

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration Between:

**BOROUGH OF RIVERDALE**

-and-

Docket No. IA-2013-017

**PBA LOCAL 335**

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Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the Borough:

Trimboli and Prusinowski, Attorneys  
(Stephen E. Trimboli, of counsel)

For the PBA:

Loccke, Correia, Limsky and Bukosky, Attorneys  
(Richard D. Loccke, of counsel)

Witnesses:

Ptl. Patrick Harden, PBA Local 335 President  
Mayor William Budesheim

INTEREST ARBITRATION AWARD

On February 25, 2013, PBA Local 335 filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over a successor collective negotiations agreement with the Borough of Riverdale. The previous agreement expired on December 31, 2012.

On April 1, 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 April 26, 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 May 3, 2013 and the record closed on that date.

#### **FINAL OFFERS OF THE PBA**

**Wage Increase:** The PBA proposes a two percent (2%) across-the-board wage increase in each year of a three-year contract. Each increase is to be effective on each successive January 1 (January 1, 2013, 2014 and 2015).

**Article I, Recognition:** The PBA proposes to add Captains to the recognition clause.

**Article IV-A, Work Related Injuries:** The PBA proposes the changing of the covered period from six months to one year.

**Article V, Sick Leave:** The PBA proposes a modification of Paragraph B, (2)(b) by adding the word "unexplained" prior to the word "Absence".

**Article VI, Longevity and Holidays:**

- The PBA proposes a deletion of the grandfather provision in the last sentence of Paragraph A.
- The PBA proposes a modification of Paragraph C by adding two additional paid annual holidays.

**Article VII, Clothing and Equipment Maintenance:** The PBA proposes adding \$400.00 per *annum* to the annual amount set forth at Paragraph B.

**Article X, Legal Aid:** The PBA proposes that the Employer pays the amount of \$160.00 per member per *annum* for the purposes of paying for the Local's State PBA LDA Program.

**Article XVIII, Fully Bargained Provisions:** The PBA proposes a deletion of this provision.

**Article XIX, State PBA Delegate:** The PBA proposes the addition of a notation that this Article shall be interpreted consistent with N.J.S.A. 40A: 14-177.

**Addendum to Contract Reference 12-Hour Work Schedule:** The PBA proposes deletion of all references to a test or trial period. The schedule would therefore become a regular part of the terms and conditions.

### FINAL OFFERS OF THE BOROUGH

The Borough submitted the following final offer:

**Salaries:**

- 2013 - Step Increases Only
- 2014 - Step Increases Only
- 2015 - Salary Freeze - all employees

**Article IV, Tour of Duty and Overtime:**

- The Borough proposes to modify the language as follows:

Any scheduled change that is made on less than 12-hour notice shall result in the entire period of work so changed to be compensated at the overtime rate of pay (time and one-half).

- The Borough proposes the following modification of the language:

Time and one-half (1-1/2) the regular hourly straight time rate of pay for time spent in the Riverdale Municipal Court with a minimum guarantee of two (2) hours pay. If that time spent in Court is contiguous, before or after, with a regularly scheduled shift, the time and one-half (1-1/2) will be based on actual hours worked.

- The Borough proposes to modify the language as follows:

A unilaterally imposed work schedule change implemented with less than 12-hour notice shall be compensated for at the overtime rate.

- The Borough proposes to eliminate Section I.

**Article IV, Work Related Injuries:**

- The Borough proposes reduction of the covered period to the first thirty (30) days.

- Non-Work Related Injuries - The Borough proposes a leave of absence for a period not to exceed 30 days.

**Article V, Sick Leave:**

- The Borough proposes to modify Section B as follows:

1. After the accumulation of 12 sick days during the first calendar year of employment after initial appointment, a full time employee covered by this Agreement shall accrue sick leave with pay on the basis of one-half (1/2) of a twelve (12) hour working day per month. Any amount of sick leave allowance not used in a calendar year shall accumulate to the employee's credit from year to year for a maximum of one hundred thirty (130) days and may be used, if and when needed, for sick leave. An employee accumulating sick leave time under this provision shall no longer be reimbursed for accrued and unused sick leave at the time of retirement from his employment.

2. The Borough proposes: Absence without notice for two (2) consecutive scheduled work days.

**Article VI, Longevity and Holidays:**

- The Borough proposes elimination of Paragraphs A and B.
- Paragraph C: Borough proposes six (6) paid holidays per year. New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.
- Paragraph E: Each member of the department shall be entitled to nine (9) personal days off per year; provided approval of the Chief prior to using them is obtained.
- Paragraph G: Borough proposes adding "...subject to the

approval of the Chief."

**Article VII, Clothing and Equipment Maintenance:**

- Paragraph B: The Borough proposes that the separate rate of clothing allowance for lieutenants to be eliminated.
  
- Paragraph D: Borough's proposes eliminating this section.
  
- Paragraph H: Borough proposes to eliminate the last word in this section.

**Article IX, Insurance:**

- A. Incorporate the minimum contribution towards medical premiums as provided by state law. The Borough will continue to provide the State Health Benefits Plan Direct 15 Plan or equivalent.

**Article XI, Training:**

- C. Borough proposes: Compensation for all such training shall be in compensatory time off at the straight time rate, up to a maximum of six (6) hours in the twenty-eight (28) day work period.

**Article XII, Other Compensation:**

- Paragraph C. Borough proposes eliminating this section.
  
- Paragraph E. Borough proposes eliminating the meal provision in this section.
  
- Paragraph G. Borough proposes eliminating this section.
  
- Paragraph H. Borough proposes eliminating this section.
  
- Paragraph I. Borough proposes eliminating this section.

**Work Schedule:**

- Addendum to contract referencing twelve (12) hour work schedule: Delete all references to a test or trial period. The schedule is a prerogative of the Appointing Authority and shall remain with the Borough Council.

**Drug Testing:**

- Incorporate the random drug testing procedures prescribed by the current Attorney General's Law Enforcement Drug Testing Policy.

**BACKGROUND FACTS**

**Demographics:**

Riverdale is a Borough of two square miles located in the eastern side of Morris County, which borders on Bergen and Passaic Counties. According to the United States Census Bureau, the 2010 resident population of Riverdale was 3,559. The Borough is crossed by numerous roads including Interstate Highway 287 and State Highway 23. According to the New Jersey Department of Transportation Statistics, nearly 100,000 vehicles per day pass through the municipality. Riverdale is home to considerable commercial development including retail shopping. Shopping malls and big box store include Target, Home Depot, BJ's Wholesale Club, Staples, Best Buy, Walmart, Borders, Sports Authority, Smart Shop, and Pearl Vision. Therefore, Riverdale is an end destination for major retail shopping. The Borough also hosts the Riverdale Armory, an industrial park, and a State Department of Transportation maintenance yard.

New high-end housing units have recently been completed within the Borough and additional units are still under construction.

**Organizational Structure:**

The Police Department currently consists of a Chief, four sergeants, and nine patrol officers. Two Captains retired prior to 2012 and have not been replaced. There is currently no officer assigned as detective. There is also a lieutenant position which remains vacant. Police officers work twelve-hour shifts for a total of 2,080 hours annually.

A report delivered to the Mayor and Council by Chief Kevin Smith in January of 2013, states in part,

The workload in Riverdale remains high; in 2012 there were no towns in Morris County with a Police Department of equal or less full-time officers than Riverdale that filed more traffic violations or more charges than in Riverdale... in 2011 we issued more summonses than 21 out of the 38 other towns in Morris County.

The Chief proposed that the municipality hire an additional police officer to help cover the workload (P-12).

**STIPULATIONS OF THE PARTIES**

The parties stipulated to the following facts:

1. Unit members are paid their step increases on the anniversary of their date of hire. To the extent that employees reached their anniversary date already in 2013, they received their step increases.
2. Rank and Grade increases are made in January of the year in which the employee reaches a contractual benchmark. For example, an employee who reaches his 12<sup>th</sup> year of service in 2013

began to receive the additional rank and grade pay in January, 2013.

3. No current employee is covered by paragraph A of the longevity provision.

4. Employees began contributing to health care premium costs beginning in January, 2013, in Tier 1 of the Chapter 78 contribution rates.

5. The Lieutenant and Captain positions were vacant for all of 2012 and continue to be vacant.

#### **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).

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 PBA proposes a 2% across-the-board increase for all employees on January 1 of each year of the contract. The Borough proposes to permit employees moving through the salary guide to obtain step increases in 2013 and 2014 with no across-the-board salary increases. In 2015, the Borough proposes to freeze the wages of all employees.

**PBA's Arguments:**

The PBA argues that Riverdale's police officers, even at the top step, are below average as compared with area communities with whom the Riverdale officers regularly work. It asserts that it would take an approximate 2.89% increase on the 2012 base rates alone just to bring the Riverdale Officer up to area average. While the Employer attempts to take credit for a higher than average pay rate in a preceding contract, this change was done years ago and was actually really "equity adjustment". The PBA also notes that, unlike most municipalities in Morris County, Riverdale's officers do not have a percentage-based longevity plan. Rather, they have flat increases in salary of \$1,000 added to pay at certain benchmarks of years' service during the officer's career. These "grade and rank" bonuses reach a maximum at the \$3,000 level and of course, do not increase as base salaries increase.

The Union also points to area base rate percentage increases which have either been awarded or negotiated for 2013 or 2014. The PBA submitted contracts from six area municipalities showing an average increase for 2013 of 2.383% and an average increase for 2014 of 2.21%.

With regard to the Borough's ability to pay and the tax levy cap and appropriations cap, the PBA asserts that the caps have not presented significant problems. It notes that the 2012

municipal budget (P-23) was well within the statutory appropriations cap and in fact, the "unappropriated cap allowance" was \$867,070 - an amount which carries forward into the cap bank for 2013. The PBA also points out that Riverdale has the second-lowest tax rate among the 39 municipalities in Morris County. The PBA attributes this to the substantial number of big box stores and commercial base which Riverdale hosts. The PBA also notes that the Borough has a very high percentage of tax collections at approximately 98% over the last eight years. The PBA further observes that the Borough has one of the highest assumed equalized value rates in all of Morris County.

With regard to the Borough's contention that it has approximately \$101,000 of potential tax refunds due for tax appeals, the PBA points out that the Borough also has an appropriations reserve for tax appeals in the amount of \$293,061.

The PBA observes that owing to the recent retirement of two police captains and the promotion of a sergeant to the chief position, the bargaining unit's overall base costs have been reduced by \$343,000. The PBA also argues that Detective Barone retired in April 2013, thus further reducing the cost of base pay for the bargaining unit.<sup>1</sup> The PBA calculates that the total

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<sup>1</sup>The Borough disputes the PBA's assertion that Barone has retired on a disability pension.

base pay for 2012 was \$1,468,118, and therefore, the amount available under the 2% cap is \$29,362 for each year of the agreement. It notes that at the beginning of 2013 there is only one officer left moving through the salary guide steps and that officer will reach top pay in mid-2013. Therefore, it asserts that because of the reduced size of the force and its attended reduced costs, there are sufficient funds available for a 2% across-the-board increase in at least two years of a three-year contract term.

**The Borough's Arguments:**

The Borough argues improvement received by PBA members under the parties' prior contract places the Borough in the position in which the already existing costs of police compensation are literally squeezing out all other municipal expenditures, including salary increases for non-police employees, which have remained flat for three years.

The Borough notes that when the last contract was signed, it did not anticipate the imposition of a 2% property tax levy cap. Under the 2008-2012 contract, the officers at top step got increases of 4% in 2009, 2010, and 2011, and 11.7% in 2012. Under the 2% levy cap, the salary increases for police have used up the available cap increases and are squeezing all other expenses (B-34). In 2012, police salary increases exceeded the 2% property tax levy increase amount. (B-41) Note that the

allowable levy increase includes 2% of the prior year's tax levy plus an allowance for new ratables. The Borough asserts that civilians have had no increases for two years while the PBA, especially at top step, received "spectacular" increases. As Exhibits B-4 and B-33 graphically illustrate, the step increments payable under the prior contract will consume almost the entirety of the allowable 2% salary increase cap in 2013, and substantial portion of that cap in 2014 and 2015.

Therefore, the Borough argues that its economic package is necessary to allow the Township to absorb the costs of the extremely generous prior contract in order to stay within the confines of a strict property tax levy cap.

The Borough notes that while the parties dispute whether Detective Barone has been placed on disability retirement, it argues that in any event the police officers are not entitled to be "credited with the savings" even if Barone is off the payroll.

The Borough calculated that, in 2012, employees of the bargaining unit were paid, in base salary, a total of \$1,348,118,50, which includes rank and grade pay under Article VI, Section B of the 2008-2012 contract, and step movement for two patrolmen. Two percent of that amount is \$26,962.37, the maximum awardable aggregate base salary increase in any single



year.

The Borough emphasizes that the award herein must include consideration of the impact of the municipal tax levy cap. The 2% levy cap will allow an increase of \$90,776.36 in the amount of taxes to be collected in 2013. In 2012, the 2% levy cap increase was only \$121,845.33 while the total increase for PBA members was \$171,173.58 or \$49,328.25 over the total allowable increase (B-41). The percentage of municipal taxes collected that are allocated to the Police Department is 62.31% (B-34). In the 2012 calendar year, not all municipal revenues were derived from the levy cap. The Borough asserts that these other sources of revenue cannot be taken into account as they will shift from year to year. Only taking the 2% levy cap into consideration, each Borough Department can only receive an allotment increase of 1.5% (B-34). If the PBA is awarded its 2% proposal, the Borough must either exceed the 2% levy cap or decrease spending for every other Borough Department (B-34).

According to the Borough, the PBA proposal exceeds the Borough's allowable levy cap collection and can only come at the expense of other Borough departments or the Borough exceeding its budget. It must be rejected on this ground alone. Additionally, step increments alone account for an increase of 1.6% to the total salary cost of the PBA.

**Existing Wages and Benefits:**

Local 335's bargaining unit are working under an expired

contract that covered the period 2008 through 2012. That contract provided wage increases in the aggregate of 23.7%, which brings Riverdale's police officers up to a top pay of \$106,000, the sixth highest top pay in Morris County. The current salary guide is as follows:

Salary Guide 2012		Increment
Rank	Salary	
Training Per Week	468	
Starting Pay	27,911	19,866
Year 2	47,777	7,943
Year 3	55,720	8,493
Year 4	64,213	2,518
Year 5	66,731	4,427
Year 6	71,158	3,965
Year 7	75,123	30,877
Comp Year 7	106,000	
Sergeant		
Year 1	108,000	3,000
Year 2	111,000	
Lieutenant		
Year 1	116,000	

Of the thirteen current members of the bargaining unit, all but one reached top pay in their rank by the end of 2012. The most recent hire (Hollenstein), will reach top pay in 2014. I note, however, that unlike most New Jersey police departments, Riverdale's officers do not have a percentage-based longevity plan. Rather, the traditional longevity plan was phased-out in favor of a "rank and grade pay" of \$1,000 as

officers hit certain anniversary benchmarks. Therefore, the diminished longevity plan present here affects the comparison with other police departments in the County.

The bargaining unit has the usual array of leave benefits, holiday pay, overtime, clothing allowance, tuition pay, gym memberships, sick leave cash-out upon retirement, and health care coverage. I note that the Borough proposes to ratchet back some of these benefits, which I will discuss below.

**Internal Comparability:**

It appears that the Borough's non-police employees are not represented for purposes of collective negotiations. Its civilian employees have had a salary freeze for 2011 and 2012. By municipal ordinance in 2011 (B-93), the Borough also reduced the sick leave and holiday benefits for its non-police employees.

**External Comparability:**

The PBA submits the following comparison with other municipal top step salary rates:

Oakland	\$112,526
Bloomingtondale	\$102,850
Ringwood	\$111,180
Pompton Lakes	\$106,057
Montville	\$102,236
Lincoln Park	\$117,504
Wanaque	\$98,107
Wayne	\$122,458
AVERAGE TOP STEP PAY BASED ON PBA EXHIBITS	\$109,115
RIVERDALE TOP STEP POLICE OFFICER BASE	\$106,000
RIVERDALE OFFICER MAX COMPARED TO AVERAGE	(\$3,115)

	(2.89%)
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The Borough has provided a wider range of comparison data by supplying top step pay rates for all municipal forces in Morris County follows (B-57):

MORRIS COUNTY TOP BASE PAY								
Rank	Municipality	Step	2008	2009	2010	2011	2012	2013
1	Lincoln Park	14	98,943	104,461	108,639	112,985	117,504	
2	Pequannock	9	95,664	101,330	105,383	109,598	113,982	
3	Chatham Borough	6	82,384			106,634	108,233	110,398
4	Harding	7	92,019	96,277	99,887	103,833	108,090	
5	Florham Park	8	92,741	96,321	100,044	103,007	106,568	110,256
<b>6</b>	<b>Riverdale</b>	<b>7</b>	<b>87,779</b>	<b>91,270</b>	<b>94,901</b>	<b>106,000</b>		
7	Denville	8	90,228	93,889	96,706	99,607	103,093	106,701
8	Chatham Twp.	5	88,263	92,263	95,722	99,312	103,036	
9	Montville	7	87,602	90,887	94,523	98,303	102,236	
34	Roxbury Twp.		85,831	94,576	98,264	102,096	102,096	104,596
10	Morris Twp.	9	89,231	92,800	96,713	98,647	101,079	103,101
11	Kinnelon	8	86,395	89,517	93,445	99,077	101,058	103,079
37	Morris Plains	8	91,035	94,677	98,464		100,433	102,442
12	Mendham Borough		88,597	92,140	97,055	98,511	99,988	101,488
13	Rockaway Twp.	5	85,668	89,113	92,319	95,781	99,373	103,199
35	Mendham Twp.		88,597	92,140	95,826	98,210	99,192	101,176
14	Madison		82,833	86,147	95,338	97,245	99,190	101,174
15	Jefferson Twp.	7	88,329	90,125	91,702	95,173	98,742	104,279
17	Parsippany	9	86,644	90,326	92,584	94,899	97,271	99,703
18	Mt. Olive	6	81,916	84,988	90,126	93,505	97,012	
16	Wharton	6	86,066	89,509	93,089	86,477	96,477	98,407
19	Mt. Arlington		77,018				96,428	99,321
20	Butler		85,616	86,961	92,703	94,326	95,976	97,896
21	Boonton Twp.	6	83,904	87,050	90,315	93,702	95,826	97,993
22	Long Hill	6	86,671	90,004	90,004	92,704	95,485	98,350
30	Rockaway Borough	6	82,202	84,668	87,844	91,138	94,646	
23	Hanover Twp.	7	85,963	88,112	89,874	92,121	93,963	95,843
24	Washington Twp.	7	85,941	88,090	90,072	91,873	93,481	94,883

25	Mtn. Lakes		83,891	87,246	90,011	91,586	93,417	95,519
26	Chester Borough	4	77,022	83,704	86,633	89,665	92,804	
27	Netcong	7	75,050	78,427	81,956	83,394	84,928	86,491
28	Boonton	7	76,744	79,238	81,615	83,247	84,912	86,610
29	Randolph	6	86,547	90,009	93,609	97,353		
31	Morristown	6	83,476	87,024	87,024	90,175		
32	Dover		87,825	96,434	96,434	103,302		
33	Chester Twp.		91,923	95,640	98,987			
36	East Hanover							
	<b>Average</b>		<b>86,200</b>	<b>90,349</b>	<b>93,652</b>	<b>96,436</b>	<b>99,454</b>	<b>100,126</b>

As can be seen by the chart above, Riverdale ranked sixth in the County for top pay of a patrol officer, in 2012. With regard to its adjacent neighboring municipalities, Butler Borough and Pequannock Township, Riverdale has three times the crime rate of Butler and four times the crime rate of Pequannock (B-58). Butler's average residential property value is \$252,702 Pequannock's is \$470,581 while Riverdale's is \$355,154, which is about average between the two. However, I note that Pequannock's top pay rate is \$113,982 while Butler's is \$97,976 putting Riverdale's top pay of \$106,000 at about average between the two. While I consider all of the data supplied by the parties concerning comparables to be relevant, I give greater weight to the comparable salary data of other Morris County municipalities and the two towns adjacent to Riverdale. I conclude that in comparison to Morris County as a whole, Riverdale is about \$6,000 above average top pay rate and it is on par with the average of the adjacent towns. However, as noted previously, because Riverdale does not have

percentage-based longevity plan, that factor must be balanced against the above average base pay rate.

**CPI:**

The most recent Consumer Price Index - All Urban Consumers, published by the Bureau of Labor Statistics (B-49) shows the following changes in CPI over the past three years:

CPI - All Urban Consumers													
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2010	2.4%	1.8%	2.1%	2.1%	2.2%	1.5%	1.5%	1.4%	1.2%	1.5%	1.3%	1.4%	1.7%
2011	1.5%	2.1%	2.3%	2.5%	2.9%	3.2%	3.3%	3.5%	3.8%	3.3%	3.0%	2.7%	2.8%
2012	2.8%	2.6%	2.6%	2.4%	1.8%	1.6%	1.1%	1.4%	1.6%	1.7%	2.0%	2.1%	2.0%

The Employer also provided a comparison between increases in CPI and the annual wage increases provided to Riverdale's police officers since 2006 (B-53). This exhibit demonstrates that while CPI increased 15% over the past six years, police salaries increased 31.85% over the same time period.

**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.

**Budget and CAPS:**

**2012:**

Total general revenue for 2012 was \$6,319,310 as compared with \$7,123,840 in 2011. Approximately 75% of the Borough's revenue comes from local property taxes. According to the Summary Levy Cap Calculation Worksheet for 2012, local property taxes contributed \$4,551,738 to the total general revenue. The remainder of the revenue comes from other sources such as State Aid, fees, permits and fines. State aid, without offsetting appropriations, was anticipated at \$439,515 for both 2012 and 2011. Total State aid included the Borough's Energy Receipts Tax of \$425,759.

The anticipated reserve for uncollected taxes was based on an estimated 96.75% of tax collections or \$453,754; the anticipated reserve for pending tax appeals was \$20,000 as was anticipated and paid in 2011.

Anticipated surplus was \$575,000 for 2012; and \$800,000 for 2011. The Borough's surplus balance as of December 31, 2012 was

\$983,483; the anticipated amount to be used in the 2012 budget was \$575,000 leaving a remaining balance \$408,483.

Total water and sewer utility revenues were \$1,732,425; and anticipated at \$1,892,312 for 2011, of which \$2,282,205 was realized.

Total anticipated general appropriations for 2012 were \$6,319,310; as compared with \$7,123,840 for 2011, of which \$6,906,617 was paid, leaving \$217,223 as reserved. The following chart shows the Borough's appropriations CAP calculations for 2012:

<b>2012 Appropriations CAP</b>	
Operating Appropriations Before Additional Exceptions (After 2.5% CAP)	5,198,321
Amount of New Construction	33,680
2010 CAP Bank	179,655
2011 CAP Bank	512,127
2012 CAP Bank	<u>50,715</u>
<b>Total Allowable 2012 Appropriations</b>	<b>5,974,498</b>
Actual Total Allowable General Appropriations "Within CAPS"	-
Unappropriated CAP Balance	<b>861,270</b>

Total public and private programs, offset by revenues, anticipated were \$14,231; and \$289,842 for 2011 as anticipated and realized. Payment of bond anticipation notes and capital notes was \$300,000; and \$600,000 for 2011 as anticipated and reserved.



The PFRS Local Employer Pension Bills (P-29) show that the Borough's original bill for its PFRS contributions in 2012 was \$541,660; with a revised amount was 428,120, resulting in a reduction of \$61,540. In 2011, the Borough budgeted \$326,945 towards its pension contributions of which \$319,879 was paid.

The Borough anticipated spending of \$1,855,300 for total police department salaries and \$48,000 for other in 2012. The total salaries and wages for Borough employees were \$2,822,595 and \$1,573,940 for other. The Police Department's salaries equate to 65% of its total salaries appropriation.

In 2012, the Borough taxed up to the maximum allowable amount to be raised by taxation. The following chart shows the levy cap calculation:

<b>2012 Tax Levy CAP</b>		
<b>Prior Year Amount to be Raised by Taxation for Municipal Purposes</b>		<b>4,414,761</b>
Net Prior Year Tax Levy for Municipal Purpose Tax CAP Calculation		4,408,261
Plus 2% CAP Increase		88,165
Total Exclusions		21,618
Adjusted Tax Levy Prior to Exclusions		4,518,044
Adjusted Tax Levy After Exclusions		4,518,044
New Ratables	6,958,700	
Prior Years Local Municipal Purpose Tax Rate (per 100)	0.484	
New Ratable Adjustment to Tax Levy		33,680
CY 2011 CAP Bank Utilized in CY 2012		<u>14</u>

Maximum Allowable Amount to Be Raised by Taxes		4,551,738
<b>Amount to be Raised by Taxation for Municipal Purposes</b>		<b>4,551,738</b>

As can be seen from the chart above, the Borough increased its amount to be raised by taxation for municipal purposes by \$136,997 of which \$88,165 was within the allowable CAP.

**2013:**

Riverdale's 2012 budget reflects the net valuation taxable of property liable to taxation for the 2013 tax year as \$801,110,100. At the time of the hearing in this matter, the Borough's 2013 budget had not yet been adopted; however the Borough did provide its 2013 levy cap calculation worksheet.

<b>2013 Tax Levy CAP</b>		
<b>Prior Year Amount to be Raised by Taxation for Municipal Purposes</b>		<b>4,538,818</b>
Net Prior Year Tax Levy for Municipal Purpose Tax CAP Calculation		4,532,318
Plus 2% CAP Increase		90,646
Total Exclusions		282,449
Adjusted Tax Levy Prior to Exclusions		4,905,412
Adjusted Tax Levy After Exclusions		4,518,044
New Ratables	7,782,700	
Prior Years Local Municipal Purpose Tax Rate (per 100)	0.498	
New Ratable Adjustment to Tax Levy		38,758
CY 2011 CAP Bank Utilized in CY 2012		14
CY 2012 CAP Bank Utilized in CY 2012		<u>21</u>

Maximum Allowable Amount to Be Raised by Taxes		4,944,205
<b>Amount to be Raised by Taxation for Municipal Purposes</b>		<b>4,944,190</b>

As shown in the chart above, for 2013 the Borough has a \$90,646 allowable cap increase and anticipates increasing its amount to be raised by taxation for municipal purposes by \$405,372.

**Statutory Considerations:**

I have considered all of the parties' arguments and the facts in the record. In applying the statutory criteria, I find that particular weight must be given to the public interest. This is not only a matter of applying a mathematical calculation to determine whether the award will be within the Borough's appropriations cap and levy cap. The Employer's ability to pay for an award does not mean that the employees are entitled to it. More specifically, the amount available under the 2% arbitration hard cap (6% over 3 years) is a statutory maximum - it is not an automatic conclusion that the award should be the maximum amount possible.

Part of the public interest also requires consideration of the Employer's appropriation cap and its levy cap limitations. While the Borough has argued that any increase above 1.5% of current base pay costs would cause it to violate its levy cap limits, I find that this is not an accurate claim. I agree that the PBA's proposed increases across-the-board on all current

salaries, plus increased costs in longevity and increments, would jeopardize the Borough's ability to stay within the levy cap. However, I have awarded the Borough's proposal for 2013 - zero percent across-the-board increases and only the payment of increments and longevity increases. I particularly note that these payments have already been implemented. Further, the amount of the increase for 2013 for bargaining unit base salaries is limited by the hard cap to \$26,962. Therefore, even assuming that the Borough again uses 65% of its budget for the Police Department in 2013, this award will not exceed the Borough's appropriation cap or tax levy cap.

Further, I have considered the current complement of salaries and benefits enjoyed by Riverdale's police officers, and I have given weight to the statutory criteria of comparing those wages and benefits to other Borough employees and police officers in other towns in Morris County and the immediate surrounding area. I have also considered the factors of cost of living, percentage increases in other area municipal police departments, and the State-wide average increases, from awards and voluntary settlements, as reported by the Public Employment Relations Commission for 2012. However, the overriding considerations in this matter are the 2% hard CAP and local tax levy cap.

**Application of the 2% Hard CAP:**

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 (emphasis added).

Here, the total base salary paid in base year 2012 was \$1,348,118.50<sup>2</sup> 2% of the total base paid is \$26,962.37. This is the maximum that I can allocate for salary increases for each year of the contract. Therefore, for the life of a three-year contract, the maximum increases may not exceed an aggregate of \$80,886 (\$26,962.37 x 3 years). Moreover, it must include the amounts needed to fund any across-the-board increases, the cost of increments, and increases in longevity payments as well. See, Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012). In addition, New Milford cautions against crediting the bargaining unit with any of the savings that might

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<sup>2</sup>The Borough used the correct methodology to calculate its total base paid and accurately arrived at a total base of \$1,348,118. The PBA calculated the total base paid at \$1,468,118, which appears to be based upon the contractual rates for each employee - the final 2012 salary on the step guide, times the number of employees at each step. This is not accurate because it discounts the fact that employees did not earn this salary until respective anniversary dates. The salaries, as well as longevity payments, for 2012 must be pro-rated.

be generated from retirements or separations from service since the end of the base year.

**2013:**

The chart immediately below shows the total base pay paid for each employee in 2012 together with their longevity payments and then advances the employees forward for built-in contractual payments through 2013:

Name	DoH	Rank	2012 Step Amount	Base Pay Paid 2012	Old Long	2013 Long	Flow Through of 2012 Incrmt	2013 Incrmt Cost	Total Paid In 2013
MacIntosh	1/1/95	Sgt	111,000	111,000	1,000	1,000		0	113,000
Biro	7/26/99	Sgt	111,000	111,000	1,000			0	112,000
Danzo	7/29/91	Sgt	111,000	111,000	2,000			0	113,000
Bogert	8/1/98	Sgt	111,000	111,000	1,000			0	112,000
Harden	2/16/03	Ptl	106,000	106,000				0	106,000
Keil	6/10/02	Ptl	106,000	106,000		1,000		0	107,000
DiGirolamo	7/1/02	Ptl	106,000	106,000		1,000		0	107,000
Barone	10/16/03	Ptl	106,000	106,000				0	106,000
Famularo	6/15/04	Ptl	106,000	106,000				0	106,000
Quant	12/16/03	Ptl	106,000	106,000				0	106,000
Roemmelle	1/17/05	Ptl	106,000	104,714			1,286	0	106,000
McDermott	7/9/05	Ptl	106,000	89,275			16,725	0	106,000
Hollenstein	6/7/07	Ptl	<u>71,158</u>	<u>69,129</u>			<u>2,029</u>	<u>2,260</u>	<u>73,418</u>
			1,363,158	1,343,118	5,000	<b>3,000</b>	<b>20,040</b>	<b>2,260 *</b>	1,373,418
	Plus Longevity		<u>5,000</u>	<u>5,000</u>					
			<b>1,368,158</b>	<b>1,348,118</b>					
		2% Hard Cap		<b>26,962</b>					
		New Money		<b>25,300</b>					

\* Hollenstein's 2013 increment value is \$3,965 of which he receives 57% in 2013, which equals \$2,260. The remaining cost of this increment will "flow-through" to 2014.

The two officers who moved from step "year 7" to step "completed year 7" during 2012 had part of that increment cost paid in 2012 and the remainder paid in 2013. In addition, Hollenstein moved from step "year 6" to "year 7"

in 2012 and received part of that increment in 2012 and the remainder in 2013. I referred to these costs above as "flow-through" and this represents an additional cost of \$20,040 in 2013 to the Borough. The cost of increments (\$22,300) and increases in longevity as officers hit new benchmarks (\$3,000) represents a total cost increase as shown below to the Borough for 2013 of \$25,300.

<b>2013 Cost Increases</b>	
1,373,418	Total Base Pay Plus Longevity in 2013
1,348,118	Total Base Pay Plus Longevity in 2012
<b>25,300</b>	New Money

These built-in cost increases effectively deplete the available pot of money under the 2% hard CAP leaving virtually nothing for across-the-board increases in 2013, and none will be awarded.

**2014 :**

Name	2013 Step Amount	Base Pay Paid 2013	.5% ATB Eff 1/1/14	Old Longvty	2014 Longvty	2014 Incrmnt Cost	Flow-Through of 2013 Incrmnt	Total Base + Longvty	New 2014 Base
MacIntosh	111,000	111,000	555	2,000				113,555	111,555
Biro	111,000	111,000	555	1,000				112,555	111,555
Danzo	111,000	111,000	555	2,000	1,000			114,555	111,555
Bogert	111,000	111,000	555	1,000				112,555	111,555
Harden	106,000	106,000	530		1,000			107,530	106,530
Keil	106,000	106,000	530	1,000				107,530	106,530
DiGirolamo	106,000	106,000	530	1,000				107,530	106,530
Barone	106,000	106,000	530		1,000			107,530	106,530
Famularo	106,000	106,000	530					106,530	106,530
Quant	106,000	106,000	530		1,000			107,530	106,530
Roemmelle	106,000	106,000	530					106,530	106,530
McDermott	106,000	106,000	530					106,530	106,530
Hollenstein	75,123	73,418	376			17,600	1,714 *	93,108	106,530
		<b>1,365,418</b>	<b>6,836</b>	<b>8,000</b>	<b>4,000</b>	<b>17,600</b>	<b>1,714</b>	<b>1,402,568</b>	1,404,990

	Plus Longevity	<b>8,000</b>							
		<b>1,373,418</b>							

\* Hollenstein's 2014 increment value is \$31,031, of which he receives 57% in 2014, which equals \$17,600. He also receives the remainder of his 2013 increment which equals \$1,714 to be paid in 2014.

Thus, for 2014, the Employer has \$19,314 in increment costs and \$4,000 in additional longevity costs. For 2014, I award a .5% across-the-board increase for all employees effective January 1, 2014. The cost of the across-the-board increases for 2014 is \$6,836 for a total of \$29,150 of new money.

2014 Cost Increases	
1,403,568	Total Base Pay Plus Longevity in 2014
<u>1,373,418</u>	Total Base Pay Plus Longevity in 2013
<b>30,150</b>	New Money

**2015:**

Name	Rank	2014 Step Amount	Base Pay Plus Lgvtly Paid 2014	1.5% ATB Eff 7/1/15	Old Lgvtly	2015 Lgvtly	2015 Incrmnt	Flow-Thru 2014 Incrmnt	Total Base + Lgvtly Paid in 2015	New 2015 Base
MacIntosh	Sgt	111,555	113,555	837	2,000				114,392	112,392
Biro	Sgt	111,555	112,555	837	1,000				113,392	112,392
Danzo	Sgt	111,555	114,555	837	3,000				115,392	112,392
Bogert	Sgt	111,555	112,555	837	1,000				113,392	112,392
Harden	Ptl	106,530	107,530	799	1,000				108,329	107,329
Keil	Ptl	106,530	107,530	799	1,000				108,329	107,329
DiGirolamo	Ptl	106,530	107,530	799	1,000				108,329	107,329
Barone	Ptl	106,530	107,530	799	1,000				108,329	107,329
Famularo	Ptl	106,530	106,530	799		1,000			108,329	107,329
Quant	Ptl	106,530	107,530	799	1,000				108,329	107,329
Roemmelle	Ptl	106,530	106,530	799					107,329	107,329



McDermott	Ptl	106,530	106,530	799					107,329	107,329
Hollenstein	Ptl	106,530	93,108	799				13,410	107,317	107,317
<b>TOTAL</b>			1,402,568	<b>10,537</b>	<b>12,000</b>	<b>1,000</b>		<b>13,410</b>	<b>1,427,515</b>	1,415,515

As shown above, the cost of longevity increases is \$1,000 and the "flow-through" cost of 2014 increments is \$13,410 for a total built-in cost of \$14,410. In addition, I have awarded a 1.5% across-the-board increase effective July 1, 2015 for all employees. The cost of this increase for one-half a year in 2015 is \$10,537. This represents a total cost to the Employer of \$24,947 as summarized in the chart below:

<b>2015 Cost Increases</b>	
1,428,515	Total Base Pay Plus Longevity in 2015
-1,403,568	Total Base Pay Plus Longevity in 2014
<b>24,947</b>	New Money

**Total Cost of the Award:**

In summary, I have awarded continued increment payments and longevity increases for each year of the 2013 through 2015 contract. I have awarded no across-the-board wage increase for 2013, a .5% increase effective January 1, 2014, and a 1.5% increase effective July 1, 2015. The cost of this award is as follows:

<b>Cost of the Award</b>					
<b>Year</b>	<b>Increment Costs</b>	<b>Longevity Increases</b>	<b>ATB %</b>	<b>ATB Increases</b>	<b>Total</b>
2013	22,300	3,000	0.0%	0	25,300
2014	19,314	4,000	0.5%	6,836	30,150
2015	13,410	1,000	1.5%	10,537	24,947
				<b>Total</b>	<b>80,397</b>

**Article I - Recognition Clause:**

The PBA demands to include captains within the recognition clause of the agreement. The Borough has not made a proposal to alter the recognition clause in this arbitration; however, I take administrative notice that the Borough has filed a Petition for Unit Clarification with the Public Employment Relations Commission which seeks to remove the lieutenants from the bargaining unit.

Neither the lieutenant positions nor the captain position has been filled since at least 2011. However, the expired contract does provide a salary rate for captains.

Without specific information concerning the duties and responsibilities of a captain, it is not possible to determine the merits of including the captain in the unit. I note that it has long been the policy of the Public Employment Relations Commission not to decide issues of unit composition when the position is not currently filled. This is so because the duties of the position would be speculative. The record does not permit me to decide this issue for the same reasons. Moreover, I believe that such an issue is better left to the Commission's jurisdiction concerning the composition of the appropriate bargaining unit if and when the position becomes filled. The proposal is denied.

**Article IV - Tour of Duty and Overtime:**

The Borough proposes to eliminate the 2-hour minimum overtime for court duty. The current contract provides,

B. Whenever an employee is required to attend a court at a time outside of his tour of duty and the court attendance is required because of his activities as a police officer, the employee shall be compensated as follows:

. . . 2. Time and one-half (1-1/2) the regular hourly straight time rate of pay for time spent in the Riverdale Municipal Court with a minimum guarantee of two (2) hours pay. An effort should be made to schedule such court time during work hours.

The Borough seeks to add this sentence:

If that time spent in Court is contiguous, before or after, with a regularly scheduled shift, the time and one-half (1-1/2) will be based on actual hours worked.

The Mayor testified that court is normally held beginning at 4 p.m. Police shifts change at 6 p.m. This means that either an officer must come in earlier than his 6 pm. start time to appear in court or an officer on duty during court time may be held over beyond his shift to testify.

The PBA argues that several alternatives are available to the Borough to otherwise cure this problem, such as scheduling officers to appear in court while they are on duty, or moving the starting time of the court sessions. The PBA asserts that the Township sees seeks to resolve every issue by removing reducing officers' benefits.

I find that the Borough's proposal is reasonable. When an officer comes in to work during his off-duty time, e.g., a day

off or after he goes home for the day, to appear in court then he should be compensated for a two-hour minimum. This is reasonable compensation given that he has to abandon personal pursuits, don his uniform, drive in to Town Hall, then wait for his case to be called, and then testify. However, when that time is an extension of his regular workday, it should be paid as any other overtime would be - that is, at time and one half for the actual overtime worked. The Borough's proposal is awarded.

The Borough also proposes to change paragraphs A and D which currently provide that a unilaterally imposed work schedule change implemented with less than forty-eight (48) hours' notice shall be compensated at the overtime rate. The Borough proposed to change the notice period to twelve (12) hours. I do not believe the Borough has sufficiently justified this proposal. Therefore, this proposal is denied.

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The PBA argues that several alternatives are available to the Borough to otherwise cure this problem, such as scheduling officers to appear in court while they are on duty, or moving the starting time of the court sessions. The PBA asserts that the Township sees seeks to resolve every issue by removing reducing officers' benefits.

I find that the Borough's proposal is reasonable. When an officer comes in to work during his off-duty time, e.g., a day off or after he goes home for the day, to appear in court then he should be compensated for a two-hour minimum. This is reasonable compensation given that he has to abandon personal pursuits, don his uniform, drive in to Town Hall, then wait for his case to be called, and then testify. However, when that time is an extension of his regular workday, it should be paid as any other overtime would be - that is, at time and one half

for the actual overtime worked. The Borough's proposal is awarded.

The Borough also proposes to change paragraphs A and D which currently provide that a unilaterally imposed work schedule change implemented with less than forty-eight (48) hours' notice shall be compensated at the overtime rate. The Borough proposed to change the notice period to twelve (12) hours. I do not believe the Borough has sufficiently justified this proposal. Therefore, this proposal is denied.

**Article IV A. - Work Related Injuries:**

The current contract provides,

1. In the event a police officer sustains a work related injury, as recognized and defined by the prevailing law of Workers Compensation in New Jersey, the governing body shall grant a leave of absence for a period not to exceed six (6) months with pay and all other benefits as provided by the terms of this Agreement; provided, however, that the officer shall submit a certificate of a physician attesting to the officer's inability to perform police duties. Upon the demand of the governing body, the said officer shall submit to a physical examination by a physician selected by the said body. In the event that the physicians chosen by the parties should differ on the issue of the officer's ability to perform police functions, the parties shall confer and agree upon the choice of a third physician whose judgment shall be binding on both parties. Immediately upon expiration of the aforesaid leave or absence, the officer may return to his police duties provided he is certified by a physician to be fit for duty. Upon return to his police duties, the officer shall be reinstated to his former position and shall be entitled to the same pay and benefits he would then be entitled to receive had he not been on the leave of absence. Any salary, income or benefits collectible from other sources as a result of employment with the Borough shall be

deductible from the income and benefits due herein during the leave of absence. Workers Compensation pay shall be deductible from the income and benefits provided by the Employer to the police officer during such leave of absence.

The PBA proposes to change the covered period from six months to one year. The Borough proposes to reduce the covered period to the thirty (30) days. The PBA says that the proposed changes from both sides are based upon the recent career-ending injury to an officer on duty.

I decline to award either of these proposals and I will leave the coverage period at six (6) months. Neither party has sufficiently justified amending the Article.

**Article IV-B - Non-Work Related Injuries:**

The current contract language provides,

1. In the event an officer sustains a non-work related injury, the governing body shall grant the officer a leave of absence from the department for a period not to exceed six (6) months without pay during which period all other benefits as provided by this Agreement shall continue; provided, however that the officer shall submit a certification of physician attesting to the officer's inability to perform police duties. Upon demand of the governing body, the said officer shall submit to a physical examination by a physician selected by said body. In the event the physicians differ on the issue of the officer's ability to perform police duties, the parties shall confer and agree upon the choice of a third physician, whose judgment shall be binding on both parties. Immediately upon expiration of the leave of absence, the officer shall be returned to duty provided he is certified by a physician to be fit for duty. Time spent on leave of absence as provided by this section shall not count as service time for any purposes under this Agreement. In the event an officer is not fit to return to

duty upon the expiration of the aforesaid leave of absence, the governing body may grant additional periods of leave not to exceed six (6) months during which period(s) of time the officer shall not receive any pay or benefits from the municipality under the terms of this Agreement. Prior to making its decision as to whether to grant an additional period of leave, upon the demand of the governing body, the officer shall submit to a physical examination by a physician selected by said body.

2. In the event the physicians chosen by the parties should differ on the issue of the officer's ability to perform police duties, the parties shall confer and agree upon the choice of a third physician whose judgment shall be binding on both parties. Immediately upon the expiration of the leave of absence, the officer shall return to his police duties provided he is certified by a physician to be fit for duty. Upon return to these duties, the officer shall be reinstated to his former position and shall be entitled to the same pay and benefits he would then be entitled to receive had he not been on leave of absence. In the event an officer is unable to return to his police duties as defined under this section, the officer at the termination of the first six (6) months leave of absence shall be permitted to use all his accumulated sick days and vacation days prior to any additional period(s) of leave. Time spent on additional periods of leave pursuant to this section shall not account as service time for any purpose under the Agreement.

The Borough demands that this provision be modified to provide a leave of absence for a period not to exceed 30 days. I note particularly that this provision permits an employee to take an unpaid leave of absence from duty owing to an injury not on-duty. While I understand the Borough's concern that during such a leave the Borough would be obligated to potentially backfill



the employee's position with overtime, at significant expense, I also understand the PBA's position that a career officer should not have his position terminated because he sustains an injury while not on duty. The Borough has other alternatives to limit the potential for abuse of this provision. I decline to award any change in this contract provision.

**Article V - Sick Leave:**

The Borough proposes to reform the provisions of Article V as follows:

A. 1. After the accumulation of 12 sick days during the first calendar year of employment after initial appointment, a full time employee covered by this Agreement shall accrue sick leave with pay on the basis of one-half (1/2) of a twelve (12) hour working day per month. Any amount of sick leave allowance not used in a calendar year shall accumulate to the employee's credit from year to year for a maximum of one hundred thirty (130) days and may be used, if and when needed, for sick leave. An employee accumulating sick leave time under this provision shall no longer be reimbursed for accrued and unused sick leave at the time of retirement from his employment.

The current provision states,

A.1. Sick leave with pay shall accrue to any full-time employee covered by this Agreement on the basis of one (1) ~~twelve (12)~~ hour working day per month during the remainder of the first calendar year of employment after initial appointment. Following the completion of the remainder of the first calendar year of employment after initial appointment, a full-time employee covered by this Agreement shall accrue sick leave with pay on the basis of one (1) ~~twelve (12)~~ hour working day per month. Any amount of sick leave allowance not used in a calendar year shall accumulate to the employee's credit from year to year for a maximum

of three hundred (300) days and may be used, if and when needed, for sick leave. An employee accumulating sick leave time under this provision shall be reimbursed for accrued and unused sick leave at the time of retirement from his employment up the maximum of three hundred (300) days at a rate of thirty (\$30.00) dollars per day.

In essence, the Borough proposal seeks to (a) cut the amount of sick leave earned by one-half; (b) cut the maximum sick leave bank from 300 hours to 130 hours; and (c) eliminate the cash out of sick leave upon retirement.

The Borough argues that there has been unfettered abuse of the Borough's leave policies by PBA members. As demonstrated in Exhibit B-38, in 2012, PBA members used 1400 vacation hours, 908 compensatory hours, 1901.8 sick hours, and 1320 holiday hours for a total of 5650.8 hours of leave time. Applying a twelve-hour shift schedule, officers have missed a total of 532 shifts at a total cost to the taxpayers of \$278,425.66. Only one Officer has missed less than 15% of his scheduled shifts. The Borough further asserts that on average, officers are off duty over 35% of the days that they would be scheduled to work.

Additionally, the Borough asserts that the sick leave adjustment is supported by comparison to other Borough employees. All other Borough employees have had their sick leave reduced to six days per year, and have had their ability

to cash-out sick time capped. Indeed, under this proposal, police officers would still receive more time off than their civilian counterparts. Police officers will receive six days off per year at twelve hours per day, or 72 sick hours per year. Civilians will receive six days of sick leave based on an eight-hour day, or 48 sick hours per year (B-93).

The Borough asserts that its sick leave proposals aim to curtail both the accumulation of sick leave time and any attempt to remain on sick leave without contacting the Department. As the Mayor testified at hearing, sick leave is intended to provide economic security for those who are absence due to illness or injury; it was not intended to be an individual retirement account.

The PBA argues that the Employer has provided no justification other than the Mayor's desire to make a change. It further contends that the proposed elimination of the sick leave buyout is also without rationale.

While I am sympathetic to the Borough's concerns regarding its views to be an excessive use of sick leave, I am not convinced that the Borough's proposal will accomplish the desired objective of reducing sick leave use. The Borough has other avenues at its disposal to challenge the legitimate use of sick leave and to motivate employees to improve attendance. Certainly it would seem that eliminating the sick leave cash-out

upon retirement provision would be counter-productive towards an end goal of reducing absenteeism, as it is the only positive incentive provided to employees to conserve sick leave. Further, other than cutting the sick leave of their civilian employees to six days a year, the Borough has provided no evidence that such a sick leave benefit is the norm for any other municipal police force. I find that the evidence concerning the internal comparables of the Borough civilian employees is insufficient to award such a draconian measure. This same is also true with the Borough's proposal to cap accumulated sick leave at one-hundred and thirty days and this proposal is also declined.

With regard to the Borough's proposal to eliminate the officer's ability to cash-out unused sick leave upon retirement, insufficient data has been provided with regard to how much leave is currently in employees' banks and therefore how much the Borough is proposing the police officers be required to forfeit. Accordingly, I find that this proposal has not been adequately supported and I do not award it.

The Borough also proposes to change Section B(2) of this article to reduce the number of days an employee might be absent without notice before the employee has been deemed to have resigned. Article V, Section B. 2 of the expired contract states,

a. If an employee is to be absent for reasons that entitle him to sick leave, he shall promptly notify his supervisor no later than his scheduled reporting time.

b. Failure to so notify his supervisor may be cause for denial of the use of sick leave for that absence and may constitute cause for disciplinary action unless a bona fide reason acceptable to the Borough has been submitted and approved.

c. Absence without notice for five (5) consecutive days shall constitute a resignation.

The PBA proposes to add the word "unexplained" before the word absence in section 2(b). The Borough wants to change section 2(c) to 2 consecutive days.

The contract already requires employees to notify the Employer when an absence is anticipated by the beginning of his shift. It further provides that failure to do so might constitute cause for discipline if the employee does not provide a valid reason. In my view, in the absence of a valid reason, there should never be an occasion where an employee is a "no-call/no-show" for more than two days.

Accordingly, I will reform the language, pursuant to the Borough's proposal to provide than:

c. Unexplained absence without notice for two (2) consecutive days shall constitute a resignation.

**Article VI. Longevity and Rank and Grade Pay:**

The longevity and rank and grade pay provisions are found

at Article VI of the expired contract, which states,

A. Members of the department shall be paid longevity compensation at the following rates for years' service - two (2%) percent for each five (5) years' service:

5 years' service	2%
10 years' service	4%
15 years' service	6%
20 years' service	8%
24 years' service	10%

Employees hired on or after September 13, 1989 will not be eligible for longevity compensation.

B. All officers hired after September 13, 1989 shall receive a rank and grade increase. The rank increase will be a rank of first class added to the officer's rank. The base pay increase will be added to the rank increase at a rate of one thousand dollars at the start of the following years of service:

Start of 12th year of service  
Start of 19th year of service  
Start of 24th year of service

The PBA's Final Offer states that it seeks to delete the grandfather provision in the last sentence of Paragraph A.

At hearing, the PBA clarified that, by eliminating the "grandfathering language," it seeks to make paragraph A. applicable to all employees, and to eliminate paragraph B. On the other hand, the Borough proposes to eliminate all longevity and rank and grade pay, paragraphs A. and B.

The PBA argues that longevity is a common benefit enjoyed by virtually all police departments in the proofs submitted by both parties in this proceeding. In Riverdale the longevity benefit was lost many years ago. In its place was a modest One

Thousand Dollar (\$1,000.00) adjustment which occurs at three points during a twenty-five year career. For the sake of comparison, this adjustment provision will be considered as a longevity program for comparisons below. The chart below compares the longevity maximum benefits based upon PBA proofs in evidence:

LONGEVITY VALUE COMPARISONS

(A)	(B)	(C)
PBA EXHIBIT	MAXIMUM LONGEVITY BENEFIT	LONGEVITY FORMULA
Oakland	\$13,503	12% @ 23 Years
Bloomington	\$7,714	7.5% @ 24 Years
Ringwood	\$11,843	10% @ 14 Years
Pompton Lakes	\$10,605	10% @ 25 Years
West Milford	\$9,874	10% @ 20 Years
Montville	\$7,157	7% @ 20 Years
Wanaque	\$9,810	10% @ 20 Years
Wayne	\$14,695	12% @ 23 Years
MAXIMUM LONGEVITY AVERAGE	\$10,650	
RIVERDALE	\$3,000	THIS IS NOT LONGEVITY BUT THE TOTAL OF 3 PAYMENTS @ 24 YEARS PER (J-1, p.8)
COMPARISON OF RIVERDALE TO LONGEVITY AVERAGE	(\$7,650)	

The PBA asserts that enormous shortfalls are illustrated in the compensation program for the Riverdale Officer. The average longevity benefit is, as of 2012 pay rates, Ten Thousand Six Hundred Fifty Dollars (\$10,650.00). The modest Three Thousand Dollar (\$3,000.00) adjustments, which are only effective at

twenty-four (24) years of service in total, pale by comparison. The shortfall in compensation at maximum benefit is Seven Thousand Six Hundred Fifty Dollars (\$7,650.00) based upon 2012 rates. The date of this computation in the chart above, 2012 rates is significant because all of the programs illustrated are percentage based. That is as base pay rises the value of the longevity plan calculated in percentages also rises. This is not so in Riverdale where the fixed value of the three one thousand Dollar (\$1,000.00) plateaus actually is reduced in percentage comparison as the base rises.

The Borough argues that the PBA's proposal to "resurrect" the longevity program is prohibited by N.J.S.A. 34:13A-16 in that it amounts to a "new economic item" and that it would exceed the 2% hard cap.

Under the current rank and grade plan in Article VI, Section B, employees receive a one-thousand dollar longevity payment beginning at the 12<sup>th</sup> year of service, a two-thousand dollar longevity payment beginning at the 19<sup>th</sup> year, and a three-thousand dollar longevity payment beginning at the 24<sup>th</sup> year. Under this current plan, longevity payments for the bargaining unit will total \$8,000 in 2013. Under the PBA proposal longevity pay would increase as shown in the chart below, to \$53,582.



Name	DoH	Rank	Base Pay Paid 2013	Long %	Long Amount 2013
MacIntosh	1/1/1995	Sgt	111,000	6%	6,660
Biro	7/26/1999	Sgt	111,000	4%	4,440
Danzo	7/29/1991	Sgt	111,000	8%	8,880
Bogert	8/1/1998	Sgt	111,000	6%	6,660
Harden	10/11/2005	Ptl	106,000	2%	2,120
Keil	6/10/2002	Ptl	106,000	4%	4,240
DiGirolamo	7/1/2002	Ptl	106,000	4%	4,240
Barone	10/16/2003	Ptl	106,000	4%	4,240
Famularo	6/15/2004	Ptl	106,000	2%	2,120
Quant	12/16/2003	Ptl	106,000	4%	4,240
Roemmelle	1/17/2005	Ptl	106,000	2%	2,120
McDermott	7/9/2005	Ptl	106,000	2%	2,120
Hollenstein	6/7/2007	Ptl	<u>75,123</u>	<u>2%</u>	<u>1,502</u>
<b>Total</b>			1,367,123		<b>53,582</b>

This increase of \$45,582 is not within the capability of the Borough's budget; additionally, it would significantly impact upon the available monies permitted under the 2% hard CAP. Therefore, this proposal must be denied.

The Borough's proposal to eliminate the rank and grade pay must also be denied. Most police departments in New Jersey have some form of reward for an officer's long service to the department; whether it is longevity pay based upon a percentage of base pay, longevity in the form of a flat dollar amount, or "Senior Officer pay" as a separate salary guide step, or "rank and grade" pay, the effect is to compensate an employee for long service to the department. Here, there are no officers remaining on the force who continue to get the longevity payment. The rank and grade pay is a very modest substitute for

longevity. Other than the cost savings, the Borough has not justified the proposal. Such a proposal, if awarded, would diminish the compensation of present employees, adversely affect employee morale, and is not supported by comparable data from other towns. Except for the housekeeping part of eliminate paragraph A because it no longer applies, the parties' proposals concerning this clause are both denied.

**Article VI - B Holidays:**

The PBA proposes to add two holidays per year. The Borough asks to reduce the holidays from the existing 11 to 6: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day as holidays, and to convert the remaining 5 holidays to personal days.

Officers are contractually entitled to 4 personal days per year and 11 paid holidays per year. In the last contract negotiations, the Borough sought to trim the number of holidays. The parties agreed to reduce the holiday benefit from 12 to 11, but to increase the number of personal days from 2 to 4. With regard to holiday pay, the contract provides,

Holiday Pay: In the event a member is scheduled to work a holiday, those members shall be compensated a sum equivalent to one and one-half (1-1/2) times his hourly rate for hours worked on the holiday and, in addition thereto, each member working a holiday shall be granted one (1) day off . . .

The Borough argues that employees would still enjoy

the same number of days off as before but the conversion of five holidays to personal days would give the Chief greater flexibility in scheduling.

The PBA acknowledges that under this proposal officers would have the same aggregate number of days off, however, it also points out that the change would impact on employee's overtime compensation, as holidays (unlike personal days) are paid at time-and-one-half.

I am not inclined to grant either proposal. The PBA has not justified its demand for an additional holiday off by the record evidence. Moreover, an officer working a holiday receives time-and-one half overtime pay for the day and a replacement day off. The effect of the Borough's proposal would be to decrease the total number of days officers could work and be paid at the overtime rate. While I am sensitive to the needs of the Borough to trim its overtime budget, in all fairness, the number of existing holidays is reasonable when compared with other municipalities, and the compensation rate is also not out of line with the comparable data. For these reasons, I am not inclined to grant the Borough's proposal, nor will I grant the PBA's proposal for additional holidays.

**Article VII - Clothing Allowance:**

PBA proposes to increase officers' clothing allowance by

\$400. In its final offer, the Borough proposed to eliminate the special rate for the lieutenant's clothing allowance (Section B) and to eliminate the reimbursement for safety eyeglasses (Section D). At the arbitration hearing, with regard to the uniform allowance, the Borough counter-proposed a direct reimbursement plan for the purchase of uniforms.

The expired contract provides for an annual uniform allowance of \$850, payable directly to the officer. The contract further provides that the officer is responsible for purchasing and maintaining his uniform pursuant to departmental standards. Lieutenants are provided with a clothing allowance of \$1150.

The PBA argues that the clothing allowance provided to Riverdale's officers is below average by \$142 per year. It presents these comparisons to neighboring towns:

**ANNUAL CLOTHING  
ALLOWANCE**

Oakland	\$1,200
Ringwood	\$700
Pompton Lakes	\$900
Montville	\$1,300
Wanaque	\$900
Wayne	\$950
AVERAGE	\$992
RIVERDALE	\$850
RIVERDALE COMPARED TO AVERAGE	(\$142)

The PBA argues that the rate in Riverdale is below average by one hundred forty-two dollars (\$142.00).

The Borough argues that the present clothing allowance is adequate and does not need adjustment. It notes that 11 Morris County Police Departments offer no clothing allowance whatsoever. These municipalities include Denville, Florham Park, Lincoln Park, Long Hill Township, Morris Township, Mount Olive, Parsippany, Troy Hills, Pequannock, Randolph Township, and Roxbury (B-54). In addition, the \$850 per year clothing allowance offered by Riverdale exceeds the clothing allowance offered by Butler Township (\$775), Chester Borough (\$750), and Rockaway Township (\$750) (B-54).

In an attempt to facilitate the situation, Mayor Budesheim made the proposal that the clothing allowance be converted into a voucher system, which would eliminate tax withholding and allow the officers to use the full amount to purchase uniforms. Under the current program there is absolutely no requirement that an officer spend a penny of his clothing allowance on uniforms. The Borough supports providing its employees with the necessary equipment provided it can ensure that the cost is actually going towards that purpose and not artificially inflating the salaries of PBA members.

I find that neither party has justified its proposals to modify the amount of the uniform allowance or to convert direct

payment to employees to a reimbursement plan. Therefore, I do not award these proposals.

The Borough has also proposed eliminating the clothing allowance for lieutenants and the stipend for glasses for all PBA members. Further the Borough would have any appeal of a denial brought to the full Council and not just the Chairperson.

The Borough asserts that it is attempting to secure adequate payment for the cost of uniforms and ensure that any appeals of a denial go to the full Borough Council instead of the Chairperson to avoid any attempted claim of bias or favoritism. The Borough contends that its proposals are reasonable and should be included in the Arbitrator's award.

Article VII, Section B. provides for a special clothing allowance for a lieutenant of \$1,150 annually. The Employer seeks to eliminate the special allowance for lieutenant's uniforms and make it the same rate as all other officers. I agree. The record has not demonstrated there are any unique characteristics to the uniform of a lieutenant that would differentiate it from the uniforms worn by other members of the department. Accordingly, I will eliminate this special provision for a lieutenant's uniform.

Article VII, Section D provides,

In the event an employee requires eyeglasses for the

performance for his duties, the Borough will pay up to one hundred twenty-five dollars (\$125.00) for such prescription safety glasses. In the event such prescription safety glasses are damaged during the performance of the employee's duties, the employee will be compensated for the repair or replacement of such prescription safety glasses up to a maximum of one hundred twenty-five dollars (\$125.00).

H. If the Chief denies a request to replace defective equipment, the member may bring his request to the council chairperson.

The PBA contends that the Borough has not justified the elimination of the safety eyeglasses reimbursement amount and that this is merely another attempt by the Borough to reduce existing benefits.

I award neither proposal as neither party has sufficiently justified the need to change the contract provisions concerning the uniform allowance or the safety eyeglasses. However, I view the Borough's proposal concerning the appeal process for complaints concerning a defective piece of equipment as reasonable. Accordingly, I will modify the language of Article VII, Section H. to read as follows:

H. If the Chief denies a request to replace defective equipment, the member may bring his request to the governing body.

**Article IX - Health Benefits:**

The Borough seeks to incorporate the minimum contribution amounts towards medical premiums as set forth in Chapter 78. It also seeks to incorporate into the contract a provision that it will continue to provide State Health Benefits Direct-15 Plan or

its equivalent to all unit employees. This first part of the proposal is statutory; the second part of the proposal memorializes the status quo. I award this proposal.

**Article X - Legal Defense Fund:**

The PBA proposes that the Employer pay the amount of \$160.00 per member per *annum* for the purposes of paying for the Local's State PBA LDA Program. The current contract provides,

A. The Borough will provide an attorney and pay all resulting legal fees for the defense of any member of the department charged with a complaint or court actions arising from the performance of his duties, whether on or off official duty. The Borough Attorney will represent the member unless there is a conflict of interest. In such case, the member will select an attorney of his own choosing who shall be approved by the Mayor and Council and whose fees the said body shall approve in advance. The approved legal aid rate is: one hundred (\$100.00) dollars per hour, together with necessary costs and expenses.

Notwithstanding the provisions of paragraph A above, the Borough will either provide an attorney or reimburse for all legal expenses of an employee under this Agreement in accordance with the rate noted in paragraph A above only where the member of the Department has complied with and as required pursuant to N.J.S.A. 40A et seq., and is proven not guilty.

B. The provisions of this Article shall not apply except under the conditions as noted above and specifically will not apply in any cases where a complaint or charges are brought against an employee covered under this Agreement by the Chief of Police or any other appropriate official on behalf of the Borough.

The PBA makes no supporting argument for this proposal.



The Borough argues that the proposal is contrary to the statute and is not justified by the statutory criteria. The Borough states that, in effect, the PBA demands that the Borough help individual members sue the Borough through the use of the PBA Defense Fund. It contends that the proposal constitutes a new economic item, and therefore cannot be considered under N.J.S.A. 34:13A-16. Further, the Borough asserts that the PBA has not met its burden to justify the propose change, and therefore, the proposal should be rejected.

I find that this proposal constitutes a new economic item, which I am prohibited from awarding under N.J.S.A. 34:13A-16. The proposal is denied.

**Article XI - Training:**

The Borough proposes that compensation for all training held on off-duty time shall be in compensatory time off at the straight time rate, up to a maximum of six (6) hours in the twenty-eight (28) day work period. The current contract language provides,

c. Compensation for all such training shall be in compensatory time off at the time and one half rate, up to a maximum of eleven (11) hours in the twenty-eight (28) day work period.

The Borough argues that it is seeking to reduce the amount of accumulated hours that PBA members may accumulate when engaged in training. By so doing, it argues, it is

attempting to limit the soaring overtime costs that it has encountered over the past two (2) years. The 71.92% increase in time and one-half payment to officers is "astounding" (B-37). By providing the PBA members compensatory time at the straight time rate for a maximum of up to six (6) hours in a twenty-eight (28) day work period, the Borough is making an attempt to save more money and cut spending.

The Borough contends that this is a reasonable proposal in an attempt to corral extracurricular spending and encourage officer attendance. This should be included in the Arbitrator's award.

The PBA argues that payment in compensatory time at the straight time rate for training on days off would violate the Fair Labor Standards Act.

The Borough's proposal to change the formula for compensating training time has not been sufficiently explained or justified. The proposal is denied.

**Article XII - Other Compensation:**

The Borough proposes to eliminate the meal provision for officers taking courses and for officers on out-of-town business (Article XII, Sections C and E). Such meals are currently reimbursed at the rate of \$7.50 per meal. The Borough argues that the officers would have to pay for their meals no matter where they are assigned, and therefore there is no basis to reimburse employees for meals when they are engaged in course

work or out of town assignments.

The PBA argues that this is an additional attempt by the Borough to diminish the police officers' compensation package.

The Borough is correct in its assertion that it should have no greater obligation to provide lunch money to employees while on assignments than it has while they are assigned to regular duties on the streets of Riverdale. This is a reasonable proposal and I award the elimination of Sections C and E from Article XII.

The Borough also seeks to eliminate Section G which provides for reimbursement for college courses up to \$500 per year and alternatively permits employees to use said stipend for gym memberships. The current contract provides,

College Reimbursement--The Borough will pay up to a maximum of \$500.00 per year for police related courses. The officer must pay for the course up front and the Borough will reimburse the officer after the governing body obtains documentation of a passing grade. (This does not include courses previously taken). An officer may use \$250.00 maximum for a gym membership in lieu of college tuition.

The Borough has not justified this proposal and I decline to award it.

The Borough also proposes to eliminate paragraphs H and I which provide for a stipend for the police detective and the emergency management officer. Both of these provisions permit the Mayor and council to set the annual

salary rate for thee positions. Neither position is filled at this time. On the other hand, there is no evidence in the record that the Borough has taken any formal action to eliminate the positions. Therefore, I find that there is no basis to award the Borough's proposal to eliminate the stipends for either position. The proposal is denied.

**Article XVII - Fully Bargained Clause:**

- The PBA seeks to eliminate this clause, which states,
- A. This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargain-able issues, which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.
  - B. This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing only executed by both parties.

The PBA says that the clause is contrary to statute.

The Borough maintains that the clause was negotiated in good faith and that no basis has been provided to change it. I find that the PBA has not provided sufficient legal justification for its claim that the clause violates the statutory provisions of N.J.S.A. 34:13A-5.3. In any event, the proper forum for deciding whether contract language is not legally negotiable is the Commission's Scope of Negotiations proceedings. I deny the proposal.

**Article XIX - PBA State Delegate:**

The PBA proposes to add to the contract language in this section that this Article shall be interpreted consistent with N.J.S.A. 40A: 14-177. The contract currently provides,

The Borough agrees to permit the State PBA delegate to attend conventions during work hours.

I see no harm in this proposal as an addition to the contract. The parties are already subject to the provisions of N.J.S.A. 40A. This proposal is awarded.

**Contract Addendum - Work Schedule:**

An addendum to the contract beginning with the 2000-2007 contract, provides for a 12-hour trial work schedule. The PBA asks to change Article IV, Section A to incorporate the 12-hour schedule and, in effect, to make the schedule permanent. The Borough objects to this proposal, and instead proposes to eliminate the reference to an experimental schedule and insert language that makes the work schedule a managerial prerogative of the Mayor and Council.

The parties have been living with the 12-hour "experimental" work schedule since 2000. I agree with the PBA that it is time for the experiment to end and to make the schedule a permanent part of the contract. In fact, Article IV, Section I already provides that "patrol officers shall work a 12-hour schedule as stated in the

attached addendum". I see no substantive change in the PBA's proposal; in fact, it is merely a contractual memorialization of the status quo. I award the PBA's proposal. The Borough's proposal to make the 12-hour work schedule an issue which is entirely at the discretion of the Employer's management prerogative would be a substantive change from the previously negotiated provisions of the addendum and therefore I do not award it.

**(New Article) - Drug Testing:**

The Borough proposes to incorporate into the contract the random drug testing procedures prescribed by the current Attorney General's Law Enforcement Drug Testing Policy.

The Borough has not sufficiently justified this proposal and I decline to award it.

**AWARD**

**Wages:**

- Increment payments and longevity increases shall continue for each year of the 2013 through 2015 contract.
- Increases
  - 2013 - 0% increase
  - 2014 - .5% increase effective 1/1/2014
  - 2015 - 1.5% increase effective 7/1/2015

**Article IV - Tour of Duty and Overtime:**

Modify section B (2) as follows:

B. Whenever an employee is required to attend a court

at a time outside of his tour of duty and the court attendance is required because of his activities as a police officer, the employee shall be compensated as follows:

. . . 2. Time and one-half (1-1/2) the regular hourly straight time rate of pay for time spent in the Riverdale Municipal Court with a minimum guarantee of two (2) hours pay. An effort should be made to schedule such court time during work hours. If that time spent in Court is contiguous, before or after, with a regularly scheduled shift, the time and one-half (1-1/2) will be based on actual hours worked.

Modify Section I to include the language previously contained in the contract Addendum concerning the 12-hour work schedule.

**Article V Section B (2) Sick Leave:**

Modify Section C as follows:

c. Unexplained absence without notice for two (2) consecutive days shall constitute a resignation.

**Article VI. Longevity and Rank and Grade Pay:**

Eliminate paragraph A.

**Article VII - Clothing Allowance:**

Eliminate Section B concerning a separate clothing allowance for lieutenants.

Modify the language of Article VII, Section H. to read as follows:

H. If the Chief denies a request to replace defective equipment, the member may bring his request to the governing body.

**Article IX - Health Benefits:**

(New Provision):

Health care contributions shall be consistent with that required by P.L. 2011, Chapter 78 or any subsequent legislation that modifies these requirements.

The Borough shall provide health benefits through New Jersey State Health Benefits Direct-15 Plan or its equivalent.

**Article XII - Other Compensation:**

Eliminate paragraphs C and E.

**Article XIX - PBA State Delegate:**

Modify the provisions of this article as follows:

The Borough agrees to permit the State PBA delegate to attend conventions during work hours consistent with N.J.S.A. 40A: 14-177.

\* \* \* \* \*

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

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.



*/S/ Susan W. Osborn*

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Susan W. Osborn  
Interest Arbitrator

**Corrected Copy** Issued: May 22, 2013  
Trenton, New Jersey