37,000,000.00 in 2013. Mention is also made of the fact that refunds due Tropicana and Borgata have not yet been included. The foregoing has also led to a decrease in the ratable base due to reductions in assessed value, as reflected by the chart at page 29 of the City's brief. The 2013 base of \$14,400,000,000.00 therefore represents a decrease of \$6,000,000,000.00 from 2010 levels.

The credible SOA testimony of Finance and Budget Director Stinson, stipulated to be included herein explained that if the Borgata tax appeal resolves, the total assessed value for the properties would drop to 13,400,000,000. The testimony also supported the City position, that if all things remained the same, there would be a 30 tax increase. Mr. Stinson renewed the City's argument that it was hampered by reductions in its sources of revenue, which were very limited with 90% coming from taxation. Atlantic City is also 1 of 2 municipalities in New Jersey that do not have a hotel room tax with Wildwood being the other.

Mr. Stinson submitted that Atlantic City's surplus had gone away, with the 2012 Audit not completed until June and the 2013 budget not anticipating any surplus. State Aid went down \$1,000,000.00 during the period, he recalled. A discussion followed regarding a capital surplus of 2,500,000.00 that was put into the 2012 budget. As to bonding, the Director reported that the City floated a \$100,000,000.00 bond issue to pay off the tax credits. Due to the bonds selling at a premium, an extra \$9,000,000.00 was realized and went into the capital fund. This shows as a revenue, but basically nets to zero when you look at both sides,

according to the testimony.

I endorse the City's position that it is critical to recognize Atlantic City was required to enter into a Memorandum of Understanding with the State of New Jersey, which provided for State supervision. This was a document drafted by representatives for the State, which cited the "extraordinary pressures on the tax base in Atlantic City and the tax rates applicable to its residents and businesses" due to tax appeals. *See* City Exhibit 2, Tab 1 sub tab 1.

To emphasize its position, the City recounts that the State requires Atlantic City to provide Interest Arbitrators with a letter confirming that the City "[h]as been directed to seek appropriate concessions," and to "[r]ealistically acknowledge the unprecedented level of fiscal stress caused by unprecedented tax appeals." *Ibid.* I have received a copy of this draft letter, and it has been afforded due consideration. This recognizes that layoffs could occur if runaway tax appeals decimated the budget.

The City accepts the fact that while these costs which are reflected in its debt service obligations are outside of the relevant caps, they nevertheless still must be paid. The additional argument is lodged that even if Atlantic City is able to keep its spending perfectly flat with no increase in its levy, the tax levy would remain the same with the tax burden shifted from the casinos to residential home owners and other non-casino, commercial properties. The end result according to the City is an anticipated increase of 26% in taxes or a proposed .30 per assessed value increase from 1.13 to 1.43. The practical implication of this is that with the

average home assessed at \$210,000.00 the tax bill would increase by \$630 per year by 2014 due to the shift in ratables from the casinos to the home owners.

I understand the City's arguments in this regard and have carefully considered them. There are a number of critical elements, however, which have been instructive in assisting me in arriving at the consistent conclusion that Atlantic City has the ability to fund the PBA INTEREST ARBITRATION AWARD. I get the fact that the City's revenue figures will remain relatively constant even if the City Council undertakes amendments to the introduced but not adopted 2013 budget to reduce the anticipated 26% tax increase. I also have no problem seeing that while the first round of casino tax appeals were resolved through bonding over a 20 year horizon, the resulting reduction in ratables and awarded tax credits will have a deleterious effect on the City's tax base.

Nevertheless, as discussed in criteria (g)5, the Foti testimony identified that the RESULTS OF OPERATIONS column on AFS Sheet 19 listed \$200,495; the UNEXPENDED BALANCE OF APPROPRIATION RESERVES contains the figure of \$5,375,598 from 2011 to 2012.; \$1,986,318 appears for MISCELLANEOUS REVENUES NOT ANTICIPATED, which ultimately will go back to surplus. *Ibid.* Therefore, even accepting Mr. Stinson's representation that the surplus was eliminated in the 2013 budget, these facts provide Atlantic City with the flexibility to fund the subject INTEREST ARBITRATION AWARD. I therefore find that my AWARD satisfies this statutory requirement.

(7) *The cost of living.*

The Consumer Price Index ("CPI") tracks the cost of living, and measures the average change in prices that are paid for goods and services purchased by households over time. The current index uses the period between 1982-1984 as its base year, with a value of 100 established. The cost of the same goods and services is then calculated for each following year, which then establishes an "index" for comparisons of consumer purchasing power.

The more comprehensive of the 2 CPIs published by the Bureau of Labor Statistics is the CPI for All Urban Consumers (CPI-U), which covers approximately 87 percent of the total population. This includes in addition to wage earners and clerical worker households, professional, managerial and technical workers, the self-employed, short-term workers, the unemployed, retirees and others not in the labor force. *See generally* USDOL Bureau of Labor Statistics *NEWS RELEASE USDL-11-1748*, December 16, 2011. Based on these figures, the PBA allows that the analysis is quite simple. The argument is made that the CPI rose 3.2% from 2010 until 2011 and 2.1% from 2011 to 2012. *See* Union Exhibit 3, Tabs 7-8. These figures reinforce the new paradigm of uniformed services collective bargaining. That is, as the City has argued and Exhibit 2 of its brief establishes, awarded and negotiated increases in the past generally by far outstripped the CPI.

However, with the onset of the "2% hard cap" there is a virtual guarantee that future increases will lag the CPI. This fact tips this statutorily significant criteria in favor of the PBA's economic proposal, however, as I previously found in both the IAFF and SOA cases, it is not dispositive. I am additionally aware that this

particular bargaining unit in the recent past has received raises that roughly more than double the CPI. Going forward, however, the outlook is less rosy.

(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.

The City has proposed multiple modifications to the salary and benefits packages currently received by PBA unit members, as well as other non-economic language which ultimately impact the conditions of employment and the continuity and stability of employment within Atlantic City. The Union is categorically opposed to the same, and charges the City with *union animus* and bad faith bargaining. The PBA position mirrors that which was adopted in both the IAFF and the SOA interest arbitrations, that the cumulative effect of my awarding the same would undermine the morale of the work force, and make it impossible for the City to attract qualified applicants in the future.

As previously set forth and discussed, a number of these proposals were rejected for the stated reasons, primarily the potentially corrosive effect that they would have within the Atlantic City Police Department. Some were modified to eventually provide some future financial relief to the City, while preserving its ability to attract qualified Police Officers to and from the ACPD rank and file.

After considering the respective positions, I have imposed two-tiered plans related to salary guide; terminal leave with a cap on sick pay-out; vacation leave; longevity and the educational benefit. These contractual modifications comply with

this statutory criteria by promoting the continuity and stability of employment within the City of Atlantic City, and harmonizing the competing interests of maintaining benefits for those who have relied upon the same for their entire police careers, while reining in the benefits for new hires in the future.

With respect to the PBA argument that two-tiered plans will foster instability and discord within the ranks, and have a concomitant negative effect on recruiting, I forcefully reject such a notion. Rather, as the City has properly observed, the same are common in many municipalities within Atlantic County and the State of New Jersey. To credit that premise, as Atlantic City correctly argues, would be to accept the argument that virtually all of those municipalities have labor instability and discord and can not attract qualified applicants. No evidence has been provided by the PBA that such is the case.

(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).

This final criteria was previously fully addressed in the context of statutory criteria g(1), g(5) and g(6). It should must be reiterated as established by the foregoing findings of fact, the City of Atlantic City has substantial flexibility within its budget and under the hard and soft caps to finance the awarded economic package. Such a result is consistent with and contemplated by the mandated statutory criteria, which is awarded pursuant to my conventional authority. In so concluding, I have carefully considered and discounted Atlantic City's arguments to

the contrary. This AWARD is accordingly rendered pursuant to my statutory authority.

IV. CONCLUSION

In issuing the subject INTEREST ARBITRATION AWARD, I have carefully and completely considered and deemed relevant each of the statutory criteria. However, the greatest weight was afforded to the interest and welfare of the public; the lawful authority of the Employer; the financial impact on the governing unit, its residents, and the statutory restrictions imposed upon Atlantic City by the hard cap language of P.L. 2010 c. 105; the overall compensation currently received; the internal comparability of the Atlantic City PBA Local No. 24 with the uniformed services and other personnel within the City; the external comparability of settlements reported by P.E.R.C. within the State of New Jersey and the County of Atlantic.

Accordingly, based upon the foregoing considerations, I find that in accordance with N.J.S.A. 34:13A-16.d, the total net annual economic changes for each year of the agreement as well as the non-economic changes are reasonable under the 9 statutory criteria set forth in subsection g., and certify that pursuant to subsection 5.f the statutory limitations imposed on the Local Levy Cap were taken into account.

V. AWARD

1. All open proposals submitted by the Atlantic City PBA Local No. 24 and the City of Atlantic City that are not awarded herein are denied. Any initial proposals that were not raised at hearing and discussed in the briefs have been considered abandoned, and have not been addressed. Any proposals withdrawn by the City at the March 18, 2013 have also not been entertained.
2. All terms and conditions of the expired Collective Bargaining Agreement shall be carried forward into this successor agreement, except for those that have been expressly modified by the terms of the subject AWARD.
3. Duration — The new C.B.A. shall be for a term of 3 years, covering the duration of January 1, 2013 through December 31, 2015, with Article XLV amended to indicate the same.
4. Wages — Article XXXIV SCHEDULE OF SALARY shall be amended to include:
 - 2013 — 1.59 (\$528,390) Increase (Retroactive To 1/1/13);
 - 2014 — 0 % Increase Effective January 1, 2014.
 - 2015 — 0 % Increase Effective January 1, 2015.

The matter of the guide application of the 2013 increase is remanded to the parties for implementation at the local level. Jurisdiction is retained over this issue, in the event it can not be resolved.

All current employees hired prior to January 1, 2013 shall receive the pay rates established by this Award. Any Police Officer hired prior to January 1, 2013 and later promoted to the rank of Sergeant or Lieutenant shall also be covered by the guides appearing in the expired C.B.A., in addition to any increased provided in this Award.

All employees hired after January 1, 2013, including the current or prospective March 2013 class of recruits shall be subject to the *new* Guide:

PATROLMAN

<u>Step</u>	<u>Salary</u>
1.	\$45,000
2.	\$50,000
3.	\$55,000
4.	\$60,000
5.	\$65,000
6.	\$70,000
7.	\$75,000
8.	\$80,000
9.	\$85,000
10.	\$90,000

SERGEANT

\$100,000

LIEUTENANT

\$110,000

5. Article XIII SPECIAL LEAVES shall be amended as follows:

Section B. Funeral Leave shall be amended to include language reading "5 *consecutive* working days of paid leave in the event of the death of a member of the officer's 'immediate family'."

The definition of "immediate family" will be modified to include *Domestic or Civil Union partner*.

The final sentence of Article XIII Section B with respect to an additional two (2) working days

of paid leave being granted for travel of more than two hundred and fifty (250) round trip miles for viewing and funeral, shall be changed so that the miles will be calculated based on *vehicular travel using MapQuest*.

6. Article XV LONGEVITY shall be amended as follows:

The introductory language in Section B shall be modified to read – "*For all employees hired before January 1, 2013 ...* the practice governing longevity shall be as follows:

New Section E, to state

The following longevity schedule shall apply to all employees newly hired after January 1, 2013:

<u>Years of Service</u>	<u>PAYMENT</u>
5 years	\$1,400
10 years	\$3,600
15 years	\$5,400
20 years	\$9,000

All current employees hired before January 1, 2013 shall continue to receive longevity according to the existing schedule contained in the expired CNA.

All current employees hired before January 1, 2013 and subsequently promoted to the rank Of Sergeant or Lieutenant shall also continue to receive longevity at the existing percentage levels.

7. Article XVIII, EDUCATION AND TRAINING INCENTIVES shall be amended to include:

A new paragraph shall be inserted stating:

Any current employees hired prior to January 1, 2013 will continue to receive the previous educational incentives existing under the terms of the expired CBA. Those employees hired prior to January 1, 2013, but not receiving an educational incentive prior to January 1, 2013 will remain eligible to receive the educational incentive under the previous schedule in the expired CBA. All employees hired after January 1, 2013 that receive police science or related training and incentives as set forth herein shall be acknowledged with special salary increments, based upon the following "new" scheduled scale:

- a) Upon the completion of an Associate's Degree or sixty-four (64) credits, of which fifteen (15) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$2,500.00 additional increment on his base salary.
- b) Upon the completion of a Bachelor's Degree or one hundred and twenty-eight (128) credits, of which thirty (30) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$1,000.00 additional increment on his/her base salary.
- c) Upon the completion of a Master's Degree or one hundred and seventy-five (175) credits, of which thirty-six (36) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$1,000.00 additional increment on his/her base salary.

8. Article XIX, TERMINAL LEAVE WITH PAY shall be amended to indicate:

Under Section B "PLAN B" –

the accumulated sick leave lump sum payment shall be capped at \$15,000.00 for all employees hired into the Atlantic City Police Department after January 1, 2013.

Any current unit members hired before January 1, 2013, will continue to receive the Terminal Leave payouts contained in the Expired CBA. Furthermore, all those employees hired into the Atlantic City Police Department prior to January 1, 2013, but subsequently promoted to the rank of Sergeant or Lieutenant shall receive the Terminal Leave pay outs contained in the expired CBA.

9. Article XXVIII PERSONNEL OFFICER shall be eliminated and incorporated into Article XXII, PERSONNEL COMMITTEE.
10. Article XXIX, SICK AND INJURED, subparagraph 6's reference to "Personnel Officer" shall be deleted. The language will then read: "Each year the City shall make available to each member of the Police Department a current record of sick and injured days taken and the accumulated balance, if any, which record shall be made available to the members with the yearly W-2 statement."
11. Article XXX VACATIONS shall be modified to reflect a new paragraph under subsection B:

Police Officers hired on or after January 1, 2013 shall be awarded vacation benefits pursuant to the following schedule:

First twelve (12 months)	-	One (1) day per month by anniversary date
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2 through 4 years of employment	-	10 days
5 through 9 years of employment	-	12 days
10 through 20 years of employment	-	15 days
20 years through retirement	-	20 days

All current unit members hired prior to January 1, 2013 will continue to receive the previous vacation schedule as set forth in the expired CBA.

New Section F.

Any employees hired before January 1, 2013, but promoted to Sergeant or Lieutenant after January 1, 2013, will receive vacation leave in accordance with the previous vacation schedule as set forth in the expired CBA, per the IAFF MOU.

Police Officers hired on or after January 1, 2013 and later promoted to Sergeant or Lieutenant shall be awarded vacation benefits pursuant to the following schedule:

Sergeant

Newly promoted Sergeants shall receive an additional sixteen (16) hours of vacation time if they are working eight (8) hour days and twenty (20) hours if working ten (10) hour days over and above their vacation entitlement had they remained a Police Officer.

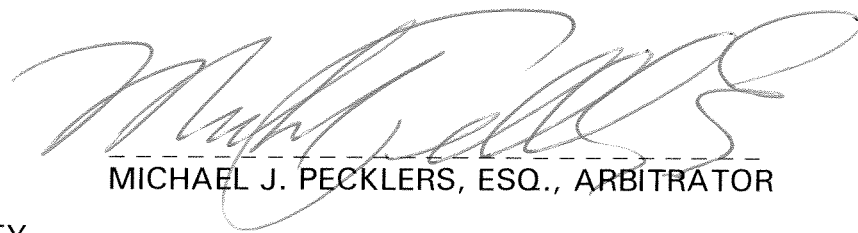
Lieutenant

Newly promoted Lieutenants shall receive an additional eight (8) hours above that of a Sergeant if they are working eight (8) hour days and ten (10) hours if they are working ten (10) hour days over and above their vacation entitlement had they remained a Police Officer.

12. Due to the deletion of Article XXVIII, PERSONNEL OFFICER, the remaining articles shall be renumbered as follows: Article XXIX SICK AND INJURED to be-

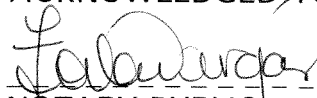
come Article XXVIII; Article XXX VACATIONS to become Article XXIX; Article XXXI PERSONAL DAYS to become Article XXX; Article XXXII, DENTAL, PRESCRIPTION AND OPTICAL to become Article XXXI; Article XXXIII LEGAL PLAN to become Article XXXII; Article XXXIV SCHEDULE OF SALARY to become Article XXXIII; Article XXXV POLICE CARS to become Article XXXIV; Article XXXVI TRADING TIME to become Article XXXV; Article XXXVII ACCIDENT REVIEW BOARD to become Article XXXVI; Article XXXVIII, P.B.A. PRESIDENT to become Article XXXVII; Article XXXIX SAVINGS CLAUSE to become Article XXXVIII; Article XL PROBATION PERIOD to become Article XXXIX; Article XLI EXPUNGEMENT to become Article XL; Article XLII SHOWER FACILITIES to become Article XLI; Article XLIII SHIFT DIFFERENTIAL to become Article XLII; Article XLIII DURATION to become Article XLII; Article XLIV FULLY BARGAINED PROVISIONS to become Article XLIII; Article XLV DURATION to become Article XLIV.

Dated: April 11, 2013
NORTH BERGEN, N.J
STATE OF NEW JERSEY


MICHAEL J. PECKLERS, ESQ., ARBITRATOR

SS:
COUNTY OF HUDSON

ON THIS 11TH DAY OF APRIL 2013, BEFORE ME PERSONALLY CAME AND APPEARED **MICHAEL J. PECKLERS, ESQ.**, TO BE KNOWN TO ME AS THE INDIVIDUAL DESCRIBED HEREIN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND HE DULY ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.


NOTARY PUBLIC

ZOILA R. VARGAS #2374097
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 5/27/2013