

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

BOROUGH OF FRANKLIN LAKES

“Public Employer,”

- and -

FRANKLIN LAKES PBA, LOCAL 150

“Union.”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2015-014

**Before
James W. Mastriani
Interest Arbitrator**

Appearances:

For the Borough:

Mark S. Ruderman, Esq.
Ellen M. Horn, Esq., on the Brief
Ruderman, Horn & Esmerado, P.C.

For the PBA:

Merick H. Limsky, Esq.
Limsky Mitolo

This decision arises out of an impasse to be resolved by an interest arbitration proceeding between the Franklin Lakes PBA Local 150 [the “PBA” or “Union”] and the Borough of Franklin Lakes [the “Employer” or “Borough”]. Prior to this proceeding, the parties conducted mediation sessions with a jointly selected mediator but were unable to reach an agreement. On July 21, 2015, I was randomly selected by the New Jersey Public Employment Relations Commission [“PERC”] to serve as interest arbitrator in accordance with N.J.S.A. 34:13A-16e(1).

The legal requirements for this case are those set forth in N.J.S.A. 34:13A-16 through N.J.S.A. 34:13A-16.9 as amended on June 24, 2014 by P.L. 2014, c. 11. These provisions took effect immediately and were retroactive to April 2, 2014. The existing contract has a termination date of December 31, 2014. Because the petition was filed on June 18, 2015, PERC processed the interest arbitration petition under the amended statute. N.J.S.A. 34:13A-16b(3) requires that the arbitrator hold an initial meeting with the parties for the purpose of conducting a mediation. That session was held on August 20, 2015. It was determined that the impasse could not be resolved voluntarily at that time and the matter then proceeded to formal interest arbitration.

Final offers from each party were received on September 4, 2015. A formal interest arbitration hearing was held on September 11, 2015. An additional attempt to mediate the impasse prior to the hearing was not

successful. The parties were aware that the flexibility to resolve the impasse without having to be subject to the statutory salary cap would no longer be present if the impasse proceeded to an award. At hearing, substantial documentary evidence was submitted into the record on all aspects of the statutory criteria, as well as on salary cap calculations. Post-hearing briefs were due and filed on September 28, 2015. They were transmitted to each party on that day. On October 14, 2015, the PBA filed a motion to strike certain exhibits filed by the Borough with its post-hearing brief. On October 15, 2015, the Borough filed a statement in opposition to the motion.¹ Pursuant to P.L. 2014, c. 11, the arbitrator has 90 days from appointment, or by October 19, 2015, in which to render an award.

In accordance with the statute, each party submitted a last and final offer. These offers are as follows:

FINAL OFFERS OF THE PARTIES

The PBA

1. **CONTRACT TERM** – Three year contract - January 1, 2015 through December 31, 2017
2. **WAGES**

2015 0% / Frozen Steps

2016 Steps and Raises as indicated on the Proposed Salary Guide

¹ I have considered the PBA's motion but decline to sustain its position due to the proximity of the motion to the Award's due date and the fact that the contents of the exhibits do not materially alter the substance of the record presented at hearing orally or in documents presented at that time.

2017 Steps and Raises as indicated on the Proposed Salary Guide

Franklin Lakes PBA 150
December 31, 2014 Snapshot
2015-2017 Proposed Salary Guide

Name	2014	1/1/2015	1/1/2016	1/1/2017
Albert	51,804			
Gallo	51,804	51,804	57,976	57,976
Economou	57,976	57,976	64,148	66,148
Hill	57,976	57,976	64,148	66,148
Zangara	62,631	62,631	68,027	70,027
O'Brien	80,825	80,825	92,412	92,412
Klein	80,825	80,825	92,412	92,412
Rynander	95,412	95,412	113,962	113,962
Wilson	95,412	95,412	113,962	113,962
Knubel	118,716	118,716	119,716	119,716
Grassi	119,254	121,043	122,207	123,371
Gansel	119,254	119,254	120,401	121,548
Osenbruck	126,136	126,136	127,136	127,136
McCombs	125,565	125,565	127,771	127,771
Lyon	130,393	130,393	132,808	132,808
Cacciatore	132,808	132,808	133,808	133,808
Klein	132,808	132,808	133,808	133,808
Jost	134,808	134,808	135,800	135,800
Total	1,774,402	1,724,387	1,820,502	1,830,813

2% of 2014 \$35,488

2% x 3 yrs. \$106,464

3. **MEDICAL**

50% reduction in medical contribution beginning 1/1/16.

4. **CLOTHING ALLOWANCE**

\$250 annual increase for all members.

5. **TRAINING**

Overtime Rate

The Borough

1. 5 year term – 2015-2019;
2. Amend step schedule to add nine (9) steps to members hired between 1/1/99 and 3/27/12; and time steps for members hired on or after 3/27/12 – see attached;
3. Proposal is “steps only” meaning that there are no increases other than steps;
4. No members will have reduced salaries due to step additions;
5. Clothing allowance reduction for all members to \$150 annually;
6. Reduction in annual sick leave allowance from 12 to 10 days;
7. Medical coverage to be amended to provide that BMED 20/35 Plan will be highest cost plan offered;
8. New hires will get medical coverage from their retirement until the day they reach 65;
9. Settlement of grievance on following terms:
 - a. No claims based on coverage prior to date of settlement.
 - b. Borough will amend coverage for existing retirees on “going forward” basis to provide co-insurance at same level as provided at date of retirement, effective as of the date of the settlement.
10. Amend contract language on retiree benefits to provide that, for employees retiring on or after December 31, 2019, retiree will receive same level of benefits as provided to current employees; and
11. Private duty rate increase from \$70 to \$85 per hour.

BACKGROUND

The municipality of the Borough of Franklin Lakes is located in Bergen County in an area commonly defined geographically as Northwest Bergen. Other municipalities considered to be included in northwest Bergen County are Allendale, Glenlock, HoHoKus, Midland Park, Oakland, Saddle River, Ramsey, Ridgewood, Waldwick and Wyckoff. The bargaining unit consists of patrol officers and sergeants. In total there are eighteen (18) employees in the bargaining unit but there were nineteen (19) as of December 31, 2014.

The existing collective negotiations agreement contains complex salary schedules containing three tiers based upon date of hire. In addition, the "steps" on the salary schedules in many instances are based upon a grouping of years of service rather than on an annual basis. I refer to these types of groupings as bands. Further, the parties, at a prior point of time, eliminated a longevity schedule and folded longevity payments into certain steps on the salary schedule. This has resulted in an elongated salary schedule based upon the number of years of service. The Agreement also provides that eligibility for advancement to the next higher patrolman's grade is based upon their anniversary date of employment. An exception is for those who attain the rank of Patrolman Year 18 who receive the appropriate negotiated salary on the first day of January of each succeeding year. In addition, assignments to the Detective Bureau/Juvenile Bureau and Traffic Bureau yield an increase of 1.5%. The respective proposals of the parties reflect that the PBA seeks to maintain the

existing salary schedules while the Borough seeks to amend the step schedule to add nine (9) steps to members hired between January 1, 1999 and March 27, 2012 and to add 8 steps for members hired on or after March 27, 2012.

The record reflects that the residents of the Borough employs a higher than normal income. It has over 10,000 residents and its median household income of \$153,681 ranks thirteenth (13th) in New Jersey. The Borough points out that its budgeting process requires that it adhere to the 2% tax levy cap, as well as the statutory cap on salary increases that can be awarded in arbitration. However, it does not assert that it has an inability to pay increases that fall within the statutory limitations or that adverse financial impact would result from same.

The parties are in substantial dispute over the method upon which salary increases can be calculated pursuant to the statutory cap on the amount that an interest arbitrator can award under the amended statute. Their respective positions on this will be evaluated during the analysis on the salary portion of this award. In addition, the disputed issues are extensive, including the PBA's proposal to reduce employee medical contributions, to increase the clothing allowance and to provide that mandatory training be conducted on an overtime rate basis. The parties disagree on the term of the Agreement and also the Borough's proposal to award increases in the number of steps to the existing salary schedules, to reduce the amount of clothing allowance, to reduce the annual sick leave allowance, to replace the existing medical insurance plan with

a new plan, to limit retiree medical coverage for new hires until they reach 65 years of age and to require retirees to receive the same level of retiree benefits as those provided to current employees effective December 31, 2019. Because of the extremely limited period of time between receipt of post-hearing briefs and the due date of an award, the issues must be decided without engaging in an exhaustive summary of the parties' arguments and evidence. Each issue will be considered individually, followed by an award setting forth all of the issues awarded representing changes to the existing collective negotiations agreement.

DISCUSSION

The statute requires the arbitrator to make a reasonable determination of the disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that are relevant to the resolution of the issues. 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).

My review of the criteria must be accomplished based upon the evidence presented as well as the application of well established standards in collective negotiations and interest arbitration. The party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. The burden to be met must be at a level beyond a party seeking additional benefits or concessions to existing terms and conditions of employment without sufficient evidentiary support. No proposed issue by either party will be deemed to be presumptively valid in the absence of justification that is supported by credible evidence. I also observe that a proposal may not be viewed in isolation to all other proposals. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. In other words, there may be merit to awarding or denying a single issue if it were to stand alone, but a different conclusion may be reached after assessing its merits within the context of all of the changes that are included in the overall award.

DURATION

The PBA proposes a three year agreement, effective January 1, 2015 through December 31, 2017. The Borough proposes a five year agreement, effective January 1, 2015 through December 31, 2019. Almost a full year has passed since contract expiration. Regardless of the contract duration awarded, the parties are subject to the statutory salary cap on the amount of salary that can be awarded. In addition, the record reflects stability in the Borough's finances and a continuity and stability of employment that serve as a proper basis for a contract duration of January 1, 2015 through December 31, 2018.

ARTICLE IX – CLOTHING ALLOWANCE

Both parties have proposals to change the amount of clothing allowance currently paid under Article IX(B). The existing benefit provides:

Each Police Officer shall receive an annual clothing allowance. The amount of clothing allowance is \$650.00. Said amount shall be paid in a lump sum amount on the first day in January, provided that a newly hired officer shall not be entitled to such allowance during the same year that he has been provided with an initial issue of clothing and equipment in accordance with Paragraph A above.

The Borough proposes to reduce the allowance to \$150, effective January 1, 2016. It submits:

Officers currently receive a \$650 annual clothing allowance plus a \$350 annual uniform maintenance allowance, or a total clothing

allowance benefit of \$1,000 per year. Assuming that this decrease is effective on January 1, 2016, the clothing allowance decrease will save the Borough \$850 per officer times nineteen (19) officers or \$16,150 per year. As a percentage of 2014 total base salaries, this proposal will reduce the Borough's costs by 0.87% ($\$16,150/\$1,852,333 \times 100$) in 2016. The savings will continue in 2017, 2018 and 2019 and beyond.

The PBA proposes to increase the clothing allowance by \$250 annually and urges rejection of the Borough's proposal. It argues:

The PBA proposes an increase to the clothing allowance. The amount of the clothing allowance has been stagnant over the past several years. An adjustment for the increase in the cost of living is appropriate in this case by way of an increase to the clothing allowance. The members of the PBA have been subjected to increased payments over the last five years including healthcare contributions, increased pension contributions, higher healthcare costs, among others.

There is a [Borough] proposal to reduce the clothing allowance from \$650 annually to \$150 annually. While this will save the employer a few dollars the impact will be larger on the individual members. Over a three year contract each employee will lose \$1500. This would negate any increase for the members at top pay and significantly reduce step increases for the lowest paid members. The employer cannot provide any basis for such a drastic reduction. In fact, the employer's own chart shows that the PBA is gets less than the average of the other towns cited by the employer. As the PBA proposal requests, the amount for the clothing allowance should be increased just based upon the increased cost of living. Cost for purchasing uniforms increases each year, it does not go down. Taking the huge chunk out of the clothing allowance that the employer is seeking does nothing more than further harm the members.

Award

After review of the parties' proposals, I do not find merit to any alteration of the status quo. The existing level of clothing allowance is reasonable based

upon all relevant comparisons and no persuasive justification has been offered by either party for an increase or decrease in the existing level of benefit. Accordingly, both proposals are denied.

GRIEVANCE SETTLEMENT

The parties have a pending unresolved grievance concerning prescription co-pays for retirees. The Borough proposes that a settlement of the grievance be awarded. Its proposal is as follows:

The Borough proposes to resolve a grievance arbitration over prescription co-pays. The grievance arbitration is pending before Arbitrator Martin Scheinman; the parties have agreed to stay the grievance arbitration pending the conclusion of this interest arbitration matter. Like SHBP, the Borough implemented higher prescription co-pays for its retirees than its active employees. The PBA filed a grievance, asserting that the Borough violated the requirement that it provide "the same level of such benefits received at the time of retirement" to its retirees. In other words, the PBA asserted that the retirees should pay the same prescription co-pays in effect at the time they retired. The Borough proposes to resolve the grievance by amending coverage for existing retirees prospectively, effective as of the date of the award, to provide co-insurance at the same level as provided on the date of retirement. The Borough, however, declines to provide co-insurance at the same level as provided on date of retirement for claims based on coverage prior to the date of the award.

The PBA seeks rejection of the Borough's proposal:

The employer has included the settlement of a grievance in its final proposal that is currently pending grievance arbitration. The parties had agreed to put off the hearing while they were attempting to reach a settlement on the contract. However, now that this matter has proceeded to arbitration, there is no authority for this matter to be resolved in an interest arbitration award. This is especially so

since there is no evidence in the record regarding the underlying dispute. This proposal should be denied on its face.

Award

I decline to award the Borough's proposal. This matter arose under the prior labor agreement and is a matter of contract interpretation before an arbitrator who has been appointed under the parties' selection procedure. An imposition of settlement terms would infringe on the PBA's right to a determination on the grievance it filed in accordance with the contractual grievance procedure.

ARTICLE X – SICK LEAVE

Article X sets forth a comprehensive scheme for sick leave. The Borough proposes to reduce the number of annual sick days from twelve (12) sick days to ten (10) sick days per year effective January 1, 2016. It asserts:

Currently, all officers receive twelve (12) sick days per year. Employees who do not use all of their accrued sick time are entitled to one-half a day's pay for each unused sick day per calendar year. Although the savings cannot be calculated with certainty, the reduction of sick time from twelve (12) sick days to ten (10) sick days per year results in a savings to the Borough of about one (1) day's pay for each officer. In accordance with traditional labor principals, one day of pay equals about 0.33%. As a result, the Borough will attribute a 0.33% savings to this proposal in 2016.

The PBA submits that there is no basis or evidentiary support to award the Borough's proposal. It argues:

There is no evidence in the record of sick time abuse. Twelve sick days per year can hardly be said to be excessive. While there may be some municipalities with ten sick days, there are probably twice as many that have fifteen sick days. For example, the agreement between Glen Rock and the PBA (U-18) provides for twenty sick days annually. Paramus and Ridgewood provide for fifteen days per year. (U-20; U-22). There is no basis for a reduction in sick days in this case.

Award

Beyond the Borough's attribution of approximately 0.33% in savings that it would receive if its proposal were awarded, there is insufficient evidence to support this concessionary proposal. The number of sick days received is not beyond the norm, and there is no data reflecting that there has been an excessive use of sick leave. Accordingly, the Borough's proposal is denied.

ARTICLE XVIII – ATTENDANCE AT TRAINING COURSES

The parties have negotiated a provision governing compensation for required attendance at in-service training courses. It states:

In the event the Chief of Police shall require any officer or patrolman to attend a specific in-service training course for the development of a skill not otherwise available to the Police Department through any of its members, such officer or patrolman shall receive compensation at a pro-rated hourly rate based upon the appropriate salary schedule or compensatory time off equal to the time spent in attendance at the training course, with a minimum of 3 hours. The method of compensation shall be determined by the Chief of Police. Nothing contained herein shall be construed as to permit to any officer or patrolman for attendance at an in-service course which is not specifically required to be taken as required above.

The PBA seeks to modify the compensation component of Article XVIII to require that its members receive their overtime rate for training.

The Borough urges denial of the PBA's proposal. It submits the following statement in opposition:

The PBA proposes that members receive their overtime rate for training. Article XVIII, Attendance at Training Courses, provides that officers receive compensation at a pro-rated hourly rate or compensatory time off equal to the time spent in attendance at the training course, subject to a minimum of three (3) hours for training. The Chief presently determines the method of compensation. The PBA's proposal will result in increased costs during the contract term, but these costs are too speculative to calculate because the Borough does not know the number of hours its police officers will spend attending training during the successor contract term.

The 2010 Amendments also bar an award of the PBA's training compensation proposal. N.J.S.A. § 34:13A-16.7(b) precludes the arbitrator from rendering an award that includes non-salary economic issues which were not included in the predecessor agreement. Because the PBA's training compensation proposal has economic ramifications, it constitutes a "non-salary economic issue" within the meaning of the 2010 Amendments. The 2010 Amendments therefore preclude an award of the PBA's training compensation proposal.

Award

I need not address the Borough's argument that N.J.S.A. § 34:13A-16.7(b) precludes the awarding of this non-salary economic issue. The PBA has not sustained its burden of establishing sufficient merit upon which to award the proposal to require overtime for required training. The existing provision appears

to have been negotiated with proper balance given to the competing interests involved, including the requirement that a minimum of three hours be paid for any participation in required training. Accordingly, the PBA's proposal is denied.

PRIVATE DUTY RATE

The Agreement does not specify the amount of payment to be received by an officer for off-duty or private duty authorized work to be performed. The Borough has proposed to increase the private duty rate from \$70 to \$85 per hour and has already implemented its proposal. It notes that:

Because the Borough is compensated by the outside contractor for private duty costs, this proposal does not increase the Borough's costs. The increase in the private duty rate, however, is a substantial benefit for PBA members.

The PBA observes:

The employer passed an ordinance making the change and the PBA did not oppose it. It was not part of the negotiations process. Even if the employer argues that it was part of negotiations, it must be determined that the increase was stipulated between the parties as it has already gone into effect. If the employer were to unilaterally lower this rate it would be subject to challenge by the PBA. The PBA has no issue with the arbitrator finding this point moot or stipulated between the parties.

Award

Given the parties' mutual acknowledgement that there is no dispute as to the increase in the private duty rate, I will award the Borough's proposal in a

fashion similar to having received a stipulation as authorized by N.J.S.A. § 34:13A-16g(4).

HEALTH INSURANCE

Both parties have advanced proposals that deal with health insurance. They will be reviewed individually.

Health Insurance Employee Contributions (PBA Proposal)

Article VIII(B) obligates employees to contribute towards payment of medical prescription and dental insurance in accordance with the provisions of state law. The PBA has proposed to reduce employee contributions for medical insurance by 50% commencing January 1, 2016. It supports its proposal as follows:

The PBA proposes a fifty percent (50%) reduction in the medical contributions that members make to their healthcare starting in 2016. All of the members of the PBA are contributing the full amount of the medical care contribution as stated in Chapter 78. Chapter 78 states:

Once those employees are subjected to the contribution requirements set forth in subsection a. of this section, the public employers and public employees shall be bound by this act . . . to apply the contribution levels set forth in section 39 of this act until all affected employees are contributing the full amount of the contribution, as determined by the implementation schedule set forth in subsection a. of this section. Notwithstanding the expiration date set forth in section 83 of this act . . . or the expiration of any successor agreements, **parties**

shall be bound to apply the requirements of this paragraph until they have reached the full implementation of the schedule set forth in subsection a. of this section.

Specifically, N.J.S.A. 40A:10-21.2 states:

After full implementation, those contribution levels shall become part of the parties' collective negotiations and **shall then be subject to collective negotiations** in a manner similar to other negotiable items between the parties.

Section 83 of Chapter 78, P.L. 2011 states:

This act shall take effect immediately, and sections 39 through 44, inclusive, **shall expire four years after the effective date.**

The effective date of the statute, N.J.S.A. 40A:10-21.2 was June 28, 2011. It is now expired. The contribution amounts are negotiable. While there is a cap on salary increases, there is no reason why an adjustment cannot be made to the healthcare contribution in order to balance out the financial impact of the two percent cap. As a result of the salary cap the members will not be receiving their full step increases and those at the top step will be getting a very small increase. A reduction in the contribution would at least allow the members to have more money at their disposal, although not part of salary with all of the benefits associated with that.

As a result of the salary cap combined with the health care contributions, the officers, especially those at top pay, have seen a reduction in actual money they take home. Officers at top pay may not get a raise over the course of a contract, yet they have been paying approximately \$10,000 for a family plan. The contribution is negotiable and it is appropriate to make an adjustment to the contribution levels in this case. The parties jointly developed a salary guide which led to a couple bubble steps which have the result of using up most of the available money for any monetary raise. This was not just the fault of the PBA, yet the PBA members bear the brunt of its harsh results. There is no doubt that at some point in the past, the employer benefitted from pushing off raises which led to the bubble steps. Now, is attempting to get another benefit by essentially blaming the large increases in those bubble steps on the PBA. The employer wants a new salary scale forever

delaying the contractual salaries while maintaining the inordinately high medical contribution levels.

While it is understood that the PBA can only propose salary adjustments in accordance with the cap statute, it is within the powers of the arbitrator to adjust the medical contribution. Such an adjustment would be an equitable adjustment to the stagnant salaries and regressive legislation which the members of the PBA have been subject to for the past several years.

The medical contribution is an ever rising cost to both the PBA members and the employer. However, the PBA members have no means to obtain more money to pay for their contribution other than money available through negotiations and arbitration. The employer, on the other hand, can obtain more money, if necessary.

The Borough objects to the PBA's proposal and submits that the proposal the PBA has presented is pre-empted by law. It offers the following arguments in support of its position:

Because the PBA's collective bargaining agreement expired on December 31, 2011, after Chapter 78 took effect, the contribution, subject to a 4-year phase in at 25% per year, took effect in January 2012. Employees contributed at first year percentages in 2012, second year percentages in 2013, and third year percentages in 2014. Employees contribute at fourth year percentages in 2015, the first year of the successor contract determined by this interest arbitration.

The Interest Arbitrator cannot implement the PBA's health insurance proposal to reduce employee contributions by 50% effective January 1, 2016 because the PBA's proposal is preempted by N.J.S.A. § 40A:10-21.2; the PBA cannot negotiate a change in employee contribution amounts until the contract after full implementation of the fourth year. N.J.S.A. § 40A:10-21.2 provides, in relevant part,

A public employer and employees who are in negotiations for the next collective negotiation agreement to be executed after the employees in that unit have reached full implementation of the premium share set forth in section 39 of P.L. 2011, c. 78 (C.52:14-17.28c) shall conduct negotiations concerning

contributions for health care benefits as if the full premium share was included in the prior contract.

* * * *

After full implementation, those contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties.

Id. (emphasis added). Negotiations concerning contribution to premiums therefore cannot occur until the collective negotiations agreement after full implementation.

Local Finance Notice 2011-20R supports this interpretation. It provides,

The law provides directive language that affects the negotiations of CNA's after full implementation of health benefits contribution. . . . Once the fourth year has been completed (100% of the required contribution has been paid for a year), the law provides that:

a. Negotiations for the next contract shall be conducted as if the full contribution was part of the previous contract.

* * * *

c. Once . . . [there is] full implementation, the contribution structure is negotiable, starting from the point of full implementation.

Exhibit 7 at 11-12. Therefore, the Local Finance Notice provides further support that the law bars negotiation of a reduction in contribution to premiums until the collective bargaining agreement after full implementation of four years of contributions.

Moreover, in Clementon Board of Education and Clementon Education Association, P.E.R.C. No. 2016-10, 42 NJPER ____ (¶ ____ 2015), attached as Exhibit 8, PERC held that a proposal made in negotiations for a successor collective bargaining agreement to reduce employee health insurance premium contributions was preempted by N.J.S.A. § 18A:16-17.2. This statutory section contains identical language to N.J.S.A. § 40A:10-21.2, the statute applicable to municipal police officers, among other public employees.

In Clementon, the parties had a three year collective bargaining agreement with a term from July 1, 2011 through June 30, 2014.

Chapter 78 became effective on June 28, 2011. Unit employees began their required four years of contributions upon the expiration of the predecessor contract at the first level on July 1, 2011. On July 1, 2014, the first year of the successor collective bargaining agreement under negotiations, the employees began their fourth year of contributions. The union proposed that employee contribution to premiums should be reduced to 1.5% of base salary after full implementation of Chapter 78. In quoting N.J.S.A. § 18A:16-17.2, which contains identical language to N.J.S.A. § 40A:10-21.2, the statute applicable to municipal police officers, PERC held that the health insurance reduction proposal was preempted until negotiations for the agreement that followed full implementation. The parties could, therefore, negotiate regarding a reduction in health insurance contributions in the next contract negotiations. See Exhibit 8. As in Clementon, the parties are in negotiations with one year remaining to achieve full implementation of Chapter 78. This fourth year will occur under the successor agreement presently under negotiations. Therefore, N.J.S.A. § 40A:10-21.2 preempts negotiation of a reduction of premium contribution rates until after full implementation of Chapter 78; i.e., upon the expiration of the successor contract, depending on the duration of the successor contract awarded. The Interest Arbitrator should therefore decline to award the PBA's proposal to reduce employee health insurance contributions by 50% effective January 1, 2016.

Award

The PBA forcefully argues that the legislative imposition of health insurance contributions is "regressive" and that relief is necessary through negotiated reductions in contribution levels. The statute preempts negotiations but provides language that lifts the preemption in favor of negotiations with the statutory levels serving as the status quo. The parties dispute the point in time in which the issue will become negotiable.

N.J.S.A. § 34:13A-16g(5) requires the arbitrator to apply the lawful authority of the employer and N.J.S.A. § 34:13A-16g(9) requires application of statutory restrictions on the employer. Given this, I am required to adhere to the statute and existing case law that governs when the issue of health insurance contributions becomes negotiable. The Borough's contention is persuasive that, given the relevant facts of this case, the PERC decision in Clementon Board of Education and Clementon Education Association, P.E.R.C. No. 2016-10, 42 NJPER ___ (¶ _____ 2015), governs this issue and, therefore, the PBA's proposal is preempted by law and cannot be awarded. Accordingly, the proposal is denied.

Health Insurance Plans
(Borough Proposal)

Article VIII(A) obligates the Borough to provide medical and hospitalization coverage in accordance with the "BMED" (Bergen Municipal Employees Benefit Fund). It proposes to switch this coverage to the Aetna PPO 20/35 Plan. It offers the following explanation in support of its proposal:

The Borough proposes to amend Article XIII, Medical, Dental and Life Insurance with respect to health insurance benefits for active employees and for retirees. Specifically, for active employees, the Borough wants to provide that BMED 20/35 Plan will be the highest cost plan offered effective on January 1, 2016. The Borough does not provide health insurance through the State Health Benefits Plan ("SHBP"). Instead, the Borough participates in the Bergen Municipal Employees Benefit Fund ("BMED"), a Health Insurance Fund ("HIF"). The plans they offer are designed to "match" the plans offered under SHBP, giving rise to the plan names. Presently, the Borough provides employees and their dependents

with a choice of nine plans. All PBA members who have not waived medical insurance coverage selected medical and hospitalization coverage under the BMED Direct 10 Match Plan, the highest cost plan the Borough offers. To contain the spiraling costs of health insurance, the Borough proposes to offer the Aetna PPO 20/35 Plan as its highest cost plan. In 2016, using an estimated increase in insurance premiums, the Borough would save about \$29,447 from the plan change. See Cost Comparison, Direct 10 Match vs. Aetna PPO 20/35 Plan at E-1, Section 5. This represents a savings of 1.58% ($\$29,447/\$1,852,333 \times 100$) in 2016. Using estimates based on an 8% annual increase in premium costs and assuming no changes in selected plan coverage (i.e., single, family, etc.) the Borough would save \$132,691 over the remaining four years of the contract. See E-1, Section 5. Employees would save \$37,426 over the remaining four years of the contract term in premium contributions. See E-1, Section 5. Because cost savings are speculative, the Borough cannot definitively calculate the savings this proposal would bring to the Borough.

The PBA objects to the Borough's proposal. It argues:

The change proposed by the employer for medical coverage has been somewhat addressed above. It is clear from the submissions that the employer is solely concerned with keeping the premiums down in anticipation of the Cadillac Tax. As stated above, a three year contract will give the parties the opportunity to negotiate over health care benefits when it is better known if this tax is going to go into effect. A change to the BMED 20/35 plan is not warranted and not supported by the evidence. The employer has only provided the fact that the plan is cheaper. Cheaper does not, on its face, establish that the plan is equal to the benefits currently in effect. Without a thorough and detailed presentation on the intricacies of the plan, there is no way to measure the financial effect of changing plans. While the premiums may be lower, there most certainly will be other increased costs which allowed the premium to be lowered. Co-pay costs, deductible amounts, out-of-network costs etc., must all be considered when evaluating a health care plan. The mere assertion that the premiums are less does not suffice to make a drastic change to the benefits.

Award

The Borough has presented a proposal supported by the cost savings to be achieved. The amounts stated in the Borough's arguments are consistent with representations made at hearing. It points out that employees would also save due to decreased premium costs upon which their contribution levels are based. These savings are actual in contrast with speculative savings that could arise from the projected imposition of the "Cadillac tax." Although the PBA alleges an absence of evidence as to the detailed nature of plan design change, the record does not support this argument. The proposed plan has, without objection, been presented as one that provides comprehensive health care coverage that patterns the New Jersey State Health Benefits Plan. The interests and welfare of the public are not furthered by the Borough having to continue to bear the burdensome costs of health care coverage under the existing plan. Accordingly, I award the Borough's proposal.

Retiree Health Benefits (Borough Proposals)

The Agreement, at Article VIII(D) provides for retiree health insurance. It states:

For employees who retire after twenty (20) years of service to the Borough and twenty-five (25) years in the pension system, the Borough will provide full (100%) medical insurance, dental, prescription, and family or spousal coverage, at the same level of such benefits received at the time of retirement. Insurance coverage for fully retired (25 years of service) employees, as

authorized herein, is secondary to any coverage or benefits available or which may become available from Medicare or any other sources of insurance, governmental or otherwise. Additionally, such coverage as may be provided by the Borough, will be discontinued for any period when insurance coverage is obtained as a result of other employment, but will be reinstated upon the termination of such employment.

The Borough seeks to modify the above provision as follows:

The Borough proposes two modifications to retiree health benefits. First, the Borough proposes, effective on the date of the award, new hires receive medical coverage from their retirement until they reach age 65. Presently, officers receive medical coverage upon their retirement for life, secondary to any coverage which becomes available from Medicare or any other source. An award of this proposal will result in significant savings to the Borough, but those savings are too speculative to calculate.

Second, the Borough proposes to amend the contract language in Paragraph D to provide that employees retiring on or after December 31, 2019 will receive the same level of benefits as provided to then-current employees. Presently, Paragraph D provides, "For employees who retire after twenty (20) years of service to the Borough and twenty-five years in the pension system, the Borough will provide full (100%) medical insurance, dental, prescription, and family or spousal coverage, at the same level of such benefits received at the time of retirement." (emphasis added). The PBA interprets this language to mean that the Borough must provide an employee who, by way of example, retired in 1985 with the same health insurance benefits today as the employee received in 1985 at the time he retired. The Borough finds this obligation unworkable given the realities of today's medical insurance market. Not only is the level of benefits provided years ago cost prohibitive, but plans providing such benefits may no longer exist. The Borough's proposal will enable retirees to receive health insurance benefits in tune with today's insurance market by tying the level of benefits provided to retirees to the level of benefits provided to then-current employees. An award of this proposal will result in significant savings to the Borough, but those savings are too speculative to calculate.

The PBA objects to the Borough's proposals. It submits:

The employer is seeking to amend the contract to limit retiree benefits for those members retiring after December 31, 2019 to the level of benefits provided to current employees. Again, there has been no evidence submitted in support of such a drastic change to benefits. Health benefits are extremely valuable. There is no way to tell what the future will bring with regard to these benefits. When discussing retiree benefits we are discussing health care twenty or thirty years from now. That would be completely unpredictable. In the future employees may give up employer health care for some other benefit. Where would that leave retirees? With no benefits? Such an open ended, speculative proposal must be denied. ...

This is also true for the proposal to end medical coverage at sixty-five for new hires. There is still a cost associated with health care after sixty-five. Members will have to purchase additional health care plans such as Medicare Part B, to get complete coverage. The employer is simply trying to lay that cost off on the employee without any basis for doing so.

Award

I do not award either aspect of the Borough's proposals. Retiree health insurance is an issue that can be revisited without prejudice to the Borough in future negotiations after presenting a detailed review of the costs associated with having to provide individual retiree health benefit plans for all retirees who are subject to health insurance coverage. It is noted that the Borough's proposal, if awarded, would not be effective until December 31, 2019. Thus, the December 31, 2018 contract duration awarded permits sufficient time for the renewal of negotiations on this issue.

SALARY

The Borough and the PBA have widely divergent positions on salary. These include the amount of salary that can be awarded under the statutory cap, the proper method for calculating those amounts and the structure of the salary schedules to be awarded.

The first point of analysis is the structure of the existing salary schedules. They are divided into three (3) separate schedules depending upon date of hire. They are as follows, as set forth in Appendix A – Wages of the Agreement:

Employees hired prior to January 1, 1999

2014

Sergeant:

18+ years	\$132,808
15-17 years	\$130,393
12-14 years	\$127,979
9-11 years	\$126,771
6-8 years	\$125,565
4-5 years	\$124,357

Patrolman:

Year 18+	\$126,136
Years 15-17	123,842
Years 12-14	\$121,548
Years 9-11	\$120,401
Year 8	\$119,254

Employees hired between January 1, 1999 and March 27, 2012

2014

Sergeant:

Years 25+	\$132,808
Years 20-24	\$130,393
Year 19	\$129,185
Years 16-18	\$127,979
Year 15	\$126,771

Years 12-14	\$125,565
Year 11	\$124,357
Years 7-10	\$123,150
Year 6	\$121,943
Years 1-5	\$120,735

Patrolman 1:

Years 25+	\$126,136
Years 20-24	\$123,842
Year 19	\$122,695
Years 16-18	\$121,548
Year 15	\$120,401
Years 12-14	\$119,254
Year 11	\$117,797
Years 8-10	\$116,962
Year 7	\$95,412
Year 6	\$80,825
Year 5	\$74,028
Year 4	\$68,027
Year 3	\$62,631
Year 2	\$57,227
Year 1	\$51,804
Police Academy Basic Training	\$41,752

Employees hired on or after March 28, 2012

2014

Sergeant:

Years 25+	\$132,808
Years 20-24	\$130,393
Year 19	\$129,185
Years 16-18	\$127,979
Year 15	\$126,771
Years 12-14	\$125,565
Years 7-11	\$123,150
Year 6	\$121,943
Years 1-5	\$120,735

Patrolman 1:

Years 28+	\$126,136
Years 23-27	\$123,842
Year 22	\$122,695
Years 19-21	\$121,548
Year 18	\$120,401
Years 15-17	\$119,254
Year 14	\$117,797
Years 11-13	\$116,962

Year 10	\$107,351
Year 9	\$101,179
Year 8	\$95,007
Year 7	\$88,835
Year 6	\$82,663
Year 5	\$76,491
Year 4	\$70,319
Year 3	\$64,148
Year 2	\$57,976
Year 1	\$51,804
Police Academy Basic Training	\$41,752

In order to place the parties' proposals in their proper perspective, certain observations are required to be made. First, each of the three salary schedules covers two classes of officers, Patrolman and Sergeants. Second, each of the schedules provides for a salary or a step at a distinct year or years of experience level, such as "Year 8." It also includes bands based upon years of experience level, such as "Years 20-24." The two schedules involving employees hired on or after March 28, 2012 and employees hired between January 1, 1999 and March 27, 2012 each have a Police Academy Basic Training step at \$41,752 and a Year One step of \$51,804. The Year One step follows the six months that a trainee successfully serves the Police Academy.

The salary steps, including the single salary steps and the salary bands, suggest that an employee would advance to the next step upon achieving the years of experience required to advance. However, in the prior contract, officers moved only two steps in three years. Thus, as the PBA points out, "Year 8" really was "Year 9." Article III(A) provides language describing this structure and

modification to prior practice in the prior agreement, including temporary changes in anniversary dates that normally would trigger step movement:

Except as follows, patrolmen shall become eligible for advancement to the next higher patrolman's grade at their anniversary date of employment as an officer with the Borough of Franklin Lakes. During the life of this contract only, step movement below Year 8 shall be every 18 months. For example, an employee on step for Year 2 with a current anniversary date of October 15th shall receive his next increment on April 15, 2013. The next subsequent increment shall be on October 15, 2014, returning the employee to the original anniversary date. Upon the 2014 return to the original anniversary date, the next subsequent increment shall return to the twelve months interval. Upon attaining the rank of Patrolman year 18, an officer shall be entitled to the appropriate negotiated salary for that year, on the first day of January of each succeeding year.

An additional factor that provides some complexity to the existing salary schedules is the fact that in the past the parties negotiated and included a longevity provision into the Agreement that was separate and distinct from the salary schedules. In the last Agreement, the parties voluntarily negotiated a process that commonly referred to as a fold-in of longevity payments into the steps of the salary schedule. It is for this reason that the salary guides in Appendix A provide for steps and bands that exceed the level of twenty years of experience, including steps defined as "Years 25+" and "Years 28+" and bands such as "Years 23-27." The Borough explains this transition in its post-hearing submission:

The salary guides in the collective bargaining agreement that expired on December 31, 2014 require explanation. See J-1 at 14-16. Franklin Lakes appears to have a lot of steps on its salary guide because the salary guides preserved the once separate

longevity steps and incorporated them into the salary guide. The sixteen (16) step guide for patrol officers hired after January 1, 1999 but on or before March 27, 2012, and the nineteen (19) step guide for patrol officers hired on or after March 28, 2012 resulted from the direct folding in of longevity benefits into base salary. The steps in the salary guide that reflect folded in longevity benefits provide significantly smaller increases than the steps that reflect original step increases. With respect to sergeants and patrol officers hired prior to January 1, 1999, all steps on the salary guide reflect former longevity increases. For sergeants and patrol officers hired between January 1, 1999 and March 27, 2012, all steps above Year 8 reflect former longevity increases. Police Academy Basic Training through Year 8 are true step increases, with officers reaching maximum step at Year 8, after the completion of seven years of service. The salary guide therefore has nine (9) steps (inclusive of two steps during the first year). For sergeants and patrol officers hired on or after March 28, 2012, all steps above Year 11 reflect former longevity increases. Police Academy Basic Training through Year 11 are true step increases. Officers reach maximum step after the completion of ten (10) years of service. The salary guide therefore has twelve (12) steps (inclusive of two steps during the first year). See J-1 at 14-16.

The overview above is essential to understanding the rationale for the parties' respective final offers on salary and, to some extent, the basis for their disagreements on future salary structure, including the number of steps and the calculation of salary expenditures. Significantly, despite challenging each others' method of calculation under the statutory salary cap, they have stipulated to the first necessary step required for such calculation under the statute and applicable case law. That is, that the 2014 expenditures by the Borough on 2014 base salaries was \$1,852,333 and that the cap amount of 2% that can be allotted towards salary increases amounted to \$37,047 in 2015. It is noted that that amount is now allowed to be compounded annually so the total amount for a four year agreement, by way of example, is \$37,047, \$37,789, \$38,543 and \$39,315

or a total of \$152,694. The statute also authorizes the arbitrator to apportion yearly amounts in a manner that equals this sum but permits its distribution in varying annual amounts.

The extent to which the parties have disagreement over salaries despite their concurrence on the applicability of the statutory salary cap, the gross amounts paid out in salary for 2014 and the amounts that equate to 2%, is evident in three major respects. The first disagreement is what the number of steps should be on the new salary guides. The PBA proposes no change in the number of steps. It instead focuses on the amounts of salary that it believes each officer should be individually awarded in order to stay within the 2% cap. In contrast, the Borough proposes to add nine steps to the salary guide for members hired between January 1, 1999 and March 27, 2012 and to add eight steps to the salary guide for members hired on or after March 28, 2012. The added steps are said to be necessary in order to advance an officer to a higher step but to render that step smaller in order to stay within the cap.

The second disagreement is over what individual officer salaries or amounts should be included or excluded from salary cap calculations. By way of example, there are sharp disagreements over salary calculations that concern two police officers. These officers are Patrolman Pelligrino and former Patrolman Albert. The parties have addressed these disputes in their written post-hearing submissions. The PBA argues the following:

With regard to the calculations on either the PBA proposed salary guide or the employer's proposed guide, there are fundamental disagreements. The first disagreement is with Officer Pelligrino. The employer has included him in their calculations for the two percent cap and, more importantly, against the cap for his movement through the salary guide. On December 31, 2014 Officer Pelligrino was in the police academy. He was not a police officer or patrolman, nor was he a member of the PBA until after he graduated the academy. While it is true that there was a salary step for the Academy, he was not covered under the collective bargaining agreement until after he had graduated the Academy. Article I, Covered Personnel, states:

This Agreement shall apply to all full time Officers and Patrolmen of the Department employed by the Borough, and the exception of the ranks of Chief, Captain, and Lieutenant.

N.J.S.A. 34:13A-16.7 states in relevant part:

b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c. 85(C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, 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.**

There is no question that Pellegrino was not a "member of the affected employee organization" on December 31, 2014. Additionally, on the effective date of the new agreement, January 1, 2015, he was not a police officer, patrolman, or member of the PBA. Finally, Pellegrino was treated differently than all of the members of the PBA. When he was finally sworn in as a police officer and became a member of the bargaining unit, he was placed on the first step of the salary guide. It was also at that time, April 1, 2015, that he was enrolled in the Police and Firemen's Retirement System ("PFRS"). (U-25). All police officers are required to be enrolled in the PFRS. Pellegrino was not, under the law, permitted to be enrolled in the PFRS because he was not a police officer until he completed the Academy. If he was a member of the bargaining unit why did the employer change his salary, yet freeze everyone else? The answer is simple. When he was sworn in as a police

officer, the Borough had to put him at the starting salary for police officers. Pellegrino's salary increases should not be part of the money available under the two percent salary cap.

The second issue concerns the status of Officer Albert who has left the police department and is no longer employed by the Borough. Albert only worked for a few months in the beginning of 2015 and then left to go work for another department. It is acknowledged that the Commission has addressed this issue, however, the facts of this case are different from the cases addressed by PERC previously. In Borough of New Milford and PBA Local 83, 38 NJPER ¶1116 (2012), the Commission wrote:

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.

In this case, Albert leaving the department is not speculative. It has already occurred. He is no longer an employee of the Borough. The arbitrator is mandated to project costs for the duration of the award. Using a salary for a person who is not an employee does not further that mandate. In fact, it would automatically create a false projection. It would add approximately \$180,000 of spending that does not exist. In a relatively small unit, like this one, that would completely change the projected costs. Finally, since the PBA's proposal is done by providing salaries for the individual officers, if it is necessary to put Albert on the list of officers, the PBA proposes he gets no increases for the duration of the contract.

The Borough disagrees with the PBA's method of calculation concerning Officers Pelligrino and Albert and contends that its own method of calculation is

more consistent with the statute and the PERC case law in regard to the proper method of calculation. The Borough submits:

The PBA does not calculate the cost of its demands in accordance with applicable law. First, the PBA's calculations are flawed because the PBA failed to include Officer Albert's salary costs in the successor contract term. See Exhibit 2. Officer Albert resigned on July 13, 2015, six and one-half months into the successor contract term. In accordance with New Milford, 38 NJPER at 340 and Borough of Ramsey, 39 NJPER 17, discussed above, which directs that separations, retirements, and promotions that occur during the successor contract term do not affect calculations, Officer Albert's salary costs must be carried through the successor contract term as if he remained employed. The PBA's decision to omit Officer Albert's salary costs illegally frees up \$51,804 for salary increases for other officers.

Moreover, as discussed above, the PBA erred in failing to include Officer Pellegrino in its calculations. See Exhibit 2. In contrast to the PBA's contention, the cost of Officer Pellegrino's base salary must be included in the calculations for the successor contract term because he was employed by the Borough as of December 31, 2014. The PBA offers no authority in support of its position that Officer Pellegrino should not be included because he was in the academy for his first six months of hire and thus not a "sworn" officer as of December 31, 2014. To the contrary, Officer Pellegrino is a member of the PBA unit. His salary at the first step of the salary guide, "Police Academy Basic Training," was governed by the salary guide in the PBA collective bargaining agreement and his salary was paid by the Borough. It is irrelevant to the analysis that Officer Pellegrino had not yet been sworn in as a police officer as of December 31, 2014. Officer Pellegrino, the most junior officer, receives the largest increases throughout the successor contract term. His increases total 40.50% over three years (using Borough figures with applicable mid-year salary increases) or 38.86% (using PBA figures). Omitting Officer Pellegrino frees up \$16,224 (using PBA figures) which falls within the 2.0% cap, illegally making \$16,224 available to increase the base salaries for the other officers. See Exhibit 3.

The third main area of disagreement is over the amounts of salary that each has attributed to the other party's proposal. The Borough calculates the

costs of the PBA's proposal for 2015, 2016 and 2017 as 3.53%, 5.51% and 1.01% respectively, amounts that it alleges far exceed the cap. The PBA rejects the Borough's calculations and submits that its own calculations, according to its methodology, fall within the 2% statutory cap. As previously stated, the PBA also rejects the manner in which the Borough has calculated its own proposals because it views the Borough as having charged to the cap certain rollovers from one year to the next, especially with regard to the first year.

Because I do not award either party's salary proposal, it is unnecessary to engage in a detailed analysis as to the merits of each party's arguments that center on disagreeing with the other party's method of calculation. I am duty bound to render an award that does not exceed the 2% salary cap based upon \$1,852,333 on 2014 base salaries that yields a cap amount of \$37,047 over the course of the new contract plus a compounded amount for each successive contract year after the initial contract year and to make those calculations based upon the required methodology established by PERC. As I have previously found, these amounts are \$37,047 and \$37,789 and \$38,543 and \$39,315 or a total of \$152,694. N.J.S.A. 34:13A-16.7 permits the distribution of the aggregate monetary value of the award in unequal annual percentages to be not greater than the compounded value of a 2% increase per year.

In deciding the application of these amounts, I am bound by PERC case law as set forth in Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340

(¶ 116 2012) and Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶ 3 2012) and their progeny. A summary of arbitral authority was recently set forth in State of New Jersey and FOP Lodge 91, P.E.R.C. NO. 2016-11 (2016). In pertinent part, it stated the following:

P.L.2010, c.105 amended the interest arbitration law, imposing a 2% “Hard Cap” on annual base salary increases for arbitration awards where the preceding collective negotiations agreement (CNA) or award expired after December 31, 2010 through April 1, 2014. P.L.2014, c.11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% salary cap, along with other changes, to December 31, 2017. N.J.S.A. 34:13A-16.7 provides:

Definitions relative to police and fire arbitration;
limitation on awards

a. As used in this section:

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

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

b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, 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. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased 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 immediately preceding year of the agreement awarded by the arbitrator.

The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent increase per year over the corresponding length of the collective negotiation agreement. 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.

In Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we modified our review standard to include a determination of whether the arbitrator established that the award would not exceed the Hard Cap. ... [T]he Commission has consistently authorized the arbitrator's approach to calculating increases in base salary items for those unit members remaining in the unit after the base year. In New Milford, the Commission endorsed the following method for "costing out" an interest arbitration award within the parameters of the 2% Hard Cap:

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 effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

[New Milford at 344, emphasis added]

In Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), we rejected the union's assertion that the arbitrator should have taken into account a recent retirement and recent promotions when projecting salary costs in the award, finding:

In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.

[Ramsey at 20, emphasis added]

I am bound by the methodology set forth in the above case law and will apply it to the salary award. I next apply the evidence of this case to the statutory criteria and the statutory salary cap. Initially, I note that the salary cap does not in every case automatically determine what the salary result should be. Its relevance and applicability in an arbitration proceeding is dependent on whether the evidence points to the probability that, in the absence of the cap, an amount that could exceed the cap could potentially be justified. In the instant

case, the PBA has produced credible evidence that supports an award that could exceed the cap. I need not proceed beyond the fact that normal movement on the salary guide in accordance with its own terms, even without any increase to the salary guides, would require funds that exceed the cap. Moreover, the Borough does not contend that an award that expends funds up to the cap limitation would compel it to exceed the tax cap levy or create adverse financial impact on the Borough. The percentages that represent the cap is generally consistent with the cost of living data. Even if such data exceeded the cap, the data would be irrelevant because it could not support an award that exceeds the cap. In short, an award less than what could lawfully be awarded would not represent a reasonable determination of the salary issue. Further, comparability evidence reflects interest arbitration awards in the County have resulted in salary increases that are at the level of the statutory salary cap. Voluntary settlements can exceed the cap but are of no evidentiary value given the requirements that awarded salary increases cannot exceed the statutory salary cap. The most compelling criteria are the interests and welfare of the public (N.J.S.A. 34:13A-16g(1)), the lawful authority of the employer (N.J.S.A. 34:13A-16g(5)) and the statutory restriction on the employer (N.J.S.A. 34:13A-16g(9)). These criteria lead to the conclusion that salary increases are warranted but only to the extent allowable by law. Accordingly, the salary award will be the maximum of what can lawfully be awarded and thus, compel expenditures up to, but not in excess of, the statutory salary cap.

Due to the requirements of the statutory salary cap, unit employees cannot be moved through the salary guides even after they have met contractual eligibility standards to do so, even if all of the steps on the salary guides were to remain frozen for four years. The obvious reason, as is known to the parties, is that the costs of step movement alone exceed the amounts of funds that can be awarded. Simply put, the large number of existing steps on the salary guide that would require greater monies than what can be awarded to fund incremental movements toward the maximum step. I next turn to the parties' proposals.

I decline to award the Borough's proposal due to the significant increase in the number of steps that the Borough would add to the salary guides that already have a higher than average number of steps. The additional 9 and 8 steps to be added to two of the existing salary schedules cannot be justified and would stand in stark contrast to the number of steps contained in comparable salary schedules. I also decline to award the PBA's proposal because, as it is calculated, the amounts necessary to fund the proposal would require this award to exceed the statutory salary cap pursuant to the mandates set forth in applicable case law. In particular, the PBA does not include Officer Peligrino in its cost projections. It removes the costs of Officer Albert who separated from employment during the 2015 contract year.

Officer Pelligrino's salary of \$41,752 for 2014 was determined by his placement on the third salary schedule (Employees hired on or after March 28,

2012) at the Police Academy Basic Training step upon his September 25, 2014 date of hire. This salary schedule has a Year 1 step of \$51,804 that Officer Pelligrino moved to on March 25, 2014. Applicable case law requires that Officer Pelligrino's salary increases in 2015 beyond where he was placed on the December 31, 2014 scattergram must be charged to the 2% cap. The PBA's contention that he was not in the bargaining unit on January 1, 2015 is understandable because it would avoid his 2015 increase to be charged to the cap. However, this contention is inconsistent with the fact that his original placement on the Police Academy Basic Training step was the result of the negotiated salary schedule. It also runs counter to the applicable case law cited above:

[T]o 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.

Borough of New Milford and PBA Local 83, 38 NJPER ¶1116 (2012)

The PBA's contention with respect to Officer Albert is also without merit. His separation from employment during 2015 does not allow for a subtraction of his \$51,804 salary from the amounts the Borough was required to project to spend due to his employment at \$51,804 on the December 31, 2014 scattergram. As stated in New Milford:

[B]oth reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award

required by the new amendments to the Interest Arbitration Reform Act.

See also, Borough of Ramsey:

The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.

Borough of Ramsey, P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012)

This methodology, as required by PERC case law, was applied by this arbitrator in State of New Jersey and New Jersey Law Enforcement Supervisors Association, PERC Dkt. No. IA-2014-003, decided January 21, 2014. That case stated:

Significantly, the aggregate amount of what is the maximum allowable amount must be placed on the scattergram, or number of employees, who are employed as of the last date of the contract year of contract expiration on June 30, 2011. PERC then requires the aggregate amount to be distributed to that scattergram over the entire contract period as if all of the employees continued to be employed without any impact from new hires or retirements.

This matter was appealed and affirmed by PERC [P.E.R.C. No. 2014-60] on March 10, 2014. In that decision, PERC held:

We affirm the arbitrator's salary award and find that his selection of the State's scattergram is consistent with our direction in New Milford. We reject NJLESA's argument that the savings realized by the State in FY 12 and 13 are to be credited to the unit. As we indicated in New Milford, the base salary calculation may not

increase by more than 2% per year, or 6% in the aggregate for a three year contract award, the amount expended by the employer in the last year of the prior agreement. N.J.S.A. 34:13A-16.7(b). Whether speculative or known, we again hold that any changes in financial circumstances benefitting the employer or majority representative are not contemplated by the statute or to be considered by the arbitrator. See Borough of Ramsey (Holding that the interest arbitration statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs in the new contract years). We also note that we have recently reversed the dynamic status quo doctrine as a matter of Commission policy and no longer require employers to pay salary increments upon contract expiration. See Atlantic County, P.E.R.C. No. 2014-40, ___ NJPER ___ (¶ 2013), app. pending; and State-Operated School Dist. of the City of Paterson, P.E.R.C. No. 2014-46, ___ NJPER ___ (¶ 2014).

Accordingly, for 2015, the cap amount of \$37,047 shall be awarded and applied to the salaries and personnel included in the December 21, 2014 scattergram that contained base salary costs of \$1,762,514. Because Officer Pelligrino was advanced to the Year 1 step at \$51,804 on March 26, 2015, the costs between his \$41,752 salary on December 31, 2014 and his \$51,804 prorated salary for 2015, the amount of \$7,516 for year 2015 must be included within the \$37,047.² I have apportioned the remainder of the amount that can be awarded in 2015 (\$29,531) in the following manner and for the following reasons.

I have concluded that a reasonable determination of the salary issue should be one that does not expand the existing number of steps on the salary schedules either in 2015 or in the remaining contract years and requires that each unit employee remain on his or her step as of the December 31, 2014

² Officer Pelligrino was the only officer to be moved on the salary schedule during 2015. All others were frozen and there are no step cost increases associated with any other employee.

scattergram throughout the contract duration. Although unit officers cannot receive their full amount of step increases, the maintenance of the existing salary structure will contribute to facilitating the parties' future salary negotiations with or without the existence of a statutory cap on salary increases. Because the amounts that can be awarded cannot cover what the normal step increases would have required, I find that a common method of distribution for all unit employees is the most reasonable and equitable approach towards the salary increases. Accordingly, the remaining \$29,531 shall be evenly distributed to the steps occupied by employees on December 31, 2014 in equal dollar amounts to each step on each of the three salary schedules by the addition of \$1,555 to each step effective January 1, 2015. To do otherwise could result in selective and disproportionate increases being awarded to various unit employees to the detriment of a majority of the others.

I award an identical method of distribution of salary cap monies for 2016, 2017 and 2018. This method of distribution would continue to award increases in equal dollar amounts as the most reasonable and equitable method of distribution. Each unit member, defined as all employees receiving a salary as determined by their placement on a step set forth in any of the three existing salary schedules as of December 31, 2014, shall receive \$1,988 in 2016 by adding this amount to the adjusted 2015 step, \$2,028 in 2017 added to the adjusted 2016 step and \$2,069 in 2018 added to the adjusted 2017 step, effective January 1 of each calendar year in 2016, 2017 and 2018. Each such

employee shall remain on his or her salary step that was occupied as of December 31, 2014³ throughout 2015, 2016, 2017 and 2018 and for future purposes retain his or her anniversary date based upon date of hire pursuant to Article III(A). Accordingly, the salary award is as follows:

1. Officer Pelligrino shall advance to the Year One Step in 2015 upon his advancement to that step upon completion of the Police Academy.
2. In 2015, each step in each of the three salary schedules shall be increased by \$1,555 effective and retroactive to January 1, 2015. In 2016, 2017 and 2018, each step of the three salary schedules shall be increased by \$1,988 in 2016, \$2,028 in 2017 and \$2,069 in 2018. All current employees who were employed on the December 31, 2014 scattergram shall receive the increases.
3. Each unit employee shall remain on his or her step as of the December 31, 2014 scattergram throughout the contract duration, except for Officer Pelligrino who shall remain at the Year One Step.
4. Any modification to staffing during this contract term shall result in employees being placed on the appropriate salary schedules as modified.

Accordingly, and based upon all of the above, I respectfully enter the terms of this Award.

³ As stated, the one exception is Officer Pelligrino who shall remain on Step 1 after having been moved from the Academy Step after six months.

AWARD

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

2. **Duration** – There shall be a four-year agreement effective January 1, 2015 through December 31, 2018.

3. **Private Duty Rate**

Private duty rate increase from \$70 to \$85 per hour.

4. **Article VIII – Health Insurance**

Medical coverage shall be amended to provide that the BMED 20/35 Plan will be highest cost plan offered effective as soon as is administratively feasible but in no event earlier than January 1, 2016.

5. **Salary**

Appendix A in the 2012-2014 Agreement shall be modified by the following:

1. Officer Pelligrino shall advance to the Year One Step in 2015 upon his advancement to that step upon completion of the Police Academy.
2. In 2015, each step in each of the three salary schedules shall be increased by \$1,555 effective and retroactive to January 1, 2015. In 2016, 2017 and 2018, each step of the three salary schedules shall be increased by \$1,988 in 2016, \$2,028 in 2017 and \$2,069 in 2018. All current employees who were employed on the December 31, 2014 scattergram shall receive the increases.
3. Each unit employee shall remain on his or her step as of the December 31, 2014 scattergram throughout the contract duration, except for Officer Pelligrino who shall remain at the Year One Step.

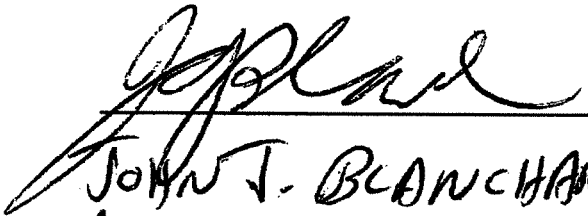
4. Any modification to staffing during this contract term shall result in employees being placed on the appropriate salary schedules as modified.

Dated: October 19, 2015
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 19th day of October, 2015, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


JOHN J. BLANCHARD
Attorney At Law
of New Jersey