

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

TOWNSHIP OF SOUTH HACKENSACK

Employer

-and-

TOWNSHIP OF SOUTH HACKENSACK
PBA LOCAL NO. 102,

Employee Organization

Interest Arbitration
Decision
-and-
Award

Docket No. IA-2010-078

Before
Timothy A. Hundley
Interest Arbitrator

For the Employer:

Giblin & Giblin
Brian Giblin, Esq.

For the PBA:

Loccke, Correia, Limsky & Bukosky
Richard D. Loccke, Esq.

The Township of South Hackensack (“Township” or “South Hackensack”) and PBA Local No. 102 (“PBA”) were parties to a negotiated agreement covering the January 1, 2005 through December 31, 2009 time period. The PBA is the exclusive representative for all of the Township’s full-time law enforcement personnel, excluding the Chief of Police and Deputy Chief.

After engaging in negotiations for a successor agreement, the PBA filed a February 24, 2010, petition with the Public Employment Relations Commission (“PERC”), requesting the initiation of compulsory interest arbitration pursuant to *N.J.S.A. 34:13A-14 et seq.* On May 4, 2010, PERC appointed me interest arbitrator in accordance with *N.J.A.C. 19:16-5.6(d)*. Accordingly, this case is governed by the interest arbitration procedures in effect at that time. *L. 2010, c. 105*, which went into effect on January 1, 2011, establishes new interest arbitration procedures and timelines for petitions filed on or after that date. *See L. 2010, c. 105*, section 4 and *PERC’s Frequently-Asked Questions, Interest Arbitration Procedures (February 9, 2011)*.

On June 22, 2010, I conducted a joint mediation session that narrowed or resolved some issues. However, the impasse persisted. Accordingly, a formal interest arbitration hearing was held on September 27, 2010, at which time the PBA and the Township examined and cross-examined witnesses and introduced

numerous exhibits into evidence. At the close of the hearing, both parties rested. However, on October 5, 2010, the PBA requested that the record be reopened for the limited purpose of allowing it to submit information concerning a federal COPS grant that was awarded to the Township on October 1, 2010.

On October 29, 2010, the Township responded that it also sought to submit information that was not available at the time of the hearing — specifically, a voluntary settlement between the Borough of Fair Lawn and the Fair Lawn PBA/SOA. On November 16, 2010, I approved both the PBA and Township requests, and a summary of the Fair Lawn settlement, and material related to the Township's federal COPS grant, were admitted into evidence. Post-hearing briefs were received by January 31, 2011, and the record was closed on that date.

The pre-2011 version of *N.J.S.A.* 34:13A-16f(5) called for an interest arbitrator to issue an award within 120 days of selection or assignment, albeit the statute also permitted the parties to agree to an extension. Pursuant to this latter provision, the Township and the PBA have agreed to extend the time for issuing an award to April 18, 2011.

In addition, the pre-2011 version of *N.J.S.A.* 34:13A-16d(2) provided that the terminal procedure was conventional arbitration, absent the parties' mutual agreement to an alternate procedure. The parties here have not agreed to an

alternative method of submission and this dispute therefore will be resolved by conventional arbitration.

N.J.S.A. 34:13A-16f(1) requires that each party submit a final offer. The Township and PBA final offers are as follows.

TOWNSHIP’S FINAL OFFER

1. Contract Term

The Township proposes a three-year contract from January 1, 2010 through December 31, 2012.

2. Wage Increases

2010: 0%
 2011: 1.5%
 2012: 1.5%

It also proposes the following wage scale for new employees.

Patrol officer	2010	2011	2012
Step 1	\$25,000	\$25,000	\$25,000
Step 2	\$27,083	\$27,083	\$27,083
Step 3	\$29,166	\$29,166	\$29,166
Step 4	\$31,250	\$31,250	\$31,250
Step 5	\$33,333	\$33,333	\$33,333
Step 6	\$35,416	\$35,416	\$35,416
Step 7	\$37,499	\$37,499	\$37,499
Step 8	\$39,582	\$39,582	\$39,582
Step 9	\$41,666	\$41,666	\$41,666
Step 10	\$43,750	\$43,750	\$43,750
Step 11	\$45,833	\$45,833	\$45,833
Step 12	\$47,916	\$47,916	\$47,916
Step 13	\$49,999	\$49,999	\$49,999
Step 14	\$52,082	\$52,082	\$52,082
Step 15	\$54,165	\$54,165	\$54,165
Step 16	\$56,248	\$56,248	\$56,248
Step 17	\$58,331	\$49,999	\$58,331

Step 18	\$60,414	\$60,414	\$60,414
Step 19	\$62,497	\$62,497	\$62,497
Step 20	\$64,580	\$64,580	\$64,580
Step 21	\$66,663	\$66,663	\$66,663
Step 22	\$68,746	\$68 746	\$68 746
Step 23	\$70,829	\$70,829	\$70,829
Step 24	\$72,912	\$72,912	\$72,912
Step 25	\$75,000	\$75,000	\$75,000

Sergeant – Increase of \$5,000 upon promotion. Increase of \$2083 per year until maximum salary of \$80,000 is reached.

Lieutenant – Increase of \$5,000 upon promotion. Increase of \$2083 per year until maximum salary of \$85,000 is reached.

Captain – Increase of \$5,000 upon promotion. Increase of \$2083 per year until maximum salary of \$90,000 is reached.

3. All employees to be paid bi-weekly.

4. Article X – Longevity

Eliminate for new employees

5. Article XIII - Clothing Allowance

Eliminate for new employees

6. Article XIV - Personal Days

Reduce to one day for new employees

7. Article XVII – Holidays

For employees on a 5/2 schedule, eliminate pay for holidays unless the employee works on the holiday.

8. Article XVII – Terminal Leave

Eliminate for new employees

9. Article XXI – Sick Leave

Eight days for new employees

PBA’S FINAL OFFER

1. Contract Term

The PBA proposes a four-year contract from January 1, 2010 through December 31, 2013.

2. Wage Increases

2010:	3.75%
2011:	3.75%
2012:	3.75%
2013:	3.75%

3. Article XVII - Holidays

The PBA proposes to modify Article XVII, Holidays, by providing that the entire holiday benefit be paid in equal installments along with regular payroll. As such, the holiday value will be used for all calculation purposes.

4. Article XI – Compensatory Time Off

The PBA proposes the creation of a Compensatory Time Off provision wherein individual officers, at their sole discretion at the end of the extra duty work performed, could elect to be compensated in either paid overtime or compensatory time off (time and one-half (1 1/2) rate. In the event that there is an election to utilize compensatory time off then said time shall accumulate in a Compensatory Time OFF Bank (CTO). Officers with available compensatory time within the CTO Bank would be permitted to utilize compensatory time off at any time in their sole discretion subject only to prior Department approval.

Extra Duty Work (New Provision)

The PBA proposes that extra duty work would be computed in blocks of four (4) hours, both for contractors seeking work and in its general administration. The appropriate amount to be paid would be paid in advance by the contractor and held by the public employer in an escrow account. Upon completion of the work then the appropriate sums would be distributed from the escrow account in the next regular paycheck. All road openings would be reviewed by the Chief of Police as to whether uniformed personnel would be needed for said area security. All extra duty jobs would be bid by the same bid procedure for extra duty work.¹

STATUTORY FACTORS

I am required to resolve this dispute based on a reasonable determination of the issues, giving due weight to those statutory factors set forth in *N.J.S.A. 34:13A-16g* deemed relevant. The nine statutory factors 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) Comparisons 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.

¹ The PBA maintains that while its wage and holiday proposals are economic, its compensatory time and extra duty work proposals are non-economic in nature and would not require the Township to expend any funds.

(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.

(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 P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

(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, c. 62² (C40A: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 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 a proposed local budget.

² In July 2010, N.J.S.A.40A:4-45.45 was amended by L. 2010, c. 44.

(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).

BACKGROUND

This proceeding involves the two captains, two lieutenants, three sergeants, and seven patrol officers employed in South Hackensack's police department (PBA Brief, p. 35, Chart No. 4). South Hackensack itself covers approximately one square mile in southern Bergen County and is comprised of three distinct non-contiguous geographic areas (COPS application, p. 14). The Township is an established, developed community that includes industrial, commercial, and residential zones (Exhibit T-15, 2008 Master Plan Periodic Re-examination Report).

The Township is situated at a transportation crossroads just a few miles from the George Washington Bridge; the New Jersey Turnpike; and the Garden State Parkway. Route 46 bisects the Township; Route 80 also passes through it; and Teterboro Airport borders the jurisdiction. Although the Township has a small

resident population of approximately 2,258 (Exhibit T-10), it is characterized by heavy traffic and a range of policing challenges.

For example, Route 46 sees average weekday traffic of close to 46,000 vehicles (Exhibit P-4), and it is lined with a variety of highway-oriented commercial establishments such as motels; adult entertainment uses; fast food restaurants; car dealerships; and the “School of Rock” entertainment venue (Exhibit T-15, 2008 Master Plan, pp. 13, 15). Township Police Officer Lance Kelly testified that the “go-go” bars and short stay motels along Rt. 46 generate a large volume of police calls, some attributable to prostitution and narcotics dealing. Other motels are a “magnet for problems” because they are used to house released sex offenders, parolees, and the homeless. Overall, South Hackensack’s “violence ranking” is the 34th highest among New Jersey’s 556 municipalities (Exhibit P-3, Star Ledger Report “Municipalities and Violent Crime”).

According to 2000 census figures, the Township’s median household income was \$57,917, below the Bergen County figure of \$65,241 (Exhibit T-10). The Township’s 2009 property tax bill for a home at the average assessed value of \$229,000 was \$7,919. On January 1, 2010, a property revaluation took effect, with the result that the average home had an assessed value of \$387,000 and a total property tax bill of \$8,347 for municipal, school and county purposes (Exhibit T-3). For fiscal year 2010, the Township’s total general appropriation for municipal

purposes was \$7,765,535; of this amount, \$5,784,079 was required to be raised by municipal taxes (Exhibit T-15, 2010 Budget, Sheet 3). Stated another way, the municipal tax levy accounted for 74% of total appropriations, a figure that is in the mid-range among Bergen County's 70 municipalities (Department of Community Affairs, Division of Local Government Services (DGLS), 2010 Property Tax Analysis).

Among the issues in this proceeding are the contract term; wage increases, provisions for new hires, and proposals concerning holiday pay and compensatory time. The Township and the PBA each urge that the nine statutory criteria weigh in favor of their respective proposals on these items, and they have each submitted comprehensive briefs and numerous exhibits. The record includes, among other items, the 2010 Township budget; exhibits detailing the Township's surplus and tax history; recent interest arbitration awards and PERC-compiled settlement data; contracts involving law enforcement employees in other Bergen County municipalities; federal and state data on the cost of living and private sector wage increases; and in-depth news reports concerning police salaries and municipal crime rates in New Jersey. The Township's witnesses were Mayor James Anzevino and Township Auditor Gary Vinci, while Officer Lance Kelly testified on behalf of the union.

In addition to this information, I have also taken arbitral notice of certain government materials that supplement or update this data, including these Township documents posted on the South Hackensack Township Library website: Annual Financial Statement (AFS) for 2010 (Unaudited); 2010 Municipal Debt Statement; 2009 Audited AFS; and the AFS for 2008 and for 2007. In addition, I make reference to the 2010 PERC Salary Analysis and other items, such as DGLS materials, distributed at the PERC Interest Arbitration Seminar in October 2010.

Recent legislation also has a bearing on this proceeding. *L. 2010, c. 44*, approved July 13, 2010, reduced the property tax levy cap for school districts, counties and municipalities from 4% to 2% . The Act states that it “shall be applicable to the next local budget year following enactment.” In addition, *L. 2010, c. 2*, mandates that all municipal employees shall pay 1.5% of their base salary as a contribution toward health insurance premiums. It took effect on May 21, 2010, except for employees covered by a collective negotiations agreement in effect on that date. For those employees, the statute applies once the contract expires.

The following is a summary of the Township’s and PBA’s arguments.

TOWNSHIP’S POSITION

The Township vigorously argues that each of the statutory factors firmly supports an award of its salary and other proposals. As a precursor to its

discussion of those criteria, the Township offers an overview of the Township's demographics and finances.

The Township begins by highlighting Mayor Anzevino's description of South Hackensack as a lower-middle class community in which 27% of the population is over 55 (compared to a State average of 22%), and 25% of the homeowners are over 65. *See also* Exhibit T-15 (2008 Master Plan, p. 3). The Township observes that 12% of Township residents live in poverty, while its February 2010 unemployment rate was 10% (COPS application, p. 17). By comparison, the State's 2009 unemployment rate was 9.2% and the County rate was 7.9% (Exhibit T-10).

In continuing its overview of South Hackensack's demographics, the Township cites Anzevino's testimony concerning how the community experienced an influx of two-family homes in the mid to late 1950's and, in addition, has seen a recent trend towards the conversion of one-family homes into two-family homes. In this vein, Township exhibits show that, according to the 2000 census, 54.5% of the Township's housing stock was owner occupied, while 43.3% consisted of rental units (Exhibit T-15, 2008 Master Plan, p.5).

The Township stresses that South Hackensack's senior citizens have been severely affected by recent State budgetary developments, including the cancellation of the 2010 \$1,500 senior citizen homestead rebate and the decision to

maintain “senior freeze” tax credits at 2009 levels. In terms of the municipal budget, the Township asserts that Vinci convincingly demonstrated that, because of an unusual number of tax appeals, the Township’s December 31, 2010 fund balance would likely be only \$600,613 – considerably less than the \$1,323,613 balance at the close of 2009 and the \$1,311,749 balance at the end of 2008 (Exhibit T-2). Accordingly, the Township asserts that it will have to cut expenses in order to preserve some surplus funds to meet emergencies. The Township also points to the cancellation, in 2010, of a \$100,000 grant from the Meadowlands Municipal Assistance Program (2010 Budget, sheet 9).

The Township reasons that additional tax increases are not an option, given that the average homeowner has already experienced a 10.8% increase in taxes from 2008 to 2010 (Exhibit T-3). It adds that newly enacted CAP legislation will also make it more difficult to raise taxes.

The Township concludes its introductory discussion by underscoring that it will have substantial debt service payments for the next 10 years, as well as an unfunded liability of \$476,833, representing the amount currently required to discharge its contractual obligation to pay retiring Township employees for accumulated sick leave. The police department accounts for \$344,342 of this total (Exhibit T-6). Finally, the Township exhibits highlight that State aid has been sharply reduced over the past few years, with the Township receiving \$484,732 in

2010, compared to \$598,054 in 2009, and \$635,259 in 2008 (Exhibit T-4). State records show that, for 2011, the Township will also receive \$484,732 (DGLS, Proposed CY 2011 State Aid Distribution).

In light of all these circumstances, the Township urges that the statutory factors and sub-factors that should be given the greatest weight are those pertaining to the lawful authority of the employer; statutory restrictions imposed on the employer; the financial impact of an award; and the cost of living. The Township addresses each of the statutory factors, as follows.

Public Interest and Welfare

The Township recognizes that the public interest calls for police officers to enjoy a stable working environment, along with terms and condition of employment that are competitive enough to attract qualified candidates. However, the Township also underscores that in 2010, two police officers (and one dispatcher) were terminated solely for budgetary reasons — the first time in the department’s history that such actions were taken. The Township notes that Chief of Police Michael Frew expressed his concern that “with the reduction of manpower it is going to be very hard to cover all the (schedules) without overtime” (Exhibit P-6). In this posture, the Township asserts that the public interest demands that the costs associated with staffing and running a police department be maintained at a level which can be supported without further staff reductions.

The Township urges that this goal would be accomplished by the award of its final offer, particularly its proposals for salary guide and benefit changes for new employees. It reasons that these new hire provisions would allow the department to contain costs over time, without requiring additional layoffs or major sacrifices from current employees.

With respect to current employees, the Township underscores that its proposal would result in a 3% salary increase for all officers over the contract term. It contends that this enhancement is reasonable, given that the average police officer salary in South Hackensack is currently \$122,991 and, under its proposal, would increase to \$126,708 by 2012.

In placing these compensation figures in perspective, the Township observes that the Star Ledger's survey of municipal police salaries shows that there are only a handful of New Jersey jurisdictions where salaries exceed those in the Township. In this context, the Township insists that the PBA has offered no justification for increases that would result in an average salary of \$142,503 by 2013, especially in an environment where the economy is still struggling and all indications are that salary increases in the public and private sectors will continue to decline. The Township also urges that its proposal for a three-year contract term is more aligned with the public interest than the four-year agreement sought by the PBA. It reasons that its proposal would not lock the parties in for an excessive period of

time and would allow the parties to adjust to any future changes in the economy during successor contract negotiations.

Turning to the other elements of its final offer, the Township asserts that, aside from its holiday pay proposal, its final offer would not adversely affect existing employees. It adds that its request to implement a bi-weekly pay period would have no negative impact on employees, but would allow it to manage payroll more efficiently.

Finally, the Township notes that in applying the public interest criterion, an arbitrator is statutorily obligated to consider the appropriations CAP set forth at *N.J.S.A. 40A:4-45.2*. For calendar year 2011, this CAP allows a municipality to increase annual budget expenditures by 2.0%, or 3.5% if it has enacted an ordinance authorizing such an increase. *See New Jersey Department of Community Affairs, Local Finance Notice No. 2011-3 (January 14, 2011, p. 4)*. The Township stresses that the purpose of the appropriations CAP is to control the spiraling cost of local government, thereby allowing homeowners to maintain their homes.

Comparisons with Other Employees

The Township recognizes that *N.J.S.A. 34:13A-16g(2)* calls for a comparison of unit members' wages, hours, and working conditions with those of other public and private sector employees. The Township vigorously asserts that

when such a review is undertaken, it becomes apparent that Township police officers are currently very well compensated and would continue to be so under the Township's final offer.

In terms of comparisons with other law enforcement officers, the Township points out that every member of the police force earns in excess of \$108,180, the maximum patrol officer's salary for 2009 (Exhibit J-1, p. 38-39; Exhibit T-15, 2010 Police Salary Calculations). When longevity, holiday, and the higher salaries of superior officers are included, the Township calculates that South Hackensack's average police officer salary is \$127,203.88.³ The Township continues that this compensation fares favorably with what the Star Ledger reports is the median police salary in New Jersey -- \$90, 672, which is itself the highest in the nation (Exhibit T-15, September 19, 2010 news article).

The Township also underscores that unit member salaries compare favorably with those of employees in the Township's only other negotiations unit, Local 11 of the Teamsters. For 2011, the Teamsters contract provides laborers with a starting salary of \$30,000 and a maximum salary of \$72,773; the maximum salary for the assistant superintendent is \$88,305(Exhibit T-15, 2008-2011 Teamsters contract). The Township notes as well that its police officers earn well in excess of \$54,542, the average private sector wage in New Jersey for 2009 (Exhibit P-13).

³ This figure includes the salaries of the Chief and Deputy Chief, who are not members of the negotiations unit.

In terms of percentage increases received by other employees, the Township observes that average private sector wages in New Jersey actually decreased 0.7% between 2008 and 2009 (Exhibit P-13), while government workers saw a 2.2% increase during this time period (Exhibit P-13). By contrast, the Township highlights that this unit has received increases of approximately 4% for more than a decade.

Given this context, the Township asserts that its proposal for a 3% increase over the term of a 2010-2012 agreement is reasonable, particularly considering that any newly-hired officer would also receive step increases as he or she moved through the salary guide. It underscores that, under the 2005-2009 contract, a starting patrol officer would see his compensation increase from \$42,604 to \$108,180 during his first eight years of employment. Finally, the Township strongly emphasizes that other police units in Bergen County have come “to recognize the precarious condition faced by municipalities in the current recession and have elected to become part of the solution.” The Township highlights these developments in Rochelle Park, Leonia and Paramus.

Rochelle Park

The PBA and the Township had a four year agreement ending on December 31, 2010 but, on April 28, 2010, the PBA and SOA signed a Memorandum of Agreement (MOA), in which they set forth their understanding that “shared sacrifices” were called for in these difficult times in order to avoid the layoffs of two officers in 2010. Accordingly, the parties agreed to an \$85,000 cap on overtime, after which overtime compensation would be in

the form of compensatory time off. In addition, the PBA/SOA agreed to a 1.5% payroll deduction from their base pay beginning on April 28, 2010, instead of when their contract expired seven months later. Finally, they agreed that there would be no cash out of compensatory time in 2010 and that any time not taken by June 1, 2011 would be lost. The memorandum was characterized as a temporary cost savings measure, the terms of which would expire on December 31, 2010 (Exhibit T-15, Rochelle Park MOA).

Leonia

A May 5, 2010 side agreement between the Borough and the PBA permitted the Borough to “retroactively to January 1, 2010, compel all members of the bargaining unit to make a contribution towards the cost of health benefits in the amount of 1.5% of the employee’s base pay.” In addition, the officers agreed to take furlough hours equal to two percent (2%) of each officer’s 2010 salary (average salary to include longevity). The side agreement specified that, except for the foregoing provisions, the parties’ negotiations agreement was to remain in effect (Exhibit T-15, Borough of Leonia Memorandum of Understanding).

Paramus

In a June 2, 2010 MOA between the PBA and the Borough, the Borough agreed to rescind a resolution regarding layoffs and demotions and withdraw its appeal of an interest arbitration award with prejudice. In addition, the PBA and Borough agreed to all terms of the award, except salary increases. Instead, the MOA provided for the PBA to receive 4% in 2008; 4% in 2009; 0% in 2010; 3% in 2011; 3% in 2012; and 3% in 2013. However, the MOA continued that if the tax levy CAP were reduced to 2.5%, the 3% increases for 2011, 2012, and 2013 would be reduced to 2.5%.

The Township points out that in Leonia and Rochelle Park, PBA units agreed to financial concessions even though they were under no obligation to reopen existing contracts. Similarly, the Township observes that the Paramus PBA agreed to modify an arbitrator’s award that had been reaffirmed by the arbitrator after a PERC remand and was awaiting decision on a further appeal.

Overall Compensation

In assessing the evidence pertinent to *N.J.S.A. 34:13A-16g(3)*, the Township observes that this statutory factor calls for a consideration of the overall compensation presently received by employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits and all other economic benefits. While the Township reiterates that police officers perform an essential function for South Hackensack residents, it stresses that the officers are already well compensated. In support of this contention, it cites a range of benefits, including the \$108,180 top salary for a patrol officer and the maximum salary of \$126,987 for a captain. The Township adds that a top-step patrol officer receives an additional \$5,770 in holiday pay, a benefit that is incorporated in base salary in many jurisdictions.

The Township continues that longevity begins at four years of service and, after 20 years, can add \$10,800 to \$12,700 to an officer's salary. In addition, officers receive full medical coverage and life insurance; a \$750 annual clothing allowance; three personal days; a maximum of 25 vacation days; 16 sick days annually; and three months sick leave for an extended illness. Officers' overtime compensation is calculated based on base salary and longevity, and they are entitled to a minimum of three hours overtime for off-duty court appearances. The

Township adds that, until a recent statutory enactment, officers' full medical coverage was non-contributory.

In addition to these numerous contractual benefits, the Township underscores that all unit members are enrolled in the Police and Fire Retirement System (PFRS) to which the Township contributed \$482,661 in 2009; \$519,314 in 2010; and an estimated \$584,434 for 2011. The Township adds that its total pension costs for all employees are projected to increase 12.64% between 2010 and 2011, compared to a 6.19% increase between 2009 and 2010 (Exhibit T-8).

The Township urges that its proposal to institute a new wage and benefit package for new hires is consistent with the cost-containment strategies used in many other municipalities. Thus, it points to several jurisdictions that have negotiated contracts with more than one wage scale and some others that have multiple longevity schedules; indeed, it notes that Wallington, Rochelle Park and Hackensack have completely eliminated longevity for new hires. The Township asserts that by proposing to reduce the salary and benefits for new hires, while holding current employees harmless, its final offer represents a reasonable compromise for these challenging financial times.

Stipulations of the Parties

The Township believes that this criterion is not relevant because there were no relevant stipulations of the parties.

**Lawful Authority of the Employer and the Limitations Imposed by
*N.J.S.A. 40A:4-45.1 et seq.***

The Township emphasizes that an employer's lawful authority is affected in a very substantial way by numerous legislative acts, including the adoption of the "appropriations CAP" set forth at *N.J.S.A. 40A:4-45.1 et seq.* The Township contends that the final budget for 2010 included appropriations up to the CAP. It points as well to Exhibit T-14, which shows that expenses over which the Township has no control (*e.g.*, pension contributions; sewer processing; debt service) were budgeted at \$2,283,033 or an increase of \$200,000 over the prior year. The Township observes that the 2010 line item for salaries and wages actually decreased from the prior year, due to layoffs and the decision not to fill vacancies. Given this financial picture, the Township asserts that it is unreasonable to expect the Township to commit an additional \$60,000 to the 2010 budget for 3.75% raises for police officers.

The Township also asserts that while it has received a \$269,485 COPS grant from the federal government, the money is actually more of a burden than a windfall. It notes that the \$269,485 will be paid out over three years and must be used to rehire the most senior officer laid off, who was earning \$108,180 plus benefits. The Township points out that not only is the grant insufficient to fully fund the officer's position, federal requirements mandate that it maintain the

position for at least 12 months after the conclusion of the program, without any offsetting federal contribution.

The Financial Impact of an Award on the Governing Unit, Its Residents, the Tax Levy Cap, and Taxpayers

The Township asserts that either party's proposal would have a substantial impact on the governing unit and its residents. However, it insists that its offer, with a new wage and benefit structure for future employees, is more reasonable than the PBA's position. The Township characterizes the PBA as seeking wage and benefit increases that are out of keeping with current economic realities.

In continuing its discussion of *N.J.S.A.* 34:13A-16g(6), the Township primarily focuses on *L. 2010, c. 44*, which was approved on July 13, 2010; replaced the 4% tax levy CAP with a 2% levy CAP; and reduced the number of items that are excluded from the CAP. The Township states that the new law will be felt in the 2011 budget and will greatly restrict its latitude in crafting a budget that will meet residents' needs. By way of illustration, the Township points to Exhibit T-5, prepared by its auditor, which shows the effect that a 2% levy CAP would have had on the 2010 budget. Under the 4% CAP that was in effect at the time, the maximum allowable amount to be raised by taxation was \$5,785,857, and the budget came in only \$1,778 under that figure. If *L. 2010, c. 44* had been in

place, the maximum allowable amount would have been \$5,679,686, and the budget would have been \$104,393 over the CAP.

Even before the adoption of this new statutory restriction, the Township asserts that it had already undertaken many cost-saving measures, including the termination of two police officers; one dispatcher; one fire inspector, and one DPW employee. In addition, the position of Chief Financial Officer was reduced to part-time and a vacancy created by retirement was left unfilled. The Township posits that these actions demonstrate the starkness of its fiscal quandary, since layoffs are the last resort for a municipality seeking to cut costs. In this posture, the Township maintains that the arbitrator should reject the PBA's proposal to include in the 2010 municipal budget an additional \$60,000 in police raises.

Cost of Living

The Township asserts that the cost of living criterion weighs heavily in favor of its own proposal. It notes that over the past decade, the salary of a top step patrol officer has increased from \$76,007 to \$108,180, or 39.25%. By contrast, the CPI rose only 29.60% during the same time span. In support of these statistics, it submits the following chart.

Year	Top Patrol Salary	Percentage Increase	CPI Increase
2009	\$108,180	4.25%	0.40%
2008	\$103,770	4.00%	3.90%
2007	\$ 99,779	4.00%	2.80%
2006	\$ 95,941	4.00%	3.80%

2005	\$ 92,251	3.75%	3.90%
2004	\$ 88,917	4.00%	3.50%
2003	\$ 85,948	4.00%	3.10%
2002	\$ 82,209	4.00%	2.60%
2001	\$ 79,047	4.00%	2.50%
2000	\$ 76,007	3.25%	3.10%
Total		39.25%	29.60%
Average		3.92%	2.96%

[Exhibit T-15, Bureau of Labor Statistics, Consumer Price Index; PBA Local 102 contracts]

The Township notes that in every year except 2005, unit members received increases that exceeded the CPI, a trend that culminated in 2009, a year in which the CPI “barely moved” but officers received a 4.25% raise. Moreover, the Township observes that the above-noted percentage increases do not include longevity or the step increases received by officers moving through the guide.

In this posture, the Township opines that it is time to bring some equilibrium back into the equation of public sector wages. It writes that implementation of its own proposal will go a long way toward achieving that goal.

Continuity and Stability of Employment

The Township writes that this criterion should not be given much weight, since little evidence bearing on the factor was submitted. It notes, however, that there is strong continuity and stability of employment in the Township’s police department, since the average officer has 17 years of service.

Statutory Restrictions Imposed on the Employer

The Township comments that most of the statutory restrictions that govern municipal operations have been addressed under other criteria. These include the appropriations and tax levy CAPs; State aid reductions; and employer pension contributions, among others. However, it submits that one other “statutory restriction” is pertinent to this proceeding: the new section of the interest arbitration statute that states that “an arbitrator shall not render any award pursuant to *N.J.S.A.* 34:13A-16 which, on an annual basis, increases base salary items by more than 2.0% of the aggregate expended by the public employer on base salary items for the members of the affected employee organization in the 12 months immediately preceding the expiration of the collective negotiations agreement subject to arbitration . . .”

PBA’S POSITION

The PBA maintains that the evidence, testimony and arguments it has presented concerning the statutory factors strongly support an award of its final offer. Its analysis of those criteria is as follows.

Public Interest and Welfare

The PBA underscores that the Township has an excellent, full-service police department that ably serves the public interest in the face of unusual policing challenges; extremely high activity levels; and staff reductions that have required

officers to display an extraordinary degree of productivity and dedication. The focus of the PBA's public interest analysis is that South Hackensack is one of the busiest law enforcement jurisdictions in Bergen County by virtue of its geographic location; its many adult and commercial uses; and the presence in the Township of "virtually every type of criminal, public safety and traffic activity one could imagine." The PBA relies on Officer Kelly's testimony, together with related exhibits, in describing this policing environment.

The PBA begins by noting that the Township police force oversees busy Route 46; backs up the State Police on Interstate Route 80; and is responsible for the area bordering Teterboro Airport. The PBA stresses that the Township is impacted by the substantial traffic generated by Teterboro, adding that police have been called to respond to aviation accidents in which airplanes overshot the runway and ended up in South Hackensack. Similarly, the PBA cites Kelly's description of how numerous traffic problems are generated by the Township's restaurants, "round-the-clock" fast food locations, commercial car dealerships, industrial and warehouse facilities; and entertainment venues such as the "School of Rock."

The PBA also emphasizes that two major rail lines run through the Township, as does a portion of the transcontinental pipeline; in addition, the Bergen County Utility authority is located in South Hackensack. The PBA

maintains that all of these uses can give rise to public safety and security concerns, as evidenced by their presence on a Homeland Security watch list. Indeed, the union points to Officer Kelly's description of how the 9/11 co-conspirators stayed in South Hackensack in the weeks preceding the attacks, during which time they frequented go-go bars in the vicinity and aroused the suspicion of a Township police officer. However, there was no "federal sharing" of information about any of the individuals involved and, when Mohammed Atta's license plate was run, no outstanding warrant showed up. Accordingly, no action was taken. Nevertheless, the PBA asserts that FBI agents learned a great deal about the co-conspirators by working with the South Hackensack police department and gathering information in the Township.

The PBA also stresses that because the Township is the site of several go-go bars and short-stay motels, the South Hackensack police force must deal with a high incidence of prostitution, theft and drug offenses. PBA exhibits collect a variety of news reports detailing sexual assaults, thefts, armed robberies, gang incidents, and drug crimes that were handled by the South Hackensack police (Exhibit P-3). A departmental log for calendar year 2009 lists a total of 11,649 police calls (Exhibit P-2), and information from the 2004 FBI Uniform Crime Rate data base showed that South Hackensack had a violent crime rate of 572 incidents

per 100,000 people, higher than the State rate of 342 but lower than the national rate of 676 (Exhibit P-3).

The PBA also underscores that the Township is a proactive police department that has a juvenile officer, participates in the DARE anti-drug program for students, and responds to first aid and emergency calls (Exhibit P-3). In further detailing the department's service to community, the PBA points out that the department has implemented a Child Safety Seat Installation program and, up until 2010, had a bicycle safety initiative (Exhibit P-3). The PBA notes as well that police officers generate revenue for the Township through the Click-It or Ticket Initiative and Municipal Court fines. In addition, the Department received funds from the Bergen County Prosecutor's Office, representing a portion of the forfeiture monies collected by the County as a result of law enforcement actions in which the Township force participated.

The PBA argues that an arbitrator should take into consideration both the above-noted challenges and successes of the Township's police department and, in addition, municipal management's policy decision to "let this force shrink." Citing Kelly's testimony, the PBA calls attention to the fact that the department has been reduced from 21 sworn police officers in 1993 to 14 officers as of September 2010. The PBA contends that this one-third reduction coincided with an enormous escalation in police calls, from 4,794 in 1993 to 11,649 in 2009

(Exhibit P-2; Kelly testimony). The PBA acknowledges that some of the workload increase can be accommodated through technology but it notes Kelly's testimony to the effect that police activity has started to become less proactive and more reactive.

The PBA expresses concern that the workload change could increase the response to citizen calls and increase officers' exposure to injury. In this vein, it asserts that municipal officials have acted contrary to the recommendations of Chief Frew, who in December 2009 sought permission to hire two new police officers and, in June 2010, opposed the termination of two officers and a dispatcher (Exhibits P-5 & P-6).

The PBA also highlights that, in August 2010, Frew responded to concerns that had been expressed by the Mayor and Township Committee about the department's overtime budget. Frew noted that overtime as of July 2010 was 409.5 hours, about half the overtime total for all of 2009, despite the reduced staff (Exhibit P-7). Frew also advised that the Deputy Chief, Captain and Lieutenant were also working as patrol officers, and that the department was trying its best to hold down overtime. In this regard, Officer Kelly testified that while "the job was getting done" and officers had a good *esprit de corps*, vacations and time off were becoming increasingly difficult to schedule.

Comparisons with Other Employees

The PBA argues that despite this unit’s exceptional performance and productivity, its overall compensation is at best average when compared with the salary and benefits enjoyed by police officers in surrounding jurisdictions. In particular, it contends that South Hackensack officers work the most hours per year of any area police officer and have average or below average benefits in such areas as educational incentive, detective differential, longevity and health insurance. The PBA adds that there is no retiree medical coverage in South Hackensack and no senior officer stipend — even though these benefits are included in many area police contracts.

The PBA continues that this situation is not static, because other Bergen County police departments have resolved contracts for 2010 and beyond, mostly through voluntary settlement. Based upon the contracts and MOAs that it has introduced into evidence, the PBA has prepared the following Chart No. 1, showing the percentage increases received by area police officers.

	2010	2011	2012	2013
Edgewater	3.65	3.75		
Elmwood Park	3.95	3.95		

Fort Lee	3 (2.5/1)			
Garfield	4 (2/2)	4 (2/2)	2.7	
Lodi	3.75	3.74	2	
Moonachie	4 (2/2)	4 (2/2)	4 (2/2)	
N.J. Transit	4.8			
Paramus		3	3	3
Ridgefield	3.65	3.75	3.75	3.75
Rutherford	2.75	3 (1.5/1.5)	3 (1.5/1.5)	
Saddle Brook	4	4		
Wallington	3.8	3.9	4	
Wood-Ridge	4(2/2)	1350 + 4(2/2)	4 (2/2)	5 (2/3)
Averages	3.80%	3.74%	3.36%	3.88%

Citing the foregoing data, the PBA argues that its proposed 3.75% annual increases are fully supported by the evidence and correspond almost exactly to the average increase set forth in Chart No. 1. The PBA continues that this conclusion is reinforced when one examines the increases received by officers in jurisdictions that share a common border with South Hackensack. PBA Chart No. 2 reflects this comparison.

	2010	2011	2012	2013
Garfield	4(2/2)	4 (2/2)	2.7	

Moonachie	4 (2/2)	4 (2/2)	4 (2/2)	
Wallington	3.8	3.9	4	
Wood-Ridge	4(2/2)	1350 + 4(2/2)	4 (2/2)	5 (2/3)
Averages	3.95%	3.98%	3.68%	5%

The PBA urges that the jurisdictions listed in Chart No. 2 are especially appropriate comparables for South Hackensack given its unique status as a municipality comprised of non-contiguous segments. Thus, the PBA points out that the City of Garfield actually surrounds the “Garfield Parks” section of South Hackensack, while Wood-Ridge surrounds another section of the Township. As a result, these sections of the Township are sometimes difficult for officers to reach from the central part of South Hackensack, and officers from other jurisdictions may be called for back-up. In light of these circumstances, the PBA maintains that its comparability exhibits are far more pertinent than those of the employer, which were selected without regard to the size of the respective police forces or the distance, location, relevance, or character of the various municipalities.

In continuing its analysis, the PBA contends that its proposal to fold holiday pay into base pay is also supported by comparability data from surrounding districts. It identifies police contracts in these jurisdictions as having this feature.

Edgewater
Elmwood Park

Fort Lee
Garfield
Hasbrouck Heights
Moonachie
Rutherford
Saddle Brook
Wood-Ridge

The PBA also contends that not only is the employer's offer unsupported by police comparability data, it is inconsistent with the 2008-2011 contract that the Township itself entered into with the blue collar Teamsters unit. The PBA stresses that the employer agreed to 4% raises for this unit for both 2010 and 2011, and did so in the context of an overall benefit package that includes some features that are more favorable than those in the PBA agreement. The PBA highlights these Teamsters benefits.

- Teamsters have a seven-step guide compared to nine pay grades for the PBA.
- Teamsters with CPR training receive a \$1400 annual stipend and those with an EMT certification are entitled to an additional \$1000. Virtually all PBA members have this training but the PBA agreement does not provide for comparable stipends.
- Article XI of the Teamsters contract provides for \$80 standby pay for weekdays and \$100 for weekends. There is no such provision in the PBA agreement.
- Teamsters receive three days of personal leave, while the Township has proposed to reduce this benefit to one day for PBA unit members.
- Teamsters all work a 5/2 schedule and receive paid holidays. By contrast, the PBA states that the Township has proposed to eliminate holidays for PBA members working a 5/2 chart.

- Teamsters receive double time for working on a holiday, plus triple time and one-half if the holiday falls on a scheduled day off. By contrast, the PBA insists that the Township is singling out police for a reduction in holiday benefits.
- Teamsters have 16 sick days, while the Township proposes that new police hires receive only eight annual days. No such reduction was proposed for the Teamsters.
- The Township provides full terminal leave for Teamsters without grandfathering for new hires. However, the Township proposes to eliminate terminal leave for new police officers.

The PBA reasons that the benefits and wage increases included in the Teamsters contract undercut the employer's position in this proceeding, especially because Teamsters do not have access to interest arbitration and the Township voluntarily agreed to the noted items.

In a related vein, the PBA contends that the Township's new hire proposals are completely without precedent in either the Teamsters contract or area police agreements. The PBA critiques such "bizarre ideas" as a 25-step pay guide, and contends that none of the employer's exhibits support the termination of such a range of essential benefits for new employees. The PBA asserts that the Township seeks to achieve ends wholly and completely at odds with the statutory criteria.

Finally, the PBA also disputes the Township's reliance on data concerning private sector employees, contending that police officers' unique responsibilities militate against making private sector comparisons controlling. Thus, the PBA

underscores that there is no private sector position that is truly comparable to that of a police officer. It stresses that a police officer can be armed at all times and must be prepared to act when off duty. Further, a police officer holds a unique public franchise that is not valid outside the State. Unlike machinists or engineers, they cannot relocate to another state and market their skills there.

The PBA also highlights the many laws and regulations that distinguish police from private sector employees. It notes that police officers do not enjoy the protection of New Jersey's wage and hour law and are not covered by the 40-hour work week set forth in the federal Fair Labor Standards Act. The PBA adds that, unlike private employees, police officers are subject to a plethora of statutes that, *e.g.*, establish minimum qualifications for hire; mandate New Jersey residency; govern promotional examinations in civil service jurisdictions; set minimum and maximum ages for initial employment; and require retirement by age 65. It also points out that police officers are subject to stringent statutory training and re-training requirements. Further, the PBA urges that while national and global trends affect the private labor market—and have a depressing effect on wages—local comparisons are the relevant benchmark for police salaries.

The PBA concludes its comparability analysis by arguing that police work is more specialized and demanding than the majority of private sector jobs. It emphasizes that a police officer is a career-committed, twenty-five year statutorily-

oriented specialist who is subject to a level of scrutiny, accountability, and authority unparalleled in the private sector. In arguing that the greatest weight should be given to comparisons with other police, the PBA cites the following analysis by Arbitrator William Weinberg:

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparison with the private sector may be seen in the testimony of the employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like titles. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsections g(2)(a) of the statute may be divided into (1) comparison with the same jurisdiction, the direct employer, in this case the Village, and (2) comparison with

comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such as contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. [*Ridgewood Arbitration Award*, Docket No. IA-94-141, pages 29-41).

Lawful Authority of the Employer

The PBA remarks that this statutory factor necessitates a review of New Jersey's two CAP laws, the appropriations CAP and the tax levy CAP. The PBA begins its analysis with a review of the appropriations CAP, which it contends has remained at 3.5% since 2008. In the PBA's view, the record reflects that the Township is under "no pressure whatsoever" from this CAP, given that the 2010 adopted budget came in \$511,773 *under* the maximum allowable appropriation (2010 Budget, sheet 3c). The PBA observes that this \$511,773 constitutes a CAP bank that affords the Township appropriation flexibility in future years. Indeed, it contends that the PBA's final offer "is significantly inside the Appropriation" CAP because 1% of the unit's total compensation is only \$15,960. Therefore, the cost of a 3.75% increase for 2010 would be \$59,850.

Turning to the tax levy CAP, the PBA writes that it is of paramount importance to recognize that the levy CAP for 2010 is 4% and that it is only in

2011 that the lower CAP goes into effect. Moreover, the PBA notes that the Township's 2010 budget came in under the levy CAP, even before South Hackensack's receipt of a \$269,458 federal COPS grant that will be disbursed over three years. The PBA emphasizes that this money is expressly earmarked for law enforcement and, indeed, was sought by the Township in order to pursue community partnerships, community initiatives and organizational transformation.

In elaborating on the import of the COPS grant, the PBA underscores that the Township received almost exactly the amount of funding that it sought. In this posture, the PBA concludes that "there is no longer an economic issue in this case" because police department expenses are under control for 2010 and the federal grant will almost certainly carry over into 2011. The PBA acknowledges that the Township's COPS application stated that the money would be used to re-hire a laid-off officer. However, the PBA opines that this is unlikely to occur, with the result that "there is now additional funding for a smaller staff." The PBA comments that the grant exceeds the base pay of the two laid off officers, which was \$216,360.

The PBA also writes that the impact of the tax levy CAP is partially offset by new legislation requiring that all public employees contribute 1.5% of their base wages "ostensibly for the purpose of helping with health care costs." Since this law went into effect in the last seven months of 2010, the PBA calculates that the

Township will receive the benefit of an amount equal to .875% of the unit's base salary for 2010. For 2011 and 2012, the PBA calculates that its proposed 3.75% increases would continue to be offset by these contributions. Based on all of the foregoing, the PBA asserts that neither the appropriations CAP nor the tax levy CAP constitutes an obstacle to awarding the PBA's final offer.

Financial Impact on Taxpayers and Residents

The PBA contends that South Hackensack as a community is rich in ratables, as evidenced by the testimony and photographs showing substantial commercial and industrial establishments in the Township. The PBA adds that the Township's own budget documents show strength in many areas, including a low comparative tax rate and the ability to regenerate surplus. In this regard, the PBA points to sheets 4 and 9 of the 2010 budget, which detail a range of sources from which the Township derives revenues that can offset police department operations. The PBA also comments that several of sheet 9's revenue sources are attributable to the police department's own efforts including, for example, the Click It or Ticket program.

The PBA also underscores that the Township had an extraordinarily high tax collection rate of 99.8% for both 2008 and 2009, indicating a lack of taxpayer angst or pressure. In any case, the PBA contends that it is not police salaries that drive the Township's overall tax rate. Instead, because the Township is the

collection agent for the schools and the County, over half of Township taxes are attributable to school and County purposes.

Finally, the PBA sharply rejects the suggestion that the Township's fiscal health is undermined by recent increases in its PFRS contributions. The PBA responds that employers were relieved of their obligation to pay *any* pension contributions for a period of five years during Governor Whitman's administration, after which the Legislature instituted a gradual phase-in of local employers' full pension contributions. The PBA reasons that the 2008 to 2009 increase in the Township's pension contributions represented the final transition to a full 100% payment —which the PBA insists the employer should have been paying all along.

The PBA submits that, in contrast to employers, police and fire employees have been paying a full 8.5% of their salary — the highest rate in the United States — without any break in this obligation. The PBA suggests that an alternative way of viewing the Township's pension costs is to consider the vast amounts that it and other public employers saved (or spent on other items) during the nine years when they were not paying their full rate.

The PBA concludes its discussion of the financial impact criterion by asserting that South Hackensack has an excellent police force which is also an exceptional financial bargain. It reiterates that there are no economic issues that preclude the Township from funding the PBA's last offer.

Continuity and Stability of Employment

The PBA maintains that a review of the “continuity and stability of employment” criterion supports an award of its proposals. It writes that this statutory factor incorporates the traditional private sector bargaining concepts of “prevailing rate” and “area standards” and it reasons that those concepts in turn weigh in favor of awarding the PBA’s holiday pay and compensatory time off proposals.

With respect to holiday pay, the PBA writes that the majority of area towns have included holiday pay in base pay, an item that is of value to the employer because it results in having more officers available to work at straight time on holidays. Further, the proposal is an advantage to the PBA because unit members receive a portion of the benefit on a biweekly basis, instead of waiting for the lump sum payment at the end of the year.

With respect to the issue of compensatory time off, the PBA writes that the Township should support the PBA proposal, because it will increase the likelihood that extra duty work will be paid in time off rather than cash. The PBA reasons that its proposal protects the Township’s interests by requiring department approval before an officer can actually take a compensatory day. The PBA surmises that management will not approve a time off request if it would entail overtime for another officer.

Finally, the PBA urges that its extra duty work proposal also protects both the Township and its police officers. The PBA points out that the proposal would require the Chief of Police to determine in advance whether a road opening would require the presence of a uniformed officer at the site. If so, the contractor would be required to remit payment up front, thereby avoiding a situation where the Township had to deploy an officer and then attempt to recover associated costs. Overall, the PBA contends that the proposal would enhance citizen safety without additional cost to the Township.

The PBA concludes its discussion of all of the statutory criteria by emphasizing that there are now fewer officers doing police work in South Hackensack, despite substantial evidence that the department's workload is increasing. It urges that its final offer falls well within the parameters of the interest arbitration statute. The PBA maintains that on the key issue of base wage, its own position is more than supported by the evidence. Further, it reiterates that its other proposals are "supportive of the citizens' protections and cost avoidance."

DISCUSSION AND ANALYSIS

My consideration of the parties' proposals is governed by *N.J.S.A.* 34:13A-16g and pertinent Court and PERC decisions. I must 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. *N.J.S.A.* 34:13A-16g; *Cherry Hill Tp.*, P.E.R.C. No. 97-119, 23 *NJPER* 287 (¶28131 1997).

In addition, I note that *N.J.S.A.* 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. Accordingly, I have been guided by the decision-making principles that are typically used in deciding interest arbitration disputes. One such principle is that the party proposing a change in an employment condition bears the burden of justifying it. I have applied that principle to the proposals in this proceeding, although I note that PERC has held that the “burden” construct has less import in evaluating salary proposals, where both sides typically propose changes; neither party seeks a continuation of the pre-award salary guide; and the award must contain a salary ruling. *Essex County*, P.E.R.C. No. 2005-52, 31 *NJPER* 86 (¶41 2005).

Similarly, while I have evaluated the individual merits of each proposal, my award reflects the precept that an arbitrator must consider the totality of changes to be made to the existing agreement, as well as the cost and impact of the overall economic package. *N.J.S.A.* 34:13A-16d(2) reflects this latter concept by requiring that the arbitrator separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine criteria in *N.J.S.A.* 34:13A-16g.

In setting forth the standards that govern my analysis, I stress at the outset that the 2% base salary CAP set forth in section 2 of *L. 2010, c. 105*, does not apply to this proceeding. As set forth in more detail *infra*, that restriction pertains only to interest arbitration proceedings involving contracts that expired *after* the January 1, 2011 effective date. *See L. 2010, c. 105*, section 4; PERC FAQs, p. 4.

The Township and the PBA have each proposed several modifications to the predecessor contract but their presentations at the hearing and in their briefs focused primarily on base salary increases. Accordingly, I devote the bulk of my analysis to that issue. In arriving at an award, I conclude that all of the statutory factors are relevant, but that not all are entitled to equal weight. My weighing and balancing of the nine factors, particularly those pertaining to the public interest, financial impact, lawful authority of the employer, statutory restrictions on the employer, and comparisons with other employees, leads me to award a total economic package that is somewhat more than proposed by the Township but less than sought by the PBA.

This interest arbitration takes place in the context of an economic, budgetary, and statutory context that has changed dramatically since the parties negotiated their last contract. This time period has been marked by rising unemployment; a falling cost of living; and a deep, almost unprecedented recession, from which the State and national economies are still struggling to

recover. While I believe that my award will maintain a competitive compensation package for these productive, highly valued employees, the salary increases I have awarded are less than would likely have been arrived at in a more favorable economic climate. More specifically, my decision-making has been informed by these factual conclusions and judgments:

- The Township has several markers of financial strength, but the record also shows areas of vulnerability. Like most public employers in New Jersey, it is facing budgetary pressures — including a reduction in State aid and the transition to the 2% tax levy CAP — that militate against the increases sought by the PBA. In addition, the overall economic environment mandates caution in arriving at salary increases.
- Economic and budgetary difficulties at the State and local level have resulted in a changed negotiations landscape, with recent data showing declines in the percentage increases received by a range of private and public employees, including public safety employees.
- Consistent with the direction provided by Court and PERC decisions, I have carefully considered the record evidence bearing on internal comparability. However, I have determined that given the current economic and negotiations climate, the statutory factors militate against awarding increases that parallel those received by the Teamsters in 2010 and 2011.

Within this framework, the terms of my award are as follows:

1. Term of Agreement

The term of the agreement shall be from January 1, 2010 through December 31, 2012.

2. Salary increases

2.0% across-the-board salary increase effective January 1, 2010.

2.0% across-the-board salary increase effective January 1, 2011.

2.0% across-the-board salary increase effective January 1, 2012.

Each salary increase is retroactive to its effective date.

3. Pay Periods

All unit members are to be paid on a bi-weekly basis as soon as practicable after the implementation of the award.

Cost of Award

A necessary prelude to the analysis mandated by *N.J.S.A.* 34:13A-16g is a costing out of the award. The total 2009 base compensation for the unit was \$1,596,080. Assuming no resignations, retirements, or new hires, the cost of the annual base salary increases under the employer's offer, the PBA's proposal, and the award are listed below.

	Township	PBA	Award
2010	\$0	\$59,853	\$31,922
2011	\$23,941	\$62,097	\$32,560
2012	\$24,300	\$64,426	\$33,211

For 2010 through 2012, the employer and PBA figures assume that the total base salary for the preceding year was enhanced by the percentage increase sought by that party; the same method was used to calculate the cost of the award. There are no increment costs to consider since all patrol officers who are currently on the

department's roster were at the top step of the salary guide as of 2009 or earlier. In addition, there is only one pay grade for each superior officer rank. The total cost of the awarded across-the-board increases is \$97,693 -- \$49,452 more than under the employer's proposal and \$88,683 less than the annual increases proposed by the PBA.

In placing the increased costs of the award in context, it is also noteworthy that beginning sometime after May 21, 2010, unit members assumed, by operation of law, a contribution toward their health benefit premiums in the amount of 1.5% of their base salary. Given the May 2010 effective date, this statute's implementation took place during the second half of 2010 and the first half of 2011, with unit members paying approximately \$23,941 in new premium contributions that would otherwise have been absorbed by the Township. Thus, the cost of the awarded increases is balanced by new revenues of approximately \$11,970 in 2010 and \$11,970 in 2011.⁴

Pursuant to *N.J.S.A.* 34:13A-16d(2), I conclude that these total net annual economic changes for each year of the agreement are reasonable under the criteria listed in *N.J.S.A.* 34:13A-16g. The rationale for the award is set forth in the following discussion, in which I analyze the evidence on each statutory factor and describe how it relates to my decision to award the above-noted salary increases

⁴ The record does not indicate when payroll deductions began for unit members, so I have allocated one-half of the new revenues to 2010 and one-half to 2011. The proportion might be closer to seven months for 2010 and five months for 2011 if the deductions when into effect in early June 2010.

and contract term. With this statutory and evidentiary analysis as a foundation, I then address the parties' remaining proposals.

Interest and Welfare of the Public

The public interest and welfare, *N.J.S.A.* 34:13A-16g(1), is a broad criterion that encompasses both a review of an employer's fiscal and budgetary status and an analysis of the compensation package required to attract and retain a productive and high-morale police force. This statutory factor also implicates the interest in labor relations stability, including the importance of considering any internal settlements involving the employer's other negotiations units. In addition, *N.J.S.A.* 34:13A-16g(1) explicitly requires consideration of the appropriations CAP set forth at *N.J.S.A.* 40A:4-45.1a *et seq.*

The "public interest and welfare" thus synthesizes and integrates many of the considerations enumerated in other statutory factors. The New Jersey Supreme Court has underscored its central importance in deciding interest arbitration disputes, *PBA Local 207 v. Bor. of Hillsdale*, 137 N.J. 71 (1994), and I have therefore given this multi-faceted criterion substantial weight in determining salary increases and ruling on the parties' other proposals.

As a threshold matter, the public interest is pertinent to the issue of contract term, and it favors the award of a three-year contract from January 1, 2010 through December 31, 2012. While the PBA proposes a four-year contract extending

through 2013, there is a paucity of comparability data for 2013 and considerable uncertainty about how strong the State and national economies will be in 2013. Local public employers are still adjusting to an environment of reduced State aid and lowered tax levy CAPS and, while the National Bureau of Economic Research (NBER) has determined that the recession officially ended in June 2009, it did not state that economic conditions were favorable. *See New Jersey Department of Labor and Workforce Development (NJLWD,) New Jersey Economic Indicators. November 2010, No. 530, p. 1.* Indeed, as outlined later, the NJLWD expects that high unemployment will persist in New Jersey in 2011 and beyond. In this posture, the public interest is best served by a three-year contract that will allow the parties greater flexibility to adjust to future economic conditions.

The public interest and welfare must also be considered in resolving the parties' salary dispute. Specifically, the fiscal and compensation components of the criterion must be balanced in light of the particular economic and budgetary circumstances pertaining in South Hackensack; the current compensation structure for this unit; and the nature of the Township's policing environment. On this latter point there appears to be little dispute.

The Township commends unit members for the essential services they provide and there is no question but that South Hackensack is a busy jurisdiction with high activity levels; a wide range of policing challenges that extend beyond

the standard patrol function; and an unusual mix of commercial, industrial, and adult uses. The department has been extremely successful in dealing with an increasing volume of police calls, despite experiencing the layoff of two officers in June 2010 and having one-third fewer officers than it did in 1993.

While officers have maintained an admirable “esprit des corps,” there are some indicia of strain in this productive department. Kelly testified that the force was becoming more reactive than proactive and Frew’s August 2010 letter to Township officials indicated that superior officers were sometimes required to work as patrol officers. In these circumstances, it is important that unit members continue to enjoy competitive salaries and benefits, to the extent permitted by the Township’s fiscal circumstances. There is a compelling public interest in ensuring that the Township’s residents and business owners continue to be served by a highly skilled, efficient, and dedicated police force.

In evaluating the economic and financial components of the public interest, I find that while the Township does have several indicia of fiscal strength, the two predominant fiscal considerations for this contract term each call for restraint in determining salary increases. First, the economy as a whole is still emerging from a deep recession and continues to be marked by high unemployment, low inflation, a depressed housing market, and reduced tax revenues to state and local governments. All of these phenomena have the potential to affect the Township in

the form of reduced interest income; lower construction-related fees, and an increase in tax appeals.

Second, the Township is adjusting to new budgetary restrictions in the form of reduced State aid and a lowered tax levy CAP beginning in 2011. As discussed more fully in the financial impact criterion, all of these developments create a “perfect storm” in which the Township has less budgetary flexibility than in the past while, at the same time, financially stressed citizens are more sensitive to tax increases and more concerned that the Township deliver public services at reasonable cost. As such the fiscal component of the public interest strongly favors moderate salary increases. As discussed later, the COPS grant does not fundamentally alter this situation because it is intended to be used to rehire a laid off police officer; does not fully cover those costs; and does not give the Township an additional \$269,485 in unrestricted funds.

With respect to the compensation facet of the public interest, unit members’ existing compensation compares favorably with that of police officers in surrounding Bergen County municipalities. For 2009 through 2013, the record includes contracts from numerous such jurisdictions, and South Hackensack’s 2009 top step patrol salary of \$108,180 is among the area’s highest for that year, as

is the sergeant salary of \$114,444.⁵ Lieutenant and captain salaries are not quite as competitive, but these ranks also fare well compared to their colleagues.

Other elements of the unit's salary and benefit structure are for the most part typical of police compensation in the County and State, a point on which I expand in my review of the overall compensation criterion. Similarly, unit members are indisputably well paid compared to most State private and public sector employees, consistent with their status as experienced, highly-trained career professionals with extraordinary responsibilities. In particular, the top-step patrol officer salary is substantially higher than the top salary in the Township's Teamsters unit.

Overall, the PBA's existing compensation structure is competitive and given the high productivity of this department, the compensation component of the public interest favors salary increases that would generally maintain the units' relative standing vis-à-vis police units in comparable jurisdictions.

In a more typical negotiations cycle, the above analysis might well lead me to award increases for 2010 through 2012 that corresponded closely to those received by area police officers, and the Teamsters unit, for the same years. This is especially so with respect to the internal Teamsters settlement, because Court and PERC decisions direct arbitrators to carefully consider internal comparability

⁵ Depending on the year in question, the record includes 10 to 18 contracts.

data. While those decisions do not mandate that an arbitrator follow internal settlements or settlement patterns, they do require that an arbitrator fully articulate the rationale for deviating from them. *Union Cty.*, P.E.R.C. No. 2003-33, 28 *NJPER* 459 (¶33169 2002) and *Union Cty.*, P.E.R.C. No.2003-87, 29 *NJPER* 250 (¶75 2003).

However, the crux of my analysis on the public interest (and financial impact and comparability criteria) is that these are not ordinary times. Increases at or close to 4% for 2010 through 2012 are not feasible in the wake of State aid cuts; the new tax levy CAP; and the fiscal distress undoubtedly experienced by many Township residents. Moreover, an emphasis on the average increases received by Bergen County police officers for 2010 through 2012, or the 2008 through 2011 Teamsters settlement, does not take into account the unfolding dynamics of County and State negotiations. Most of the agreements in the record were negotiated before 2010, a year which saw both the enactment of the 2% tax levy CAP and a decline in the raises received by New Jersey public sector employees, a point I detail in my comparability analysis.

My decision to award 2% across-the-board increases for 2010 through 2012 reflects this changed landscape and takes into account the Township's budgetary constraints. In this posture, settlements that might have offered strong guidance a few years ago no longer serve that function.

While the awarded increases will likely result in some deterioration of the unit's relative standing vis-à-vis area jurisdictions, I believe that unit salaries will continue to be reasonably competitive. This is especially so because, for contracts expiring after January 1, 2011, the 2% base salary cap on awarded increases will exert a continuing downward pressure on both awards and voluntary settlements, with the result that South Hackensack's salaries will remain well within the reasonable range throughout the contract term.

While I have awarded percentage increases that are closer to the Township's proposal than to the PBA's, some moderate enhancement beyond the Township's offer is appropriate given the challenges faced by this very productive unit. I also find that the Township has some budgetary flexibility to fund increases above its own offer. The award exceeds the employer's proposal by \$31,922 in 2010, \$8,619 in 2011 and \$8,911 in 2012 — figures that must be placed in the context of a 2010 municipal budget of approximately \$7.7 million. I note that for 2010, the year where the gap between the award and the employer's offer is the largest, the 2% CAP was not in effect. Further, as set forth in the financial impact discussion, I am satisfied from a review of the 2010 budget that these differentials can be accommodated within the Township's overall budgetary framework. Accordingly, I conclude that the awarded increases will not have an adverse financial impact on the Township or its residents and taxpayers.

A final element that must be considered in connection with the public interest is the expenditure CAP established by *N.J.S.A. 40A:4-45.1a et seq.* This CAP limits the amount by which a municipality may increase its total appropriations over those in the preceding year to the lesser of 2.5% or a federally-prepared cost of living adjustment (COLA). Municipalities also have the authority to adopt an ordinance allowing for a 3.5% increase, which South Hackensack has done for 2010 (Exhibit T-15, 2010 Budget, Sheet 3b). As explained in the lawful authority section of this opinion, my award for 2010 will not cause the Township to exceed the limits imposed by *N.J.S.A. 40A:4-45.1a et seq.* Further, there is no evidence that the award will cause the CAP to be exceeded in 2011 or 2012.

Comparisons with Other Employees

N.J.S.A. 34:13A-16g(2) is a multi-pronged factor that calls for a comparison of the wages, hours, and working conditions of the employees involved in the proceeding with employees “performing similar services” and “employees generally” in (1) private employment in general; (2) public employment in general; and (3) public employment in the same or similar comparable jurisdictions. The record includes data on most of the above-noted categories of employees, some of it focusing on the percentage increases received by different groups and some of it detailing employee salaries and health benefits. I have carefully considered all of this data and, overall, I have given the comparability criterion significant weight.

A reasonable resolution of a salary dispute depends on an understanding of the salaries and working conditions that pertain in police and non-police employment.

Based on my review of pertinent exhibits and testimony, I conclude both that this unit's current compensation structure is competitive and that some enhancement over the contract term is necessary to maintain that status. However, fiscal considerations point toward lower across-the-board salary increases than might be awarded in a more favorable economic climate. Moreover, current economic and budgetary conditions have begun to result in lower salary increases for a range of employees, thereby providing further support for the 2% increases awarded herein.

In determining across-the-board salary increases for 2010-2012, it is useful to start with an understanding of the unit's existing salary structure. Whether or not it compares favorably with the compensation of similarly situated employees is critical to assessing what if any future adjustments should be awarded.

In evaluating dollar amount salaries, it is essential to compare unit members' salaries and working conditions with those of employees who perform the "same or similar services" in the "same or comparable jurisdictions." *N.J.S.A. 34:13A-16g(2)*. I have focused on other Bergen County municipalities as "comparable jurisdictions." Comparisons within a County are traditional in interest arbitration and neither party has suggested that the Township is part of another identifiable

group of municipalities. Both the PBA and the Township have submitted numerous police contracts from surrounding municipalities, and there is a considerable overlap among their submissions.

While the Township also emphasizes the Star Ledger report on police salaries statewide, that document appears to mix different officer ranks in calculating a department’s average police salary: I reach that conclusion because the report’s computations are based on all officers paying into the PFRS (Exhibit P-3). In addition, it is not clear from the report what other items are included in the average salary figure — *e.g.* holiday pay, longevity. Therefore, in placing the Township’s 2009 salaries in perspective vis-à-vis other municipal police officers, I have primarily focused on the contracts and MOAs in the record.

The following list, derived from the underlying contracts, shows 2009 salaries for the four officer ranks involved in this proceeding. South Hackensack’s salaries, and those in jurisdictions with higher base salaries, are in bold.

	Patrol Officer	Sergeants	Lieutenants	Captains
Edgewater	\$100,073	\$108,079	\$116,725	\$126,064
Elmwood Park	\$108,915	\$118,717	\$128,215	\$138,472
Fort Lee	\$106,946	\$117,640	\$129,407	\$142,346
Garfield ⁶	\$101,807	\$107,280	\$111,275	\$117,240

⁶ In two instances, the PBA and the Township submitted different contracts for the same jurisdiction. In Garfield, the Township submitted a 2008-2011 agreement for the PBA unit, while the PBA submitted a 2008-2012 contract for the same group, which includes higher salaries for 2009. Similarly, the Township submitted a July 1, 2005 through June 30, 2009 agreement for Lodi, while the PBA submitted a July 1, 2009 through December 31, 2012 agreement for the same PBA unit. The 2009-2012 agreement reflects higher salaries beginning July 1, 2009. I have used the higher PBA salaries for comparison purposes, since the PBA agreements are the most recent.

Hasbrouck Heights	\$107,597	\$113,059	\$118,509	\$123,943
Hackensack	\$105,054	\$113,923	\$122,792	\$131,661
Little Ferry	\$104,868	\$110,734	\$118,121	\$122,297
Lodi	\$104,734	\$111,067	\$117,397	\$123,730
Moonachie	\$104,546	\$108,728		
Paramus	\$118,978	\$131,175	\$143,817	\$166,476
Ridgefield	\$107,925	\$110,952	\$115,406	\$119,668
Rutherford	\$104,683	\$111,951	\$121,465	
Rochelle Park	\$111,825			
Saddle Brook	\$106,303	\$113,250	\$120,418	\$127,580
South Hackensack	\$108,180	\$114,444	\$120,757	\$126,987
Wallington	\$101,564	\$105,467	\$108,942	
Wood-Ridge	\$105,413	\$111,795	\$117,128	\$122,462

This chart demonstrates that patrol officers and sergeants are among the most highly paid officers of their rank, albeit lieutenant and captain salaries are not quite as competitive. Salaries exceed those in Garfield, Wallington, Moonachie, and Wood-Ridge, locales that the PBA identifies as sharing a common border, and having the most interaction with, South Hackensack (PBA brief, p. 20). It is also noteworthy that South Hackensack officers receive, in addition to base salary, an additional \$5,409 to \$6,349 in the form of holiday pay.⁷ By contrast, the holiday benefit is included in the base salary in several jurisdictions, including Garfield, Edgewater, Elmwood Park, Hasbrouck Heights, Fort Lee, Paramus, Moonachie, Rutherford, Saddle Brook, and Wood-Ridge.

In sum, the PBA's salary structure under the predecessor contract is very competitive with that of their colleagues in other Bergen County jurisdictions,

⁷ For 2010, holiday payments for all unit members fell within this range, with the exception of one laid off junior patrol officer who received \$2,942 (Exhibit T-15, 2010 Police Salary Calculations).

commensurate with their status as members of a busy police department with significant policing challenges.

Unit members' salaries are also highly competitive when compared with the compensation of public and private employees in general, as is evident from a review of the average salaries in a range of public and private occupational groups. The NJLWD annual wage report shows average 2009 salaries for local, state, and federal government workers of \$55,442; \$62,511, and \$69,636, respectively. The Township's Teamsters unit includes top 2011 salaries of \$72,773 for laborers; \$78,912 for mechanics; and \$88,305 for the assistant superintendent.

With respect to private sector employees, I agree with the PBA that there are few if any employees who perform the "the same or similar services" as municipal police officers. However, the interest arbitration statute requires a consideration of the wages and employment conditions of "employees generally" in "private employment." *See Borough of Bogota*, P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998). Accordingly, I have considered such information.

For 2009, the NJWLD wage report shows an average private sector wage of \$54,542 (Exhibit T-15, NJWLD Report). Among the various employment classifications, only the category "management of companies and enterprises" had had a 2009 average wage (\$124,784) that was higher than the 2009 salaries for the Township's patrol officers, sergeants, and lieutenants.

Within this framework, it is appropriate to consider across-the-board increases that will enable PBA salaries to remain competitive, while also taking into account the Township's budgetary circumstances and the evolving negotiations climate. With respect to other police units, the record as a whole shows average percentage increases for 2010 through 2012 above the 2% I have awarded. However, beginning in 2010, there are also significant indicia of a downward trend in such increases.

Thus, for agreements reached throughout the 2004 to 2010 time frame, PBA Chart No. 1 shows average increases for police units of 3.70% for 2010, 3.74% for 2011, and 3.36% for 2012 based on a group of eight to twelve jurisdictions.⁸ The figures are 3.95% for 2010, 3.98% for 2011 and 3.68% for 2012 when only Wood-Ridge, Garfield, Moonachie and Wallington are included (PBA Chart No. 2). This data would not be materially different if some of the additional contracts submitted by the Township were included in the calculations. For example, jurisdictions such as Carlstadt, Hackensack, Rochelle Park and Little Ferry reflect increases well above 2% for one or more of the contract years 2010 through 2012.

At the same time, the record reflects a recent but distinct turn away from increases at the above-noted levels. Within Bergen County, the 2010 interest arbitration award in Rutherford directed a 2.75% increase for 2010 and 3% raises

⁸ I have recalculated the 2010 figure in PBA Chart No. 1 after excluding the NJ Transit police officer contract. Those officers have different day-to-day responsibilities than municipal officers and there are significant differences in the funding sources and jurisdiction of NJ Transit and municipal police departments.

(split increases of 1.5%/1.5%) for 2011 and 2012. The Fair Lawn PBA agreed to a 12.5% increase over six years, and in June 2010, the Paramus PBA agreed to a 0% increase for 2010. For 2011 through 2013, the parties in Paramus negotiated a downward adjustment of 3% increases to 2.5% in the event a new tax levy CAP was enacted.

Also in 2010, PBA units in Leonia and Rochelle Park reopened contracts and agreed to contribute 1.5% of their base salary toward health benefits several months before they would have been required to do so by statutory mandate. Further, the police officers in Leonia agreed to take furlough hours during 2010 equal to 2% of their 2010 base salary.

These developments have a parallel at the State level, where the average salary increase in interest arbitration awards issued in 2010 was 2.43%, down from 3.75% in 2009 and 3.73% in 2008 (PERC Salary Analysis). The average increase in 2010's voluntary reported interest arbitration settlements was 2.80%, compared to 3.60% in 2009 and 3.92% in 2008. With respect to public employees in general, the average public sector wage in New Jersey increased only 2.2%, while the average private sector wage declined 0.7% statewide and in Bergen County (NJLWD Wage Report).

It is within this context that I have carefully reviewed the Teamsters 2008-2011 contract, consistent with the well established principle that, in appropriate

cases, adherence to an internal settlement pattern fosters later relations stability and encourages future settlements. *Union Cty.*, P.E.R.C. No. 2003-33; *Union Cty.*, P.E.R.C. No. 2003-87. I am also mindful of PERC's direction that an arbitrator should specify the reasons for adhering or not adhering to a pattern, and should consider the impact of deviating from any pattern on the continuity and stability of employment. *Ibid*; see also *Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39*, Docket No. A-1899-06T3, 34 *NJPER* 8 (App. Div. 2008), (approving PERC's approach with respect to internal comparisons).

In a more typical negotiations cycle, the 4% increases received by the Teamsters unit for 2010 and 2011 might well form a strong basis for awarding similar increases to this unit. The blue collar unit serves the same residents as the police force and is funded out of the same budget. However, for the reasons detailed throughout this award, increases at the 4% level are no longer appropriate in the current financial environment. Moreover, the record does not disclose whether the police and Teamsters unit have historically received the same increases. See *N.J.A.C. 19:16-5.14(c)(4)(2)* (one factor in a comparability analysis is the history of differentials between uniformed and non-uniformed employees within the same jurisdiction). In this vein, I note that the two units appear to be on different negotiations cycles and received different increases for 2009, when the PBA contract included a 4.25% increase and the Teamsters agreed to a 4% raise.

In addition, the Teamsters agreed to eliminate longevity for employees hired after April 1, 2009, a provision that I have declined to award for this unit (Exhibit T-15, Teamsters Contract).

Against this backdrop of comparability data, the 2% awarded increases constitute a reasonable determination of the salary dispute. From a comparability standpoint, some adjustment beyond what the Township has proposed is warranted. An average annual increase of 1% over the contract term would measurably erode the unit's compensation vis-à-vis both the Teamsters unit and their counterparts in other County police departments. Further, even the most recent settlements and awards reflect average annual increases above 1%. In addition, it is worth noting that while the effective date of the 1.5% health benefits contribution was the focus of the MOAs in Leonia and Rochelle Park, South Hackensack officers were automatically subject to this requirement since late May 2010, because their 2005-2009 agreement had expired. Similarly, while PBA units in Leonia, Rochelle Park, and Paramus recognized the need for certain "shared sacrifices" to avoid layoffs, this police force has already experienced the brunt of such actions.

At the same time, while the 2% increases are less than the adjustments sought by the PBA, I believe they will enable unit salaries to remain well within a reasonable range. The salaries for each rank under the award will be as follows:

	2010	2011	2012
Patrol officer	\$110,344	\$112,550	\$114,801
Sergeant	\$116,733	\$119,068	\$121,449
Lieutenant	\$123,172	\$125,635	\$128,148
Captain	\$129,527	\$132,118	\$134,760

Under the award, Township base salaries will continue to be higher than those in Garfield, Moonachie, and Wallington, three of the jurisdictions that share a common border with South Hackensack and provide back-up to the Township's police force. Wood-Ridge, a similarly situated municipality, has somewhat higher base salaries for all ranks for 2011 and 2012, including a top step patrol officer salary of \$114,662 for 2011 and \$119,880 for 2012. At the same time, it must be noted that base salaries in Wood-Ridge, as well as Garfield and Moonachie, all include holiday pay, which is now and will continue to be remitted separately in South Hackensack.

With respect to 2010-2012 base salaries in other Bergen County jurisdictions, the record shows the following salary ranges for each rank. I have excluded the higher Paramus salaries both because they are somewhat of an outlier and because the schedules in the record are those in place prior to the reductions that presumably went into effect as a result of the June 2010 MOA and the enactment of the 2% tax levy CAP.

2010

Patrol officer **\$103,726 to \$116,298**

Sergeant	\$109,475 to \$123,497
Lieutenant	\$113,082 to \$133,968
Captain	\$121,977 to \$147,363

2011

Patrol officer	\$107,405 to \$117,689
Sergeant	\$111,737 to \$128,281
Lieutenant	\$117,428 to \$138,543
Captain	\$123,006 to \$149,627

2012⁹

Patrol officer	\$107,405 to \$121,175
Sergeant	\$112,854 to \$128,293
Lieutenant	\$117,428 to \$134,830
Captain	\$123,006 to \$144,569

South Hackensack’s salaries will remain securely within these ranges throughout the term of the agreement. I recognize that by 2012 in particular, South Hackensack’s salaries will not rank as high compared to various other Bergen County municipalities as they did in 2009. This is because many of the entities included in the 2009 listing had concluded contracts for 2011 and 2012 in 2009 or earlier, and had agreed to increases above 2% for all or some of the years from 2010 through 2012. The inevitable effect of awarding 2% increases for this unit is to lower its “relative standing” vis-à-vis such municipalities. However, while interest arbitrators generally aim to maintain a unit’s relative standing, this is an unusual negotiations climate in which salary adjustments have trended

⁹ The maximum 2012 superior officer salaries are lower than those for 2011, because the highest superior officer salaries for 2011 were in Elmwood Park, and that agreement extends only through December 31, 2011.

significantly downward in the past year. The increases I have awarded represent a reasonable balancing of fiscal and comparability considerations.

Further, the awarded increases are also consistent with the changing negotiations climate and the developments that will unfold once the new interest arbitration statute is fully implemented. For example, seven of the jurisdictions for which 2009 salaries are listed on pages 59-60 do not have agreements for 2012. As those contracts are finalized, it is likely that the increases will be closer to those I have awarded than to settlements reached in 2009 and earlier. Moreover, for all contracts expiring between January 1, 2011 and April 1, 2014, *L. 2010, c. 105* prohibits an arbitrator from rendering an award that increases base salary on an annual basis by more than 2%. 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.”

These provisions will result in a definite downward pressure on awarded increases, particularly for departments with a significant percentage of officers moving through the guide, since base salary is defined to include increments. Settlements will also trend lower, since negotiations will be conducted within the framework of the amended interest arbitration statute. Thus, while the base salary cap is in effect, salaries will increase at a slower rate than they did during the several years prior to 2010. As a consequence, the increases awarded herein will

be closer to the norm. In this environment, I believe the Township's compensation package will remain competitive.

Overall Compensation

The overall compensation criterion, *N.J.S.A.34:13A-16g(3)*, requires the arbitrator to consider all the economic benefits received by the employees involved in the proceeding, including direct wages, vacations, holidays, excused leaves, insurance, pensions and medical benefits. It thus directs a focus on all employee benefits, not just the items that are at issue in the proceeding.

Viewed from this perspective, unit members enjoy a comprehensive compensation and benefit package that includes vacation, sick leave, personal days, terminal leave, holiday pay, a clothing allowance, PFRS membership, and full medical coverage. This comprehensive compensation structure is typical of police units, as is the longevity benefit of up to 10% of base salary. The longevity provision is in the mid-range among County jurisdictions, some of which have longevity benefits of 12% or 15% of base salary, while others cap longevity at 8% or 9%. Similarly, the seven-step salary guide for officers hired prior to July 1, 2005 is fairly typical, with most municipalities having seven, eight or nine step guides. For South Hackensack officers hired after July 1, 2005, their 9-step guide is somewhat longer than the average.

Within this framework, the overall compensation criterion does not factor significantly in my assessment of what base salary increases to award, since there are no marked excesses or deficiencies in overall compensation that would lead me to adjust the percentage increases suggested by the other statutory factors. The overall compensation factor does play a significant role in my analysis of the Township's proposals for new hires, as discussed *infra*.

Stipulations

N.J.S.A. 34:13A-16g(4) requires the arbitrators to consider the stipulations of the parties. There are no stipulations that pertain to the issues involved in this interest arbitration.

Lawful Authority of the Employer; Statutory Restrictions on the Employer

N.J.S.A. 34:13A-16g(1) and (5) each mandate consideration of the lawful authority of the employer, including the limitations on appropriations imposed by *N.J.S.A.* 40A:4-45.1a *et seq.*, commonly known as the expenditure CAP law.

N.J.S.A. 34:13A-16(g)(9), similarly directs an analysis of the statutory restrictions imposed on the employer, including the tax levy cap first enacted in 2007 and then amended in 2010. *See L. 2010 c. 44.*

These CAPS were designed to control the costs of local government and limit increases in the local property tax. I discuss each CAP in turn and conclude

that the award will not cause the Township to breach the restrictions they impose. I turn to the most recently enacted statute first.

Beginning with the first budget year following its July 13, 2010 enactment, *N.J.S.A.* 40A:4-45.44 through 45.47 limits the annual increase in a local entity's tax levy to 2%. Certain expenditures excluded from the cap. Among these exclusions are increases in debt service and capital expenditures; health insurance cost increases over 2% but below the State Health Benefits Program index (16.7% for calendar year 2011); weather and other declared emergencies; and increases in pension contributions, and accrued liability for pension contributions, in excess of 2%. Local units may ask their voters to increase their levy above their cap limit. The CAP applies to the total budget, not individual line items.

For local units such as South Hackensack with calendar year budgeting, the 2% tax levy CAP went into effect for the budget year beginning on January 1, 2011. Thus, for 2010, the first year of the contract, the 4% tax levy CAP pertained. The Township's tax levy cap calculation for 2010 year shows that the Township's local tax levy for municipal purposes was \$1,778 below the maximum allowable amount (2010 Budget, Sheet 3c). My awarded increases of 2% for 2010 will cost \$31,922 and will exceed the Township's offer by that amount. While the record shows that the Township had very little additional tax levy potential in 2010, I conclude that the Township can accommodate the additional \$31,922 within the

framework of its adopted budget. As discussed in the financial impact analysis, there are some indicators of budgetary flexibility in the form of a 2009 reserved appropriation in the police department salaries line item; local revenues in excess of those anticipated for 2010; and the new revenues provided by this unit's health benefit contributions.

In this posture, I find that the 2% increases will not cause the Township to exceed its tax levy CAP for 2010. For 2011 and 2012, the 2% increases are aligned with the tax levy CAP and there is no evidence in the record that my award, which exceeds the Township's offer by less than \$9,000 in each year, will cause the Township to exceed the new levy CAP. For 2011, the salary increases are also balanced by new revenues from health benefits contributions during the first several months of the year.

Turning to the expenditure CAP, *N.J.S.A.* 40A:4-45.1a limits the amount by which a municipality can increase its total final appropriations from the previous year to the lesser of 2.5% or a federally-prepared cost of living adjustment (COLA). In addition, a municipality may by ordinance choose to increase the COLA percentage up to 3.5% and may also "bank" the difference between 3.5% and its final appropriations subject to the cap. Any "cap bank balance" is not available cash, but constitutes additional expenditure authority that may be used in the ensuing two years.

Certain items are excluded from the CAP limits including, among other items: revenue generated by applying the preceding year's tax rate to the apportionment valuation of new construction or improvements; capital expenditures; debt service; and expenditures mandated by statute or court order. The CAP does not limit any particular line item, only total appropriations.

The COLA percentage for 2010 was 0% but the Township could and did adopt a 3.5% COLA ordinance. (*Local Finance Notice No. 2009-26, (November 30, 2009)*; 2010 Budget, Sheet 3b). For 2010 my award will result in an additional expenditure of \$31,922 beyond that in the Township's offer. Again, even if these monies are not available in, for example, reserves for salary increases, this additional expenditure would not cause the City to exceed its lawful authority under *N.J.S.A. 40A:4-45.1a et seq.* since the Township's 2010 budget was \$511,772 below the expenditure CAP when calculated pursuant to the 3.5% ordinance (2010 Budget, sheet 3c).

For 2011, the COLA percentage is 2%, subject to municipal adoption of a 3.5% ordinance. *See Local Finance Notice, No. 2011-4, January 14, 2011.* The Township's CAP calculations for 2011 and 2012 are not in the record, but it is unlikely that the awarded increases will cause it to exceed its lawful authority, given that the award exceeds the Township's offer by \$8,619 in 2011 and \$8,911 in 2012.

Finally, I address in more detail the Township's contention that the "statutory restrictions imposed on the employer" criterion encompasses the 2% base salary CAP set forth in section 2 of *L. 2010, c. 105*. As noted at the outset, this provision does not apply to this proceeding, as is evident from an examination of section four of *L. 2010, c. 105*, which reads in pertinent part as follows:

This act shall take effect January 1, 2011; provided however, section 2 shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to a negotiated agreement expiring on that effective date or any date thereafter until April 1, 2014. . . .

PERC has confirmed this reading in its FAQs, which sets forth an example that conforms closely to the procedural history in this case, except that the interest arbitration petition here was filed in February 2010 instead of June 2010.

**Q Contract expired 12/31/2009
 IA petition filed in June 2010
 Award pending**

**A 2% cap on base salary does not apply
 All other provisions in the new law including but not limited to new
 time lines, fees, arbitrator selection do not apply
 (IA petition filed before new effective date)**

Financial Impact of the Award

N.J.S.A. 34:13A-16g(6) requires an arbitrator to consider the financial impact of an award on the governing unit, its residents and taxpayers. As such, the factor has a strong overlap with the fiscal component of the public interest and

with *N.J.S.A.* 34:13A-16g(5) and *N.J.S.A.* 34:13A-16g(9), which mandate a consideration of the legal limits of a municipality's expenditure and taxation authority. However, the financial impact criterion directs a broader inquiry than 16g(5) and (9) and requires an analysis of whether an award is reasonable in view of the municipality's overall financial picture and the income of its residents. In addition, *N.J.S.A.* 34:13A-16g(6) requires an arbitrator to consider "to the extent evidence is submitted," the impact of an award on an employer's ability to initiate, expand, or maintain programs and services.

I have given *N.J.S.A.* 34:13A-16g(6) substantial weight in arriving at salary increases that are closer to the Township's proposal than they are to the PBA's final offer. At the same time, I conclude that my award will not have an adverse financial impact on the Township or its residents and taxpayers.

The budgetary and financial documents in the record indicate that the Township has several fiscal strengths, including a near-perfect tax collection rate of 99.57% for 2010 (2010 AFS, sheet 22) ; the demonstrated ability to regenerate surplus for 2008 and 2009 (Exhibit T-2); and low total debt that does not approach the statutory limit of 3.5% of the municipality's equalized valuation. *See N.J.S.A.* 40A:2-6; South Hackensack 2010 Annual Debt Statement (calculating a debt ratio of .44% of equalized valuation).

Other financial indicators are not as positive. The Township is facing the fiscal constraints common to all New Jersey public employers, including State aid that, for 2010 and 2011, is \$150,000 below the 2008 allocation and \$113,000 below the 2009 distribution (Exhibit T-4; DGLS Proposed FY 2012 State Aid Formula Distribution, p. 23). Vinci also testified that during 2010, the Meadowlands Commission discontinued a \$100,000 grant to the Township, a reality that is reflected in a comparison of the 2010 and 2009 budgets. In addition to these aid reductions, the Township will be subject to a lowered 2% tax levy CAP beginning in 2011, thereby limiting its ability to raise taxes should it chose to do so in this economic climate.

It also appears that the Township's ability to regenerate surplus is under some pressure, albeit not to the extent that the Township suggests. Preliminarily, it appears that the Township has followed the accepted budgetary practice of underestimating certain revenue so that excess receipts can flow into surplus. This approach provides the Township with working capital — as well as funds that can be used to help support the next year's budget and keep tax increases in check. During 2008, the Township ended the year with a fund balance of \$1,311,749 (\$1,120,000 cash surplus), of which \$525,000 was used as anticipated revenue in the 2009 budget (Exhibit T-15, Historical Surplus Analysis). As of December 2009, the Township had a cash surplus of \$1,084,000, and a total fund balance of

\$1,323,613, of which \$573,000 was anticipated as revenue in the 2010 budget (Exhibit T-15, Historical Surplus Analysis). The 2007 audit posted on the Township's website shows similar fund balances for 2006 and 2007, but with lesser amounts being anticipated as revenue (\$300,000 in 2006 and \$450,000 in 2007).

For 2010, the unaudited AFS indicates that the Township had a cash surplus of \$929,111 and a total fund balance of \$1,040,366. This is more than the \$600,000 that the Township estimated but still a decline from prior years and somewhat of a concern, given that the Township will almost certainly need to use a portion of that fund balance in the 2011 budget.

Another element of the Township's financial picture is the \$269,485 federal grant from the COPS Hiring Program (CHP) that the Township received based on Chief Frew's application. In an October 4, 2010 letter to the Mayor, Chief Frew advised that the grant would be disbursed over three years and was intended for "hiring or rehiring officers to fill CHP grant-funded positions." (Frew Letter attached to COPS application). Frew recommended that the Township re-hire one of the laid off officers. While I view the grant as a positive development for police department operations, it does not constitute an unrestricted grant to the police department and will not cover all the salary and benefit costs for one officer over a three-year period.

Overall, the above-noted circumstances warrant caution in awarding salary increases. This conclusion is reinforced when the Township's fiscal situation is considered in light of the recent minimal increases in the CPI and the high unemployment rate in the State, County, and Township. This broader economic picture is a relevant consideration in this proceeding because *N.J.S.A. 34:13A-16g(6)* directs a consideration of an award's impact on not only the governing body as an entity but on taxpayers and residents as well.

Even if such circumstances as high unemployment and a poor housing market do not immediately and directly impact a municipal budget, these realities can deeply affect the residential and business taxpayers who support that budget. And while the NBER found that the recent recession officially ended in June 2009, "it did not conclude that economic conditions are favorable, only that the recession had ended and a national recovery began during June." *See NJLWD, New Jersey Economic Indicators, No. 530, p. 1.* In this vein, the NJWLD opines that New Jersey's labor market is best viewed "with cautious optimism;" it expects that New Jersey's unemployment rate will average 9.2% in 2011. *Ibid.* An added element in this proceeding is the Township's sizeable senior citizen population, which has felt the brunt of restrictions on property tax reimbursement programs.

The 2% across-the-board increases that I have awarded take into account these economic and budgetary circumstances, together with the lack of certainty

about when the economy will fully recover. However, while those factors strongly support increases more moderate than those sought by the PBA, they do not require that increases be limited to those proposed by the Township. I conclude that the awarded increases represent a reasonable determination of the salary issue and will not negatively impact the Township or its taxpayers.

For 2010, the difference between the award and the Township's final offer is \$31,922, an amount that must be placed in the context of a 2009 municipal budget of approximately \$7.7 million. While it is not my role to direct how the Township should fund the award, *see County of Essex*, P.E.R.C. No. 2005-52, 31 *NJPER* 86 (¶41 2005), citing *New Jersey State PBA, Local 29 v. Irvington*, 80 *N.J.* 271, 293 (1970), the record does suggest that the Township has some flexibility within the confines of the adopted 2010 budget, including a 2009 reserved appropriation of \$47,825 in the police department salaries and wages line item (2010 Budget, sheet 14). *Compare Essex* (because settlements and awards do not always coincide with adopted budgets, the planning process for salary increases includes budgeting for reserves and contingencies within the current operating fund). In addition, as noted, beginning in or around the second half of 2010, the Township's health benefits costs were offset by approximately \$11,970 in new health benefits contributions that it would otherwise have had to absorb. Finally, I note that the Township received \$93,607 in unanticipated local revenues during 2010 (2010

AFS, sheet 20). These revenues may well provide the Township with some additional budgetary flexibility, although I also recognize that the Township depends on such inflows so that it can generate a reasonable surplus, thereby providing it with monies that can be appropriated in the succeeding year's budget.

As noted in the lawful authority discussion, the difference between the award and the Township's final offer is \$8,619 for 2011 and \$8,911 for 2012. These increases are aligned with the tax levy CAP and, again, must be evaluated within the context of the overall municipal budget. For 2011, the Township also will receive approximately \$11,970 in new health premium contributions that it would otherwise have had to absorb. In this posture, I am satisfied that these differentials between the Township's final offer and the award can be accommodated within the Township's overall budgetary framework.

Some additional points warrant discussion. *N.J.S.A.* 34:13A-34-16g(6), requires an arbitrator to consider "to the extent evidence is submitted" the impact of the award on existing or proposed governmental services and programs. While the Township has demonstrated the need for caution in awarding salary increases, it has not demonstrated that any planned or existing programs or services would be jeopardized by an award that exceeds its own offer by the amounts at issue here.

For its part, the PBA emphasizes that the bulk of the Township's property taxes are attributable to the schools, and it therefore reasons that its proposed

increases would not adversely affect taxpayers and would have a very small impact on the total local taxes paid. The PBA is correct in observing that that the school tax levy is larger than the municipal levy. However, the statutorily-mandated focus of this interest arbitration is on the portion of the budget controlled by the Township Council; the school board budget is subject to its own, similar strictures. Moreover, the PBA's logic could be used with respect to a myriad of individual expenditures within the budget; however, such a fiscal approach would have negative consequences if applied across-the-board.

For the foregoing reasons, I conclude that the awarded increases represent a reasonable determination of the salary dispute and will not have a negative effect on the Township, its residents and taxpayers, or the municipal tax levy.

Cost of Living

N.J.S.A. 34:13A-16g(7) mandates consideration of the cost of living, which is typically measured by the Consumer Price Index (CPI) published by the federal Bureau of Labor Statistics (BLS). The Township emphasizes that, over the last decade or more, unit members have received increases in base salary that exceeded the CPI by approximately 10%. It urges that the cost of living supports an award of its own offer, especially given the minimal CPI increase during 2009.

I have carefully considered the CPI data highlighted by the Township, as well as BLS statistics for 2010. I have given this criterion some weight in arriving at salary increases.

The Township highlights BLS data showing that between 2008 and 2009, there was a .04% annual increase in the CPI for All Urban Consumers in the New York-Northern New Jersey area. For 2009 to 2010, the figure was 1.7%. *See www.bls.gov.*

The cost of living factor is a moderating influence in awarding salary increases and, viewed in isolation, this factor could support adjustments somewhat lower than those I have awarded. For example, I appreciate the Township's position that its offer is reasonable in light of the salary gains that Township police officers have made in recent years. I highlight in particular this unit's receipt of a 4.25% adjustment for 2009, a year when the CPI was much lower. However, the adjustments that I have awarded are necessary to maintain the competitiveness of unit salaries, especially in light of the unit's productivity in the face of significant policing challenges.

Continuity and Stability of Employment

N.J.S.A. 34:13A-16g(8) directs a consideration of the continuity and stability of employment, including seniority rights and other factors ordinarily and traditionally considered in determining wages and employment conditions in

public and private sector negotiations. It incorporates three concepts that have been discussed at other points in this award. The first is the desirability of providing for a competitive compensation package that will prevent excessive turnover, thus maintaining “continuity and stability in employment.” The second is the concept of the “relative standing” of a negotiations unit with respect to other units of similar employees. Absent strong justification, arbitrators are generally reluctant to significantly change a unit’s relative standing, reasoning that interest arbitration is an extension of the negotiations process and is not ordinarily intended to revamp a compensation structure established over many years of negotiations.

Finally, the continuity and stability of employment also implicates the importance of considering internal settlements, since unwarranted deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability within a jurisdiction.

Applying these concepts to the record in this case, there is no indication that the Township has had excessive turnover or difficulty in recruiting officers. This situation will almost certainly continue under the award because the awarded increases should ensure that unit salaries will continue to be reasonably competitive with those in other Bergen County police departments. In addition, recruitment should not pose a difficulty in this labor market.

I also conclude that the awarded increases will not, over the long term, have a significant negative effect on the unit's relative standing. As discussed in the comparability portion of this opinion, the Township's police force will likely experience some deterioration in its relative standing vis-à-vis other Bergen County police departments, some of which have received increases approaching 4% for 2010, 2011 or 2012. However, as also addressed earlier, the negotiations climate is evolving and will continue to evolve as the result of the 2% base salary cap. As other departments are awarded or agree to raises more in line with those awarded here, this unit's relative standing will stabilize.

Finally, although the awarded increases are less than those negotiated with the Teamsters for 2010 and 2011, it is unlikely that this circumstance will have a significant impact on labor relations stability. The Teamsters and PBA units are on different negotiations cycles, there is no evidence that the two employee groups have traditionally received the same increases. Most important, this award takes place in a changed negotiations environment where the reasons for departing from the Teamsters settlement have been fully articulated.

In sum, the continuity of stability and employment will not be jeopardized by the awarded increases, which are lower than those proposed by the PBA. At the same time, I have also determined that increases at the level sought by the Township could jeopardize the morale of this small, dedicated police force.

OTHER ECONOMIC & NON-ECONOMIC PROPOSALS

The foregoing discussion of the statutory factors informs my analysis of the other unresolved issues. I start with an analysis of the Township's new hire and holiday pay proposals.

Township's New Hire Proposals

The Township proposes a significant restructuring of the compensation and benefit structure for new police officers. It seeks to eliminate the clothing allowance, terminal leave, longevity, and personal days for such employees. It also seeks to replace the existing nine-step salary guide with a 25-step guide that, for 2012, would have a maximum salary of \$75,000. Finally, its new hire package would provide new officers with eight sick days annually, compared with 16 for existing employees.

I conclude that the public interest and continuity and stability of employment criteria, together with comparability and overall compensation considerations, militate against the award of these modifications. In addition, I am not persuaded that the extensive changes are warranted by the Township's fiscal situation.

Preliminarily, this unit's compensation structure was mutually arrived at over many years of collective negotiations and, absent strong justification interest arbitrators are traditionally reluctant to change so many existing terms and conditions of employment within one contract term. In any case, the public

interest and the continuity and stability of employment both encompass the need for labor relations stability and departmental cohesion, and these objectives would very likely be undermined by the creation of such a large gap between the terms and conditions of employment for new employees and those pertaining to existing members of the police force.

The public interest, comparability and overall compensation criteria also favor the maintenance of a competitive compensation package, and this goal would also be jeopardized by the implementation of the Township's new hire package. While a few jurisdictions (including South Hackensack) have different salary guides for employees hired on different dates, none of those guides entail different maximum salaries for employees hired at different times. Instead, the guides require more recent hires to proceed through additional salary steps before reaching the top salary.

Nor does any jurisdiction in the record have police salaries within the range of those that the Township has proposed for new employees. Further, none has eliminated the range of benefits that the Township suggests. Indeed, the Township's new hire proposals would result in police officers having lower salaries, and lesser benefit packages, than the laborers and mechanics in the Township's blue collar unit. This is plainly inadvisable in view of the training and responsibilities of police officers.

In sum, award of the Township's proposals as a package would greatly reduce the competitiveness of the Township's compensation structure for new hires, thereby potentially undermining its ability to recruit and then retain new officers.

Further, the Township makes no particularized arguments that one or more of the benefits it seeks to delete are either uncommon or excessive. My independent review of the contracts in the record indicates that this unit's overall compensation is competitive but well within the range of the benefits offered in other County police departments. While the Township does note that three Bergen County jurisdictions have eliminated longevity for new employees, the record shows that the majority of municipalities retain some form of this benefit for all police officers. In light of the moderate salary increases awarded herein, I find that it is appropriate to retain this unit's existing mid-range longevity benefit.

Finally, in concluding my discussion of the Township's new hire proposals, it is noteworthy that the contract term under this award will extend only through December 31, 2012. There is no suggestion that the Township has plans to add new members to the police force within this limited time frame, aside from rehiring one officer pursuant to the COPS grant. In this posture, the Township's proposals would not result in significant cost savings during this contract term.

Township's Holiday Pay and Bi-Weekly Pay Proposals

The Township maintains that it could process its payroll more efficiently if all unit members were paid on a bi-weekly basis, and the PBA does not offer any counterpoint to this reasoning. I am persuaded by the Township's argument, and I award its bi-weekly pay proposal.

I reach an opposite conclusion with respect to its holiday pay proposal. Under the existing agreement, all unit members receive one day's pay for each of an enumerated list of holidays, regardless of whether or not they work on the designated days (Exhibit J-1, Article XVII, p.22). The Township proposes to eliminate this benefit for officers on a 5-2 schedule unless the employee works on the holiday.

This benefit is part of the existing overall compensation package and, in the context of an award that includes very moderate salary increases and a likely diminution in the unit's relative standing for the short-term, I decline to award the Township's proposal.

PBA's Holiday Proposal

The PBA proposes that holiday pay be included in base pay, consistent with the practice followed in several other Bergen County municipalities. The PBA views this change as beneficial because officers would receive the holiday amount on a bi-weekly basis instead of annually. In addition, holiday pay would be

included in base salary for all calculation purposes, such as overtime pay. The PBA also urges that implementation of its proposal would be beneficial to the Township because more officers would be available to work on holidays on a straight time basis.

The PBA's holiday proposal is an economic one that would increase the base pay on which the overtime rate is calculated; it could also affect employer and employee pension contributions, to the extent that the Division of Pensions determines that holiday pay rolled into base pay constitutes creditable salary for pension purposes.

As stated throughout this award, the Township's budgetary and fiscal constraints are a key consideration in this proceeding. Accordingly, I have allocated all economic benefits to base salary increases and I decline to award any non-salary proposal that would increase the costs of the award.

I recognize that the majority of Bergen County police contracts in the record include holiday pay in base pay. However, while a comparability analysis weighs in favor of this modification, economic considerations predominate and I decline to award the proposal in this round of negotiations. This is an issue that the PBA may pursue in subsequent negotiations.

PBA Compensatory Time and Extra Duty Work Proposals

The PBA seeks the creation of a Compensatory Time Off provision whereby officers could, at the end of an extra duty detail, choose to be paid in compensatory time off, which would then accumulate in a time off bank. At the officer's sole discretion, he or she could then draw on the bank for additional leave time, subject only to prior department approval.

I appreciate the PBA's position that a time off bank could reduce overtime costs, especially since the PBA posits that the department could deny a compensatory time off request if it would require that another officer be called in on overtime. However, I am reluctant to award the proposal on this record, where it is unclear how allowing the accumulation of compensatory time would affect the department's ability to schedule existing vacations and personal leave, which Officer Kelly testified is already difficult. Therefore, I find that the PBA has not met its burden of justifying this proposal.

I also decline to award the PBA's extra duty work proposal, which governs situations in which officers provide security and supervision for contractors doing work within the Township. There may well be some merit to the PBA's suggestions for obtaining advance payments from contractors; establishing escrow accounts; and requiring the Chief of Police to ascertain the need for police supervision at road openings. However, I decline to award the PBA's proposal

without a fuller understanding of how such work is handled now and what if any problems have arisen under existing administrative procedures.

AWARD

1. **Term of Agreement**

The term agreement shall be from January 1, 2010 through December 31, 2012.

2. **Salary increases**

The following increases shall apply to each rank, step, and position in the PBA unit.

- 2.0% across-the-board salary increase effective January 1, 2010.
- 2.0% across-the-board salary increase effective January 1, 2011.
- 2.0% across-the-board salary increase effective January 1, 2012.

Each salary increase is retroactive to its effective date.

3. **Pay Periods**

All unit members are to be paid on a bi-weekly basis as soon as practicable after the implementation of the award.

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

Dated: April 7, 2011
Princeton, N.J.

Timothy A. Hundley
Timothy A. Hundley
Arbitrator

State of New Jersey }
County of Mercer }ss:

On this 7th day of April 2011, before me personally came and appeared Timothy A. Hundley 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.

Virginia G. Hundley
Virginia G. Hundley
Notary Public of New Jersey
My Commission Expires 6/22/2015