

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

BOROUGH OF SHIP BOTTOM

-and-

Docket No. IA-2013-024

PBA LOCAL 175

Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the Borough:

Cleary, Giacobbe, Alfieri, Jacobs, Attorneys
(Bruce Padula, of counsel)
(Dustin Glass, of counsel)

For the PBA:

Alterman & Associates
(Stuart J. Alterman, of counsel)

Witnesses:

Dr. Raymond Caprio, Financial Expert
Sergeant Scott Barr
Officer Edward Williams, PBA Delegate

INTEREST ARBITRATION AWARD

On April 18, 2013, the Borough of Ship Bottom filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over a successor collective negotiations agreement with PBA Local 175. The previous agreement expired on December 31, 2012.

On May 3, 2013, I was appointed to serve as the interest

arbitrator by a random selection procedure pursuant to N.J.S.A.
34:13A-16(e)(1). This statutory provision requires that an
award be issued within 45 days of my appointment with no
provision for any extensions.

An interest arbitration hearing was held on May 29, 2013 at
the Borough Municipal Building. Both parties were offered
testimony and documentary evidence. Both parties submitted
Final Offers and calculations of their respective proposals.
Post-hearing briefs were filed by June 5, 2013 and the record
closed on that date.

FINAL OFFERS OF THE BOROUGH

Article XXV, Duration:

The Borough proposes a three-year agreement.

Article IV, Salaries:

The Borough proposes a 2% salary increase, inclusive of
increment and longevity, in each year of the successor
contract.

Add 5 steps to and equalize the salary guide.

Article V, Longevity:

Eliminate Longevity for all employees who commence employment
on or after January 1, 2013. Freeze longevity at its current
levels with no future increases for current employees.

Article XII, Sick Leave:

Paragraph C:

Eliminate supplemental compensation upon retirement for all officers who commence employment on or after January 1, 2013. Reduce maximum supplemental compensation upon retirement for current employees from \$15,000 to \$7,500.

Paragraph F:

-Eliminate supplemental annual compensation for unused sick leave for all officers who commence employment on or after January 1, 2013.

-Reduce \$15,000 cap to \$7,500 for annual sick leave sell back for current employees.

Article XVI, Grades:

Eliminate differential pay for the Senior Patrolman

Article XXI, Insurance:

Employees shall contribute in an amount equal to that required by P.L. 2011, c. 78, which amount shall remain in effect until further mutual agreement.

FINAL OFFERS OF THE PBA ¹

Term of Agreement:

January 1, 2013 through December 31, 2015

Wages and Salaries:

2013 - Pay increments; 2% COLA increase effective July 1, 2013

2014 - No step increments; 2% COLA effective October 1, 2014

2015 - Pay increments; 2% COLA effective May 1, 2015

¹At the hearing the PBA sought to amend its final offer to also include changes in the health care plan. I declined to permit such an amendment on the basis that it would prejudice the Borough from responding to the PBA's evidence on this issue. It also amended its proposal concerning salaries and increments, as reflected above.

BACKGROUND FACTS

Demographics:

Ship Bottom is a borough in Ocean County, New Jersey. As of the 2010 Census, the Borough's population was 1,156 reflecting a decline of 228 from the 2010 Census. The Borough is located on Long Beach Island and borders the Atlantic Ocean (B-1). Immediately to the north of Ship Bottom is the Borough of Surf City, and just south of it is Long Beach Township.

Ship Bottom was incorporated as the borough of Ship Bottom-Beach Arlington by an Act of the New Jersey Legislature on March 3, 1925, from portions of Long Beach Township. The Borough was renamed as Ship Bottom in 1947. Ship Bottom is 1.001 square miles of which 0.713 square miles is land; and 0.288 is water (B-1)

The Borough is known as the "Gateway to Long Beach Island", as Route 72 provides the sole road access from Manahawkin in Stafford Township, ending in Ship Bottom as it crosses Manahawkin Bay via the Manahawkin Bay Bridge (formerly known as the Dorland J. Henderson Memorial Bridge). (B-1)

The following chart depicts 2010 Census data for the Borough:

Ship Bottom 2010 Census Data	
Households	2,066
Families Residing in the City	555
Population Density per Sq. Mile	1620.6
Housing Units Avg. Pop Density per Sq. Mile	2,896.3
Median Age	54.2
Median Household Income *	\$60,673
Median Family Income *	\$97,841
Per Capita Income *	\$41,184
Below the Poverty Line - Families *	5.4%
Below the Poverty Line - Population *	5.2%
* Source: American Community Survey (2006-2010)	

Like many beach communities along the New Jersey shore, Ship Bottom's summer population swells with vacation renters and visitors. During the summer months, the Borough hires police "specials" to assist its regular force with traffic control, enforcement of motor vehicle laws and citizen complaints.

In late October, 2012, the Borough was the victim of Hurricane Sandy. Severe flooding caused considerable damage to the Borough's municipal building, located on Long Beach Boulevard. The damage has forced the Borough to temporarily relocate its municipal offices into trailers. Much of the Borough's records and equipment were damaged or lost in the flooding, making the Borough unable to submit municipal budget data for 2012. It has also not yet been able to prepare its 2013 municipal budget.

Organization of the Police Department:

The Ship Bottom Police Department consists of a chief, two sergeants and eight patrolmen, one of whom is designated as the "senior patrolman." Due its size, the force does not have a detective division, and all police officers act as generalists. An officer may be called upon to do anything from traffic control, motor vehicle stops, responding to noise complaints, DWI checks, domestic disputes, assaults, and felony offenses. Sergeant Scott Barr, the PBA Delegate, testified that each officer has his area of specialization.

Crime Statistics:

The chart below reflects Ocean County's municipalities' crime index totals for 2011:

Crime in Ocean County for 2011								
Municipality	Total Crime	Violent	Non-Violent	Crime Rate per 1,000	Murders	Rapes	Robberies	Aggravated Assaults
Toms River	3241	101	3140	35.5	1	3	61	36
Brick	1424	100	1324	19	0	7	20	73
Lakewood	1167	93	1074	12.6	2	6	31	54
Jackson	917	64	853	16.7	0	6	19	39
Lacey	773	28	745	28	0	0	9	19
Berkely	659	38	621	16	0	1	11	26
Little Egg	606	41	565	30.2	0	10	4	27
Stafford	486	12	474	18.3	0	1	5	6
Manchester	415	15	400	9.6	0	2	0	13
Point Pleasant	371	14	357	20.2	0	1	4	9
Seaside Heights	359	55	304	124.4	0	2	5	48
Beachwood	260	6	254	23.5	0	0	1	5

Barnegat Twp.	247	30	217	11.8	0	5	7	18
Point Pleasant Beach	218	7	211	46.7	0	1	2	4
Beach Haven	168	4	164	143.6	0	0	0	4
Ocean	162	6	156	19.4	0	0	3	3
Long Beach	141	2	139	46.2	0	0	0	2
South Toms River	109	11	98	29.6	0	0	2	9
Plumstead	109	4	105	12.9	0	1	1	2
Seaside Park	88	6	82	55.7	1	1	2	2
Bay Head	88	1	87	90.9	0	1	0	0
Ocean Gate	82	2	80	40.8	0	0	0	2
Lavallette	81	3	78	43.2	0	0	0	3
Tuckerton	67	7	60	20	0	0	0	7
Ship Bottom	63	0	63	54.5	0	0	0	0
Mantoloking	53	1	52	179.1	0	0	0	1
Pine Beach	48	1	47	22.6	0	0	0	1
Eagleswood	47	4	43	29.3	0	0	0	4
Lakehurst	41	2	39	15.4	0	0	1	1
Surf City	34	1	33	28.2	0	0	0	1
Harvey Cedars	24	0	24	71.2	0	0	0	0
Barnegat Light	11	0	11	19.2	0	0	0	0
Island Heights	11	0	11	6.6	0	0	0	0

The chart above is depicted by order of the municipality with the highest "total crimes"; "highest violent crimes"; and highest "non-violent crimes" for 2011. Ship Bottom is ranked 25th of the 33 municipalities shown. (B-54 through B-61)

STIPULATIONS OF THE PARTIES

The parties stipulated to the following facts:

1. Employees' increments are paid on the anniversary date of their date of hire as a patrolman with the Borough.
2. Employees' longevity payments are paid on the anniversary date of their date of hire as a patrolman with the Borough.

3. Unit members began contributing to the cost of health care premiums pursuant to Chapter 78 beginning January 1, 2013. They are presently in "Tier 1" of the contribution rate schedule.

4. The list of employees submitted by the Town on (P-11, B-52) accurately reflects the complement of employees in the bargaining unit on December 31, 2012 together with their base pay paid in 2012.

STATUTORY CRITERIA

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

An Arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate money value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

The statute also provides a definition as to what subjects are included in "base salary" at 16.7(a):

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

salary shall not include non-salary economic issues, pension and health and medical insurance costs.

It should be noted, pursuant to the above language, that the 2.0% cap, or the amount that an award cannot exceed, is not tied directly to contract terms but rather to:

[T]he aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.

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

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

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

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

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

The Arbitrator's award must address all nine (9) statutory criteria, identify the criteria found to be relevant, analyze all of the evidence pertaining to the relevant criteria, and explain why any remaining criteria were deemed irrelevant. "A reasoned explanation along those lines should satisfy the requirement for a decision based on those factors that are judge relevant." Borough of Hillsdale and PBA, 137 N.J. 83 Any economic offers that are clearly unreasonable in light of the statutory criteria must be rejected.

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

which criteria are more significant and as to how the relevant evidence is to be weighed.

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

In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. Among those factors that interrelate and require the greatest scrutiny in this proceeding are the evidence on internal comparability [N.J.S.A. 34:13A-16g(2)(c)], the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)] and the Borough's statutory budget limitations [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)]. In addition, the

statutory 2% hard cap must be applied to this case as the contract expired after the passage of the 2011 amendments to the statute.

DISCUSSION

SALARIES AND INCREMENTS:

The Borough proposes a 2% salary increase, inclusive of increment and longevity, in each year of the successor contract. The PBA also seeks the full 2% annual increase, the maximum as permitted by the 2% statutory hard cap. It proposes to apportion the maximum amount to raises, longevity increases and increments as follows:

2013 - Pay increments; 2% COLA increase effective July 1, 2013

2014 - No step increments; 2% COLA effective October 1, 2014

2015 - Pay increments; 2% COLA effective May 1, 2015

Both parties propose 2% salary increases, inclusive of increment and longevity, in each year of the successor contract; in other words, both parties agree to go to the statutory hard cap maximum under N.J.S.A. 34:13A-16.7(b). In its final offer submitted May 21, the PBA proposed the payment of increments in 2013 and a 2% across-the-board increase to the salary guide effective May 1, 2013; a step-guide freeze (no increment payments) in 2014 with a 2% across-the-board increase effective January 1, 2014; and increment payments in 2015 combined with a 2% increase effective January 1, 2015.

At hearing, the PBA advanced an "alternative calculation" in which the 2% across the board increase would be effective July 1, 2013, the second would be effective October 1, 2014, and the third would be effective May 1, 2015. The PBA submitted calculations on each proposal.

The employer supplied a list of its employees, together with their base salaries for 2012. That list includes the contractual base salary for each employee, the total amount of base salary, plus longevity, education pay, and holiday pay actually paid to each employee, for an aggregate amount of \$937,711.15 (B-52). The following chart reveals the calculations of 2012 total base pay:

BOROUGH OF SHIP BOTTOM LIST OF PBA LOCAL 175 EMPLOYEES											
Name	Rank	Hire Date	1/1/12 Base Pay	2012 Incr	Incr % of the Yr.	2012 Incr Cost	2013 Base 12/31/12	2012 Lgnty	2012 Hol	Educ	2012 Tot Base Pay Pd
Mury	Sr. Ptl.		90,729				90,729	7,920	4,994		103,643
Barr	Sgt.	6/2/89	96,427				96,427	9,447	5,398		111,273
Butler	Sgt.	5/27/87	96,427				96,427	9,643	5,398		111,468
Gesicki	Ptl CI 1	11/10/95	87,661				87,661	5,260	4,779	750	98,449
Nash	Ptl CI 1	8/20/01	87,661				87,661	5,260	4,779	750	98,449
Williams	Ptl CI 1	1/2/03	87,661				87,661	2,630	4,604	750	95,644
Holloway	Ptl CI 1	1/2/03	87,661				87,661	2,630	4,521		94,812
Tretola	Ptl CI 1	1/10/05	87,661				87,661	1,753	4,543	500	94,457
Potter	Ptl CI 2	10/23/07	62,723	6,809	18.9%	1,287	69,532	1,391	3,633	500	69,533
Jones	Ptl CI 3	11/25/08	<u>54,076</u>	8,647	10.1%	<u>873</u>	<u>62,723</u>	<u>1,254</u>	<u>3,299</u>	<u>500</u>	<u>60,003</u>
TOTAL			838,687	15,456		2,160	854,143	47,187	45,947	3,750	937,731

The parties agree that this represents the proper total base pay paid in 2012 for purposes of calculating the 2% hard cap pursuant to N.J.S.A. 34:13A-16.7(b). The parties further agree that the value of the 2% maximum statutorily allowable increases that can be awarded is \$18,754 annually, and that the maximum allowable increases that can be awarded for a three-year period is therefore \$56,263.

One might think that the parties are in virtual agreement with regard to salary increases to be provided to this unit. Such is not the case: the parties disagree over the application of the 2% increases.

Borough's Arguments:

The Borough argues that its final offer is reasonable and supports each element of the statutory criteria. It asserts that the evidence presented by their PBA at the hearing was irrelevant and failed to address the statutory criteria. It further asserts that the PBA's proposal on salary increases exceeds the 2% statutory maximum.

The Borough asserts that, since the total amount of any award cannot exceed \$56,262.65 over the three-year contract period, the proposed total salary paid to PBA members at the end of this contract could amount to no more than \$993,973.80,

which represents a \$56,262.65 increase over the \$937,711.15 paid to PBA members in 2012. Accordingly, the only issue to be decided is how the \$56,262.65 "pie" should be divided amongst the PBA officers between increments and wage increases. The Borough contends that the PBA's proposal uses "fuzzy math" to calculate the costs of its proposal and the proposal does not conform to the statutory requirements outlined above and must be rejected.² More specifically, the Borough argues, the PBA's proposal would yield a total year-end 2015 salary costs for PBA members of \$1,031,942.00. Thus, the PBA seeks to increase the total base pay paid by \$94,230.85 from the 2012 totals. This amounts to an overall increase of 10.04% from the 2012 total base pay paid. Put another way, the Borough argues that this proposal seeks to increase total base pay paid from 2012 by an average of 3.34% per year. The PBA's offer represents average annual salary increases of \$31,410.28. This exceeds the annual increases of 2% pursuant to the statutory hard cap. See N.J.S.A. 34:13A-16.7(b).

²The Borough notes that the PBA has submitted multiple proposals and calculation methods. See P-2 and P-3. Further, Exhibits 40-43 of P-3 and the Appendix thereto propose calculation methods and various differing dates to implement the PBA's proposed percentage increases in the salary guide. The Borough argues, to the extent that these differ from the PBA's Final Offer, they should be rejected. The PBA cannot submit multiple offers and methods of calculation when their proposed Amended Final Offer was rejected as untimely.

The Borough argues that, even the "alternate calculation offered by the PBA's financial expert at hearing, Exhibits 40 through 43 of P-3, which proposes a 2% COLA effective July 1, 2013, also exceeds the statutorily imposed 2% cap. If only a two-year time period from year-end 2013 through year-end 2015 is used, this PBA proposal still exceeds the maximum allowable three year award of \$56,262.65. In pertinent part, Exhibit 41, of P-3 provides that the year-ending 2013 total salary paid would be \$964,718.00. See P-3, Exhibit 41. The 2015 year-end total salary paid would be \$1,036,387.00. Id. at Exhibit 43. The Borough avers that, even by using a two-year period, this PBA proposal would increase the total salary paid by \$71,669.00 during that time. This is statutorily impermissible. Further, the Borough calculates that by the very terms of the PBA's final offer, it seeks to isolate only the costs of increments and salary increases and to apply the 2% cap in a vacuum. What the PBA asks the Arbitrator to do is to ignore all carryovers in salary increases from one year to another, including the carry-over of increment costs from 2012 into 2013, then from 2013 into 2014, and so forth.

The Borough further maintains that the PBA's proposal only increases the next year's salary over the year-end base salary of the prior year. It does not increase the next year's salary

from the prior year's aggregate amount expended by the public employer on base salary items as is statutorily required. See N.J.S.A. 34:13A-16.7(b). Accordingly, all of the carryover costs that the PBA attempts to ignore renders the PBA's proposal untenable in light of the statutory mandate.

The Borough cites my prior interest arbitration award in Borough of Midland Park and PBA Local No.79, Docket No. IA-2013-013 (Osborn 3/28/13). The Borough notes that in that matter, I specifically noted that the costs of the award were inclusive of across-the-board increases, costs of increments and cost of adjustments in lieu of increments. I also noted that those numbers were inclusive of the "flow-through" or "carryover" of costs from year to year. The Borough contends that the PBA's proposal herein impermissibly ignores carryover costs and views each year independent from one another.

The Borough argues that its offer is more reasonable when compared to what other Ocean County police officers are making. Moreover, the Borough's offer will achieve economic and fiscal stability for the Borough in light of the tax cap levy imposed in 2011, the after effects of Superstorm Sandy, increases to medical benefit costs and pension contributions, decreases in the Total Fund Balance, and decreases in State Aid. (B-39 through B-50) It further argues that, in comparison to

other borough employees, the Borough's police officers are extremely well-compensated. It argues that its proposal is also in line with similar wage increases awarded in Township of Springfield and PBA Local 76, Docket No. IA-2012-003 (Gifford 11/21/11) (0% increase in 2011, 1.75% in 2012, 1.75% in 2013 and 2.5% in 2014); Borough of Seaside Park and PBA Local No. 182, Docket No. IA-2012-022 (Osborn 4/9/12) (2% increase in 2012, 1% in 2013 and 1.5% in 2014); Borough of Point Pleasant Beach and PBA Local No. 106, Docket No. IA-2012-001 (Mastriani 9/16/11) (0% wage increase in 2011, 2% increase in 2012, 2.25% in 2013, and 2.5 in 2014); Township of Washington and PBA Local 301, Docket No. IA-2009-053 (Mastriani 7/21/12) (2.50% increase in 2009, 2.25% in 2010, 2.0% in 2011, 1.75% in 2012 and 1.50% in 2013); Township of West Caldwell and West Essex PBA Local 81, Docket No. IA- 2012 -012 (Gifford 3/12/12) (1.75% increase in 2012; 1.95% in 2013 and 1.95% in 2014.) Thus, the Borough argues, awards with approximately two percent (2%) yearly wage increases, inclusive of increment, and additions of steps to the salary guide are commonplace in interest award decisions and same should be awarded here.

The Borough notes that it is offering the statutory maximum even in light of the fact that the Borough received extensive damage from Superstorm Sandy (B-18). Moreover, the overall

outlook for Ocean County remains negative because of the decline in its tax base as a result of Superstorm Sandy as well as disaster recovery costs, which will continue to affect municipal budgets for the foreseeable future (B-20 through B-22). The Borough observes that Sandy damaged 46% of Ship Bottom's housing stock, caused Ocean County's tax base to be slashed by roughly \$9,000,000.00 of which \$3.6 billion was caused by the storm and another \$5.4 billion due to a loss in market value of properties (B-18, B-27). Even with the turmoil caused by Superstorm Sandy, the Borough has been willing to offer the PBA the maximum 2% increase inclusive of longevity and increments, so long as five additional steps are added to the salary guide. In light of the above, this is reasonable and a much more sound approach than the PBA's impermissible final offer. The PBA's final offer will cause the Borough to divert funds away from other critical projects, such as rebuilding and repairing the damage caused by Sandy, to the coffers of the PBA.

The Borough also asserts that the cost of the award cannot be reduced by the cost containment savings generated by the premium sharing contributions mandated by the enactment of P.L. 2010, c.2 and P.L. 2011, c.78 or the savings generated by any changes in health benefits. The statutory premium sharing

contributions and changes in health benefits are intended to offset the increasing cost of healthcare, not fund salary increases for PBA members.

According to the Borough, Ship Bottom's salaries are comparable to those in other area municipalities. It argues that, contrary to the testimony of Sgt. Barr, officers are not likely to be leaving Ship Bottom because its compensation plan is too low.

In summary, the Borough argues that its final offer will allow the salaries of the Borough of Ship Bottom police officers to stay competitive with the Ocean County averages, even in these difficult economic times, while the PBA's offer is unreasonable, does not consider the impact of such award on the Borough's taxpayers and does not conform to the strict statutory requirements.

The PBA's Arguments:

The PBA argues that the Borough's final offer seeks to "gut the contract," is not reasonable, and not supported by the record. The PBA urges a blanket denial of the Borough's offer.

The PBA argues that the Borough has misinterpreted the statute as to the 2% hard cap limitations and therefore has miscalculated the possible award of salary increases in this matter. The PBA

asserts that the term "aggregate" as used in the statute and explained in the legislative intent provides that it is comprised of the salaries contractually provided or expended by the Public Employer on base salary items for members of the affected employee organization in the twelve months immediately preceding the expiration of the Collective Negotiation Agreement, and caps any raise at 2% of the preceding year cost. The statute and/or legislative intent point to capping raises at 2%, not a one-time 2% raise in perpetuity spread over two, three or more year deals.

The PBA maintains that I am required to follow the same pattern of calculating the cost of the award as was used in Borough of Midland Park and PBA Local 79, Docket No. IA-2013-013 (3/28/13) and Burlington County and PBA Local No. 249, Docket No. IA-2013-005 (11/26/12). The PBA states that this is the only fair and equitable approach which has been the historic and logical way to calculate arbitration awards in this State. This approach has been accepted and published by the New Jersey Public Employment Relations Commission, budgeting manuals and subsumes the compounding effect that its financial expert explained as "the cost of doing business".

In fact the PBA argues an analysis which includes the flow-through of residual costs from one year to another is

inconsistent with the statute and legislative intent. The PBA maintains that the amendment providing for the 2% hard cap is figured in the aggregate. It is not figured by or through a residual. In fact, nowhere in the statute or any other arbitration awards is the word residual utilized. Moreover, the word residual is not mentioned in the legislative intent and at no time did the legislature ever consider and/or provide that a residual "should be considered" in computing the 2% hard cap. The PBA maintains that, since the legislature neither considered nor contemplated such a term, the Arbitrator must render this decision consistent with prior arbitration awards and consistent with the statute and budgeting manuals and make all determinations within the aggregate as specifically stated within the statutory language.

The PBA further asserts that the Arbitrator should not entertain any thought or concern about a residual cost from one year into the next, particularly from 2012 into 2103. First, the Ship Bottom contract was settled mutually.

The PBA has presented through its financial expert a final offer along with an alternate calculation as found in the Appendix of Dr. Caprio's report. The Appendix explains the alternate calculation model about the 2013 distribution of

\$18,754.00 along with a 2% COLA increase on July 1, 2013 and step increments for two officers occurring on October 23, 2013 and November 25, 2013 related to the two officers that continue to move through the steps. The testimony of its financial expert substantiates the PBA's final offer throughout the evidence submitted in his report and in particular, Part 4 entitled "Cost out of Proposal". The PBA contends that its proposal provides for a maximum of \$56,262.65 to be distributed over three years between step increments and cost of living increases. The PBA proposed that the distribution be essentially equal and it provided for the step increments of the two individuals moving through the steps, Jones and Potter. Their step increments occur on differing anniversary dates which actually lessens the financial impact of the stated increments through the three year proposed guide. The alternate calculations demonstrate these points relevant to the law. The PBA maintains that the real cost in the PBA's proposal is less than 2% per year, as described below. The fact that the statute in and of itself limits the cost of living increments to 2% cannot be interpreted as a one shot event. The PBA continues that such an interpretation would mean that any and all salary increments, any and all contracts would only be one year contracts. Therefore, the PBA asserts, a collective bargaining agreement comprised of more than one year

necessarily means that the initial year of the contract follows the expired Collective Bargaining Agreement. That initial year at some point, presumably at the end of the year, expires and then moves into the second year of the Collective Bargaining Agreement which of course, then expires and moves into the third year of a Collective Bargaining Agreement. The logic follows through whether it is a two-year agreement, a three-year agreement or multi-year agreement. At the end of the day, the legislature could not have intended that a multi-year contract would be capped at 2% in total. The PBA further argues that such an interpretation is well beyond the legislative intent. The intended cap, whether it be the appropriations cap, the levy cap, and/or the hard 2% cap on wage increases has to apply within each year of any collective bargaining agreement a continued mathematical compounding effect of that effects as it moves to successor years. To interpret it otherwise would create an adverse effect not only on the unions but also on the interests of the public and negatively impact the remaining criteria within the interest arbitration statute.

The PBA maintains that the Borough's calculations include increases in costs resulting from movement through steps in 2012, as an encumbrance on an Arbitration Award in 2013. This

is entirely at odds with budget practice. In the first place, the movement in step occurring within 2012 was entirely result of a contractual agreement between PBA Local 175 and the Borough, and all costs associated with such contract or legal obligations of the municipality. Essentially, the PBA and the Borough resolved the matter with an offer, consideration, and an acceptance of that contract with all built in costs. A simple explanation of this is available in hundreds of budgeting manuals such as commitments shall be recorded in a timely manner coincident with the occurrence of events from which they originate. Further, the PBA maintains that the statute does specify a basis with which a nominal 2% maximum adjustment is allowed -- the amount paid -- but the amount "paid" by the Borough is not the same as the amount the Borough is otherwise legally obligated to pay officers into the future absent any further contracts. Once officers' salaries are adjusted through a valid contract, future costs essentially become a normal cost of doing business that is assumed entirely by the municipality. Future changes in this "real base pay" are the subject of subsequent CBAs or Interest Arbitration Awards.

For the purposes of the instant matter, there is a general agreement that the statutory 2% calculation is based upon

approximately \$937,711.00 paid in 2012, yield an amount to be awarded for each of any subsequent years covered by an award of approximately \$18,754.00. The actual contractual obligation of the municipality, however, is \$951.027.

The PBA asserts that the Borough's premise that the difference between total salaries from the beginning of the first year to end of the third year cannot exceed \$56,262 is similarly flawed as it is inconsistent with accepted budgeted practice, and (2) would allow for a total award over multiple years of 0.66% per year for a three-year award. The PBA argues that,

Ship Bottom's logic would operate as follows. You award 2% in 2013, or \$20,000.00, but because you awarded it in 2013, you still must use the "award money" allowable in 2014 to continue funding the 2013 award, so the entirety of the funds available for 2014 must be assigned to continue funding the 2% awarded in 2013, for the effect of NO increase in 2014. Ship Bottom's logic also carries into 2015 as well. So, the only way the ending payroll in 2015 can be no more than \$60,000.00 over the 2013 start of year is to award 2% in 2013 and nothing thereafter ... i.e. a cumulative total increase of \$60,000.00.

The PBA avers that this is inconsistent with all budgeting principles, and would have the effect of maximizing all multi-year awards to a single 2% award. The only proper way of computing wage increases via percentage is to simply provide the

percentage increase in the first year and provide the percentage increase in the second year and the percentage increase in the third year and so forth, which essentially means that the first year of the agreement would provide for 2%, then the second year would provide for a 2% and a 2%, and the third year of the agreement would provide for a 2%, 2%, and a 2%. That is the only way to properly account for a 2% raise in each year of the actual contract per the statute.

The PBA concludes that the impact on the taxpayers from the PBA's proposal is extremely minimal in that the total cost of the proposal is approximately \$100,000. Ship Bottom must be able to maintain competitive wages for its Police Department in order to recruit top individuals who want to make a career of policing in Ship Bottom. In fact, competitive salaries, maintaining competitive salaries and attempting to fend off the wage degradation is most important and most certainly in the best interests of the welfare of the public.

ANALYSIS

Statutory Considerations:

I have considered the record and the parties' respective arguments in this matter. In applying the statutory criteria, I find that the public interest is the factor which is entitled to the most weight. This factor inter-relates with and encompasses

several other factors, including the Employer's statutory limits on appropriations and tax levies. By necessity, it also includes the statutory prohibition against awarding increases in excess of the 2% hard cap. I have also given weight to the factor of continuity of employment, the employees' existing wage and benefit package, the compensation and benefit packages in other similar jurisdictions. Here, while these factors deserve significant weight, the over-riding consideration is the 2% hard cap.

With regard to the Borough's ability to pay, its mandate to limit appropriation increases to 2.5% over the prior year, and its levy cap limits, I note that the Borough included in its final offer a 2% increase, including increment and longevity payments, which is the maximum amount permitted under the hard cap. Therefore, I have advised the parties to this proceeding that, for purposes of my award, I will assume that (a) the Borough has the ability to pay the award it proposed; and (b) the proposal is within the Borough's appropriations and tax levy caps. Accordingly, I advised the parties at hearing that no budgetary analysis would be considered.³ That is, I would not permit the Borough to introduce evidence that it could not sustain the increases which it proposed, and that it would serve no purpose for the PBA to prove that the town could afford its

³The destruction to the Borough's municipal building as a result of Hurricane Sandy rendered it unable to yet prepare and present a 2013 municipal budget.

own offer. Since the 2% hard cap is a statutory maximum, the PBA would also not be permitted to proffer evidence that the Borough could afford a greater increase than that permitted by statute.

I have considered the parties' arguments and the facts presented in the record. I give particular weight to the following facts:

Existing Wages and Benefits:

The ten officers in the bargaining unit continue to be paid pursuant to the 2012 salary guide as follows:

Step	# EES	2012 Pay Rates
1		36,490
2		40,182
3		46,720
4	1	54,076
5	1	62,723
6		69,532
7	5	87,661
Sr. Ptl	1	90,729
Sgt.	2	96,427

In addition to salary, officers have a longevity program that provides additional pay based upon the number of years' service an officer has with the Borough. The maximum is 24 years, for which the officer received a longevity payment of 10% of salary.

Officers receive sick 12 leave days annually. Unused sick leave may be accumulated from year to year or the officer may "sell back" up to eight sick days at the end of the year at 50% pay with a lifetime maximum of \$15,000. Upon retirement, the officer is paid for 50% of unused accumulated sick leave up to a maximum of \$15,000.

Officers have a vacation benefit of between 10 days and 24 days annually, depending upon length of service. Additionally, they enjoy up to 5 personal days annually.

Ship Bottom's police work a 10-hour workday with 4 days on duty followed by 3 days off. Officers who work rotating shifts are paid a \$1,900 stipend, except officers hired in 2002 or later receive 2% more for the evening shift and 3% more for the night shift, which is added to base pay. Officers also receive a \$1000 annual clothing allowance, an educational incentive plan of \$500 for an Associate degree and \$750 for a BA degree. Officers are covered by medical, dental, prescription and vision care insurance through the Central Jersey Health Insurance Fund.

Comparability:

Both parties submitted comparative data to analyze the salary package of ship Bottom as compared to other municipal police forces. The PBA identifies nine other Ocean County towns, including the four other municipalities with police

forces on Long Beach Island. The chart below shows how Ship Bottom compares with those towns:

Township	Entry Level Salary (Bottom)	Patrolman Top Pay	Last Effective Year
Ship Bottom ⁴	36,490	87,661	2012
Surf City	47,271	88,071	2013
Beach Haven	33719 *35,700	85,946	2013 (*Hired after 2012)
Long Beach	N/A	N/A	2010
Harvey Cedars	39,441	97,020	2013
Barnegat	43,931	92,389	2013
Stafford	46,232 *35,000	102,440	2012 (*Hired after 2011)
Mantaloken	56,345	99,579	2012
Point Pleasant Beach.	45,596	98,083	2012
Lakewood	38,192	101,222	2012

The PBA argues that Ship Bottom's salaries are below average as compared to the other departments on Long Beach Island and in Ocean County.

The Borough presented contracts from every municipality in Ocean County. It accumulated the 2012 salary figures from each, as represented by the charts below:

Minimum Step Salary

	2012
High	\$73,832
Low	\$29,000
Average	\$43,449
Ship Bottom*	\$36,490

⁴The PBA's salary amounts for Ship Bottom were inconsistent with the 2009-12 contract salary guide. I have corrected the numbers.

Maximum Step Salary

	2012
High	\$115,543
Low	\$65,707
Average	\$92,750
Ship Bottom*	\$87,661

Sergeant's Salary

	2012
High	\$116,403
Low	\$70,963
Average	\$93,605
Ship Bottom*	\$96,427

* The Borough's salary numbers as presented in its brief inaccurately reported a starting salary of \$40,639, a top pay rate of \$92,423, and a sergeant rate of \$98,226. These amounts are inconsistent with the contract salary guide rates. I have corrected the chart accordingly.

CPI:

The Consumer Price Index for All Urban Customers (CPI-U) decreased 0.4% in April 2013 on a seasonally adjusted basis. Over the last twelve months, from April 2012 through April 2013, the all index items increased by 1.1%, before seasonal adjustment. (B-51)

PERC Statistics on Settlements:

The most recent salary increase analysis for interest arbitration on PERC's website shows that the average increase for awards was 2.88% from January 1, 2010 through December 31, 2010; 2.05% from January 1, 2011 through December 31, 2011; 1.86% from January 1, 2012 through December 31, 2012; and 2.17%

from January 1, 2013 through March 31, 2013. Over the same time periods, it reported voluntary settlements of 2.65%, 1.87%, 1.77%, and 1.88%. PERC indicates that the average 2012 settlement for post-2011 filings is 1.84%, and the average 2012 awards for post-2011 filings is 1.85%. The data shows that the salary increases received through voluntary settlement or an award from January 1, 2011 through March 31, 2013 have leveled off over that period of time. I give greater weight to the increases received through the post-2011 filings than I do for the ones under the other settlements and awards.

Modification of Salary Guide Steps:

The Borough proposes to add five additional steps to the salary guide and to equalize the steps. It asserts that a twelve-step salary guide is fair and reasonable in that it allows officers to reach maximum salary approximately halfway through their careers.

The Borough argues that the additional steps are required in order to achieve financial stability, while still affording a competitive salary for all current and new hires. It notes that the current salary guide includes numerous step increases worth between \$6,000 and \$8,000. In addition, the step increase to go from a patrolman second class to patrolman first class is \$18,129, a 26.07% increase in just one year. The Borough maintains that,

without adding additional steps to the salary guide, the "bubble" which exists between second and first class patrolman will only continue to grow. Without additional steps, the advancement of two officers -- Potter and Jones -- from second class to first class during the term of this new contract will each eat up nearly the entire \$18,754.22 maximum yearly salary increase allowable by law, inclusive of increments and longevity. In fact, the cost of all step increases over the life of the proposed contract would eat up \$43,067 (\$18,129 + \$24,938).⁵ Accordingly, the Borough avers that, if the present guide structure is maintained, only about \$13,000 would be left of the \$56,262.65 available to be used for all other officers, inclusive of the permitted 2% annual increases.

The Borough also notes that adding steps to the salary guide has become a common trend. It states that, within Ocean County, steps were added to salary guides in Borough of Seaside Park (3 steps), Borough of Point Pleasant (1 step), Washington Township (3 steps), Fairfield (2 steps), West Caldwell (1 step), Beach Haven (2 steps), Lavallette (6 steps), Ocean Township (2 steps); Point Pleasant Beach (3 steps), and Tuckerton Borough (4 steps). (B-29, B-31, B-32, B-33, B-34, B-36, B-74).

⁵This is comprised of Jones' movement from second class to first class in October, 2013 (cost of \$18,129), and Potter's step movement from third class to second class in November 2013 (cost of \$6809), and then Potter's movement to class one in November, 2014, at a cost of \$18,129), for a total of \$43,067.

The Borough concludes that the imposition of additional steps, without reducing the salary of any current employee, will ensure future fiscal stability while still providing each officer with a competitive salary and a salary increase. Without doing so, adherence to the hard cap will require many officers to receive no increase at all.

The PBA argues that the Borough has provided nothing to support this proposal and same should be denied pursuant to N.J.S.A. 34:13(a)-16(f)(3). It notes that the Borough has not provided written estimates or calculations of the financial impact of this proposal. As to comparability, the PBA offers the following comparisons to the number of steps in other surrounding municipalities:

Township	<u>Steps</u> in	{Last Effective Year}
Ship Bottom	8 Steps	2012
Surf City	8 Steps	2013
Beach Haven	9 Steps (to SGT)	2013 (*Hired after 2012)
Long Beach	N/A	2010
Harvey Cedars	12 Steps	2013
Barnegat	7 Steps	2013
Stafford	8 Steps	2012 (*Hired after 2011)
Mantaloken	8 Steps (to SGT)	2012
Point Pleasant Beach	10 Steps	2012
Lakewood	8 Steps	2012

The PBA argues that the Borough's proposal to increase the number of steps to maximum has not been supported by any convincing rationale or record evidence and therefore must be denied.

Application of the 2% Hard CAP:

For many decades, a cost analysis of negotiated wage increases in municipal government has focused mainly on the cost of providing the across-the-board increases to unit employees. It has been is commonplace to only count the cost of such increases and to ignore the cost of increments. This is in contrast to negotiations in school districts, where traditionally, the parties negotiate a percentage increase from which the cost of increments must be subtracted. In municipal settings, the increment costs have largely been ignored, but where they are considered at all, those costs are on top of salary increases. However, the passage of Chapter 105, in 2011 has forced the parties and interest arbitrators to factor in not only the cost of increases to the salary guide, but the costs of increments and increases in longevity as well. Section 16.7(b), provides,

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

the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate money value of the award over the term of the collective negotiation agreement in unequal annual percentages (emphasis added).

The statute also provides a definition of what is "base salary" at 16.7(a):

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

I note that these provisions of the statute, when read together, prohibit an arbitrator from awarding increases of more than 2% annually to: "base salary items" -- salary provided pursuant to a salary guide"; and "salary increments", and "amount[s] provided for longevity."

Borough of New Milford, 2012-53, 38 NJPER 340 (¶116 2012) was the first interest arbitration award reviewed by the Public Employment Relations Commission under the 2% statutory cap limitations. In New Milford, the Commission adopted guiding principles for the application of the 2% cap:

...we modify our review standard to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2%

per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

PERC continued its discussion of base salary:

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

newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

We note that the cap on salary awards in the new legislation does not provide for the PBA to be credited with savings that the Borough receives from retirements or any other legislation that may reduce the employer's costs (emphasis added).

The first part of the Commission's directives in New Milford is clear and, I believe, now universally accepted. That is, an arbitrator must determine the Employer's aggregate base pay costs in the base year -- specifically, the total amount the Employer actually paid to unit employees in that year, including base pay, increment payments, longevity payments, and any other payment which the parties have considered as part of base pay.

Where increments and/or increases to longevity payments (as employees reach new benchmarks established by the contract for longevity increases) are paid on the first of the year, this presents no problem. The amounts paid to employees for the entire base year will be equal to the amounts listed in the salary guide at corresponding steps. An exception is when an employee is in a "no-pay status" for any part of the year, in which case his/her annual salary payment must reflect the amount he was actually paid, not the contract amount.

However, in situations where increments and/or longevity increases are awarded on the employee's anniversary, the amount of the increment and/or longevity increase must be pro-rated to account for what is actually paid out in the base year. This concept of pro-rating total pay in the base year has recently been confirmed by the Commission in Borough of Byram, P.E.R.C. No. 2013-72, _____ NJPER _____ (4/18/13).⁶ For example, if an employee is eligible to advance on the step guide on his anniversary of September 1 of the base year, he will receive only 25% of the increment payment in the base year; the remainder of that increment payment will be paid out the following year, which is the first year of the contract awarded. This "flow-through" will be discussed below.

Once a determination is made by the arbitrator as to the "total amount of base pay paid to unit employees" in the base year, then the statute requires a calculation of 2% of that amount. This is the maximum amount of increase the arbitrator can legally award within the 2% hard cap in each year of the new contract, except that it can be awarded in unequal amounts. It is a constant dollar figure, which does not compound from year

⁶In Byram, the Commission held that the arbitrator correctly pro-rated employees' salaries and longevity increases in the base year. A scattergram approach, which would have been based upon the employees' salaries at year end, would not have been useful as employees received salary increase mid-year in the base year, and longevity payments on their mid-year anniversaries.

to year (New Milford).

Here, the parties agree that the total base paid in 2012 - the base year -- was \$937,711.15. The parties further agree that 2% of that total is \$18,754 -- therefore the maximum available amount for all increases over the life of the three-year contract is \$56,263. From this pot, any increases to total base pay, including increment payments, longevity increases, holiday pay increases, and of course, cost of living increases must be included.

The question then becomes, what is the correct method of calculating these costs? Going back to New Milford, the Commission provided direction to arbitrators in this regard:

The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements.

Applying the Commission's calculation directives in New Milford, determining the total costs paid in the base year involves a pro-rated calculation of the employer's actual total costs for the base year for each employee. Calculating the cost of the award uses a different methodology of

calculation. Using the scattergram method involves determining how many employees are on each salary guide step as of December 31 of the base year, arriving at a total, applying any across-the-board increases being awarded, and then advancing increment-eligible employees to the next step on the guide for that year. This process is repeated for each year of the contract being awarded. Because this method compares end-of-year base pay costs to from one year to the next, it does not involve pro-rating the cost of increments and/or longevity payments. Because the entire amount of the increments is captured in each year, there is no need to separately calculate the flow-through of increments costs where increments are paid mid-year. Of course, the aggregate increase cannot exceed 6% of base year actual costs as calculated in the first calculation.

The parties disagree about whether the cost of the award should include the residual costs from increments paid to employees in the base year. Two officers were advanced to their next step late in 2012; they received part of the value of that increment in 2012 (which was included in the base year calculation), and then will receive the rest of the increment value in 2013. The Borough appears to be arguing that this residual cost, or "flow-through," should be calculated within

the 2% hard cap. I decline to do so. First, the statute provides that an Arbitrator "shall not render any award" which increases base pay costs by more than 2%. The residual costs of increments from the base year are not part of my award, but rather, are costs associated with the parties' prior agreement. Second, the scattergram approach, by counting the step value from year end point to year end point, counts all increment advancements for the life of the contract.

Applying the scattergram method to the facts of this case, I find that it is not possible to award the payment of all increments when due and still be able to award any meaningful across-the board increases in salary to the unit as a whole. All but two of the ten unit members are at the top step of the salary guide. The scattergram below shows the current guide placement of all unit employees:

Name	Rank	Hire Date	2012 Base Pay (12/31/12)
Barr	Sergeant	6/2/89	96,427
Butler	Sergeant	5/27/87	96,427
Mury	Senior Patrol	8/21/89	90,729
Gesicki	Patrol 1st Class	11/10/95	87,661
Nash	Patrol 1st Class	8/20/01	87,661
Williams	Patrol 1st Class	1/2/03	87,661
Holloway	Patrol 1st Class	1/2/03	87,661
Tretola	Patrol 1st Class	1/10/05	87,661
Potter	Patrol 2nd Class	10/23/07	69,532
Jones	Patrol 3rd Class	11/25/08	62,723
TOTAL			854,143

As can be seen by the scattergram, absent any change to the salary guide or cost of living increases, the cost of moving Potter and Jones forward one step on the salary guide in 2013 will be \$24,938 (\$18,129 to move Potter from \$69,532 to \$87,661 plus \$6,809 to move Jones from \$62,723 to \$69,532). In 2014, the cost of increments will be \$18,129 (the cost of moving Jones from \$69,532 to \$87,661). At that point, all current employees will be at top pay. The total cost of increment advancements over the life of the contract will be \$43,067. In addition, Mury, Barr and Gesicki are entitled to longevity increases in 2013 as they each reach a benchmark year of service. The total cost of these longevity increases total 3,978. Subtracting these amounts from the 2% cap maximum of \$56,263 leaves \$9,218 left for any cost-of-living adjustments over all three years of the contract.

In situations such as this, where it is not possible to award both increments and any real measure of salary increases, I have several alternatives available. First, I could award a freeze of the salary guide and longevity increases, thus freeing up all of the potential increase money for across-the-board cost of living adjustments. Second, I could restructure the salary guide to provide a greater number of salary steps, each for a smaller increment amount. Third, because the statute permits me to award increases year to year

in unequal percentages, I could in essence, borrow money from one year to fund increases in another year.

In considering the statutory criteria, and applying the 2% hard cap, I award the following:

1. Longevity: Employees will be frozen at their current longevity dollar amounts for the length of this contract.

2. Step Guide Revisions: Revise the salary guide effective January 1, 2013 to add two additional steps between step 6 and step 7 on the existing guide as follows:

Old Salary Guide			New Salary Guide		
Step	2012 Pay Rates	Increment	Step	Revised Steps	Increment
1	36,490	3,692	1	36,490	3,692
2	40,182	6,538	2	40,182	6,538
3	46,720	7,356	3	46,720	7,356
4	54,076	8,647	4	54,076	8,647
5	62,723	6,809	5	62,723	6,809
6	69,532	18,129	6	69,532	6,043
7	87,661	3,068	7	75,575	6,043
Sr. Patrol	90,729	5,698	8	81,618	6,043
Sgt.	96,427		9	87,661	
			Sr. Patrol	90,729	
			Sgt.	96,427	

3. Increments and Cost-of-Living Adjustments:

2013:

Effective upon his anniversary date, Potter would move from

step 6 to step 7 on the new salary guide and would receive a \$6,043 increment. Effective upon his anniversary date, Jones would move on the new salary guide as revised above from step 5 to step 6 and receive a \$6,809 increment. The combined cost of these increments will be \$12,852, leaving \$5,902 available under the 2% cap. Therefore, I award a .6% across-the-board increase effective January 1, 2013 which will cost \$5,125 ($\$854,143 \times .6\%$). This will increase the cost of increments by \$77 and increase holiday pay for 2013 by \$276. Thus, the total of the 2% hard cap spent in 2013 is \$18,330, leaving \$424 left under the cap.

2014:

Effective upon his anniversary date in 2014, Potter will move from step 7 to step 8 on the new salary guide and will receive a \$6,079 increment. Effective upon his anniversary date, Jones will move from step 6 to step 7 on the new salary guide and receive a \$6,079 increment. The combined cost of these increments will be \$12,158 leaving \$6,596 for 2014 left available under the 2% cap. This is in addition to the remaining balance of \$424 from 2013 for a total of \$7,020 available under the cap. Therefore, I award a 1% across-the-board increase effective January 1, 2014 which will cost \$8,722 ($\$872,197 \times 1\%$). In addition, this will slightly increase the

cost of holiday pay by \$462 ($\$46,227 \times 1\%$) and the cost of increments by \$122. Thus, the total cost of increases for 2014 is \$21,464.

2015:

In order to provide a maximum across-the-board percentage increase to all employees, I will freeze employees on the current step of the step guide for 2015; that is, there will be no increments paid in 2015. I award a 1.75% across-the-board increase effective January 1, 2015. The cost of this COLA increase will be \$15,631 ($\$893,199 \times 1.75\%$) for 2015. In addition, this will slightly increase the cost of holiday pay by \$817. Thus, the total cost of increases for 2015 is \$16,448.

This configuration will result in employees that are still moving through the step guide to be at least able to get some increment benefit in two of the three years of this contract. It will enable all officers to get a cost-of-living increase I in every year of the contract. Over the life of the contract, officers will get a combined, compounded increase of 3.38% thereby increasing top pay to \$90,628 by the end of the contract. This serves to maintain employee morale and permits the police force to maintain its competitive standing among other police departments in the area, thus enhancing employee continuity and furthering the public interest. Moreover,

restructuring the salary guide to reduce the size of the bubble step to an amount more in line with the other steps assists the Employer with budget planning and furthers the public interest, by not having big payments in any one year. Employees will still get to top pay by 2016 and the amount of the top step has not changed.

Cost of the Award:

Cost of the Award						
Year	Incrmnt Costs	ATB %	ATB Incr	Lgnty Incr	Hol Pay Increase	Total
2013	12,929	0.6%	5,125	0	276	18,330
2014	12,280	1.0%	8,722	0	462	21,464
2015	0	1.75%	15,631	0	817	16,448
	25,209	3.35%	29,478	0	1,555	56,242

The Employer's total cost of base pay in the base year was \$854,143. With the cost of the award as shown above, by the final year of the contract the Employer will have a base pay cost of \$908,830. Thus, the total increase over the life of the contract in base pay cost is \$54,687 (not counting increases in holiday pay).

Article V, Longevity:

The Borough proposes to eliminate longevity for all employees who commence employment on or after January 1, 2013. It also proposes to freeze longevity payments at their current levels with no future increases for current employees.

Article V of the 2008-2012 contract provides for a two-tier longevity program. Employees hired before 2002 are entitled to longevity pursuant to the following schedule:

<u>Years of Service</u>	<u>% of Base Salary</u>
Upon Completion of 4 years	2%
Each Year Thereafter	1%
Until Officer Reaches	6%
Beginning 18 th Year	8%
Beginning 24 th Year	10%

The longevity schedule officers hired after January 1, 2002 is as follows:

<u>Upon Completion of</u>	<u>% of Base Salary</u>
4 years	2%
8 years	3%
12 years	4%
16 years	6%
20 years	8%
24 years	10%

In 2012, all ten of the members of the bargaining unit received some measure of longevity pay. Five of the officers are paid from the pre-2002 schedule while the remaining officers are paid from the newer schedule. Three officers, with 24+ years of service, are currently receiving 10% longevity pay this year. Dollar values for this longevity program currently range from \$1,200 to over \$9,000. In 2013, even without salary increases, the cost of the longevity program is \$47,187.

In comparing the longevity program in Ship Bottom with other towns in Ocean County, including the other 4 towns on Long Beach Island, the following chart shows the comparison:

Longevity Comparisons:

Township	Longevity (Bottom)	(Last Effective Year)
Ship Bottom	24 Years (10% Max)	2012
Surf City	21 Years (10% Max)	2013
Beach Haven	20 years (10% Max)	2013 (*Hired after 2012)
Long Beach	21 Years (12% Max)	2010
Harvey Cedars	N/A	2013
Barnegat	20 years (10% Max)	2013
Stafford	23 Years (12% Max)	2012 (*Hired after 2011)
Mantaloken	25 Years (10% Max)	2012
Point Pleasant Beach.	25 Years (12% Max)	(Hired before 2012)
Lakewood	20 Years (8% Max)	2012

As can be seen, Ship Bottom is mid-range in compensation plans in terms of longevity percentages, which range from 8% to 12%. However, an officer must work 24 years before being eligible for maximum longevity - this component is slightly negative of mid-range.

The Borough argues that its proposal to amend longevity payouts is fair and reasonable and in line with previous interest arbitration awards. It cites Borough of West Caldwell, Docket No. IA-2012-12 (Gifford 3/12/12) in which Arbitrator Gifford reduced longevity for new hires, and Borough of Point Pleasant Beach, IA-2013-01 (9/16/11), in which Arbitrator

Mastriani reduced the longevity plan for new hires, and Borough of Midland Park, Docket No. IA-2013-13 (Osborn 3/28/13) B-31; B-34.

The PBA argues that the Borough has failed to provide any comprehensive cost analysis to support this proposal. Further, it contends that the Borough has supplied no information that would lead a reasonable individual to believe that there is an ability to pay issue combined with significant economic hardships by continuing with the benefit. It should fact be left alone based upon the fact that there has been no economic analysis supporting any change whatsoever including the 2013 budget. The PBA maintains that the Borough's longevity proposal should be denied as it is not in the public interest and it will have a negative effect on the Police Department's ability to attract and retain quality officers.

I find that the Borough's proposal to eliminate longevity for new hires is not supported by the evidence of comparability or in relationship to the officers existing package of salary and benefits. Eliminating longevity entirely would significantly disadvantage the Borough in terms of hiring and retaining quality police officers and would encourage current officers to seek employment elsewhere. Therefore, this proposal is denied. As to the Borough's proposal for longevity for

current employees be frozen at their current levels, I have granted this proposal but only for the length of this contract. Upon expiration of the 2013-2015 contract, longevity payments pursuant to Article V will resume.

Article XII, Sick Leave:

Paragraph C:

The Borough proposes to eliminate the payment of unused sick leave upon retirement for officers hired after January 1, 2013. It also asks to reduce the maximum amount of supplemental compensation upon retirement for current employees from \$15,000 to \$7,500. The Borough also seeks to eliminate the annual cash-out of sick leave for new hires and to reduce the lifetime cap amount on this benefit from \$15,000 to \$7,500.

The current contract contains two sick leave cash-out provisions. The first, found at Article XII (C), provides that an officer shall be paid for 50% of his unused sick leave upon retirement or death, up to a maximum of \$15,000. Section (G) provides for an annual cash out of up to 8 days of unused sick leave annually. To qualify, the employee must maintain a minimum sick leave bank of 50 sick days. The payment rate is at 50% for the value of the sick days cashed in, and there is a lifetime cap of \$15,000 for such compensation.

The Borough contends that this proposal is in line with previous interest arbitration awards including Borough of Midland Park, Docket No. IA-2013-13 (3/28/13), in which I awarded a reduction in sick leave cash-outs for new hires. It also cites Borough of West Caldwell, in which Arbitrator Gifford reduced the payout rate at which officers accrued unused sick leave days from 50% to 33.3% per day at the pay rate when earned. The Borough contends that its proposal is fair and reasonable.

The PBA argues the Borough's proposals to change the sick leave cash-out provisions have not been supported by any facts or economic analysis. It argues, "Obviously, the issue is really here whether individuals should use sick time or not, create overtime or not, and thus bank their sick time, for use at a later time, such as retirement. It is a benefit and no analysis has been provided supporting their position." It further asserts that one employee on the force has submitted an application for disability retirement and has a legitimate expectation to obtain the supplemental compensation upon retirement. It argues that this retiring officer and others should not be refused this long time benefit. With regard to the Borough's proposal to reduce the annual cash-out of sick leave, the PBA maintains that the Borough again has not justified this demand. Further, it argues that both proposals

would have "a negative effect in having and maintaining quality officers and is adverse to the relevant criteria in totem." (PBA brief at p. 24-25).

I find that there is insufficient evidence or rationale presented in the record to adequately consider either of the Borough's proposals concerning cashing out sick leave. The record does not indicate how much the Borough has been paying out for this benefit, nor even what the existing sick leave usage rates are. A sick leave incentive plan -- whether annually payable as cash bonus or in extra vacation days, or for that matter, a provision that permits cash out of sick leave upon retirement, all have as their goal to provide an incentive to employees not to use sick leave unless absolutely necessary. When an employee calls out sick, his position may have to be filled with an overtime assignment. Thus, these plans, when effective, can provide a savings to employers in the form of overtime reductions.

I have modified sick leave incentive plan and/or sick leave cash-out upon retirement provision where the costs were exorbitant in comparison with the results achieved. See Hudson County and PBA Local 109, Docket No. 2012-46 (7/23/12). The Borough of Midland Park, cited by the Borough, is inapposite. In that matter, I reduced an existing terminal leave benefit of

60 days' pay to 40 days' pay for new hires. Under the Midland Park plan, all employees were eligible for terminal leave regardless of accumulated sick leave balances.

Further, it seems mathematically unlikely going forward that the Borough would actually be liable to any officer for full payment of both the annual incentive and the end-of-career incentive. Officers are given 12 sick days a year, so the maximum an officer can earn over a 25-year career is 300 sick days. Assuming an officer at top pay is paid \$87,661 and works 260 working days a year, his daily salary is \$337. Upon retirement, he could cash in 89 days and be paid for one-half -- 44.5 days ($\$337$ at today's rates \times 44.5 days = \$15,000). This means that to have a bank that big, he could use (or annually cash in) no more than an average of 8.5 days annually, over his 25-year career, in order to be eligible for the maximum payment upon retirement. ($8.5 \times 25 = 212.5$) If he opted to take the annual sick leave incentive payment instead every year, he would have to maintain near perfect attendance over his career to have enough sick leave bank left to cash out at retirement. I conclude then, that it is unlikely any officer would actually be able to take full advantage of the annual sick leave incentive and the retirement sick-leave cash out at their current levels. However, to fully consider whether to modify an existing sick

leave incentive plan, I would need to have sufficient information necessary to determine whether the plan is actually providing the incentive and getting the desired results. Additionally, without the cost information, I cannot evaluate whether the cost is worth the benefit, and thus, whether a modification of the plan is in the interests of the public. The Borough's proposals regarding eliminating and/or reducing the sick leave incentive cap and the supplemental compensation upon retirement cap to \$7500 each must be denied.

Article XVII, Grades:

The Borough proposes to eliminate differential pay for the Senior Patrolman. [Actually, senior patrolman is not mentioned in this Article; it is only mentioned in the Salary Schedule.]

The expired contract provides in the salary schedules for:

Senior Patrolmen: \$90,729

"Senior Patrolman: The patrolman with the most seniority with the department shall be designated as (Corporal) and shall be paid 3.5% above patrolman 1st class." (contract at p. 22)

The Borough makes no argument in its brief concerning this proposal. The PBA argues that this proposal is unsupported. It notes that this provision only affects the salary of one individual as only one patrolman can be the "senior patrolman" on the force at one time as that individual attains that status. It is recognition for his length of service.

Sgt. Barr testified that upward mobility is essentially nonexistent in the police department, and this provision was negotiated into the contract to address that lack of opportunity for advancement and an opportunity for greater pay, rank and responsibility. The PBA argues that there is no basis to excise this provision from the contract.

As the PBA noted, this provision was included in the contract because, in a small town such as Ship Bottom, there is little room for upward mobility. For those junior officers who might never make sergeant, the senior sergeant status is an opportunity to take on a little extra responsibility in mentoring newer officers and gain a little extra compensation for their status. The provision also gives the Borough the ability to retain long-time career patrolmen who might otherwise migrate to other, larger towns. This is in the public interest, and fosters continuity of the police force, and promotes better employee morale. The cost to the Borough is slight - a mere \$3,000 a year. I am not inclined to excise this provision from the contract. This proposal is denied.

Article XXI, Insurance:

The Employer proposes to add this provision:

Employees shall contribute in an amount equal to that required by P.L. 2011, c. 78, which amount shall remain in effect until further mutual agreement.

Neither party addressed this proposal in their respective briefs. It appears that the Borough asks to incorporate the statutory requirement of Chapter 78 into the contract. I agree. However, to the extent that the Borough asks to maintain Chapter 78's employee contribution rates even if the statute is amended, the proposal is denied. I award the following new provision:

Employees shall contribute in an amount equal to that required by P.L. 2011, c. 78.

Health Benefits (PBA's Proposal):

In its brief, the PBA resurrected its argument that the Borough's health care benefits should be provided by the New Jersey State Health Benefits Plan rather than the current plan, as provided under the joint insurance fund. The PBA maintains that the significant cost savings which would inure from switching plans would be more than enough to fund the PBA's entire salary proposal. The PBA's brief argues that I improperly denied its request to amend its final proposal at hearing.

The Borough's proposal did not include any proposal concerning health care plans other than the contribution language. The PBA raised the issue for the first time at hearing, and asked to amend its final offer. It contends that (a) it raised the issue before the hearing commenced; (b) it advised counsel for

the Borough by telephone on the evening before the hearing that it was amending its proposal; and (c) the Borough was well aware of the PBA's desire to change to a less expensive provider, via a grievance and discussions during negotiations.

N.J.S.A. 34:13A-16(f)(1) provides,

At a time prescribed by the Commission, the parties shall submit to the arbitrator their final offers on each economic and non-economic issue in dispute. The offers submitted pursuant to this section shall be used by the arbitrator for the purposes of determining an award pursuant to paragraph (2) subsection d. of this section.

N.J.A.C. 19:16-5.7(f) provides,

At least 10 days before the hearing, the parties shall submit to the arbitrator...and to each other their final offers on each economic and non-economic issue in dispute. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approved such an agreement, before the close of the hearing.

Here, the PBA filed its final offer with me on May 21, 2013 and served a copy on the Borough. That offer clearly stated that the only issue the PBA sought to propose had to do with salary increases. On May 24, the PBA attorney Stuart Alterman called me to discuss the potential for settlement. During that conversation, Alterman indicated that the PBA may be amending its

proposal. I stated that the Commission's Rules provide that I may accept revisions to final offers up until the opening of the hearing. However, no proposed revision was then submitted to me until the opening of the hearing.

The record in this matter does not demonstrate that health care plans were the subject of the parties' negotiations. The filing of a grievance over health care issues is insufficient to put the Employer on notice that health care plans would be the subject of this interest arbitration. Permitting such a revision to the final offer at that juncture would, in effect, permit the PBA to submit evidence concerning its proposal (which it did), while the Employer would have had no opportunity to do so. Accordingly, I ruled that I would not permit the PBA's final offer to be amended to now include a proposal to modify the health insurance plan, as such an amendment would be prejudicial to the Borough's ability to defend against such a proposal. Accordingly, the PBA's revisited arguments in its brief concerning the appropriateness of changing health care plans is not considered. I would also note that there is no provision in 34:13A-16 to credit savings from health care costs to employees' salaries.

AWARD

I award the following:

Salaries, Longevity and Step Guides:

1. Longevity: Employees will be frozen at their current longevity dollar amounts for the length of this contract.

2. Step Guide Revisions: Revise the salary guide effective January 1, 2013 to add two additional steps between step 6 and step 7 on the existing guide as follows:

Old Salary Guide			New Salary Guide		
Step	2012 Pay Rates	Increment	Step	Revised Steps	Increment
1	36,490	3,692	1	36,490	3,692
2	40,182	6,538	2	40,182	6,538
3	46,720	7,356	3	46,720	7,356
4	54,076	8,647	4	54,076	8,647
5	62,723	6,809	5	62,723	6,809
6	69,532	18,129	6	69,532	6,043
7	87,661	3,068	7	75,575	6,043
Sr. Patrol	90,729	5,698	8	81,618	6,043
Sgt.	96,427		9	87,661	
			Sr. Patrol	90,729	
			Sgt.	96,427	

3. Salary Increases:

2013: Effective January 1, 2013 increase the salary guide by .6% across-the-board.

2014: Effective January 1, 2014 increase the salary guide by 1.0% across-the-board.

2015: Effective January 1, 2015 increase the salary guide by 1.75% across-the-board.

4. Increments:

Increments to be paid, where applicable, in 2013 and

2014.

In 2015, no step movement.

Insurance: Add a provision to the contract as follows:

Employees shall contribute in an amount equal to that required by P.L. 2011, c. 78.

* * * * *

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

Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making this award. My Award also explains how the statutory criteria factored into my final determination.

Susan W Osborn
Susan W. Osborn
Interest Arbitrator

Dated: June 17, 2013
Trenton, New Jersey

State of New Jersey }
County of Mercer } ss:

On this 17th day of June, 2013, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

Pamela Jean Sutton Browning

