

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

BOROUGH OF FANWOOD,

“Public Employer,”

- and -

PBA LOCAL 123,

“Union.”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2010-104

**Before
James W. Mastriani, Arbitrator**

Appearances:

For the Employer:

Steven S. Glickman, Esq.
Ruderman & Glickman, P.C.

For the Union:

James M. Mets, Esq.
Mets, Schiro & McGovern, LLP

I was appointed interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this matter involving the Borough of Fanwood [the "Borough"] and PBA Local 123 [the "PBA"]. Pursuant to statutory authority, a pre-interest arbitration mediation session was held on February 4, 2011. Despite the good faith efforts of the parties, a voluntary agreement could not be reached. Thereafter, an interest arbitration hearing was held on May 3, 2011. At the hearing, each party argued orally, presented witnesses and submitted documentary evidence into the record. After the hearings, the parties agreed to hold the record in abeyance, including the filing of post-hearing briefs pending further additional joint efforts to negotiate a resolution. Thereafter, the parties continued to negotiate but after they concluded that a voluntary agreement could not be reached, I set a post-hearing briefing schedule. Post-hearing briefs were filed by both parties, the last of which was received on or about June 18, 2012. Absent an agreement to utilize an alternative terminal procedure, the procedure of conventional arbitration was utilized.

As required by statute, each party submitted a last offer on the disputed issues. The respective offers are as follows:

FINAL OFFERS OF THE PARTIES

PBA LOCAL 123

A. Change all dates to correspond with the new contract term.

B. **Article V - Annual Salaries**

1. Section 1: Increase base salaries by the following percentage increases:

Effective and retroactive to 1/1/10	2.0%
Effective and retroactive to 1/1/11	2.0%
Effective 1/1/12	2.0%
Effective 1/1/13	2.0%
Effective 1/1/14	2.25%

2. Effective July 1, 2011 the value of 4.0% of the Ptl. A, B and C salary guide steps shall be added to each of the applicable steps prior to the implementation of the 2.0% raise on 1/1/12.
3. Add 1 Step to the salary guide for officers hired on or after 1/1/12 and to equalize all steps as close as possible.

C. **Article VI - Longevity**

Eliminate Longevity effective in 2011.

D. **Article VII - Holidays**

Section 4 (new):

Time off on the holidays set forth in Section 1, above, shall be awarded on a rotating seniority basis for all officers who are at Patrol Officer A status, Corporal, Sergeant, Lieutenant and Captain. If the officers at the levels listed herein do not select all of the eligible leave on the contractual holidays, the leave time shall be awarded on a first-come-first-serve basis amongst the remaining members of the unit.

E. Article VIII - "Leave of Absence"

1. Section 1: In a settlement agreement dated September 15, 2009 (see attached), the parties agreed to address the definition of a "three (3) full working days off per year with pay as personal days" contained in Section 1 of this Article in successor negotiations. It is the PBA's position that this phrase entitles PBA bargaining unit members 3 full days off per year on a day-for-day basis regardless of the number of hours in the officer's schedule. For example, an officer on an 8 hour day would receive 3 days off at 8 hours per day while an officer working a 12 hour day would receive those same 3 days off at 12 hours per day.

F. Article X - Vacations

1. Section 2, e (new):
 - e. Notwithstanding the foregoing, all officers shall be allowed to take 2 vacation period (tours) in July and/or August of each year. Selection for these 2 tours shall be based on rotating seniority with the most senior officer selecting his July/August vacations first and so on down the list.

G. Article XII - Insurance Plans

The Borough agrees to establish a reimbursement procedure, effective and retroactive to July 1, 2010 for reductions in benefits that occurred when the Borough changed from a private plan to the N.J. State Health Benefits Plan.

H. Article XXIII - Duration

January 1, 2010 through December 31, 2014.

I. Appendix "A"

Incorporate the terms of Paragraph B, above.

BOROUGH'S FINAL OFFER

1. **Duration**

The Borough proposes a three (3) year contract commencing January 1, 2010 and expiring on December 31, 2012.

2. **2010 Salary Offer**

The Borough proposes a wage freeze for the calendar year 2010.

3. **2011 Salary Offer**

The Borough proposes effective retroactive to January 1, 2011, all police officers receive a one and one-half percent (1.5%) salary increase.

4. **2012 Salary Offer**

The Borough proposes effective January 1, 2012, all police officers receive a two percent (2.0%) salary increase.

5. **College Incentive Program**

The Borough proposes to eliminate the current program and provide a one-time payment of \$500.00 for any police officer receiving an Associate's Degree in Criminal Justice or Public Administration and a one-time payment of \$1,000.00 for any police officer receiving a Bachelor's Degree Criminal Justice or Public Administration.

BACKGROUND

The Borough is located in Union County and has 7,100 residents within a 1.3 square mile area. It falls adjacent to Scotch Plains. These communities combine to provide public education through the Scotch Plains-Fanwood School

District but provide separate police departments. All documents in evidence reflect that Borough is a desirable place to live. It has a central business district that recently underwent redevelopment and saw the construction of several multi-use buildings that houses both commercial and residential occupants. Residents have access to a Fanwood rail station on the Raritan Valley Line that services New Jersey Transit trains to Newark, Hoboken or New York, thus providing a close and central location that appeals to the commuting public. The 2000 census shows median income at \$99,232 and a per capita income of \$34,804.

The police department is small but statistical evidence shows that it is productive and efficiently run. While small in size, it is broken down into Administration, Traffic, Detective and Patrol Divisions. The bargaining unit consists of one (1) Chief, one (1) Captain, three (3) Sergeants, three (3) Corporals, one (1) Detective and eight (8) Patrol Officers, all of whom are in the bargaining unit except for the Chief of Police. The Corporal rank frequently serves in place of the Sergeant rank when a Sergeant is not on duty. The Chief, Captain and Detective work a 5 on/2 off, eight (8) hour shift schedule. Officers in the patrol division work a 4 on/4 off, twelve (12) hour shift schedule. The patrol officers work the twelve (12) hour steady shift separated into an A and B side. The staffing levels are down from the full complement of 21 officers that existed prior to 2008. The minimum manpower in patrol is two (2) officers per shift. Notwithstanding the reduction in manpower, calls for service increased from

12,698 in 2009 to 14,012 in 2010. Motor vehicle summonses also increased from 3,155 in 2008 to 3,213 in 2009 and 3,738 in 2010. The Borough experiences a lower violent crime rate than does the state or national averages and less property crime than the state and national averages.

The Borough is well managed and, as the record reflects, operates in a fiscally sound manner. It operates under the Borough form of government with a Mayor directly elected to a four year term and a Borough counsel of six members who are elected to serve three year term on a staggered basis. Financial documents in evidence show that the Borough has traditionally been fiscally sound, but has been subject to recent financial stress. For example, surplus levels have decreased as well as local revenues that the Borough normally anticipates. As is the case with other municipalities, the Borough must operate under statutes that limit increases (appropriations) within the current expense portion of its budget and with limits on municipal tax increases. Within these statutory limitations, it has had to cope with increased contributions to the PERS and PFRS retirement systems and increases in other line items such as garbage collection contracts, sewer authority charges and health insurance premium increases. In this proceeding, it does not advance an inability to pay argument in a strict legal sense, but it does stress that its expenditures are necessarily limited by both legal and practical reasons. It contends that an award must be sensitive to its basic revenue sources in a manner that does not create negative or

adverse financial impact on the governing body and its residents. The Borough stresses the need for a salary schedule freeze in 2010 due to the effects of the recession on its revenues.

Given this general overview, I will offer a brief summary of the parties' positions that have been submitted on behalf of their respective final offers. The PBA contends that an award of its proposal would further the interests and welfare of the public based upon its view that the modifications it seeks would maintain reasonable comparability with similar municipal police agreements, that they can be funded within the lawful limitations imposed on the Borough without stress on the taxpayers and would maintain the continuity and stability of employment within the smaller police department that has shown increased productivity. It defines its proposal as falling within the cost of living data and compatible with the current scope of overall compensation and benefits that are currently being received by unit members. In contrast, it views the Borough's proposal as being too short in duration, demoralizing to police officer morale and not justified within the Borough's overall financial capabilities. It further notes that the imposition of the legislated health insurance employee contributions will result in substantial wage reductions on unit members if the Borough's last offer were to be awarded.

The Borough contends that the PBA's proposals are inconsistent with the Borough's financial abilities and budgetary priorities. The Borough notes that while it may have an appearance of financial health based upon income levels and real estate valuations, the statutory framework on its finances severely limit its expenditures and revenue sources. The Borough provides an analysis of the more recent amendments to the Cap law that limits appropriations and legislation that limits the raising of revenues through taxation. In addition, the Borough submits financial data showing the impact of recently decreased revenues on its budget. The Borough produced exhibits reflecting declines in surplus balance, decreases in local revenues anticipated and reductions State aid. Simultaneously, the Borough points to increased expenditures over which it has no control, including health insurance premiums, pension contributions, garbage collection and sewer authority charges. The Borough also contends that its proposal is reasonable in light of the comparability evidence. It notes that starting salaries are above the County average as well as maximum salaries. The Borough cites present and projected cost of living figures which support its view that its proposal is more realistic and reasonable than that of the PBA. It further contends that the continuity and stability of employment would be best served by its proposal because an award of the PBA's proposal could jeopardize the Borough's ability to maintain the workforce at its present levels.

DISCUSSION

The Borough and the PBA have submitted substantial documentary evidence, testimony and oral and written argument in support of their respective last offers. All submissions have been thoroughly reviewed and considered. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

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

In interest arbitration proceedings, the party seeking to add to existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. When both parties propose a change on an identical issue, the proposed change must be evaluated in light of the evidence presented and why there should be a modification to the status quo. I have applied these principles to my analysis of the issues in dispute. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the manner in which an individual issue is decided can reasonably impact upon the resolution of other issues. In other words, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be required after assessing the merits of any individual issue within the context of an overall award. These principles are in harmony with the statutory requirement and the clear legislative intent that the overall economic impact of all terms of an award is consistent with making a reasonable determination of all issues.

DURATION

The Borough proposes a three year agreement effective January 1, 2010 through December 31, 2012. The PBA proposes a five year agreement effective January 1, 2010 through December 31, 2014. Under all of the facts and circumstances that are present in this record, a contract duration that extends through December 31, 2014 is a reasonable determination of this issue. The record in this matter did not close until June 15, 2012 because of continuing efforts of the parties to reach an agreement. The two additional contract years would be consistent with the parties' own negotiations efforts and will allow for stability and a period of time for each party to evaluate any changes that each might wish to propose for the future upon contract expiration based upon relevant considerations that exist at that time. Moreover, the record in this proceeding is sufficiently broad in scope to permit an award covering this time period consistent with the statutory criteria. Accordingly, I award a contract duration that extends through December 31, 2014.

ARTICLE XII – INSURANCE PLANS

The PBA's proposal concerning health insurance flows from a 2010 change that the Borough made in its health insurance plan. The Borough at that time had a private health insurance plan but unilaterally changed the plan to the NJSHBP primarily for economic reasons. The change saved the Borough

\$50,000 annually. Because it was acknowledged that the new plan did not provide the same benefits, the parties agreed to establish a reimbursement procedure to cure any relative proven inequities in coverage. The PBA proposes to include language in the agreement that would maintain the status quo concerning the prior establishment of that reimbursement procedure. The PBA's proposal is reasonable and it is awarded. It does not represent a change from the Borough's voluntary recognition in 2010 that its change to the NJSHBP would be accompanied by a reimbursement procedure. The Borough has not shown that the procedure has eroded the financial benefits it received from making the change. Accordingly, I award the PBA's proposal as follows:

The Borough agrees to establish a reimbursement procedure, effective and retroactive to July 1, 2010 for reductions in benefits that occurred when the Borough changed from a private plan to the N.J. State Health Benefits Plan.

Each party acknowledges more recent legislation concerning employee contributions toward health insurance premiums. Unit members were required to contribute 1.5% of base salary towards health care benefits as required by law on May 21, 2010 pursuant to P.L. 2010, Chapter 2 as a result of legislative action legally mandating the contributions. Thereafter, there was additional legislative action addressing the issue of employee health insurance contributions. The Governor signed P.L. 2011, Chapter 78 into law with an effective date of June 28, 2011 or the first pay period in July pursuant to that legislation. That legislation provides for amounts of health benefit contribution pursuant to a

percentage schedule based upon a combination of the type of coverage the employee selects and the amounts of base salary earned. Chapter 78 will require contributions that in the aggregate those required by Chapter 2. This award must be consistent with law because N.J.S.A. 34:13A-16g(5) and (9) require the arbitrator to consider the Borough's lawful authority and statutory restrictions, one of which is to implement Chapter 2 and Chapter 78 in accordance with their terms. Accordingly, the Award will require a provision reflecting that health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

ARTICLE VI – LONGEVITY

Article VI of the Agreement current contains a comprehensive scheme for longevity payments. Its terms reflect the following:

1. In addition to the salaries set forth in Article V above, the Employer agrees to pay to all members of the Police Department hired before January 1, 1997, longevity pay based upon the following schedule:

<u>Term of Service</u>	<u>Percentage of base Salary</u>
5 years to less than 10 years	3%
10 years to less than 15 years	4%
15 years to less than 20 years	5%
20 years or more	6%

For all members of the Police Department hired after January 1, 1997, the longevity payment shall be revised to provide the following:

<u>Term of Service</u>	<u>Percentage of base Salary</u>
8 years to less than 13 years	3%
13 years to less than 18 years	4%
18 years to less than 23 years	5%
23 years or more	6%

2. Six months' longevity will be paid on the first pay period for the month of June, unless there are three pay periods in June, and then said payment will be made at the second pay period, and, six months' longevity will be paid in the first pay period for the month of December of each year of this Contract.

3. Although the Police and Firemen's pension system does not now permit the deduction of pension payments based upon longevity as well s base pay unless all members of a given department submit to such deductions, the Employer agrees that if a change is made in the regulations of the Police and Firemen's pension system during the term of this Agreement, the following shall apply:
 - a. When an employee completes his 20th year of service he may choose to have pension deductions made from his longevity salary. Requests for such deductions shall be made to the Chief of Police in writing, who shall verify the request and notify the Borough Treasurer. Longevity pay shall then be included in the employee's base salary and deductions shall be made from each biweekly check.

 - b. The raising of an employee's base salary for the purpose of including longevity for pension deductions shall not mean that the base for every member of the same grade or rank shall be raised. This will only apply to employees who request and qualify for longevity deductions on an individual basis.

The PBA has proposed to delete the longevity provision. While doing so it has proposed that a salary adjustment be made to the Patrolmen A, B and C salary guide steps which are the highest three steps in the salary schedule.

While that proposal is not directly linked to the longevity elimination in the phrasing of its proposal, it is acknowledged that there is linkage between the PBA longevity's proposal eliminating that benefit and the aforementioned proposal for a simultaneous salary adjustment. The Borough does not agree to the PBA's proposal but emphasizes that any such adjustments that accompany the longevity elimination must show offsets in the future from the longevity payments that would be received if the existing longevity schedule were to remain in effect.

The PBA's proposal with respect to longevity has merit and is awarded but only as modified below. The longevity provision in Article VI will be eliminated effective January 2013. The existing longevity schedule provides for payments of 4%, 5% and 6% based on years of service, depending upon whether an employee has been hired before or after January 1, 1997. For those hired before January 1, 1997, the 5% level is achieved at fifteen (15) years and the 6% level at twenty (20) years. For those hired after January 1, 1997, the 5% step at eighteen (18) years and the 6% step at twenty-three (23) years. Although the PBA has proposed that the elimination be accompanied by adding the value of 4% to each of the applicable steps in patrolman A, B and C salary guide steps prior to the implementation of the January 1, 2013 wage increase, the financial feasibility of the PBA proposal only exists by limiting the salary adjustment to the Police Officer A Step. The changes will be beneficial to both parties. The

Borough's exposure to the 4% add-in to Step A will be offset by the elimination of the longevity schedule which now yields a 5% payment for those with 15 or 18 years of service, depending upon date of hire and a 6% payment for those with 18 to 23 years of service depending upon date of hire. This portion of the award will also eliminate whatever confusion that may exist as to the pensionability of the existing longevity payments. The add-in to the salary schedule will require pension contributions by the Borough but on a longer-term basis, such payments will be more than offset by the elimination of the longevity schedule, especially for those in the unit that would see a reduction from the 5% and 6% payments currently being received. Accordingly, effective January 1, 2013, the longevity schedule shall be eliminated and prior to the calculation of the 2013 wage increase on January 1, 2013, the value of 4% shall be added to the Police Officer A Step.

ARTICLE X – VACATIONS

The PBA proposes that new language be added to Section 2 of Article X stating that:

Notwithstanding the foregoing, all officers shall be allowed to take 2 vacation period (tours) in July and/or August of each year. Selection for these 2 tours shall be based on rotating seniority with the most senior officer selecting his July/August vacations first and so on down the list.

The PBA points out that the current selection process allows senior officers to take all of the summer vacation slots. It asserts that its proposal will allow junior officers to at least be eligible for summer vacations. The Borough does not object to the proposal so long as it does not result in any increase in the amount of contractual vacation time.

I award the following. The PBA's proposal shall be included in the Agreement at Article X effective January 1, 2013. The inclusion of the language shall be accompanied by language stating that the January 1, 2013 award of the PBA's proposal shall not result in the granting of any additional vacation time.

ARTICLE VII – HOLIDAYS

The PBA proposes language that concerns the selection of holiday time off. Currently, police officers work an average of six to seven of the contractual holidays per year. The relevant language in the agreement is as follows:

1. Recognizing the unusual hours of employment, working conditions, shift work, 24-hour duty, each employee shall be entitled to holiday pay at the rate of pay he is receiving on a given holiday in addition to the regular pay covering this time period. Payments shall be made in two (2) equal installments with the first (1st) installment in the first pay period in June and the second (2nd) installment in the first pay period in December.

New Year's Day
Martin Luther Kings' Birthday

Washington's Birthday
Good Friday
Easter Sunday
Memorial Day
Fourth of July
Labor Day
Columbus Day
Veterans Day
Election Day
Thanksgiving Day
Christmas Day

The PBA proposes language that would allow all police officers and superior officers to select holiday time, or time off, on a rotating seniority basis. Any time left over would be selected on a first come first served basis. The Borough does not oppose the proposal as long as it does not result in additional holiday time being received. Given this, and the fact that junior officers will remain eligible to elect to be off on holidays and will not be scheduled for almost half of the 13 contractual holidays, I award this proposal. Accordingly, the following language shall be added to the holiday provision at Article VII:

Time off on the holidays set forth in Section 1, above, shall be awarded on a rotating seniority basis for all officers who are at Patrol Officer A status, Corporal, Sergeant, Lieutenant and Captain. If the officers at the levels listed herein do not select all of the eligible leave on the contractual holidays, the leave time shall be awarded on a first-come-first-serve basis amongst the remaining members of the unit.

LEAVE OF ABSENCE – PERSONAL DAYS

This issue arises in the context of applying a Section of a September 15, 2009 Settlement Agreement between the Borough and the PBA. That Agreement is in evidence. In that settlement agreement, resolutions were achieved over issues raised in various grievances and arbitration requests in which the PBA alleged that the Borough had violated the terms of the Agreement. One such section of the Settlement Agreement is Section 2 which referenced arbitration requests that had been made over the use of personal time. That section of the Settlement Agreement stated the following:

Personal Time (AR-2008-761): Officers will not be denied the use of personal time if they provide a minimum of 72 hours' notice, unless an emergency is declared by the Chief as defined by the collective bargaining agreement. The issue regarding the phrase, "full working day off" will be addressed by the PBA in successor contract negotiations.

There is no dispute as to the settlement agreement itself. But the language shows that the parties deferred the issue as to what constitutes a "full working day off" to the successor negotiations process. An agreement has not been reached on the meaning of that phrase and has been submitted herein.

Initially, I note that the existing contract uses the language "full working day" and the dispute is limited to how the language should be applied. The record reflects that there are different lengths of working days depending upon work assignment. It is my view that the term "full working day" should be given its plain and common meaning. After due consideration of the parties positions

on this issue, I award the PBA's position which states: "this phrase entitles PBA bargaining unit members to three (3) full days off per year on a day-for-day basis regardless of the number of hours in the officer's schedule. For example, an officer on an 8 hour day would receive 3 days off at 8 hours per day while an officer working a 12 hour day would receive those same 3 days off at 12 hours per day." Accordingly, this language shall be added to Article VIII.

COLLEGE INCENTIVE

The Borough proposes to eliminate the current college incentive program and provide a one-time payment of \$500.00 for any police officer receiving an Associate's Degree in Criminal Justice or Public Administration and a one-time payment of \$1,000.00 for any police officer receiving a Bachelor's Degree Criminal Justice or Public Administration. The PBA opposes the Borough's proposal.

Article XIII of the Agreement currently provides for a college incentive program. The terms provide the following:

1. Payments for college credits shall be made only to personnel who have completed a minimum of 12 credits in Criminal Justice or Public Administration at accredited colleges and universities.
2. Personnel transferring into Criminal Justice or Public Administration from another major shall not receive payment for credits until they have attained a minimum of 12 credits in

Criminal Justice or Public Administration and shall only be paid for credits which are accepted and applied towards a Criminal Justice or Public Administration degree by an accredited college.

3. Payments shall not be made for credits unless the student attained a grade of "C" or better.
4. All requests for incentive payment shall be accompanied by certified transcripts of attendance and semester hours and grades.
5. Personnel applying for college incentive payments shall submit transcripts to the Chief of Police of credits earned as of December 31st of the current year and shall be paid for those credits in two payments during the following year. Said payments shall be made at the same time that the longevity and holiday payments are made.
6. Incentive payments shall be paid in block payments of 12 credits as education process is achieved at the rate of \$15.00 per credit and according to the following schedule:

<u>Block</u>	<u>Credits</u>	<u>Amount</u>
A	12	\$180.00
B	24	\$360.00
C	36	\$540.00
D	48	\$720.00
E	60	\$900.00
F	Associates Degree	\$950.00
G	72	\$1,080.00
H	84	\$1,260.00
I	96	\$1,440.00
J	108	\$1,620.00
K	120	\$1,800.00
	BS or BA Degree	\$1,900.00
	Masters Degree	\$2,000.00

The Borough's presentation on this issue is persuasive. The record shows that its hiring practices are consistent with hiring police officers who have demonstrated academic achievement. Based upon the circumstances present within the Borough, it has demonstrated that it need not be obligated to continue the financial obligations that exist under the present terms of the Agreement. Its proposal to make one-time payments on a tiered basis upon elimination of the benefit represents a reasonable reward for those who have demonstrated higher education achievement. Accordingly, the Borough's proposal is awarded effective January 1, 2013.

SALARY

The parties disagree on what the salary increases should be over the term of the Agreement. The PBA has proposed salary increases of 2% effective January 1, 2010, 2% effective January 1, 2011, 2% effective January 1, 2012, 2% effective January 1, 2013 and 2.25% effective January 1, 2014. All increases would be retroactive to their effective dates. The Borough has proposed that there be no increase to the salary schedule for year 2010 followed by a 1.5% increase effective January 1, 2011 and a 2% increase effective January 1, 2012. I have previously awarded a contract duration of January 1, 2010 through December 31, 2014 and will evaluate what represents a reasonable determination of the salary issue in that context.

A determination of the salary issue must take into account several competing facts. The financial evidence is comprehensive and cannot be fully summarized although the financial record has been fully reviewed. The PBA, through its financial expert Joseph Petrucelli, contends that the Borough is able to afford the salary increases it has proposed due to the Borough having sufficient reserve funds and maintaining a large surplus revenue balance. The financial report does show that the Borough has had strong revenue growth and a high rate of tax collections. Its 0.90 net debt reflects financial stability. Through good fiscal management, the Borough has stabilized its tax levy using approximately 50% to 75% of surplus in each budget year while regenerating much of the amount that it has used. The record shows that the police department has not been the cause of increases to the average residential property tax bill. While the municipal portion did increase by almost \$80 between 2009 and 2010 the amount allocated to the annual cost for the police department decreased by slightly over \$50. The Department raises approximately \$500,000 in revenues and \$229,184 in side job fees. The Borough has also saved substantial expenses by not filling vacancies thus reducing its gross salary expenditures. The PBA analyzes the Borough's financial condition by evaluating the actual revenue collected compared to the budgeted amount, the Borough's cash balance, its annual receipt of additional unanticipated revenues and low debt. The PBA also analyzes the health insurance contribution rates for unit

members which are the result of Chapter 2 and Chapter 78. It estimates these contributions will result in annual average savings of approximately \$3,000 per unit member or \$47,000 annually based upon existing and proposed salaries. The PBA also cites healthy revenue figures regarding the amount of revenue the police department has raised for the Borough.

The PBA also submits a comparability analysis that includes other municipalities within the County of Union. While recognizing that its members receive competitive wages compared with the other municipalities, the PBA asserts that its wage proposal will do nothing but retain that competitiveness in contrast with the Borough's final offer which it contends would cause PBA members to lose relative standing within the County without justification. This, it argues, would be an improper result in light of the reasonable financial health that the Borough is in compared to many other jurisdictions.

The Borough urges rejection of the PBA's wage proposals. It submits that the PBA's proposal does not serve the interests and welfare of the public because it is said to ignore the Borough's lawful authority and financial impact on the governing unit. This is especially so with regard to the PBA's 2% proposal for 2010. The Borough submits that it experienced extraordinary budgetary distress in that year. Thus, an award in that amount or anything above the wage freeze that the Borough has proposed would be unreasonable and unsupportable. The

Borough further notes that an award of any increase in 2010 would be costly because it would then flow through the remaining years of the contract at substantial costs which it simply cannot afford.

The Borough also contends that the comparability evidence does not reflect that its police officers are poorly compensated in relation to other municipalities. Based upon exhibits it has submitted into the record, the Borough concludes that it ranks fourth out of eighteen Union County municipalities in starting salaries and sixth with respect to maximum salaries. When comparing compensation to the Borough's ranking as to per capita income, median family income and median household income, the Borough concludes that PBA compensation levels compare favorably with other municipalities. The Borough also submits that there are only six municipalities in Union County that have fewer steps from starting to maximum salary. The Borough also provides argument based upon record evidence that its proposal is more consistent with the statutory criteria concerning the cost of living and continuity and stability of employment. On this latter point, the Borough notes that Fanwood is a desirable community in which to work and it has not experienced turnover or instability in the workforce.

As previously stated, I have awarded a contract duration extending through December 31, 2014. This requires the setting of salary terms for

contract years 2013 and 2014 as well as for the three prior years. After due consideration of the parties' expertly advanced submissions, I am persuaded that neither final offer can represent a reasonable determination of the salary issue and I do not adopt either proposal. Instead, I have fashioned terms that, in an overall context, comport more consistently with the statutory criteria. After due consideration and application of the statutory criteria, I award the Borough's proposed wage freeze for 2010 followed by 2% increases to each step and rank in the salary schedule in 2011, 2012, 2013 and 2014, all with January 1 effective dates. The terms that have been awarded result in a 1.6% annual average increase and the terms provide an overall balance to the many competing requirements that are set forth in the statutory criteria. This increase falls below the 2.05% average proposed by the PBA and above the 1.17% average proposed by the Borough.

In fashioning these salary terms, I have considered the totality of the terms of the award that affect compensation levels and financial impacts. These include the 2010 wage freeze which not only provides budgetary relief to the Borough in 2010 but reduces its cumulative cost obligations through contract year 2014. The awarded terms will also require the addition of an additional salary step for new hires that will require an additional year of experience prior to reaching patrol officer maximum pay. In addition to cost savings, the Borough has shown that the length of steps in the current agreement compare very

favorably within the County with Clark, Kenilworth, Linden, Scotch Plains and Union all having an additional step beyond Fanwood. Further, no negative impact will result from the adding of an additional step. The expansion of steps will provide substantial financial relief to the Borough in the event it decides to restore employment levels close to what they have been in the past.

I do not rely upon any single criterion, although the interests and welfare of the public are entitled to the most substantial weight because this factor recognizes the interrelationships that exist between and among all of the relevant criteria. These include the Borough's statutory obligations, financial impact, comparability, overall benefits and compensation, cost of living and the continuity and stability of employment.

The financial evidence, including the financial reports and official budget data, support an award that reflect that its costs can be funded within the Borough's statutory requirements and without adverse financial impact. I have considered all of the financial evidence. The evidence does show increasing budgetary stress due to some revenue loss and due to the statutory limitations on the Borough's ability to raise revenues that might otherwise be raised through the tax levy. This has been addressed by the awarding of a wage freeze in 2010. The PBA has shown that the police department has not been an aggravating

factor in increased taxation due to a reduction in staffing levels. Moreover, the costs of the award contain offsets that will ease the burden of future costs.

I have based a cost analysis off of a roster reflecting one (1) Captain, no Lieutenants, four (4) Sergeants, three (3) Corporals, one (1) Detective and eight (8) Police Officers.¹ In contract year 2010, there are no costs for employees in the ranks of Captain, Sergeants, and Corporals and for Police Officers who are at Class A, the maximum step. There are costs linked to step movement for those moving from the Probationary Step B to Class B Patrol Officer. Step movement on the salary schedule has occurred for those who were eligible. This amount is \$20,256 in 2010. In 2011, the 2% increase at each step of the salary schedule for those who do not receive step increases yields a cost of \$17,961. The cost of the 2% increase plus the cost of step movement for patrol officers not at top step is \$24,389. The overall cost in contract year 2011 is \$42,350. In 2012, the 2% increase at each step of the salary schedule for those who do not receive step increases yields a cost of \$30,130. The cost of the 2% increase plus the cost of step movement for patrol officers not at top step is \$20,776. The overall cost in contract year 2012 is \$50,906. In 2013, the 2% increase at each step of the salary schedule for those who do not receive step increases yields a cost of \$23,950. The cost of the 2% increase plus the cost of step movement for patrol officers not at top step is \$15,239. The overall cost in contract year 2013 is

\$39,189. In 2014, the 2% increase at each step of the salary schedule for those who do not receive step increases yields a cost of \$24,421. The cost of the 2% increase plus the cost of step movement for patrol officers not at top step is \$11,677. The overall cost in contract year 2014 is \$36,098.

The comparability data is relevant and is entitled to weight. That data supports the 1.6% average wage increase over the contract duration and provides for the general maintenance of wage relationships within the County in a manner that is consistent with the Borough's financial abilities. In this regard, I have given weight to the Agreements in Clark, Scotch Plains, Cranford and Springfield. The record shows that the contract's terms have provided for the continuity and stability of employment of the Borough's police officers and that stability will be maintained by the terms that have been modified by the award. The average terms of the increase are consistent with the cost of living data and also, on balance, consistent with the wage data in evidence for private employment and public employment in general. The overall levels of compensation and benefits currently being received have also been considered. There are terms that are more favorable and less favorable than the County averages and nothing herein is based upon that factor requiring results different than what has been awarded.

¹ These estimated costs may not be precise due to changes in staffing that may have occurred since 2010, including resignations, promotions, hiring and retirements.

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

AWARD

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

2. **Duration**

There shall be a five-year agreement effective January 1, 2010 through December 31, 2014.

3. **Health Insurance**

a. **Article XII - Insurance Plans**

The Borough agrees to establish a reimbursement procedure, effective and retroactive to July 1, 2010 for reductions in benefits that occurred when the Borough changed from a private plan to the N.J. State Health Benefits Plan.

b. **Health Insurance Contributions**

Health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

4. **Article VI - Longevity**

Article VI – Longevity shall be eliminated and removed from the Agreement effective January 1, 2013. The elimination of longevity shall be accompanied by adding the value of 4% of the Patrolmen salary guide Step A prior to the calculation of the 2% wage increase on January 1, 2013.

5. **Article X – Vacations**

A new section shall be added to Article X – Vacations as follows:

Section 2, e (new):

- e. Notwithstanding the foregoing, all officers shall be allowed to take 2 vacation period (tours) in July and/or August of each year. Selection for these 2 tours shall be based on rotating seniority with the most senior officer selecting his July/August vacations first and so on down the list. The PBA's proposal shall not result in the granting of any additional vacation time

6. **Article VII – Holidays**

A new section shall be added to Article VII – Holidays as follows:

Time off on the holidays set forth in Section 1, above, shall be awarded on a rotating seniority basis for all officers who are at Patrol Officer A status, Corporal, Sergeant, Lieutenant and Captain. If the officers at the levels listed herein do not select all of the eligible leave on the contractual holidays, the leave time shall be awarded on a first-come-first-serve basis amongst the remaining members of the unit.

7. **Article VIII – Temporary “Leaves of Absence”**

Add the following language to Section 1 – Personal Days:

The language “full working days off” shall be defined as follows:

“This phrase entitles PBA bargaining unit members to three (3) full days off per year on a day-for-day basis regardless of the number of hours in the officer’s schedule. For example, an officer on an 8 hour day would receive 3 days off at 8 hours per day while an officer working a 12 hour day would receive those same 3 days off at 12 hours per day.”

8. **Article XIII – College Incentives**

Effective January 1, 2013, the current college incentive program shall be eliminated and a one-time payment of \$500.00 shall be made for any police officer receiving an Associate’s Degree in Criminal Justice or Public Administration and a one-time payment of \$1,000.00 for any police officer receiving a Bachelor’s Degree Criminal Justice or Public Administration.

9. **Salaries**

- a. The existing salary schedules shall be adjusted by the following amounts effective and retroactive to their effective dates. All increases shall be at each step of the salary schedule and at each superior officer rank and shall apply to all unit employees and those who have retired on normal or disability pension and except for those who have voluntarily resigned or have been separated from employment without good standing.

January 1, 2010	0.0%
January 1, 2011	2.0%
January 1, 2012	2.0%
January 1, 2013	2.0%
January 1, 2014	2.0%

b. **New Hire Salary Schedule**

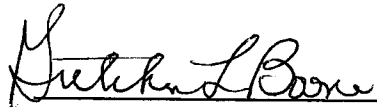
There shall be a new salary guide for officers hired on or after the date of this award. The new schedule shall add one step to the salary guide and all steps shall be equalized.

Dated: October 16, 2012
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 16th day of October, 2012, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 04/30/2014

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

MUNICIPALITY OF FANWOOD,

“Public Employer,”

- and -

PBA LOCAL 123,

“Union.”

**CLARIFICATION OF
INTEREST ARBITRATION
AWARD**

Docket No. IA-2010-104

**Before
James W. Mastriani, Arbitrator**

Appearances:

For the Employer:

Steven S. Glickman, Esq.
Ruderman & Glickman, P.C.

For the Union:

James M. Mets, Esq.
Mets, Schiro & McGovern, LLP

I issued an Interest Arbitration Decision and Award on October 16, 2012. One section of the Award (Section 8) involved Article XIII – College Incentives. The parties have mutually requested that a clarification of this Section of the Award be issued. The Award at Section 8 is hereby clarified as follows:

Employees who have been receiving college stipends (Incentive Payments) pursuant to Article XIII of the Agreement prior to October 15, 2012, shall continue to receive the stipend as it existed under Article XIII under the terms of the Agreement that expired on December 31, 2009. Employees who were on the Borough's payroll on or after the date of the Award (October 16, 2012) and obtain a college degree would receive a one-time payment of \$500.00 for any police officer receiving an Associate's Degree in Criminal justice or Public Administration and a one-time payment of \$1,000.00 for any police officer receiving a Bachelor's Degree in Criminal Justice or Public Administration. Such employees will not be eligible for a stipend for a Master's Degree. Employees hired on or after the date of the Award (October 16, 2012) shall only be eligible for the one-time stipend and no stipend for a Master's degree.


Dated: October 24, 2012
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 24th day of October, 2012, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 04/30/2014