

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

TOWNSHIP OF IRVINGTON

-and-

Docket No. IA-2014-066

PBA LOCAL 29

Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the Township:

Scarinci and Hollenbeck, attorneys
(Ramon Rivera, of counsel)
(Christina Michelson, of counsel)

For the PBA:

Trimboli and Prusinowski, attorneys
(James Prusinowski, of counsel)
(Jinkal Pujara, of counsel, on the brief)

Witnesses:

Maurice Gattison, PBA Local 29 President
Jerry Ramos, PBA Local 29 Negotiations Chair
Joseph Petrucelli, PBA Financial Consultant
Faheem Ra'Oof, Township Chief Financial Officer
Wayne Bradley, Township Administrator
Joseph Santiago, Township Police Director

INTEREST ARBITRATION AWARD

BACKGROUND

On March 31, 2014, the Township of Irvington filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over successor collective negotiations agreements with Police Benevolent Association Local 29. The previous agreement expired on December 31, 2010.

On April 30, 2014, I was appointed to serve as 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. By letter of May 5, I scheduled an interest arbitration hearing for May 21, 2014 and directed each party to submit a final offer no later than May 16 in accordance with N.J.S.A. 34:13A-16(f)(1).

On May 21, I conducted an interest arbitration hearing at the Township's Municipal Offices. The Township and the PBA each submitted documentary evidence and testimony. Both parties submitted Final Offers. The PBA submitted the report of its financial analyst and a calculation of the financial impact of its economic proposal. The Township submitted a certification of its chief financial officer and a calculation of the impact of both salary proposals. The PBA submitted a list of unit employees for 2011, 2012 and 2013, together with their dates of hire, dates of entry or exit from the bargaining unit, either by retirement, termination of service or promotion, and their total base pay paid for each year. The City also submitted the same list for 2011. Post-hearing summations were filed by May 30, 2014.

FINAL OFFERS OF THE TOWNSHIP

1. DURATION — January 1, 2011 to December 31, 2014 (four-year agreement)

2. SALARY (Article XI)

Subsection 1- Salary Increase

1. January 1, 2011	0% Increase to base pay
2. January 1, 2012	0% Increase to base pay
3. January 1, 2013	0% Increase to base pay
4. January 1, 2014	1% Increase to base pay

Add two steps to the salary guide for the PBA to increase from six steps to eight steps.

Subsection 2 - The Township shall pay unit employees on system of bi-monthly pay periods for all employees. Modify provision as follows:

Where an annual payment schedule would require 27 rather than 26 bi-monthly pay periods, the parties agree that the calendar year pay periods shall be divided by 27 pay periods and not 26 pay periods.

Subsection 4- Freeze additional pay for current detectives at \$1250 per year.

Subsection 5- Eliminate provision in its entirety including contractual language regarding Canine Squad and eliminate stipend of \$150 per month.

3. LONGEVITY (Article XII)

- Eliminate longevity for new employees hired on or after January 1, 2011.

- Freeze the current cash value of longevity for all current employees for their entire career.

4. VACATION LEAVE (Article XIV)

Modify for employees hired on or after January 1, 2011 as follows:

1-10 years: Patrol — 10 days
11-15 years: Patrol — 15 days
16 plus years: Patrol — 20 days

Subsection 2- For all current employees add the following language "Any unused vacation may be carried forward into the next succeeding year only."

5. TERMINAL LEAVE (Article XXI)

Eliminate terminal leave for new employees hired on or after January 1, 2011.

6. HEALTH BENEFITS (Article XVII)

Eliminate the traditional health plan for all current employees.

Subsection 4 - Increase prescription co-payments for brand name drugs from \$20.00 to \$40.00 for all current employees.

Subsection 8- Add the following new provision:

Health care contributions shall be made by all current employees in accordance with New Jersey State law, N.J.S.A. 40A:10-21.1.

SICK LEAVE (Article XV)¹

¹ In its final offer the Township also proposed to modify the sick leave provision to limit sick leave to fifteen paid days per year and to permit employees to accumulate unused sick leave. It also proposed a new provision, "Retirement Benefit", which would pay employees hired after January 1, 2011 for their unused sick time upon retirement up to a maximum of \$15,000. By email of June 2, the Township sought to modify these two proposals to limit their effectiveness to employees hired after the date of this award. By email of June 5, I advised the parties that the Commission's rules did not authorize me to accept amendments to final

- Sick Leave Incentive. Modify as follows for all current employees:

Employees that do not use any sick time in the six-month period shall be awarded an additional vacation. The six (6) month period shall be either January 1 — June 30; or July 1 — December 31 of the calendar year.

OVERTIME (Article X)

Amend overtime compensation to provide that the maximum hours of compensatory time accrued in lieu of overtime and/or on-call duty status is 100 hours.

FINAL OFFERS OF THE PBA

The PBA proposes to make the following corrections to the contract:

1. On page 1 "N.J.S.A. 34:13-A-1 et seq." should be changed to "N.J.S.A. 34: 13A-1 et seq." The corrected provision should read as follows:

WHEREAS, the Township and the PBA, as the exclusive majority representative of the Patrolmen hereinafter designated pursuant to the provisions of N.J.S.A. 34:13A-1 et. seq., as amended, have an obligation to engage in collective negotiations.

2. Article VII, Grievance Procedure under Step 6, on page 14 under subsection (b) the second sentence reads "The decision of the arbitrator shall be in writing and set forth his or her findings of act, reasoning and conclusions on the issues submitted." The word "act" should be "fact." The corrected provision should read as follows:

offers after the close of the hearing. Thereafter, the Township withdrew these two proposals.

The decision of the arbitrator shall be in writing and set forth his or her findings of fact, reasoning and conclusions on the issues submitted.

Under Step 6, on page 14 under subsection (b) the use of the word "commission" has a capital "C" when it appears that it should not. At the bottom of page 14 and the top of 15 the word "accepted" is used when it appears the word "excepted" is intended. The corrected provision should read as follows:

He or she shall have no power to add or subtract from or modify any of the terms of the Agreement, nor to establish a wage rate, nor shall he or she in any case have power to rule on any issue or dispute excepted from the definition of a grievance as contained in this Article or excepted from this grievance procedure by any other provision of this Agreement.

3. Article XI, Salaries. The last clause of paragraph 3 should be stricken as holiday pay is no longer provided by the Township. The corrected provision should read as follows:

The Gross Annual Salary for an officer shall be the Annual Salary as listed in Section 1 of this Article XI plus longevity and detective allowance, if applicable.

1. Article XII, Longevity - Section (c) reads in part "an amount equal to two percent (6%) of the yearly base pay." The "two" should be changed to "six." Likewise, in subsection (d) it reads "an amount equal to two percent (8%) of the yearly base pay." "Two" should be "eight." The corrected provision should read as follows:

(c) Over fifteen (15) years of service but less than twenty (20) years of service, an amount equal to six percent (6%) of the yearly base pay.

(d) Over twenty (20) years of service but less than twenty-four (24) years of service, an amount equal to eight percent (8%) of the yearly base pay.

CONTRACT MODIFICATIONS

Terms of Agreement (Article I)

Modify the contract and provide for a three-year agreement. The modified provision would read as follows:

The term of this Agreement shall be for the period commencing January 1, 2011 through December 31, 2013.

HOURS OF WORK AND OVERTIME (Article X)

Section 2, Paragraph 5

Increase the maximum accumulation of compensatory time on the books from 200 hours to 480 hours consistent with FLSA §207(0)(3)(a) and consistent with the SOA Agreement. The modified provision would read as follows:

3. Each employee shall be permitted to accumulate up to 480 hours of compensatory time on the books, inclusive of compensatory time provided by Section 3 and 4 of this Article X and by Article XV, Section 2 and 4.

Paragraph 6 and 7

Modify the use of compensatory time and Emergency Time Due provision as follows:

When an officer requests time off from work through use of accumulated compensatory time, approval of such time off will be governed by the Fair Labor Standards Act (FLSA). Such compensatory time must be requested within a reasonable time of knowing that such compensatory time is necessary and such request will be granted unless the granting of the compensatory time would be unduly disruptive to the Department in providing services to the public.

If an officer does not have accumulated compensatory time and less than five (5) days' notice for the leave is provided, or if the officer does not request to utilize accumulated compensatory time for such leave, then such request shall be deemed Emergency Time Due (EDT). The reason for the use of such time must be provided to the scheduling desk at the time of the request and it shall be at the discretion of the Department whether to grant such request. The Department may require that verification of the need for the leave be provided within two (2) days of the officer's return to duty. The officer will have to notify administration within five (5) days of the officer's return to duty how to adjust the deficit (vacation time, etc.) confirmed by signature. If the officer refuses to allow use of an accumulated source, the time out of work may be determined to be unpaid in the discretion of the Chief of Police. For purposes of this provision "days" shall mean the officer's scheduled duty days.

SALARIES, (Article XI)

Appendix A - Wage Increase

Effective January 1, 2011 — 2% increase.

Effective January 1, 2012 - 2.5% increase.

Effective January 1, 2013 - 2.5% increase.

Acting Supervisor Pay

Modify paragraph 3, adding the following subsection for acting pay:

(d) In the event that an officer is serving in a higher classification on an acting capacity in place of a Sergeant or as a Communication Supervisor or as a Senior Detective in charge of the Detective Bureau in the absence of a Sergeant, the officer shall receive pay equivalent to that of the higher rank (Sergeant) during such time as the officer is serving in the higher classification.

Detective Pay

Modify detective pay allowance as follows:

4. In addition to his or her regular base, a Police Officer serving as a Detective shall receive

\$1500.00 per annum.

VACATIONS (Article XIV)

Modify the following:

Paragraph 1

Amend "December 31, 2010" to "December 31, 2013"

Add the following new subsection to paragraph 1:

(i.) Upon Completion of the twentieth (20th) full year of service, twenty-seven (27) working days.

Increase the number of vacation days to equal that of the Superior Officers Association at each applicable step.

SICK LEAVE (Article XV)

Modify the sick leave provision to incorporate the General Order regarding Sick Leave Police and Procedures, GO No.: 2014-01 dated June 1, 2013.

HOLIDAYS (Article XVI)

Include in the list of days receiving compensatory time Christmas Eve and New Year's Eve. The modified provision would read as follows:

1. Each employee after completing his probationary period of service for the Township shall receive two (2) work days' compensatory time for each of the following regular holidays:

Election Day

Veteran's Day

Christmas Eve

New Year's Eve

BEREAVEMENT LEAVE (Article XVII)

Provide four days of bereavement leave in the event an immediate family member dies, and provide three days of bereavement leave for any other listed individual. Add fiancé and relative of a fiancé to the list of immediate family members. The modified provision would be as follows:

1. In the event of death in the immediate family of the employee, the employee shall be entitled to four (4) working days of leave to be taken in close proximity to the date of death.
2. Immediate family shall be defined as spouse, child, stepchild, parents, parent-in-law, grandparents, sister, brother, grandchild, childhood stepmother or stepfather, fiancé or fiancé, or relative regularly residing in the employee's household.
3. In the event of death of a sister-in-law, brother-in-law, grandparent-in-law, niece or nephew, aunt, or uncle of the employee, the employee shall be entitled to three (3) day's leave.

INSURANCE COVERAGE (Article XVIII)

If the Township fails to make payments to medical providers within the required period of time, then the Township will be responsible for any late fees and collection costs incurred by the officer and interest will be paid to the officer by the Township due to its delinquency. The provision should be added to paragraph 3:

3. The Township will be responsible for paying to the officer interest at the rate of 10% if payment is not made on a submitted bill within seventy-five (75) days of the date of submission by the employee. If an officer is assessed late fees or costs associated with the medical provider's collection of the charges, then the Township will be responsible for paying such costs.

TERMINAL LEAVE (Article XXI)

Incorporate the past practice of terminal leave payments being made to a retired officer within 30 days of retirement.

MISCELLANEOUS (Article XXII)

Paragraph 12 - Increase the number of PBA days provided to the PBA President from two to four days per month. The PBA Delegate shall receive three days per month. The modified provision would read as follows:

12. The PBA President or his Designee shall be granted leave without loss of pay for attendance to PBA duties up to four (4) days per month upon written notice. The PBA Delegate shall be granted leave without loss of pay for attendance to PBA duties up to three (3) days per month in addition to attendance at the monthly State PBA meeting upon request.

Add the following new provisions to the agreement:

POLICE-RELATED SHOOTINGS (New Article)

In the event of a police-related shooting, the officer involved shall receive administrative leave for stress for a minimum of two (2) days with pay. No report will be required of the officer involved for a period of forty-eight (48) hours from the time of the incident. The officer shall also have the opportunity to consult with an attorney prior to submitting his report.

YEARLY ASSIGNMENTS (New Article)

Allow for officers to bid for special assignments (Jailer, school resource, court officer, etc.) based upon seniority.

STIPULATIONS

The parties entered the following stipulations into the record:

1. Unit employees receive their step increases on the date of their service anniversary.
2. Unit employees receive their longevity increases on the date of their service anniversary.
3. The Township has continued to pay both step increases and longevity increases since the expiration of the 2008-2010 contract.
4. The past practice has been to make retroactive salary payments, on a pro-rated basis, to employees who have retired since the expiration of the prior agreement.
5. Longevity payments are included in employees' base pay and are included in the calculation of pension contributions and overtime.
6. Employees' stipends are included in base pay for the purpose of calculating pension contributions and overtime.
7. Employees are currently in Tier III of health care contributions pursuant to Chapter 78 and will move to Tier IV on July 1, 2014.

BACKGROUND FACTS

Demographics:

Irvington was incorporated as an independent village on March 27, 1874, from portions of Clinton Township. On March 2, 1898, Irvington was incorporated as a town, replacing Irvington

Village. Portions of Irvington are part of an Urban Enterprise Zone. By the turn of the 18th century, Irvington had been transformed from a country village to a thriving middle-class suburb of Newark. (T-1)

The Elizabeth River is the chief geographical feature of Irvington, bisecting the Township from north to south. The Garden State Parkway also cuts through the middle of Irvington, going north and south. Irvington Township is surrounded by the City of Newark to the northeast and east; East Orange to the north; and Maplewood and Millburn to the west.

The Township of Irvington is an area of three square miles with a population of 53,926.² Population density per square mile is 20,107, which is a higher population density than Newark, East Orange, Jersey City, or Paterson. The average residential property value for Irvington is \$255,428; while the average total property tax bill is \$8,454.

According to the State of New Jersey, Department of Labor and Industry, the 2007 through 2011 unemployment rates for the Township, Essex County and the State of New Jersey (on an average basis) were as follows: (T-26)

UNEMPLOYMENT RATES			
Year	Township	Essex County	New Jersey
2011	12.7%	10.8%	9.3
2010	13.0%	11.0%	9.5%

² Source data is the TownStats BETA Project for 2011.

2009	12.3%	10.5%	9.2%
2008	7.8%	6.6%	5.5%
2007	6.6%	5.3%	4.3%

The following chart provides the median household income for the Township of Irvington, Essex County, and New Jersey based upon the Township's, County's, and State's income group:

(T-32)³

MEDIAN HOUSEHOLD INCOME			
Income Group	Township	Essex County	New Jersey
\$0 - \$10,000	2,791	36,560	213,939
\$10,000 - \$14,999	1,592	17,456	143,830
\$15,000 - \$24,999	2,932	30,887	288,606
\$25,000 - \$34,999	3,005	30,016	305,449
\$35,000 - \$49,999	4,143	39,072	437,373
\$50,000 - \$74,999	4,148	47,511	608,244
\$75,000 - \$99,999	1,939	29,615	413,928
\$100,000 - \$149,999	1,123	28,309	391,123
\$150,000 - \$199,999	148	10,184	130,492
\$200,000 +	167	14,082	132,837

The Township's estimated Per Capita Income for the census periods of 2010, 2000, 1990, 1980, and 1977 is provided below:

(T-26)

ESTIMATED PER CAPITA INCOME			
Year	Township	Essex County	New Jersey
2010	20,924	31,535	34,858
2000	16,874	24,943	27,006
1990	12,982	17,574	18,714
1980	6,611	7,538	8,128
1977	5,899	6,499	6,492

³ The source for this data is the 2000 Income Census, U.S. Bureau of the Census (T-26).

Crime Rates:

In 2010, Irvington had a crime rate of 56.8 per 1000 citizens. (U-23) This crime rate was higher than Jersey City, Newark, East Orange, Orange, South Plainfield, Elizabeth or Trenton. In 2010, Irvington had a total of crimes committed of 3,062, of which 901 (29.4%) were violent crimes. This compares with the City of Newark which had 13,199 crimes in 2010, of which 2,974 were violent crimes (22.5%). However, Police Director Joseph Santiago testified that since 2008, the Irvington crime rate has decreased by about 48%, and violent crimes have gone down proportionately. Santiago acknowledged that Irvington's police officers continue to have a relatively dangerous job and that they "earn their money every day." He observed that the taxpayers pay police officers to deal with the things in life that the average citizen does not want to deal with.

Organization of the Police Department:

Irvington's Police Department is headed by Police Director Joseph Santiago, a long-time veteran of police administration throughout New Jersey. Santiago previously served as the Police Director for the City of Newark and the City of Trenton. He also held an administrative position with the Essex County Prosecutor's Office, and was for a time head of the New Jersey State Police.

The Irvington police force currently consists of 157 sworn police personnel, including the Chief, the Deputy Chief, 4 Captains, 9 Lieutenants, 24 Sergeants, and 118 patrolmen; as well as civilian support personnel. In addition to the Patrol Division, the department also has specialized units, including the Detective Bureau.

According to Director Santiago, the authorized strength of the PBA's bargaining unit continues to be 162 positions -- a goal it has not reached in several years. Since the end of 2010, the PBA unit has been reduced through attrition from 133 patrolmen to its current level of 118.

STATUTORY CRITERIA

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).

* * * *

N.J.S.A. 34:13A-16.7(b) limits an arbitration award to 2% increases over the aggregate base salaries in the last year of the expired contract. However, this limitation does not apply in this matter because the prior contract expired before that amendment to the statute became effective in 2011.

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 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 to determine the total net 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 the other factors that interrelate and require the greatest scrutiny in this proceeding are the financial impact of

the award [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)]; the cap restrictions on the employer [N.J.S.A. 34:13A-16g(6)]; the comparison of wages, other compensation and benefits of the Township's police officers to other municipal police especially those in comparable jurisdictions; and the cost of living.

DISCUSSION

Contract Duration:

The PBA seeks a three-year contract which would cover 2011 through 2013. The Township proposes a four-year contract which would extend through 2014.

The PBA did not address the contract length issue in its brief.

The Township argues that the PBA's proposal for a three-year contract should be denied and that a four-year contract should be awarded. It states that limiting the contract to three years, when the Township is financially strained and in negotiations with three other bargaining units, will further destabilize the Township's resources. The Township cites the award of another arbitrator in the matter of Borough of Spotswood and PBA Local 225, Docket No. 2011-048(05/23/2011), which the Township asserts is pertinent and compelling. In that matter, the arbitrator rejected the PBA' proposed four-year contract proposal in a case where the contract expired December

31, 2010, and thus, not subject to the 2% arbitration cap. The Union offered a four-year contract to expire December 31, 2014, while the Township offered a three-year contract. In rejecting the PBA's proposal, the Arbitrator found,

. . . the PBA asks that there be an Agreement imposed for a four-year period specifically to avoid the need to be involved in negotiations during a period when the State law, an expression of the legislature to control costs of police and fire contracts would be no longer in effect. Clearly a matter of self-interest without any regard for the interests and welfare of the residents of Spotswood. (T-140, page 8)

In this matter, the parties are not subject to the statutory 2% cap on the arbitrator's award because the prior contract expired in 2010 -- before the effective date of the statute applying the 2% cap. I am somewhat puzzled by the parties' respective arguments in this matter. Awarding a three-year contract would mean that the parties would then be subject to the 2% cap should the next contract be submitted to an interest arbitrator. Awarding a four-year contract would mean that the PBA would escape the current statutory requirement for a 2% cap on the arbitrator's award for contracts expiring after 2010 and before the statute expired on April 1, 2014.

If I award the PBA's proposal, the parties will immediately return to the bargaining table to negotiate over a successor agreement, which will likely include a continued negotiation over the health benefits issue. It appears that the PBA favors

this because it agrees that the current health benefits plan needs to be re-examined and possible alternatives explored. It is willing to discuss possible changes to the health care plan as part of negotiations for the next contract.

On the other hand, a three-year contract will mean that the contract will already be six months beyond its expiration date when the award issues. The parties will again for negotiating over retroactive pay and benefits. It is virtually impossible to negotiate retroactively over a change in health care plans.

I award a four-year contract. Ordinarily, a longer contract stabilizes the relationship between the parties and provides a measure of predictability to the Township's budgeting process. Negotiations are arduous, time-consuming and expensive. Here, however, with either a three-year or a four-year contract, the parties will be promptly returning to the negotiations table to bargain over a successor agreement. Given that the parties have been in negotiations for more than three years for this agreement, it is unlikely that the parties will reach a prompt settlement on the next contract in a timely fashion. Such a lengthy period without a current agreement in effect often results in sizeable retroactivity payments once the contract is settled or awarded. Here it is not in the public interest for the Township to accumulate such a potential liability for retroactive payments. Further, as discussed in

detail below, the parties need time to explore possible alternatives to the existing traditional healthcare benefits currently offered to the employees. I therefore conclude a four-year agreement is in the best interest of the parties, the police officers, and the public.

Salaries:

The Township proposes to freeze salaries for patrolmen at the 2010 levels for all of 2011, 2012, and 2013. Further, it proposes a 1% salary increase effective January 1, 2014.

The PBA proposes a 2% increase effective January 1, 2011, a 2.5% increase effective January 1, 2012, and an additional 2.5% increase effective January 1, 2013.

Township's Arguments:

The Township argues its final offer is more reasonable in terms of the financial impact on the township, its residents and taxpayers, and is more in the public's interest. The Township asserts that this award will affect the five other units with which it has expired collective agreements. The Township argues it is statutorily prohibited from raising taxes beyond the tax levy cap to cover salary and wage increases. It asserts its final offer is more reasonable and is within the 2% cap.

The Township argues it was forced to take drastic measures to help it move forward in a productive and financially viable manner. In 2009 and 2010, the Township contemplated layoffs

that would have affected all bargaining units, and had several layoff plans approved by the Civil Service Commission.

The Township asserts it endured a lack of surplus and has suffered from a minimal fund balance over the past four to five years due to a budget deficit and deferred charges of approximately \$10 million. The Township asserts that it conducted layoffs and furloughs in FY 2011 to overcome the significant deficit. In an agreement with the State, the Township deferred the deficit, to be raised over a five-year period.

The Township argues its Final Offer is critically necessary to stabilize and reduce the local tax burden as it has been unable to collect all of its projected revenues during the past five years. The Township also faced significant damage from Hurricane Sandy and Hurricane Irene. In 2012, the Township paid approximately \$850,000 for Hurricane Sandy damage relief, and was reimbursed half of that amount in 2013 and expects the remainder from FEMA in 2014 or 2015. In addition, the Township has faced numerous sewerage collapses, which were not anticipated.

The Township asserts its residents are on the low end of the income spectrum, with a median household income of \$42,580 and median family income of \$50,798, as of the 2010 census. Nearly one-third (1/3) of the Township's households make less

than \$24,999 annually. The Township argues it has limited or no ability to generate revenue from property taxes because approximately 1,775 homes in the Township have been foreclosed on since 2008, with property values dropping approximately \$300 million. The Township's Ratable Values have also declined steadily since 2010. The Township has faced numerous tax appeals from residents and has been required to issue millions of dollars in refunds. The Township bonded money to cover these costs.

The Township contends that to maintain some parity, its Final Offer must be awarded in its entirety. The Township has not increased the salary of its twenty two non-union employees since approximately 2010 and has eliminated longevity for all managerial and non-union personnel.

The Township argues the Police Department's budget is about 38% of the its operating budget and the majority of the department's budget consists of police officers' salaries. The Township argues that its Final Offer provides savings in the Department's budget because of proposals that would limit the terminal leave paid out upon retirement and limit compensatory time in lieu of overtime/on-call duty status to 100 hours. The Township asserts that its proposal to reduce vacation leave will curb the accrual of paid leave due at an officer's retirement or

departure from the Police Department in the form of terminal leave.

The Township argues that in 2011, 2012, and 2013 the Police Department overspent its budget, because of overtime and terminal leave payouts. The Police Department's budget does not include health benefits or pension costs. The Township argues that overtime payments are a major cost that increases the police department's budget. The Township asserts that despite the fact that employees have been contributing towards the costs of health benefits, they remain costly to the Township. The Township argues it is also required to make pension payments to the State police and fire retirement funds and these payments increased significantly from 2010 to 2013.

The Township argues that any award in excess of its Final Offer will result in severe financial hardship to the Township and its already strained budget. Not only has the Township faced financial stress from the recent economic recession, the Township has incurred significant unanticipated costs in street and sewer repair due to the overall condition of the Township's facilities and storm damage from both Hurricanes Irene and Sandy.

The Township argues that the CPI data demonstrates that the Township's Final Offer is more reasonable than the PBA's Final Offer. The Township argues its residents' incomes

are not increasing by anything similar or even comparable amounts as unemployment is high in Irvington. The Township argues that the PBA's wage proposal is merely an attempt to obtain unjustifiable salary increases in an economic environment that has significantly worsened over the last several years. In fact, it asserts, the PBA failed to provide any financial certifications indicating that the salary increases were affordable.

The Township asserts the PBA's salary increases are not in line with the CPI. It argues the PBA seeks increases over the 2% cap, which is above the CPI.

The Township argues that the PBA failed to show that its members' standard of living will be harmed by the Township's Final Offer, as a majority of the police officers earn well over \$90,000 per year in base salary alone. In contrast, median incomes in the Township are a fraction of this salary.

Essex County has had an unemployment rate consistently over the national and state average - decreasing to 10.6% only in June 2013. The Township contends that through responsible governing and the receipt of grants, PBA members have enjoyed continued employment stability; the Township has returned all laid off officers to work and continued to employ new recruits in this time of extreme financial difficulty.

The Township argues that I should be guided by the statutory cap even though this award is not subject to it because two other Township fire units' expired contracts will be subject to the cap. The Township argues that in order to maintain equality or parity among Township contracts, no award over a 2% cap should be issued.

The Township argues that Interest Arbitration Awards are the only tool a municipality can rely upon to control its contractual costs where negotiations fail. It argues that its Final Offer is the more reasonable, and in accordance with the 2% cap. The Township asserts it has demonstrated good faith by submitting a salary proposal that provides a reasonable salary increase.

The Township argues that it provides a higher minimum salary and first step base salary than other Essex County municipalities, it provides base salaries that are well above the County average, and the its maximum base salary is on par with the County average.

The Township argues it submitted sufficient evidence establishing that the overall compensation and benefits provided to its PBA members are equal to or better than the averages in Essex County. As such, the Township's Final Offer should be awarded.

PBA's Arguments:

The PBA argues that the Township can afford its proposal by working within its existing budget, reallocating funds to the police department, taking advantage of surpluses, reserves, and unanticipated revenues from within and outside the police department's budget. The PBA asserts that no new taxes are necessary, that in the past few years (ie, the next contract period) the Township spent under its spending cap and taxed under the tax levy cap. Thus, these caps do not and will not restrain the Township in its ability to afford to compensate police fairly. The PBA asserts that any property tax increase that would become necessary would be nominal; it explained the homeowners (two-thirds of whom are landlords) can afford a nominal increase.

The PBA argues that its members' net income has been steadily decreasing because of having the pay Chapter 78 health insurance contributions, increased pension contributions, and the cost of living has been increasing, while the Township has consistently had reserves in its budget for salary increases, has revenue sources other than taxes it can allocate to police salaries, and the ample ability under the tax levy cap to nominally raise taxes, to cover the cost of the PBA's proposal.

The PBA argues its proposal should be awarded because the Township has steadily decreased the police department budget while increasing other municipal salaries.

It should be awarded to maintain wage levels as close as possible to the increased cost of living in the area.

The PBA argues its proposal should be awarded because the Township's financial reports are inaccurate, unreliable, and show the Township's financial mismanagement.

The PBA argues that its proposal is reasonable in comparison to municipalities that do not receive an Abbott school subsidy; and the Township is only spending 0.9% of its total property tax allocation on the Police Department. The Police Department constitutes a significant portion of the entire municipal budget; however, it is also the largest department in the municipality and is a 24/7 operation.

The PBA argues that its proposal is in the public's best interest and welfare because of the Township's relatively high crime rate. It will better reward PBA members than the Township's low economic proposal for their efforts in reducing Irvington's crime rate; it will increase morale and encourage productivity and eventually may lead to increased revenues in Irvington.

Finally, the PBA argues that Irvington police officers are not reasonably compensated compared to other municipal police

officers in New Jersey and that only its proposals are reasonable compared to the wages and working conditions of similarly situated police officers.

The PBA argues that since 2008, Police Department wages and other expenses have resulted in reserves. In 2012, the Township spent \$145,224.50 less than budgeted for the Police Department salaries and other expenses; in 2011, the Township spent \$272,290.40 less than budgeted for the Police Department salaries and other expense line items and it contends that these reserves amount to \$417,514.90 savings that can be used to fund the PBA's proposed salary increases. The PBA's asserts its proposal, above the steps already in the contract for 2011 through 2012, totals only \$570,537. The PBA argues the Police Department's reserves for those two years covered all but \$153,000 of the PBA's proposed increase.⁴ It asserts that the reserves for 2011 and 2012 covered (or would cover) 73% of the increased cost in the PBA's proposal.

In addition to the reserves in the Police Department Budget, the PBA argues that the Township normally has appropriation reserves, arising from spending less than its budgets. It argues that in the past, the Township has

⁴ The PBA's proposed increase over the step movements in the guide for 2013 equals \$341,358. Since the PBA was not provided with information regarding the 2013 Audited Financial Statement ("AFS") it cannot provide information as to how much reserve from 2013 could have covered the proposed increased cost for that year. However, it assumes that a significant portion of the 2013 salary increase would be covered by the 2013 reserve based upon the 2011 and 2012 information.

continually spent less than budgeted, for example, according to the Audited Financial Statement ("AFS") of December 31, 2013, there is \$38,591,369 available for future spending in 2014. The PBA asserts that the Township can apply unexpended appropriations and reserves in future budget periods. The PBA could not estimate the amount of appropriation reserves that could lapse to surplus in 2013 and 2014 because the Township has not provided the 2013 unaudited financial statements. However, the appropriation reserves that lapsed into surplus in 2012 and 2011 were \$1,835,932 and \$1,479,067, respectively. The PBA argues that these reserves (totaling \$3,314,999) can be used to fund the PBA's proposed salary increases. The PBA argues that this amount greatly exceeds the \$911,895 difference between its proposal and the Township's proposed wage increases.

The PBA argues that the Township's budgetary and revenue patterns demonstrate that the Township has been able to generate funds during 2011 and 2012 but since 2010, it has not used any of these balances. Thus, it asserts, the surplus balance of \$953,034 (as of January 1, 2013) can be used to fund the PBA's proposed salary increases.

The PBA argues that within the past couple of years, neither the spending nor tax levy caps restricted the Township's budget. The PBA contends that in 2012 and 2013, the Township operated under a 3.5% maximum spending cap. The PBA asserts

that the Police Department and all related services currently account for 19.6% of the total tax bill. The PBA contends the Township could have allocated more to the Police Department in those years.

The PBA argues, by working within the current budgets, the Township can allocate sufficient funds to the Police Department to cover the cost associated with its salary proposal. Moreover, the PBA also argues that adopting its proposed wage increases will not require the Township to raise property taxes. The PBA argues that the long-term impact of the PBA's proposed wage increases will allow the Township to maintain a healthy financial position because the funds required to raise the Police Department wages are already present in the Township and Police Department budgets and would only need to be reallocated to the Police Department's budget. The PBA asserts its proposal is affordable to the Township.

The PBA argues that awarding its wage proposal is in the best interest and welfare of the public because it will reward PBA members for their efforts in reducing Irvington's crime rate; it will increase morale and productivity in the department and eventually lead to increased revenues in Irvington.

* * * *

The following facts have been considered with regard to the

salary issues presented:

Budget:

Irvington transitioned from a State Fiscal Year (SFY) Budget to a Calendar Year (CY) Budget in 2011. (T-33)

Below is a summary of the Township of Irvington's Adopted 2013 Municipal Budget (Anticipated/Realized)⁵: (FA-1; FA-4; T-31)

2013 CURRENT FUND - ANTICIPATED REVENUES			
General Revenues	2013	2012	Difference
Surplus Anticipated	0	0	0
Miscellaneous Revenues	23,935,914	26,136,519	-2,200,605
Receipts from Delinquent Taxes	4,081,721	2,572,799	1,508,922
Local Tax for Municipal Purposes	68,522,679	68,473,178	49,501
Addition to Local School District Tax	1,965,204	1,978,854	-13,650
Minimum Library Tax (FA-4)	<u>929,102</u>	<u>964,953</u>	<u>-35,851</u>
Total General Revenues	99,434,620	100,126,303	-691,683

It can be noted that no anticipated surplus was budgeted for in 2012 and 2013. All categories of 2013 anticipated general revenues decreased overall by \$691,683. A further review of the 2013 budget indicates that public and private revenues (Section 3.F) are anticipated to decrease by more than \$2.0 million. (T-25)

The following chart shows the Township's general appropriations for budget years 2012 and 2013: (T-25)

⁵ 2014 Budget has not yet been adopted.

2013 CURRENT FUND - GENERAL APPROPRIATIONS				
General Appropriations	2013	2012	Difference	Reserved 2012
Total General Appropriations within "CAPS"	76,009,588	76,417,251	-407,663	2,213,188
Operations - Excluded from "CAPS"	5,937,064	7,423,086	-1,486,022	15,329
Capital Improvements	0	0	0	0
Municipal Debt Service	8,459,908	8,030,622	429,286	0
Total Deferred charges	1,166,000	774,492	391,508	0
Judgments	0	0	0	0
Cash Deficit	0	0	0	0
Transferred to Board of Education	3,199,269	3,199,269	0	0
Reserve for Uncollected Taxes	<u>4,662,791</u>	<u>4,281,584</u>	<u>381,207</u>	<u>0</u>
Total	99,434,620	100,126,303	-691,683	2,228,517

Federal Grants:

In 2011, the Township received a federal grant from the "COPS" program totaling \$1,896,472. Moreover, according to the Township's CFO, Faheem Ra'Oof, the Township is still expecting \$850,000 in repayments from FEMA as a result of Hurricane Sandy.

State Aid:

The Township's State Aid revenue is as follows for the budget years 2010 through 2013: (T-33)

STATE AID REVENUE		
Budget Year	Amount	% Changed From Prior Yr. ⁶
CY 2013	12,875,233	0.11%
CY 2012	12,861,584	4.94%
TY 2011	12,255,796	-6.48%
SFY2011	13,105,414	-19.97%
SFY 2010	16,376,531	

⁶ Percentages have been adjusted for accuracy.

The Consolidated Municipal Property Tax Relief Act (COMPTRA) is comprised of municipal property tax relief programs. The COMPTRA statute mandates inflationary adjustments to maintain comparability with the private sector. The Union states that the cost of utility services has significantly increased over time, yet revenues related to those increases have not been provided for property tax relief as required by State statute. This contradiction to the COMPTRA State statute is another reason why the property tax burden has increased in the Township. Furthermore, the Union contends that according to a Watchdog report from the Press of Atlantic City, an analysis of the State Treasury and Department of Community Affairs data estimated that of the total of what energy companies paid on energy receipts tax, only 43% was provided back to the towns in 2010, further supporting that the reason for the tax burden shift is not the cost of the police. (U-FA, U-FA-Tab 6a through 6e)

Property Valuation:

The Table of Equalized Valuations for the Township reflects the following values for the years 2010 through 2013: (T-30)

- (2013) \$2,445,292,523
- (2012) \$2,787,307,928
- (2011) \$2,894,862,867
- (2010) \$3,151,174,386

Equalized valuation decreased from 2010 to 2013 by \$705,881,863.

Property Taxes:

The following chart provides a comparison of the Township's property taxes for the years 2000, 2005 and 2011: (T-1)

TOWNSHIP OF IRVINGTON			
Property Taxes	2000	2005	2011
Number of Residences	8,020	7,987	7,994
Average Residential Property Value	\$21,713	\$21,620	\$255,428
Average Total Property Taxes	\$4,856	\$5,148	\$8,454
Average Property Tax Rebate	\$208	\$552	\$190
Average Net Property Taxes	\$4,648	\$4,596	\$8,264
Total Local Municipal Tax Levy	\$32,826,734	\$37,027,788	\$69,400,948
Total County Tax level	\$8,720,185	\$8,335,586	\$13,188,859
Total School Tax levy	\$18,700,059	\$17,459,529	\$18,831,226
Total Property Tax Levy	\$60,246,978	\$62,822,903	\$101,421,033
Net Valuation Taxable	\$269,399,000	\$263,815,483	\$3,064,240,467
Residential Value	\$174,140,200	\$172,677,400	\$2,041,891,000
Non-Residential Value	\$0	\$86,597,900	\$976,246,500
Vacant Land Value	\$2,692,600	\$2,922,100	\$36,718,800
Percentage Residential Value		65.9%	67.0%
Calendar Year Equalized Value	\$1,275,563,447	\$2,075,652,895	\$2,894,342,559
Calendar Year Total Equalized Rate	4.7%	3.0%	3.5%

According to Township Chief Financial Officer Faheem Ra'Oof, the Township has recently undergone a Township-wide reevaluation of property values. Ra'Oof stated that it is anticipated that tax collections will increase now that the Township has been reassessed and the taxes should more closely reflect the true value of the properties. On the other hand, Ra'Oof also speculated that there would be an increase in tax appeals as a consequence of the reevaluation, particularly among the commercial sector.

The Township has experienced significant increases in its budgeted revenues due in part to the increases in its tax ratable values. The Township, in accordance with the provisions of P.L. 1997, c.99, held an accelerated tax lien sale in the fiscal years 2009 through 2011. Thus, the Township's equalized valuation rates have significantly increased for 2011. (T-34)

The average residential property tax cost to raise one tax point (\$289,843.40) is \$24.43. In 2013, the average annual residential property tax would increase by \$24.43 in order to raise an additional \$244,298.37 (one tax point) by taxation. (U-FA)

The chart depicted below illustrates Irvington's tax rates and for the years 2007 through 2013: (T-29, T-34; U-FA-Tab 5)

TAXES & TAX TITLE LIENS RECEIVABLE							
Tax Rate							
Year:	2013	2012	2011	2010	2009	2008	2007
Total Tax Rate	3.510	3.398	3.310	3.284	2.534	2.549	2.27
Apportionment of Tax Rate							
Year:	2013	2012	2011	2010	2009	2008	2007
Municipal	2.396	2.287	2.265	2.286	1.576	1.617	1.43
County	0.443	0.429	0.415	0.386	0.360	0.338	0.29
School	0.670	0.649	0.615	0.597	0.584	0.580	0.54
County Open Space	0.0	0.0	0.015	0.015	0.014	0.014	0.01

For 2013, the Township's property taxes represented 71.8% of its budget (99,434,620/71,416,985). For 2012, the Township's

property taxes represent 71.1% of Irvington's budget (100,392,035/71,416,985). Anticipated tax revenues for both 2012 and 2013 remained the same, although the municipal tax rate increased from 2.287 to 2.396 for an increase of 4.7% (U-FA; U-FA-Tab 3; T-21, T-25)

According to the certification of CFO Ra'Oof, the Township had faced significant reductions in tax collection in 2009 to present. The tax collection in 2009 was 98.5%; 2010 was 96.73%; 2011 was 95.59%; TY 2011 was 89.71%; 2012 was 93.39%; and 2013 was 93.38%. As such, the Township has consistently collected less tax from its residents over the past five years. This has impacted the Township because it would have to raise taxes and/or borrow to overcome any short falls in cash flow. The Township has either raised the tax levy or reduced available operating expenditures over the past four years.

An adopted budgeted reserve for uncollected taxes in 2013 is \$4.6 million for an estimated 94.7% of tax collections; and a reserve of \$4.2 million was appropriated in 2012 based on an estimated 95.9% of tax collections. Tax collection receipts for delinquent taxes were \$144,095 for 2011; and \$751,904 for 2010. (T-21, T-25, T-36)

Surplus:

The Union contends that since 2008, the Township has created fund balances and generated excess results from

operations. The Union states that the Township has regenerated surplus since 2011 and has a January 1, 2013 balance of \$953,034, the highest surplus balance since 2008. The use of the surplus balance for the years 2013 and 2014 was not provided. (U-FA)

In his certification Ra'Oof states the Township has suffered from a minimal amount of fund balance over the past four to five years due to a budget deficit and deferred charges of approximately \$10 million.

To overcome the Township's 2011 deficit of \$10 million, the township arranged with the State Department of Community Affairs to adopt a transitional year budget in 2011 and convert its budgeting process from state fiscal year to calendar year. The Township was also compelled to enact layoffs and furloughs. Police officers were among those laid off, but the officers were rehired when the Township obtained a "COPS" grant to fund their rehiring.

Still unable to cure its deficit, the Township entered into an agreement with the State that permitted it to defer the \$10 million dollar deficit and the Township is paying it off over a five-year period which will continue through 2015. Annual amounts the Township pays towards this deficit are as follows:

Deficit Repayments		
Year	Amount Paid	
SFY 2011	1,400,355	
TY 2011	1,799,716	
CY 2012	2,559,674	
CY 2013	2,952,723	
CY 2014	2,678,248	Projected
CY 2015	754,535	Projected

Irvington's Actual Fund Balances as of the beginning of each calendar year from SFY 2008 through Budgeted CY 2013 are depicted below: (U-FA, U-FA-Tab 3)

USE OF SURPLUS	Budgeted 2013 CY	Actual 2012 CY	Actual 2011 TY	Actual 2011 SFY	Actual 2010 SFY	Actual 2009 SFY	Actual 2008 SFY
Surplus Balance as of Beginning of Year	953,034	773,020	695,540	695,540	695,540	773,117	1,361,489

The Union contends that the above schedule illustrates that the Township has been able to generate fund balances in the years 2011 and 2012 (\$180,014 and \$77,480, respectively). Operating results for 2013 have not been provided. It also states that Irvington Township has not utilized any fund balance as surplus revenue since 2010. (U-FA, U-FA-Tab 3)

The Union's financial expert states that the Township had appropriation reserves which arise out of spending less in 2013

than budgeted and the Township had \$38,591,369 available for future spending in 2014. ⁷ (U-FA)

The 2013 Unaudited Financial Statement has not been provided and therefore the Union avers that it cannot estimate the amount of appropriation reserves that could lapse to surplus in 2013 and 2014. The chart below depicts the Unexpended Balance of Appropriation Reserves for the Township from year 2008 through 2012: (U-FA)

UNEXPENDED BALANCE OF APPROPRIATION RESERVES					
YEAR	Appropriation Reserves Unexpended	Encumbrance Reserves to be Expended	Total Reserves	Surplus Generated from Lapsed Appropriations	Percentage Recognized as Surplus
2014 CY				Not Provided	Not Provided
2013 CY	Not Provided	Not Provided	Not Provided	Not Provided	Not Provided
2012 CY	1,439,211	2,207,403	3,646,614	1,835,932	45.33%
2011 TY	1,463,282	2,144,626	3,607,908	1,479,067	57.99%
2011 SFY	1,439,211	2,610,533	4,049,744	545,804	20.70%
2010 SFY	1,692,002	858,601	2,550,603	284,282	16.59%
2009 SFY	2,096,524	540,558	2,637,081	709,212	
2008 SFY	1,009,786	703,630	1,713,416	334,864	
Documentation supports: 2008-2011 Audited Financial Statements; and 2012 Unaudited Financial Statements. Documents not provided: 2012 Audited Financial Statements; and 2013 Unaudited Financial Statements.					

The Union contends that the Township has continually spent less than budgeted. The unexpended appropriation and encumbrance reserves indicated in the chart above allow the Township to

⁷ This statement could not be validated from other data as the 2013 financial statement has not been provided.

apply these unexpended appropriation reserves to future budget periods. Any encumbrance cancelled and appropriation reserves that lapse after one year generates surplus. Unexpended balances of appropriation reserves lapse to budget operations in the second budget year after they are generated. Cancelled encumbrances lapse to surplus in the budget year cancelled.

(U-FA)

Net Debt:

The Township has a net debt percentage of 2.57%. The Union contends that this indicates that the Township has remaining statutory borrowing ability in the amount of \$27,240,847. The chart below depicts Irvington's 2012 Annual Debt Statement:

(U-FA)

EQUALIZED PROPERTY VALUES & DEBT ANALYSIS				
CY	Equalized Value	Net Debt Outstanding	Net Debt %	Remaining Borrowing Power
12/31/2012	2,776,764,427	75,465,961	2.57%	27,240,847
12/31/2011	2,885,787,000			
12/31/2010	3,140,889,235			
		3-year Avg. Equalized Value		2,934,480,221
		Multiplied by 3.5% - 2013 Avg. Equalized Value		<u>3.5%</u>
		Statutory Debt Limit	100.00%	102,706,808
		Amount of Statutory Debt Limit Utilized	<u>73.48%</u>	<u>75,465,961</u>
			26.52	27,240,847

The Union avers that Township has \$75,465,961 of net debt and a

resulting net debt percentage of 2.57%. It avers that Irvington has remaining borrowing ability in the amount of \$27,240,847 and that the Township is not financially extended. (U-FA, U-FA-Tab 13)

Appropriation Cap:

The 2012 general appropriations are \$100,126,302; Total modifications equate to \$23,709,052; the 3.5% Cap is calculated on \$76,417,250; for an additional amount of \$2,674,604 per N.J.S.A 40A:40-45.14; allowable 2012 operating appropriations before additional exceptions is \$79,091,854; allowable 2012 operating appropriation is \$80,729,366 versus the amount appropriated in the 2013 CY Budget of \$77,238,870. (U-FA, U-FA-Tab 16)

The Union contends that the Township elected to utilize only \$77,238,870 of available spending in the 2013 budget in lieu of the 3.5% cap calculation amount of \$80,729,366 with the utilization of the cap bank of \$1,580,891. In addition, the Township declined to use \$3,490,496 (\$80,729,366 less \$77,238,870) of available spending. The \$3,490,496 is available for future years spending. It states that by the Township foregoing the available spending, this would indicate that its budget was not restricted by the spending cap. (U-FA, U-FA-Tab 16)

Tax Levy Cap:

For 2013, the Township's prospective tax increases were subject to a 2.0% cap or increase to the previous year's amount to be raised by taxation, which is then subject to various modifications. The formula to calculate the levy for CY 2013 is as follows: (U-FA-Tab 16)

Prior year amount to be raised by taxation is \$68,473,178, plus a 2.0% Cap increase of \$1,369,464, yields an adjusted tax levy prior to exclusions of \$69,842,642. Total exclusions were \$541,977 resulting in an adjusted tax levy of \$70,384,619. New ratables - increase in valuations of \$56,612 provided a maximum allowable amount to be raised by taxation of \$70,441,241. The Township's amount of taxes in the budget for 2013 is \$69,946,902, which is under the 2% Cap. (U-FA-Tab 16)

The Union states that the Township elected to forego \$494,339 in cap allowance; thereby, again in the Union's opinion, would indicate that the Township budget was not restricted by the tax levy cap. (U-FA, U-FA-Tab 16) Although requested to do so, the Township did not provide the levy cap calculation workbook for the 2014 budget, and its 2014 budget has not yet been adopted.

Department Budget:

The Police Department budget is the largest expense of the Township's budget. The Department's salaries and wages equate

to 45.39% of the Township's total salaries and wages appropriations of \$36,404,340. (U-FA, U-FA, Tab 2)

The following chart depicts the Township Police Department's salaries and wages, and overtime expenses for 2013 and 2012: (U-FA, U-FA-Tab 2):

IRVINGTON TOWNSHIP POLICE DEPARTMENT				
General Appropriations	Budgeted CY 2013	Budgeted CY 2012	Paid or Charged	Reserved
Salaries and Wages	15,524,808	15,704,949	16,027,620	57,950
Overtime	<u>1,000,000</u>	<u>1,000,000</u>	<u>1,000,000</u>	<u>0.00</u>
Total	16,524,808	16,704,949	17,027,620	57,950

The Union contends that the Township had \$145,224 left in reserve in the Police Department salaries and wages and other expenses from the CY 2012 and \$272,290 in reserve from the 2011 TY budget. The following chart depicts police salaries and wages, including regular pay and overtime payments:⁸ (U-FA, U-FA-Tab 1)

Township of Irvington Police Department				
Salaries & Wages - Regular & OT		Modified	Amount	
	Budgeted	by Transfers	Paid	Reserved
2014 CY	Not Provided			
2013 CY	16,524,808	Not Provided	17,893,851	-
2012 CY	16,704,949	17,085,569	17,027,620	57,949
2011 TY	18,038,476	19,182,245	18,997,055	185,190
2011 SFY	17,353,224	Not Provided	18,179,169	-
2010 SFY	18,900,000	18,900,000	18,632,540	267,460

⁸ The amount actually spent in SFY 2011 was obtained from Ra'Oof's certification. The amount actually spent in 2013 was \$17,893,851 and was also taken from Ra'Oof's certification, but cannot be relied upon as completely accurate as the 2013 financial statements have not been audited.

Police - Other Expenses				
2014 CY	Not Provided			
2013 CY	729,923	Not Provided	Not Provided	-
2012 CY	525,000	525,000	437,725	87,275
2011 TY	850,000	851,000	763,900	87,100
2011 SFY	425,000	Not Provided	Not Provided	-
2010 SFY	400,000	400,000	399,856	144

Ra'Oof testified that the Township continues to maintain its amount budgeted for overtime at \$1 million dollars event though the department consistently spends more because it wants to maintain this limit on overtime spending even though this goal is consistently exceeded.

The estimated impact on the taxpayer for the 2013 annual general tax allocated to the cost of the Police Department was an increase of \$2.03. The net valuation taxable for the Township in 2013 is \$2,898,434,038. The value of one tax point is \$289,843.40. The Union provides the following chart which delineates 2013 average annual residential property tax municipal rate increase allocated to the cost of the Irvington Police Department: (U-FA, U-FA-Tab 5)

Police Department's General Township Tax Rate for 2013				
		2012	2013	Increase (Decrease)
Municipal General Tax Rate		2.319	2.396	0.0769
Avg. Residential Assessed Valuation		252,089.47	244,298.37	(\$7,791.10)
Municipal General Tax Rate	\times	<u>2.319</u>	<u>2.396</u>	<u>.0769</u>

		584,676.40	585,383.58	707.18
Per \$100 of Assessed Value	/	<u>100</u>	<u>100</u>	<u>100</u>
Amount to be Raised by Taxation for Municipal General Purposes		5,846.76	5,853.84	7.07
Percentage of Police Dept. Raised by Municipal Taxation				28.68%
Average Annual Residential Property Tax Municipal Rate Increase Allocated to Cost of Police				\$2.03
Documentation Sources: 2012 Unaudited Financial Statements and http://www.nj.gov/dca/lgs/taxes/tax,menu.shtml				

The Union states that the above chart illustrate that the general Township tax rate portion of the average residential property tax bill increased by \$7.07 from 2012 to 2013. Of the \$7.07 average annual increase, \$2.03 was allocated to the cost of the Police Department for taxpayers in 2013. (U-FA, U-FA-Tabs 5, & 7)

Cost of Living:

The CPI represents changes in process of all goods and services purchased for consumption by urban households. The CPI utilizes the period between 1982 and 1984 as the base year for comparison. The cost of goods and services during those years is given a value of 100. The cost of the same goods and services is then calculated for each following year, establishing an "index" for easy comparisons of purchasing

power. The CPI is based on the prices of goods, clothing, shelter, and fuels.

The Union states that the average annual inflation rate for the period of January 1, 2010 through October 31, 2013 was 2.76%. (U-47, p.14) Thus, even by applying the PBA's wage proposal, the PBA members will not receive compensation that outpaces inflation. The PBA has proposed increases of 2%, 2.5% and 2.5% over the three years of the proposed agreement. The top earners in the department will still have on average between .76% and .25% less buying power for the years associated with the increases based upon the cost of living increases and the salary increases received.

The Township avers that the U. S. Department of Labor Bureau of Labor Statistics issued a Consumer Price Index in January 2012, covering December 2011; in January 2013 covering December 2012; a report on Northern New Jersey in August 2013; and a Summary on May 15, 2014. (T-46 and 47) The CPI increased 3.0% for all items over the prior 12-month period ending in December 2011. (T-46A) For all items, except food and energy the CPI held at 2.2%. In December 2012, the CPI for all items increased 1.7% before seasonal adjustment. (T-46B) As of July 2013, the CPI-U for New York and Northern New Jersey increased 2.1% for the prior 12-month period, before seasonal adjustment. (T-46C) As of April 2014 the CPI had risen 2.0% for the

previous 12 months, prior to seasonal adjustment. (T-46D) The CPI data demonstrates that the Township's Final Offer is more reasonable than the PBA's Final Offer.

Private Sector Comparisons:

According to the New Jersey Department of Labor and Workforce Development Private Sector Wage Survey, total private sector wages increased between 2011 and 2012 by 2.1%. Local government wages increased during the same period by 1.5%, while all wages (public and private sector) increased an average of 1.9%. The same report reveals that all wages increased an average of 2.0% in Essex County.

(U-25)

I give almost no weight to the component of comparability with the private sector, other than to observe the private sector wage increases as noted above (U-25, U-26). There is no particular occupation, public or private, that is an equitable comparison to police officers. The officers are unique in a variety of ways, including the potential to be called upon to respond to their assigned mission areas of conducting interrogations, searches, and related duties as assigned, and the mitigation of special hazards that threaten public safety, along with the stress and dangers of the job. Moreover, they are regularly required to work evenings, nights and holidays.

Unlike the private sector, they do not compete in a global economy, which tends to depress wages.

PERC Settlement Rates:

The most recent salary increase analysis for interest arbitration on PERC's website shows that the average increase for awards issued in 2013 on post-2011 filings was 1.16% where no 2% cap applied, and 1.89% where the cap did apply. Over the same time period, reported voluntary settlements averaged 1.96%.

The PERC analysis indicates that the average 2012 award for post-2011 with a 2% cap was 1.98%, and an average of 1.59% for awards with no 2% cap. Settlement for the same time period (based upon 29 contracts settled) averaged 1.82%. Overall, PERC's data over the past few years shows that there is a downward trend in salary increases received through voluntary settlement or an award.

Existing Salary and Benefits:

Since the last contract expired in December, 2010, the bargaining unit has been reduced by 11.3%. On January 1, 2011, the unit consisted of 133 patrolmen. Since that date, a combination of retirements and separations from service resulted in 28 employees leaving the Township's force (10 in 2011; 7 in 2012; 9 in 2013, and 1 so far in 2014. In addition, 13 patrolmen were promoted to sergeant in 2013. However, the

Township did hire 5 new recruits in 2012 and 21 more new officers in 2013. As of the date of the hearing, there are 118 patrolmen in the Police Department.

The Department currently has 25 patrolmen assigned to the detective squad. Detectives currently receive a stipend of \$1250 for that assignment.

Officers assigned to the Patrol Division work a 4/4 schedule, meaning that they are on duty four consecutive days followed by four days off duty. Shifts are 11.25 hours in length. Officers assigned to specialized units work a 4/3 schedule with 10 hour workdays.

Patrolmen are paid from the existing salary guide shown below:

Irvington Salary Guide			
Step	# of Ees	2010 Amount	Increment
Academy		40,792	7,126
1st yr		47,918	9,973
2nd yr	10	57,891	8,554
3rd yr	10	66,445	8,549
4th yr	4	74,994	8,551
5th yr	9	83,545	5,983
6th yr	<u>100</u>	89,528	
	133		

Number of employees shown is of 1/1/11

The chart above shows the placement of each officer on the 2010 salary guide as of January 1, 2011. As of that date 100 of the 133 officers were at top pay. However, as

stipulated by the parties, officers have received step advancement each year since the 2010 contract expired.

Further, employees enjoy a contractual longevity plan which provides for longevity pay ranging between 2% and 10% of base pay, depending upon length of service. Of the 118 current officers, 90 receive some percentage of longevity, with an additional 10 officers reaching their fifth anniversary later in 2014 and thus becoming eligible for their first longevity payment. The expired contract contains the following longevity schedule:

Years of Service	Longevity % of Base Salary
0 through the 5th year	0%
Upon completion of 5 years' service	2%
Upon completion of 10 years' service	4%
Upon completion of 15 years' service	6%
Upon completion of 20 years' service	8%
Upon completion of 24 years' service	10%

Longevity increases as officers reach their next benchmark in service years and are payable on the employee's anniversary. Longevity payments are included in employee's bi-weekly salaries and are therefore fully pensionable. While Article XXII, Overtime, does not specifically state the basis on which overtime is calculated, I infer that since longevity payments are included in employees' biweekly base pay, that they are also included in the basis for overtime calculations.

Officers receive overtime pursuant to Article X of the contract which provides for overtime payment at the rate of time and one-half pursuant to the parties' past practice. Apparently officers have the option of taking overtime payments in cash compensation or in compensatory time off. In addition to compensatory time for overtime work, officers have other sources of compensatory time. Pursuant to Section 2(4) of the contract gives employees a compensatory day in lieu of a Thanksgiving holiday. In addition, Article XVI of the contract gives employees compensatory time in lieu of Veterans' Day and Election Day. Further, employees receive compensatory time for what is known in the department as "Sara Bost Day" and a bank of additional compensatory days in settlement of an earlier grievant involving the twenty-seventh pay period in 2004. Officers are permitted to accumulate up to 200 hours of compensatory time.

The Holiday article in the contract does not provide for additional compensation or compensatory time for any additional holidays beyond the two mentioned in the preceding paragraph. I note that the 2002-2004 contract did refer to 11 holidays; therefore, I infer that at some point after 2004 the parties agreed to fold holiday pay into base pay.

Irvington's police officers enjoy unlimited sick leave but are required by departmental policy to remain confined to their

homes when taking a sick day. Officers also receive a generous vacation package pursuant to the following schedule:

Years of Service	Vacation Days per Year
Less than 1 full year of service	1 day per month
Upon completion of the 1st full year of service	14 working days
Upon completion of the 2nd full year of service	17 working days
Upon completion of the 4th full year of service	22 working days
Upon completion of the 7th full year of service	23 working days
Upon completion of the 9th full year of service	24 working days
Upon completion of the 14th full year of service	25 working days
Upon completion of the 17th full year of service	26 working days

The contract does not limit the accumulation of vacation days carried over from year to year.

Irvington's police officers also have a terminal leave benefit which provides that an officer retiring with 25 years of service will be paid 16 weeks' pay upon retirement in addition to his accumulated, banked vacation leave and compensatory time.

Officers are covered by the Township's healthcare plan which includes prescriptions, and a dental plan, for the employee and his/her dependents. Employees may choose between traditional coverage and a HMO plan. Employees are required by the provisions of Chapter 78, P.L. 2011, to contribute a

percentage of the cost of the premiums.

Internal Comparables:

None of the Township's four uniformed bargaining units have settled contracts at this point. The Police Superior Officers Association, representing the police sergeants, lieutenants and captains, had a contract that also expired in 2010. Sergeants earn \$101,503 in base pay, and also receive longevity for a rank differential of about 13.4%. The PBA notes that the police superiors have a slightly better longevity plan and vacation plan. The Township has filed for interest arbitration for all four bargaining units; this group will be the first to go to an award.

In 2009, the Irvington Workers Association, representing the Township-wide unit of blue and white-collar employees, signed a Memorandum of Agreement for a three-year contract extending through December 31, 2013. That agreement, in part, froze employee salaries and longevity steps for 2010, deferred a 2% raise for 2010 into 2011, and provided for a wage reopener for 2012 and 2013 (T52). No evidence was submitted concerning a negotiated settlement on wages for 2012 and 2013 for this civilian group.

The SEIU, representing the City's crossing guards, also have a wage reopener for 2011 (T53).

In 2007, the Township's two fire unions, IAFF Local 305 and

2004, representing firefighters and fire officers respectively, signed a Memorandum of Agreement for a five-year contract. That agreement provided for a 1% increase in January 2011, followed by a 3.5% increase in July, 2011 (T54).

With regard to the Township's non-union employees, the Township recently passed a resolution eliminating longevity for all new hires and freezing these employees at their current longevity rate.

External Comparables:

Both parties submitted contracts from other municipal police departments in support of their respective arguments. The PBA submitted salary information from selected municipalities which appear to be large, distressed New Jersey cities. The Township submitted salary data from most all of the municipal police forces in Essex County. That salary information is depicted in the following chart⁹:

Municipality	2011	2012	2013
W. Caldwell		102,058	104,048
Cedar Grove			102,011
Livingston	97,636	101,736	
Verona	*95,591		
Roseland	95,436		
Fairfield	91,420	93,286	94,153

⁹ *The Township's summary chart (T-103) omitted one town and also contained several inaccuracies: Livingston's top pay as reported is actually the rate for detective sergeants; the same is true for Cedar Grove; other towns in the charts report either old pay rates or future pay rates. To be able to compare salaries in other communities in the same year, I have expanded the chart to what is shown below.

Bloomfield	89,749	94,293	
Maplewood		89,073	90,854
Irvington	89,528		
Millburn	88,843	91,980	
Glen Ridge	87,270	90,325	
N. Caldwell		88,142	89,905
Newark	87,249	89,866	
Nutley			89,594
S. Orange		86,695	88,429
W. Orange	**84,458		
Montclair	86,616		
Belleville	80,000	81,608	83,248
E. Orange		75,503	79,033
Orange Tp.	*53,703		
Average	86,731	90,380	91,253
* 2010 rate			
** 2009 rate			

Maximum Base Salary Average - 2011	
High	97,636
Low	53,703
Average	86,731
Township of Irvington	89,528

As noted in the charts above, Irvington's top pay for patrolmen is about \$2,800 above the 2011 County average and ranks 9th out of the 20 Essex County municipalities with data provided. However, a closer look at the municipal contracts submitted into evidence show some details which bear noting. In Newark, police officers have a two-tier wage plan, effective in 1999. Both tiers have four "regular" steps, and a "senior pay step" of \$89,866 (2012 rate); the officer does not reach the senior pay step until his/her tenth year of service. Setting

aside the senior pay step, top pay for officers hired after 1999 was \$71,887 in 2012.¹⁰ Newark officers also have 16 paid holidays, longevity ranging from 4% (five years) to 14% (30 years), a \$1,000 uniform allowance and a night shift differential.

In East Orange, a neighbor with contiguous borders to Irvington, a 2013 interest arbitration award increased the top pay rate to \$75,503 in 2012 and \$79,033 in 2013. Moreover, it must be remembered that, unlike most other towns where holiday pay is paid out separately, holiday pay in Irvington is included in base pay.

* * * *

ANALYSIS

For the term of the four-year contract the Employer offers a freeze of the salary guide for 2011, 2012, and 2013. It offers a 1% across-the-board increase in 2014. The PBA proposes a 2% across-the-board increase for 2011, another 2% increase for 2012, and 2.5% increase for 2013.

The Employer calculated that the cost of its proposal over the life of the four-year contract would be \$102,614 (does not include longevity increases and increments). It also calculated that the cost of the Union's proposal for 2011 through 2013

¹⁰ All officers hired before 1999 would have to be at the senior pay step.

would be \$803,629. Under either scenario, the cost of increments and longevity increases over the four-year period would be \$1,178,707, which does not include increased costs of increments and longevity as a consequence of increasing base pay. (T-145)

The PBA offered its own calculations. It states that the Township's proposal amounts to an increase of \$913,793 over the four-year contract, above the cost of the base contract. The PBA argues that comparing the PBA's three-year term wage proposal and the first three years of the Township's proposal reveals that that the overall cost of the PBA's offer exceeds the Township's by only \$911,895.

* * * *

In crafting an award, consideration must be given to the cost increase the Township has already incurred through the payments of increments and increase to longevity. Here, both increments and longevity increases have been implemented on the employee's anniversaries since the prior contract expired at the end of 2010. Since that time, the cost of increments actually paid¹¹ has been as follows:

¹¹ To arrive at my calculations I used the agreed upon list of employees provided for 2011 and the Union's list for 2012 through 2014. Each employee's increment payment and longevity payment was then pro-rated in each year to account for payments on anniversary dates.

Increment Payments	
2011 Increment Paid	127,892
2011 Increment Cost Flow-Through into 2012	<u>133,782</u>
2011 Total	261,674
2012 Increment Paid	133,001
2012 Increment Cost Flow-Through into 2013	<u>66832</u>
2012 Total	199833
2013 Increment Paid	141,174
2013 Increment Cost Flow-Through into 2014	<u>194,830</u>
2013 Total	336,004
2014 Increment Paid	107,503
Total	905,014

In addition, the Employer reports that the cost of increase in longevity payments over the four-year period totals \$139,358.

(T-145) Thus, the Employer's payroll costs for this bargaining unit have already increased by more than \$1,044,000 over the contract life.

With all due respect to both parties' positions, neither party's proposal is realistic. Under the PBA's proposal, top pay would rise from its current level of \$89,528 to \$95,008 in a three-year period. In comparing this top pay rate with other municipalities in Essex County, the PBA's proposal would put Irvington's police officers at \$95,008 -- on par with such wealthy towns as Verona and Roseland, and make it the fifth highest paid municipal police force in Essex County in 2013.

I am required to consider the impact of salary increases on the taxpayers of the municipality. Demographics show that

Irvington's taxpayers have substantially less per capita income, median household income, and average residential property values than Essex County averages. Most certainly Verona's and Roseland's demographics exceed the County average. Irvington's taxpayers can ill afford such increases.

The Township's proposal also does not fit within the statutory criteria in that it fails to recognize comparable wage rates going forward, the cost of living, and the general settlement trends in New Jersey. At a mere 1% increase over the four-year contract period, employees at top pay would receive a four-year increase of \$895, an average of \$224 a year increase. This does nothing to keep up with the cost of living and is certainly far off the mark of average settlement and interest arbitration awards over the past two years.

After careful consideration of all of the facts presented in this matter, and applying the relevant statutory criteria, I award the following salary increases:

SALARIES

2011: Effective and retroactive to January 1, 2011 increase all salary rates by 1%

2012: Effective and retroactive to January 1, 2012 increase all salary rates by 1.5%

2013: Effective and retroactive to January 1, 2013 increase the dollar value of the sixth year step by 2%. All other steps will remain frozen at the 2012 dollar values.

2014: Effective and retroactive to January 1, 2014 increase the dollar value of the sixth year step by 2%. All other steps will remain frozen at the 2012 dollar values.

The resulting revised Salary Guide is as follows:

2011-2014 Salary Guide				
Step	2011 1.0% ATB	2012 1.50% ATB	2013 2.0% ATB	2014 2.00% ATB
Academy	41,200	41,818	41,818	41,818
1st yr	48,397	49,123	49,123	49,123
2nd yr	58,470	59,347	59,347	59,347
3rd yr	67,109	68,116	68,116	68,116
4th yr	75,744	76,880	76,880	76,880
5th yr	84,380	85,646	85,646	85,646
6th yr	90,423	91,780	93,615	95,488

This salary award will allow all employees to receive some increase in each year of the period awarded. In the first two years all employees will receive a modest increase in salary rates; in the second two years, raises will only be for employees at the top step; however, officers still moving through the salary guide have received significant pay increases in the form of step increments. The impact upon the top pay rate will be that it will increase over the four-year period to a maximum in 2014 of \$95,488. While this is higher than the 2013 County-average (the most current year for which statistics are available), it must be considered that unlike most municipalities in Essex County, Irvington's officers do not have a separate holiday pay benefit. Therefore, this award will maintain Irvington's status in the average range of top

pay for police officers. It will also maintain employee morale and unit continuity as officers will not likely look to seek employment in better paid communities. Furthermore, it will ensure that Irvington's pay scales will not be significantly adversely affected by increases in the cost of living.¹² Additionally, at an average of 1.62% increase a year these increases are not far outside the range of settlement trends in New Jersey's public sector.

In considering the statutorily mandated factors of the financial impact on the governing body and the taxpayers and the Employer's lawful authority, including appropriations caps and levy caps, the awarded increases are payable without exceeding the caps. In 2010, the total cost for base pay for all members of the PBA was \$11,248,041. Each year thereafter, the total cost of base pay, including the cost of increases awarded retroactively herein have declined slightly each year. This is in large part due to the staffing reductions in the police department and the attrition of senior officers retiring and being replaced with recruits at a much lower salary. In 2004, even after the raises awarded here, the aggregate cost of base pay is anticipated to be \$10,300,596. Given that the cost of base pay is decreasing, the across-the-board increases

¹² The PBA's argument that officers' net pay has been shrinking due to increases in pension contributions and healthcare premium sharing, I am confident that the legislature did not intend that Chapter 78's required contributions be offset by salary increases.

awarded here cannot result in an overall increase in base pay costs.¹³ Further, this Award will permit the Township to reward employees for their participation in crime rate reduction and recognize their service in a difficult law enforcement setting.

Retroactive Pay:

Pursuant to the parties' stipulated past practice, the payment of retroactive increases as set forth above shall include payments to employees who have retired or were promoted out of the bargaining unit since January 1, 2011.

Proposed Modifications to the Salary Guide:

In its final offer, the Township proposed "adding two steps to the salary guide." However, it made no specific proposal about where the additional steps should be inserted, nor what the dollar value of the steps should be relative to the contiguous steps.

The Township's proposal would expand the guide from 7 steps (academy plus 6 steps) to 9 steps. The Township points out that of the 20 municipalities in Essex County, the number of steps range from a low of four to a high of 10 steps, with an average number of steps at 6.4 (it is unclear if the academy or probation step is included or excluded from these numbers).

The Union asserts that there is no basis for the arbitrator

¹³ It should be noted that I did not award the increments or longevity increases; these amounts were already paid and of course accounted for in the Township's budget at the time the increase were paid.

to conclude that it is appropriate for additional steps to be included in the salary guide at this time.

On the one hand, the number of steps on the Irvington guide is on par with other police departments in the area. Any new recruit can expect to reach maximum pay in his/her sixth year. But on the other hand, the cost of increments is high -- on the 2010 guide, increments range from \$5,983 to \$9,973. And, in 2010, there were 33 employees still moving through the salary guide. In 2014, there will be 30 employees who are increment eligible. The cost of paying increments for 2011 (even before across the board increases in the dollar value of the guide) was \$261,674; the 2012 increment cost was \$199,833; the 2013 cost was \$336,004; the 2013 increment cost is \$107,503; and the 2014 increment cost is \$274,538.¹⁴ Slowing the progression to top pay would cut down on the cost of paying employees increments.

Further, it is not uncommon for parties to agree to the expansion of the guide, nor for arbitrators to so award it. I have added guide steps in other awards. In Borough of Ship Bottom and PBA Local 175, Docket No. IA-2013-24 (7/7/13), I added two steps to the salary guide for a total of 10 steps; in Morris County Sheriff and PBA Local 298, Docket No. IA-2012-35

¹⁴ Increments paid on employees' anniversaries result in part of the payment being made in the year due and the remainder flows through into the following year. Here, the total payout for 2011 was \$127,892 with the remainder of the costs payable in 2012; for 2012, the amount paid was \$133,001, with the remainder of the costs payable in 2013; and for 2013, the amount paid was \$141,147, with the remainder flowing into 2014.

(3/4/14), I expanded the step guide from ten steps to 14 steps. In Hudson County Department of Corrections and PBA Local 109, Docket No. IA-2012-46(7/23/12), I created a second tier salary guide for new hires with two additional steps. Generally, this has been necessary to control the costs of awards in order to stay within the legislatively mandated 2% arbitration cap. Of course, the 2% cap does not apply in this matter.

I have found that it is also appropriate to expand the salary guide when a step with a large increment value, commonly referred to as a "bubble step" is potentially resulting in a various large one-shot increase to a small group of officers, resulting in insufficient funds for employees who are at the top of the guide. Here, the step increments have already been paid out to employees in 2011, 2012 and 2013. Increments have been paid to employees who have reached their anniversary date in 2014. Therefore, it would be inappropriate to make any adjustments to the guide at this late stage. Further, I recognize that lengthening the step guide amounts to a concession on the part of the Union, as it then takes longer for employees to reach top step. The salary guide is a product of years of collective bargaining. If concessions are expected on the part of the union, then it usually comes with an increase in pay or benefits in another area. Here, given the modest salary increases being awarded, I do not feel that this is an

appropriate contract period to rearrange the salary guide. The Township's proposal to add additional steps to the guide is denied.

Longevity (Article XII):

This Article provides that "...All police officers shall receive, in addition to base pay scale, a payment for years of faithful service rendered, an amount equal to the following:

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

The Township proposes to eliminate longevity for new employees hired on or after January 1, 2011. It also asks to freeze the current cash value of longevity for all current employees for their entire career.

The Township notes that it has eliminated longevity for new hires for all managerial and non-union personnel as of March 19, 2014 by Township Ordinance (T-141). Thus, the Township asserts that its final offer with regard to longevity should be awarded to "maintain parity" with the Township's non-union employees.

The Township also contends that there is a growing trend

toward eliminating or reducing longevity benefits especially for new hires. It cites Borough of West Caldwell and West Essex PBA Local 81, Docket No. IA-2012-12 (3/12/12), in which the arbitrator reduced longevity for new hires; and Borough of Tenafly, Docket No. IA-2013-018 (5/6/13), in which the arbitrator eliminated longevity for new hires. In Spotswood, supra, the arbitrator abolished longevity to new hires and those officers who had not yet received it.

The PBA opposes both of the Township's proposals concerning longevity. It asserts that the Township did not present any testimony indicating that longevity has been modified for any collective negotiations unit. In fact, no collective negotiations unit has agreed to any modifications of its longevity provisions as no collective negotiations agreement has been entered between Irvington and any negotiating unit. Therefore, the PBA notes that there is no pattern on which to base the Township's proposals to modify the longevity provision.

Further, the Union argues that the Township submitted no evidence calculating the continuation of the existing longevity program or its anticipated future costs. The Township CFO presented information regarding some of the costs associated with the Police Department including salaries, pensions and health benefits (T-145); however, the Union contends that nothing in the charts or testimony indicates how the Township

would benefit by having its proposal regarding longevity adopted. As such, the PBA maintains that the record does not support a modification of the longevity provision.

Longevity payments to members of this unit are not insignificant. Officers receive longevity in the form of a percentage of base pay based upon their length of service. The percentage ranges from 2% to 10%. In 2011, there were 109 officers receiving longevity pay; in 2014, there are 97 officers receiving longevity, including 3 at the top rate of 10%. The total cost of the longevity benefit to the Township in 2014 is \$370,677. Over the life of the four-year agreement, the aggregate cost of longevity payments will be \$1,568,529. While the Union faults the Township for not presenting a calculation of the savings on this proposal, I do not. The savings is obvious: the cost to the Township if the proposal to freeze longevity at its present levels and not offer it to new employees would be the same dollar value as the cost today. Of course, the cost would only decrease from that point, as longevity-eligible employees would retire or separate from service.

On the other hand, virtually every municipality in Essex County has a longevity program for its police officers. All range from 2% to 11% at the top. For instance, in Newark -- perhaps the most comparable police force to Irvington in pay and

in crime rates -- the longevity ranges from 2% at five years' service to 14% at 30% service. I have carefully considered both sides of this issue. On balance, I have decided that this proposal should not be awarded in this round of negotiations. For one, the contract period is nearly expired; all longevity payments have already been expended for this contract. Two, freezing longevity going forward would make Irvington's pay rates far less competitive than its neighbors; thus the statutory factor of comparability does not support awarding this proposal. Third, the Township has no pattern among any other bargaining unit to eliminate longevity or to freeze it. Therefore, there is no internal pattern of settlement which can be relied upon for support of this proposal. Fourth, employee morale would suffer. As noted in the plain language of the contract, the longevity benefit exists to "reward the employee for long service to the Township..." If longevity is phased out, the message to the officers could be that their "long service" no longer needs to be rewarded. Fifth, the absence of a longevity program in Irvington might make recruitment and retention more challenging as new officers might seek a more lucrative pay scale (including the opportunity for longevity) elsewhere; thus causing unit continuity to suffer. None of these consequences is in the best interest of the public. Accordingly, the Township's proposal to eliminate longevity for

new hires and to freeze the amounts at their current dollar value is not awarded.

27th Pay Day (Article XI(2)):

The Township shall pay unit employees on system of bi-monthly pay periods for all employees. Modify provision as follows:

Where an annual payment schedule would require 27 rather than 26 bi-monthly pay periods, the parties agree that the calendar year pay periods shall be divided by 27 pay periods and not 26 pay periods.

The Township did not address this issue in its brief.

The PBA maintains that there is no basis to change the formula for calculating paychecks. It points out that, in 2004, based upon a bi-weekly method of paying PBA members, there were 27 pays to be paid by the Township. Article XI, Section 2 and 3 of the PBA Agreement provides in relevant part the following:

2. Salaries shall be paid by dividing annual salary by the number of pay periods (14 day intervals) in accordance with past practice.

3. The Gross Annual Salary for an officer shall be the Annual Salary as listed in Section 1 of Article XI plus longevity and detective allowance, if applicable, plus eleven (11) paid holidays as provided in Section 3 of Article XVI of this Agreement and other allowances or entitlements.

(a) The Bi-weekly Pay shall be determined by dividing the Gross Annual Salary by twenty-six (26).

[PBA Ex. 28, Article XI 2-3]

In 2004, the Township decided that, because there would be 27 pay days, it would divide employee salaries by 27, instead of the contracted for 26, and issue the employees 1/27 of their salary each pay period. The Irvington Workers Association (IWA) objected to the Township's unilateral modification as to how its members were going to be paid. (Id. 4-5) Based upon concerns raised by the IWA, the Township issued a new memo stating that instead of paying employees 27 times during the year, it would adjust the pay dates so that the employees would receive their entire pay over the year in 26 paychecks. (Id. p. 5) While the fire unions agreed to this arrangement, the Town's other unions, including the PBA and the Irvington Workers Association representing civilians did not, and grievances ensued.

The PBA notes that its contract language has been slightly modified since the 2004 pay day grievance. This shows that the parties, since 2004, have negotiated regarding the provision. The Township could have sought to negotiate over the 27 pays but did not successfully do so. The PBA argues that this arbitration should not usurp the prior arbitration decision and negotiations regarding this issue by making modifications to this provision.

Similar provisions as those in the PBA agreement regarding payment are in all of the Irvington collective negotiations

agreements. Therefore, there is no pattern to substantiate and/or justify modification of this provision.

Township Administrator Wayne Bradley testified that unit employees, as well as other Township employees, are paid on a bi-weekly basis, every other Friday. A review of the calendar indicates that there will not be a 27th payday until 2016. Therefore, there is no need to adjust the contract's provisions in anticipation of this problem until the next round of negotiations. I therefore decline to award the Township's proposal.

Stipends (Article I(4)):

Under the parties' current contract, patrolmen assigned to the detective squad are provided an annual stipend of \$1,250. The PBA seeks to increase the detective stipend to \$1,500 annually. The Township proposes to freeze the detective stipend at the current rate. The Township also seeks to eliminate the stipend for the canine squad.

Neither party addressed this issue directly in their respective briefs.

There are 25 patrolmen currently assigned to the detective squad.¹⁵ Even without retroactivity, increasing the detective stipend from \$1,250 to \$1,500 would cost \$250 per employee, at a cost to the department of \$6,250.

¹⁵ In fact, the number of detectives has more than doubled since 2011: in 2011, there were 9 detectives; in 2014, there are 25 (U-17; U-20).

On the other hand, I note that the detective stipend in the SOA contract is currently \$1,300 per employee, so increasing the stipend for rank and file officers in the detective squad would not achieve parity with superiors.

I find that there is insufficient justification in this record for increasing the detective pay. While it is just slightly below the stipend offered to superiors in the detective bureau, there may be some rationale for this disparity of which I am not aware based upon this record.

The Township also proposes to eliminate the stipend for the canine unit. Director Santiago testified that the canine unit was abolished in 2011 as a result of an internal audit that revealed the unit was not as effective as anticipated. Because the department no longer has the dogs, there is no need to anyone to be assigned, and the stipend is unnecessary. There is no plan to resurrect the unit. Therefore, this section of the contract can be removed as unnecessary. I award the Township's proposal to eliminate the canine stipend.

Acting Supervisor Pay:

The PBA proposes to modify paragraph 3, adding the following subsection for acting pay:

(d) In the event that an officer is serving in a higher classification on an acting capacity in place of a Sergeant or as a Communication Supervisor or as a Senior Detective in charge of the Detective Bureau

in the absence of a Sergeant, the officer shall receive pay equivalent to that of the higher rank (Sergeant) during such time as the officer is serving in the higher classification.

Neither party addressed this issue in the briefs. There is no record evidence of how often patrolmen are asked to be acting sergeants, communication supervisors or senior detectives. Moreover, Director Santiago testified that there is no "senior detective" in the detective bureau even when the sergeant is absent. The PBA's proposal lacks justification and facts concerning potential costs to the Township, and therefore, cannot be awarded.

Vacation Leave (Article XIV):

Both parties included proposals concerning vacation leave in their respective final offers. The PBA proposes to change the date referring to the contract expiration from December 31 to the new expiration date of the successor agreement. Further, it seeks to modify section 1 as follows:

Add the following new subsection to paragraph 1:

(i.) Upon Completion of the twentieth (20th) full year of service, twenty-seven (27) working days.

It also asks that the number of vacation days allotted at each benchmark be increased to equal that of the Superior Officers Association.

The Township demands that the vacation leave benefit be amended to provide a second tier for employees hired after January 1, 2011. It proposes the following language be added to Article XIV:

For employees hired on or after January 1, 2011
vacation leave shall be as follows:

1-10 years: Patrol - 10 days
11-15 years: Patrol - 15 days
16 plus years: Patrol - 20 days

The Township further seeks to limit vacation leave carry-over to one year after the year in which the time was earned.

The PBA argues that it seeks to achieve parity with the vacation leave allotment as provided for in the SOA contract. With regard to the Township's proposal for a second tier of vacation leave for new hires, the PBA particularly objects to such a proposal if it impacts upon employees hired since January 1, 2011 as proposed by the Township. The PBA points out that the Township has hired approximately 20 officers since January 1, 2011; thus, there would be an immediate impact on PBA members to their detriment if the Township's proposal were adopted.

The PBA asserts that there is no record evidence as to how a modified vacation schedule would impact the PBA and/or benefit the Township; therefore, the PBA argues that the Township's proposal should not be awarded.

The Township argues that it is seeking to reduce costs by decreasing the vacation leave allotment for new hires. The

Township asserts that Irvington's PBA members enjoy a more vacation days than most other Essex County municipalities. The Township's PBA members also enjoy a higher number of vacation days at an earlier anniversary than in other local municipalities. The Township currently provides the following vacation days: (T-89)

Years of Service	Vacation Days per Year
Less than 1 full year of service	1 day per month
Upon completion of the 1st full year of service	14 working days
Upon completion of the 2nd full year of service	17 working days
Upon completion of the 4 th full year of service	22 working days
Upon completion of the 7 th full year of service	23 working days
Upon completion of the 9 th full year of service	24 working days
Upon completion of the 14 th full year of service	25 working days
Upon completion of the 17 th full year of service	26 working days

The County submitted the following chart (T-90) showing the average number of vacation days provided for employees in other Essex County municipalities:

Vacation Leave Average				
	5 years	10 years	15 years	20 years
Average	17	20	22	25
High	25	26	29	29
Low	10	13	18	19
Irvington	22 (4 yrs)	24 (9 yrs)	25 (14 yrs)	26 (17 yrs)

The Township argues that the PBA enjoys considerably more than the average vacation days throughout a police officer's career. The Township points out that, in fact, of the twenty municipalities in the County, only two other municipalities receive more vacation days than Irvington's officers.

The Township argues that it is asking to limit vacation leave carryover to one year to limit the payout of leave time to officers upon their retirement. The PBA did not address this issue specifically in its brief, nor did it argue in favor of expanding the vacation leave benefit, except to state that it is seeking parity with the SOA's leave benefit.

First, the PBA's proposal to change the contract expiration date referred to in the first sentence of the vacation article is awarded. Second, with regard to the PBA's proposal to increase vacation allotment to match the benefit in the SOA contract, I find that this proposal has not been adequately justified. The vacation allotment referred to in the SOA contract has been part of that bargaining unit's benefits since at least 1999 and therefore, there is at least a 14-year history of no parity between the PBA and the SOA contract at least as it applies to vacation leave. It is not unusual for superior officers to have a richer benefit than those given to the rank and file simply in recognition of the fact that it is a deserved reward for rank. In addition, the

PBA's vacation leave allotment already exceeds the average number of vacation days for municipal police officers in Essex County. Therefore, the PBA's request to increase its leave allotment is not awarded.

The Township makes a convincing argument that Irvington's police officers have a more generous vacation benefit than nearly every municipality in Essex County. Within the police department, the value of compensated absences is over \$2 million. (T-47)

In addition, an officer on vacation leave often must have his post backfilled with another officer on overtime. The Township has demonstrated that it has a significant financial burden with its overtime costs which routinely exceeds its budgeted overtime expense of \$1,000,000 annually. To provide the Township with some measure of relief concerning overtime payments for employees on vacation leave, I am awarding the Township's proposal for a second tier for vacation leave for employees hired after July 1, 2014.

I also award the Township's proposal concerning vacation leave carryover to limit the number of days an officer may carry vacation time to only the next succeeding year. This award will be effective beginning with vacation time earned on or after January 1, 2014. Officers will be permitted to keep their current banks of vacation leave time intact. Awarding

this proposal will prevent employees from further building up large banks of unused vacation time to be payable upon retirement and thus reduce the Township's burden of terminal leave payments upon employees' retirements. These goals are in the public interest.

Terminal Leave (Article XXI):

Both parties have made proposals to modify the article concerning Terminal Leave Pay. The Township seeks to eliminate the benefit for new hires. The PBA seeks a new provision under this section which would incorporate the past practice of terminal leave payments being made to a retired officer within 30 days of retirement.

The Township points out that, as CFO Ra'Oof testified at hearing, terminal leave is one of the main cost drivers in the police department's budget -- with terminal leave payments of compensatory time having been paid out in amounts as follows over the past three years: in 2011, \$916,142.25; in 2012 \$686,548.51; and in 2013 \$643,982.89. For each of these three years the Police Department has overspent its budget in the amounts of: \$825,945.00 (2011); \$29,289.20 (Transition Year 2012); \$322,640.85 (Calendar Year 2012); and \$1,369,042.86 (Calendar Year 2013). (T-47; T-145) As such, the Township proposed several cost saving measures, including vacation leave modification to curb the accrual of paid leave due at an

officer's retirement or departure from the Police Department. The overtime and terminal leave payouts caused the police department to be consistently over budget.

In support of its proposal, the PBA argues that the unrebutted testimony in the record shows that the past practice is that terminal leave payments are made within 30 days of an officer's retirement or separation from service. The PBA seeks to have this past practice incorporated into the successor agreement.

Currently, the collective negotiations agreement provides that a PBA member who retires after having completed 25 years of service shall be granted terminal leave compensation, which is a payment equal to eight bi-weekly pay periods. This terminal leave is in addition to any other monies due to the employee at the time of retirement. (PBA-28, Article XXI)

In 2010, the Township had several employees including police officers and members of other negotiating units retire at the same time. Recognizing that the Township did not have sufficient funds to cover the cost for the terminal leave and accumulated benefit leave time for all of the retiring employees, the Township approached the PBA to discuss a deviation from the past practice of making this payment within 30 days.

Understanding the situation the Township was in, and after

consultation with the impacted officers, the PBA agreed that the Township could make the payments over a more prolonged period. The PBA prepared a memorandum of agreement to memorialize the agreement, which stated:

[Payments under to Article XXI], pursuant to past practice have been made within thirty (30) days of a PBA member retiring from the Irvington Police Department.

Due to unusual financial circumstances, the Township has represented that it is unable to make the above payments to PBA members who retired effective September 1, 2010 within thirty (30) days of their retirement. However, such payments shall be made in the following manner. The equivalent of a bi-weekly pay will be made to each member of the PBA who retired effective September 1, 2010 on the regular schedule for salary payments in the month of September. The remainder of the above payments shall be made to such PBA members by no later than October 8, 2010. Only if individual members of the PBA who retired on September 1, 2010 advise that a different payment schedule will be utilized, then the foregoing payment schedule will be applied.

(PBA-15)

Although the agreement was implemented, the Township declined to sign the agreement. The PBA maintains that it does not want the 2010 situation to create a precedent regarding payment of terminal leave in contravention of the long-standing past practice; it seeks to have the past practice incorporated into the successor collective negotiations agreement. This will ensure that the procedure for payment is clear and unambiguous

for future retirees. The PBA points out that, in the event the Township needs to deviate from the provision in the future, it can again negotiate with the PBA over the suspension of the requirement, as it did in 2010.

The PBA points out that there is no adverse financial impact on the Township if the proposed language is included in future agreements. The proposed language does not increase or in any way modify the financial obligation that the Township already has toward its retirees. Rather, it merely articulates the uncontested past practice regarding how the obligation will be paid.

The PBA argues that the Township's proposal to eliminate the terminal leave for new hires should be rejected. It asserts that the Township did not present any testimony as to the anticipated economic impact elimination of the provision would have in the event the provision was removed from the agreement. Nor did the Township provide any analysis of the impact the terminal leave provision has at the current time. Rather, the Township has merely stated that this provision should be removed for any PBA member hired after January 1, 2011.

The PBA argues that the Township did not present any testimony that it has eliminated terminal leave from any other negotiating unit nor that it has eliminated terminal leave for non-union employees; thus, there is no pattern to justify the

elimination of terminal leave from the PBA contract.

I am inclined to award the Township's proposal to eliminate terminal leave for new hires. First, Irvington is apparently the only Township in Essex County with a terminal leave benefit based solely upon an employee's service to the municipality, as opposed to the cash-out of accumulated sick leave. Therefore, the factor of comparing this workforce to other similar jurisdictions does not support continuing this benefit.

Second, to be eligible for the benefit, an employee would have to have 25 years of service; therefore, a retiring officer would be at top pay and would have the maximum longevity benefit (10%) for a total annual pay of \$98,481 (at the 2010 rate). His terminal leave of 16 weeks' pay is therefore worth $(\$98,481/26, X 8) \$30,302$. This payment is in addition to the payment of the officers' accumulated comp time bank (200 hours or 5 weeks for a maximum of \$9,469), plus accumulated unused vacation time. Even without payment of vacation time, the retiring officer leaves the department with a lump-sum check of over 40,000. The Township posits that terminal leave payments for just accumulated compensatory time in those years were \$916,142 in 2011; \$686,549 in 2012; and \$643,983 in 2013.¹⁶

The PBA criticizes the Township for not calculating the value of its proposal to eliminate the benefit. However, it

¹⁶ It is unclear from the documents whether these figures relate to this bargaining unit only or are based upon the Township's entire workforce.

would be impossible to predict the actual savings to the Township since the number of retirees in any given year is in itself speculative. In 2011, 8 officers retired; in 2012, 5 officers retired; and in 2013, 6 officers retired. At this retirement rate, the Employer is spending about \$240,000 per year on payments to retiring officers, of which \$180,000 is directly related to the terminal leave benefit. This potential savings, together with the comparison with other municipal police departments, justifies the Township's proposal. Further, it is a benefit that is not in the public interest, as it is doubtful that officers stay with the Irvington police force just for the terminal leave benefits and doubtful that it is a necessary ingredient in attracting qualified police recruits.

I award a modified version of the Township's proposal. Terminal leave is eliminated for unit employees hired after July 1, 2014.

I also award a modified version of the PBA's proposal that the practice of paying terminal leave payments within 30 days after the employee's retirement date be continued, and that provision be included in the contract article. However, some employees may not prefer to have that lump sum payment all in one check because of the tax implications in the year of retirement. Therefore, I award the following:

Retiring employees will have an option of being paid their terminal leave benefit and cash-out of unused

accumulated leave balances in either of the following methods: (a) lump-sum payment of all monies due within 30 days of the employee's final paycheck; or (b) in two equal lump sum payments, the first of which shall be payable within 30 days of the employee's final paycheck, and the second of which payable by January 30 of the year following retirement.

Sick Leave:

The PBA asks that Article XV, "Sick Leave" be modified to incorporate the Police Department's General Order regarding Sick Leave Police and Procedures, General Order No. 2014-01 dated June 1, 2013.

The Township seeks to modify the provisions of the Article concerning the Sick Leave Incentive Program.

Employees that do not use any sick time in the six-month period shall be awarded an additional vacation. The six (6) month period shall be either January 1 — June 30; or July 1 — December 31 of the calendar year.

The current contract provides at Article XV, Sick Leave:

Sick leave shall be determined in accordance with Standard Operation Procedure No. 1:13 enacted on February 20, 1997 after negotiations between the Police Department and the PBA and SOA [and as] amended on August 25, 2001 as a result of further negotiation.

An officer who does not use any sick leave for the first six (6) months of the year shall earn one day of additional vacation. An additional one (1) day [of vacation] can be earned by not using sick leave during the second six (6) month of the year.

Neither party provided me with SOP #1:13 concerning sick leave procedures. Therefore, I cannot properly

evaluate the PBA's proposal to incorporate this Standard Operating Procedure into the contract.

With regard to the Employer's proposal to modify the language concerning sick leave incentive, it is unclear what the Township intends to accomplish by this proposal, and the proposed modification is ambiguous. The PBA responds that the proposal is simply an unnecessary change in wording. If, by the proposed modification, the Township seeks to limit the incentive to once a year (either January 1 to June 30 or July 1 to December 30), then I decline to award the modified language. If the proposed language is merely a rewording of the existing language, then I decline to award it, as such a change has not been justified.

Compensatory Time:

Both parties made proposals to change the provisions of the article concerning comp time. The current contract language provides at Article X, Section 2,

5. Each employee shall be permitted to accumulate up to 200 hours of compensatory time on the books, exclusive of compensatory time provided by Section 3 and 4 of this Article X and by Article XV, Sections 2 and 4.¹⁷

6. Compensatory time granted under this Agreement shall be taken in accordance with the existing practices subject, however, to manpower requirements of the Department determined by the Chief and/or Director.

¹⁷ There is no Section 2 and 4 of Article XV.

Officers earn compensatory time off for a variety of reasons: Article X(2)(4) grants employees 11.25 hours of comp time in lieu of the day after Thanksgiving. Officers also receive two comp days for working Election Day and Veteran's Day (which the PBA seeks to expand to four holidays). Further, Officers may also take payment for overtime worked in the form of comp time as well as for court time.

The Township seeks to amend the article to limit the maximum hours of compensatory time accrued in lieu of overtime and/or on-call duty status to 100 hours.

The PBA asks to increase the maximum accumulation of compensatory time on the books from 200 hours to 480 hours consistent with FLSA § 207(0)(3)(a) and consistent with the SOA Agreement. The modified provision would read as follows:

3. Each employee shall be permitted to accumulate up to 480 hours of compensatory time on the books, inclusive of compensatory time provided by Section 3 and 4 of this Article X and by Article XV, Section 2 and 4.

The PBA argues that the more the Employer restricts the use of compensatory time, the greater the need for officers to be permitted to accumulate comp hours. The PBA cites the testimony of PBA President Maurice Gattison and former PBA President Jerry Ramos, which both explained that there have been issues related to how compensatory time is allowed to be used. (See below). The PBA maintains that because its members are harmed by the

limitations on the number of hours they can accumulate and simultaneously prevented from using the hours, it submits that the cap should be raised. The PBA also seeks by its proposal to bring the PBA agreement into conformity with the most recently executed SOA agreement.

The Township argues that the PBA's proposal to increase the overall hours of compensatory "time on the books" from 200 to 480 hours -- an increase of over 250%, will impact the Superior Officers and the contemporaneous negotiations as the compensatory time will be the same for both Superior Officers and regular officers. Director Santiago testified that there have not been any issues raised by the PBA regarding this proposal. Furthermore, Director Santiago testified that an increase in compensatory time would be impossible to financially sustain as compensatory time is already a major cost-driver in the police department's budget.

The Township points out that, while compensatory time is supposed to lower overtime costs, it actually causes more overtime for the police department when officers utilize their accumulated compensatory time. Further, the Township argues that within the police department, the value of compensated absences is over \$2,000,000. (T-47) Thus, the Township's proposal to limit the accrual of compensatory time off to 100 hours should be awarded rather than the PBA's proposed increase

to nearly 500 hours. The Township states that the latter is simply unaffordable.

The contract overtime provision does not specify how regular compensatory time is earned; rather, the contract simply provides that the existing practices would continue. The record does not include evidence on what the existing practice is concerning the earning of compensatory time. Presumably, and in accordance with the Fair Labor Standards Act, officers have an option to take comp time in lieu of cash payment for overtime worked, and payment (cash or comp) is paid at the rate of time and one half the officer's regular rate. Further, the record does not make clear how frequently the officer taking a comp day would necessitate back-filling that vacant post with an overtime assignment. If back-filling for absences (comp time or other leave types) is frequent, then the Township's argument that comp time, while seemingly a cost savings over the payment of cash overtime, is actually a greater expense. The comp for overtime pyramids as each officer on comp time causes the next officer backfilling on overtime to earn one and a half times the comp hours, which when taken causes the next officer backfilling to earn one and one half the hours in comp time, and so forth.

Presumably, once an officer reaches the maximum of 200 hours in his/her comp time bank, then he/she must opt for cash payment for further overtime worked until he/she draws down on

the comp time bank. Upon retirement, the officer is entitled to cash out his/her comp time back (along with all other accumulated leave time) for cash compensation. Thus, the comp time bank is a "savings fund" of sorts against the employee's retirement. As discussed earlier, terminal leave payments are a costly problem for the Township. Increasing the number of comp hours an officer is entitled to bank would exacerbate that problem.

If the department were at or nearer to full authorized strength, I would envision less of a problem with comp time banks, as the use of comp time would be less likely to result in overtime. However, given that the present staffing levels apparently do not often permit officer's taking time off without incurring overtime, I am not inclined to increase the cap on comp time banks at this time. Nor am I inclined to reduce the banks. For one, there is a practical problem with this idea: would officers be required to immediately surrender for cash payment all of their banked hours over the new 100 hour limit? Or would all further comp time accumulations be prohibited until the officer draws his/her bank down to the new benchmark? These practical implications were not addressed by the parties.

Given the lack of evidence presented, I am not able to adequately evaluate the proposals to expand or reduce the comp time bank limits. Therefore, both proposals are denied.

The PBA also proposes to modify the comp time and Emergency Time Due provisions concerning departmental approval. These sections currently provides,

Section 2(6): Compensatory time granted under this Agreement shall be taken in accordance with the existing practices, subject, however, to manpower requirements of the Department as determined by the Chief and/or Director.

Section 2(7): In the event that an officer receives Emergency Time Due (ETD) and does not have sufficient accumulated time to cover the ETD, he will have five (5) working days (his) to notify administration how to adjust the deficit (vacation time, etc.) confirmed by signature. If the officer refuses to allow use of an accumulated source, the time out of work may be determined to be unpaid in the discretion of the Chief of Police.

The PBA proposes to following modified language for these sections:

Section 2(6): When an officer requests time off from work through use of accumulated compensatory time, approval of such time off will be governed by the Fair Labor Standards Act (FLSA). Such compensatory time must be requested within a reasonable time of knowing that such compensatory time is necessary and such request will be granted unless the granting of the compensatory time would be unduly disruptive to the Department in providing services to the public.

Section 2(7): If an officer does not have accumulated compensatory time and less than five (5) days' notice for the leave is provided, or if the officer does not request to utilize accumulated compensatory time for such leave, then such request shall be deemed Emergency Time Due (EDT). The reason for the use of such time must be provided to the scheduling desk at the time of the request and it shall be at the discretion of the Department whether to grant such request. The Department may require that verification of the need for the leave be provided within two (2) days of the officer's return to duty. The officer will

have to notify administration within five (5) days of the officer's return to duty how to adjust the deficit (vacation time, etc.) confirmed by signature. If the officer refuses to allow use of an accumulated source, the time out of work may be determined to be unpaid in the discretion of the Chief of Police. For purposes of this provision "days" shall mean the officer's scheduled duty days.

The Township submitted Exhibit T-146, General Order 2010-04 as amended October 15, 2013, which provides:

Authorization:

- A. The approval of Emergency Time Due shall be limited to the level of Bureau Commanders (Police Captains) or, in their absence, the Chief of Police.
- B. All requests for the utilization of Emergency Time Due shall require the identification of the specific emergency and shall be immediately communicated to the appropriate Bureau Commander for approval or denial.
- C. The failure to secure approvals and/or institute notifications for the use of Emergency Time Due (ETD) shall be considered a serious infraction of the Department's discipline.
- D. Request for Time Due, Personal Days and single Vacation Days shall be submitted via channels to the Office of the Chief, Personnel Office, for approvals. The following general requirements shall apply to these requests:
 1. **Requests shall not be unreasonably denied.**
 2. The need for overtime shall not constitute an express reason for denial, unless significant staffing issues are present and documented.
 3. Requests shall be addressed and answered within two (2) business days of the request to provide the requesting member sufficient opportunity to finalize personal plans

4. The granting of more than two (2) consecutive Time Due, Personal Days and extended Vacation requests shall not be granted without the express written authorization of the Police Director.

Request Process:

A. Time Due: Officers requesting Time Due (TD) or Compensatory Time shall make the request no later than five (5) days before the date of the Time Due. Time Due shall be granted based upon adequate staffing levels for the particular date, shift and the requesting officer having sufficient hours on the books.

B. Emergency Time Due: Emergency Time Due (ETD) is meant to provide officers with an alternative to the five-day advance request procedure only when a "true" emergency arises that is absolutely unforeseen. ETD is the exception, not the rule. Officers and employees are personally responsible for reporting to work when scheduled and shall not, in any instance, believe authorizing ETD is automatic. If any officer has prior knowledge of an upcoming event, even though it may be short notice, he/she must seek Time Due through the regular Time Due system, explaining why they could not provide 5 days' notice. The automatic granting of ETD leads to insufficient staffing; therefore Platoon/Bureau Commanders are directed to be judicious in granting ETD. . . . An officer who has abused the ETD system may be subject to disciplinary action. (Emphasis in original)

The General Order goes on to state that officers must provide at least ten days' notice of vacation time being taken, and five days' notice of personal days being taken.

Compensatory time which is requested less than five days prior to its use is deemed to be Emergency Time Due (ETD). PBA President Gattison testified that when a PBA member requests the use of compensatory time, he/she is not told until the last

minute whether the time off will be granted. The officer must request the time off and wait to see if there is an officer who is available to work voluntary overtime for that shift. If an officer is not available to work the voluntary overtime, then the compensatory time is not allowed to be used. Further, Gattison testified that the Chief of Police has unilaterally determined that when an officer needs to take time off, which is requested less than five days in advance, due to childcare issues, the officer must present a medical note confirming that medical treatment was sought and obtained for the child. The childcare requirement is not set forth in the General order.

The PBA argues that the policies set forth in the General Order were unilaterally imposed and violate provisions of the Fair Labor Standards Act in terms of the taking of comp time when the request for the time's usage is submitted less than five days in advance of the date when it is to be used. These unilateral requirements on use of compensatory time are violations of the FLSA and the contract should be revised to prohibit imposing these obligations.

The Union avers that the FLSA provides that an employee who has accrued compensatory time and requests use of the time must be permitted to use the time off within a "reasonable period" after making the request as long as it does not "unduly disrupt the agency's operations." 29 U.S.C. §207(o)(5). Currently, the

Township and the Police Department violate the FLSA in the manner in which it allows compensatory time to be utilized. The PBA wishes to make the Township and the Police Department's process and procedure for allowing use of compensatory time to be consistent with the FLSA.

The PBA further contends that ETD time off applies when the request is made less than five days prior to its use. When an officer has sufficient compensatory time to cover the time off, then its use should be governed by the FLSA. Therefore, unless the Township can show that the request results in an "undue burden," then the request must be granted. The revised provision would not grant the Township the authority to deny the use of ETD for childcare.

Moreover, the PBA contends that preventing officers from using compensatory time unless there is another officer available to voluntarily work overtime is impermissible under the FLSA. The FLSA does not allow compensatory time to be denied solely due to overtime being created.

The Township asserts that the PBA's proposal is similar to Santiago's General Order. Santiago testified that he has not received any grievances objecting to this Order or to any claims of unreasonable denials of ETD time. Santiago felt that the PBA's proposal was unnecessary. Therefore, the Township argues that the PBA has failed to demonstrate the need for this

proposal to be awarded. In addition, the Township asserts that the PBA's proposal would create an additional category of previously negotiated time "Emergency Time Due." The provision would also allow the officer and not administration to determine the application of days - whether vacation, sick or unpaid.

* * * *

I find that the existing contract language is unclear and no longer adequately sets forth the parties rights and responsibilities regarding comp time and Emergency Time Due. However, the PBA's proposed language appears to be overbroad. In its section 6(2), it proposes that comp time approval be "in accordance with the FLSA." The FLSA merely states that the employee must be permitted to use the time off "within a reasonable period after making the request as long as it does not "unduly disrupt the agency's operations." 29 U.S.C. §207(o)(5). Incorporating this language, which is vague, would predictably lead to a multitude of grievances over its interpretation and application. Rather, I believe that some of the language found in the General Order is clearer; more specifically sets forth employee's rights and responsibilities; and is a fair and balanced approach. The language requires the Department to notify the employee that his/her request is approved (or not) within two days, and that approval shall not be denied because a need for overtime would be triggered. The

General Order requiring five days' advance notice for the use of regular comp time is reasonable to the employee, and gives the Employer an opportunity to plan the work schedule at least a little bit in advance. Further, the General Order's parameters for the use of Emergency Time Due are also reasonable. While one might argue that the requirement on the employee to recite the "emergency circumstances" giving rise to such an ETD request is intrusive, it is designed to prevent officers who have not planned their time off in advance from "gaming" the system by waiting until the last minute to request a comp day unless it is truly for an unforeseen circumstance. Accordingly, I award the following contract provision, as adapted from the General Order:

All requests for the utilization of Emergency Time Due shall require the identification of the specific emergency and shall be immediately communicated to the appropriate Bureau Commander for approval or denial.

The following general requirements shall apply to these requests:

1. **Requests shall not be unreasonably denied.**
2. The need for overtime shall not constitute an express reason for denial, unless significant staffing issues are present and documented.
3. Requests shall be addressed and answered within two days of the request to provide the requesting member sufficient opportunity to finalize personal plans

Request Process:

Time Due: Officers requesting Time Due (TD) or Compensatory Time shall make the request no later than

five days before the date of the Time Due. Time Due shall be granted based upon adequate staffing levels for the particular date, shift and the requesting officer having sufficient hours on the books.

Emergency Time Due: Emergency Time Due (ETD) is meant to provide officers with an alternative to the five-day advance request procedure only when a "true" emergency arises that is absolutely unforeseen. If any officer has prior knowledge of an upcoming event, even though it may be short notice, he/she must seek Time Due through the regular Time Due system, explaining why they could not provide 5 days' notice.

The employer's concern is that this adds yet another layer of time benefits to the employees is unfounded. The Emergency Time Due category apparently is a past practice, even if not fully spelled out in the contract before. Further, the ETD time is not in addition to comp time; it draws from the employee's regular comp time on the books. To the extent that the Township is asserting that contract language concerning this issue is unnecessary, I disagree. While the Santiago General Order is currently in effect, governmental leaders change over time. In fact, with a new Mayor being sworn into office on July 1, 2014, the parties have acknowledged that Irvington's leadership might well be in new hands soon. The Employer has previously modified the employee's rights and responsibilities to take comp time off -- a term and condition which requires negotiation with the majority representative before modifications are made. Having the employee's rights and responsibilities concerning comp time

committed to contract language gives the Employer's policy permanency.

Holidays (Article XVI):

The PBA proposes to add Christmas Eve and New Year's Eve to the list of holidays for which an employee receives compensatory time. The modified provision would read as follows:

1. Each employee after completing his probationary period of service for the Township shall receive two (2) work days' compensatory time for each of the following regular holidays:

Election Day

Veteran's Day

Christmas Eve

New Year's Eve

The PBA has not advanced any particular argument in support of this proposal. The Township argues that the PBA's proposal to double the number of holidays granted as compensatory time, and will impact the Superior Officers, as the superiors will expect to achieve the same outcome. Police Director Joseph Santiago testified that an increase in compensatory time would be impossible to sustain financially as compensatory time is already a major cost-driver in the police department's budget.

The record does not reveal whether police officers I Irvington are currently paid separately for holidays. Since the Restaino arbitration in 2006 mentioned 11 paid holidays pursuant to a contract provision, I can only assume that at some point

the parties agreed to fold holiday pay into base salary, and it is no longer paid separately. Although, in T-94 the Township asserts that officers currently received 15 paid holidays, the Holiday Article XVI, mentions only compensatory time off for Veteran's Day and Election Day. Nor do I know the origins of this provision. I do note that officers receive two comp days for each of these holidays, for a possible four days off. I cannot justify granting more opportunities for comp time for this proposal, particularly without more information to explain its importance. The proposal is denied.

Bereavement Leave:

The PBA seeks to increase the number of bereavement leave days to four days for a death of a member of the officer's immediate family, and provide three days of bereavement leave for any other listed individual. It also seeks to add fiancé and relative of a fiancé to the list of immediate family members.

The PBA proposes the following modified language:

1. In the event of death in the immediate family of the employee, the employee shall be entitled to four (4) working days of leave to be taken in close proximity to the date of death.
2. Immediate family shall be defined as spouse, child, stepchild, parents, parent-in-law, grandparents, sister, brother, grandchild, childhood stepmother or stepfather, fiancé or fiancée, or relative regularly residing in the employee's household.
3. In the event of death of a sister-in-law, brother-in-law, grandparent-in-law, niece or nephew, aunt, or

uncle of the employee, the employee shall be entitled to three (3) day's leave.

The current contract provides, in relevant part:

1. In the event of death in the immediate family of the employee, the employee shall be entitled to three (3) working days of leave to be taken in close proximity to the date of death.
2. Immediate family shall be defined as spouse, child, stepchild, parents, parent-in-law, grandparents, sister, brother, grandchild, childhood stepmother or stepfather or relative regularly residing in the employee's household.
3. In the event of death of a sister-in-law, brother-in-law, grandparent-in-law, niece or nephew, aunt, or uncle of the employee, the employee shall be entitled to one (1) day's leave.

The PBA did not address this proposal in its brief.

The Township responds that the PBA is attempting to increase bereavement leave at the cost to the Township, both in number of days and for whose death it may be taken. Extending the policy to cover the death of a fiancée places an additional burden on the Township as it will be impossible to verify the relationship in order to fairly and correctly assign leave in this manner. Director Santiago testified that he was unaware of any request for bereavement leave of a fiancé that was requested, denied or grieved by the PBA. Further, the PBA failed to provide any testimony that established that an increase in bereavement leave was justified and as such, should be denied.

According to T-98, the Township has demonstrated that Irvington's Bereavement Leave policy is well within the normal range as compared with other Essex County municipalities. However, I can appreciate the logic of a situation where an officer can be in a long-term, committed relationship but not legally married to his/her partner. The death of such a partner would be every bit as difficult a situation as losing a spouse or parent or sibling. Therefore, I will extend the definition of "immediate family" in Section 2 to include any individual regularly residing in the employee's household. My intention with this awarded language is to catch life partners (of either gender). The employer will be entitled to request verification of the relationship and/or residency. As to the PBA's demand to increase the number of bereavement days, this proposal is denied.

Health Benefits Article XVII:

The Township currently offers health benefits to unit employees under a traditional plan or an HMO. The Township seeks to eliminate the traditional health plan for all unit employees. The Township also seeks to increase co-payments on the prescription drug plan and to include contract language mandating employee contributions under Chapter 78.

Section 4 of Article XVII provides for prescription co-payments of:

Brand Name Drugs \$20.

Generic Drugs: \$10.

The contract further provides that 90-day Mail Prescriptions by mail shall use the same co-pays as above. Further, it states that,

No officer shall pay more per annum per plan for prescriptions as provided by the State Health Benefits Program, or HNA, whichever is lower.

The Township seeks to increase the copayment amount for brand name drugs from \$20.00 to \$40.00.

The Township also asks to incorporate a new provision in Article XVII (8) which would state that all employees would make health care contributions in accordance with New Jersey State law, N.J.S.A. 40A:10-21.1.

The PBA proposes to add to Article XVII(3) a provision that would impose penalties on the Township for medical bills not timely paid. Specifically, it proposes the following language:

The Township will be responsible for paying to the officer interest at the rate of 10% if payment is not made on a submitted bill within seventy-five (75) days of the date of submission by the employee. If an officer is assessed late fees or costs associated with the medical provider's collection of the charges, then the Township will be responsible for paying such costs.

Pursuant to Chapter 78, police officers are currently contributing towards the cost of health care premiums in "Tier

3" of the contribution rates. They are scheduled to move to Tier 4 on July 1, 2014. Tier 4 contribution rates for family coverage and single coverage (the two most popular coverage levels) are as follows:

Contribution for Single Coverage		Contribution for Family Coverage	
Salary Range	Tier 4 (7/1/14)	Salary Range	Tier 4 (7/1/14)
40,000-44,999.99	12%	40,000-44,999.99	7%
45,000-49,999.99	14%	45,000-49,999.99	9%
50,000-54,999.99	20%	50,000-54,999.99	12%
55,000-59,999.99	23%	55,000-59,999.99	14%
60,000-64,999.99	27%	60,000-64,999.99	17%
65,000-69,999.99	29%	65,000-69,999.99	19%
70,000-74,999.99	32%	70,000-74,999.99	22%
75,000-79,999.99	33%	75,000-79,999.99	23%
80,000-94,999.99	34%	80,000-94,999.99	24%

The PBA conducted a voluntary survey of its members to obtain information regarding the membership's perspective on the health insurance program that the Township provides. 79 members responded to the survey, which is approximately half of the membership. Of those who responded 68 of them are enrolled in the Traditional plan as compared to 2 respondents enrolled in the HMO. 28 of the respondents (35%) indicated that in their opinion there are major issues with the health insurance. The primary issue is the payment of claims that are submitted.

PBA President Gattison testified that his membership has complained about the Township's insurance coverage failing to pay insurance claims. Members have provided him copies of the

unpaid bills, which he has delivered to the CFO's office in order to get assistance in getting the bills paid. According to Officer Gattison's testimony, after bringing bills to the CFO's office, the bills were finally paid. The PBA argues, however, that it should not have to have the bills personally delivered to the CFO's office in order to get covered medical health treatment bills paid.

Officer Jerry Ramos, PBA Local 29's former president, is enrolled in the Township's HMO plan. He testified that he suffered a mild heart attack while participating in a marathon in South Jersey in 2012. After being taken to a nearby hospital and treated, he submitted his bills, which are over \$20,000 to the insurance provider for payment. Nearly a year has passed, and his repeated efforts to obtain payment have not brought about a resolution. Ramos testified that when he has attempted to communicate with the Finance Office directly concerning the unpaid bills, he has been told to take the problem to the PBA.

Township CFO testified that he checked into this situation and found that Ramos' bills from the provider were being declined (although apparently Ramos has not been formally advised of this), because he received treatment "out of network." The HMO plan does not pay for treatment out of network. In the meantime, Ramos explained that he is being threatened with collections proceedings and damage to his credit

reputation because of the outstanding invoices. Ramos is continuing to incur late fees and interest that are imposed by the healthcare providers. Gattison echoed that concern and stated that a number of his members have had similar complaints. The PBA asserts that grievances have not been filed because it believes it does not have the ability to grieve against the third-party agent handling the insurance claims.

Ra'Oof testified that he is aware there are ongoing problems with the reimbursement system for the health insurance claims. He acknowledged that Gattison has delivered bills to his office, and he has had to address issues related to the payment of outstanding bills. Ra'Oof explained that the Township has worked to get the situation corrected; however, the process is ongoing. Issues remain and will likely continue to occur.

The outstanding payments can occur for various reasons, according to the CFO's testimony. There have been instances when the Township is not up to date with its payments to the third-party provider for insurance services, resulting in payments for outstanding bills not getting paid. For instance, the Township Council may not authorize payment for the health insurance services. When the Township is operating under a temporary budget, as it currently is, its payments for health insurance may not be paid in full. It is possible that such

situations are likely to continue and provider bills for services will continue to be delayed in payments.

While Officer Ramos has the HMO insurance plan, the majority of the officers who responded to the PBA's survey have the Traditional Plan. Further, more than one-third of the respondents identified problems with the insurance plan, including payment of claims. Nearly half of the respondents stated that they had unpaid claims pending. Therefore, the Union asserts that this is not an isolated issue; rather, this is a systemic issue that has not been corrected and likely will not be corrected.

The PBA argues that allowing the Township to avoid responsibility for its payments to the detriment of the PBA members who are incurring late fees, interest charges and adverse information on their credit reports due to the Township's actions will only stop if the Township is required to cover the interest and late fees its actions or inactions are causing. Therefore, the Township seeks contract language to compel payment of the late fees and interest charges imposed upon PBA members.

The Township has sought to have the Traditional Plan removed from the plans that PBA members can choose from. This would require that all PBA members enroll in and maintain only HMO coverage. The PBA maintains that, during the course of

negotiations, it requested information regarding coverage based upon managed care modeled after the Direct 10 and Direct 15 plans in the State Health Benefits Plan (SHBP). While the Township provided pricing for such plans (T-144), it did not provide any plan documents that could be presented to the membership regarding the level of coverage that would be provided if the Traditional Plan were eliminated and replaced by the managed care plans. In fact, the plan summary did not provide any substantive information regarding what would be covered, what doctors would be in the network or any information that may be material to determining whether the plan was superior to the HMO plan or how it compared to the Traditional plan.

Additionally, the PBA argues that while the Township has sought increases in prescription co-payments, no objective information was presented to support this claim.

The Township contends health insurance is a major cost in the Township's budget. Despite the fact that employees have been contributing towards the costs of health benefits, the overall cost to the Township has nonetheless remained steady. The health benefits cost for the entire Township's workforce was \$14,819,108 in 2011, \$14,156,812 in 2012, and \$14,025,600 in 2013. (T-143) As such, health benefits remains costly to the Township.

The Township provided a chart, (T-144) reporting the projected monthly premiums of its current insurance plans. The monthly cost for the Township's current traditional coverage is as follows:

Single coverage - \$985

Employee/Spouse - \$1,858

Family - \$2,906

This compares with the HMO costs which under the current plan are as follows:

Single - \$782

Employee/Spouse - \$1,452

Family - \$2,256

The Township also provided information regarding "copycat" plans to the New Jersey State Health Benefits Direct 10 and Direct 20/30 plans. According to the Township's information, the cost of the Direct 20/30 copycat plan is identical to the premium rates for the current HMO program.

There can be no doubt but that the traditional plan currently offered by the Township is an expensive option. Indeed, for family coverage (the most popular plan), the Township is spending \$34,872 annually. Further, there is a growing trend among New Jersey public employers to migrate away from traditional coverage in favor of managed care plans and HMOs. Here, however, the Township proposes to simply eliminate

traditional care and only offer its HMO. I believe that the Township and the PBA need to explore other possible alternatives to its existing HMO plan before the traditional coverage can be eliminated. When Officer Ramos became ill at an out-of-town event, and required immediate medical treatment, the HMO Plan denied coverage because the provider was "out-of-network". One need only look to the experience of Officer Ramos with the Township's HMO Plan to know that this plan is inadequate to meet the needs of employees and their families. The risk to the employee in racking up large medical bills in the event of an out-of-town emergency may deter people from seeking medical help in such circumstances. While the HMO Plan provides a less expensive premium at \$27,072, I am not satisfied that offering this plan as the only alternative for employee health care coverage is in the interest of the employees or in the interest of the public. I believe the parties would be better served by thoroughly investigating other medical plans including their premium costs and the details of the benefits offered by each plan. The parties then need to return to the bargaining table to negotiate over this issue. Since I am awarding a four-year agreement which will expire at the end of 2014, the parties have the next six-month period to do such an evaluation. I decline to award the Township's proposal to eliminate traditional coverage at this time.

Ra'Oof further provided that despite the PBA's allegations, as of the date of the hearing there were no unpaid claims. Although, Ramos testified that he has an out-standing balance of \$20,000 for health benefits, Ra'Oof was advised that it was due to the insurer's denial of claims. Moreover, each health insurance plan has an appeal process. The record does not indicate whether Ramos has not filed any appeals. The Township contends that the PBA failed to provide any testimony of the need to apply a 10% fee for failure to process their members' co-pay claims. The Township further argues that the PBA's proposal would require the Township to reimburse PBA members for any late fees or collection costs with interest for any delay in payment -- regardless of justification. It contends that this is both outside the scope of the Interest Arbitration proceeding and will inure further economic benefit to the officer should a payment be delayed for any reason. The PBA is seeking extraordinary relief, without providing any financial evidence that same is needed. Moreover, no testimony was provided by the PBA of actual fines or credit ratings issues.

I am not inclined to award the PBA's proposal for fines and interest on unpaid medical claims. First, the courts have determined that it is contrary to the public interest for employers to pay interest. Second, the PBA has not

satisfactorily demonstrated, other than antidotal evidence the extent to which unpaid medical claims have resulted in late fees or interest charges being tacked on by providers. Therefore, I am at a loss to determine the potential cost of this proposal to the Township. While I completely sympathize with the PBA's predicament over the unpaid medical bills, I do not believe this is the cure. The PBA's contract with the Township specifically provides for medical benefits; if the Township is not providing timely reimbursement for medical benefits the Union has the option of filing a grievance over the issue and potentially taking this issue to arbitration. The PBA's proposal is therefore denied.

The Township's proposal to include a provision of the contract concerning employee contributions for medical insurance pursuant to Chapter 78 is awarded. The following provision shall be added to Article VXII:

Subsection 8- New provision- Health care contributions shall be made by all current employees in accordance with New Jersey State law, N.J.S.A. 40A:10-21.1.

Union Leave (Article XXII):

The PBA proposes to modify Article XXII, "Miscellaneous", at paragraph 12 to increase the number of PBA days provided to the PBA President from two days to four days per month and to provide for three days a month off for the PBA Delegate. The modified provision would read as follows:

12. The PBA President or his Designee shall be granted leave without loss of pay for attendance to PBA duties up to four (4) days per month upon written notice. The PBA Delegate shall be granted leave without loss of pay for attendance to PBA duties up to three (3) days per month in addition to attendance at the monthly State PBA meeting upon request.

According to PBA President Maurice Gattison, for the past year he has been assigned to nights, likely in direct response to his holding the office of PBA President. With his current schedule, he works Mondays through Thursdays and reports for duty at or near the close of business each day. As a result, he is unable to contact or communicate with many PBA members or Township Administration during his working hours and shifts. This results in his having to use his personal time to attend to PBA business.

PBA business can include meetings with the Police Director and/or Township Business Administrator, and the Township CFO. Such issues which might be addressed during these meetings have included unpaid health insurance claims and possible deviations from or interpretations of the contract. In addition, the PBA President also attends disciplinary hearings, and meets with officers facing disciplinary charges. Of course, the PBA President is also responsible for the overall administration of the PBA contract. Since Gattison works nights, he is required to attend to all of these activities, which occur during the normal business day, on his own time.

PBA President Gattison testified that, based upon his survey of other similar departments in the area, PBA Presidents of some units are not required to perform day-to-day operations; rather, they are on "paid release," time. In contrast, Gattison has to perform all of the PBA work during the days on his own time and report for all but two tours of duty per month. Since Irvington refuses to allow PBA President Gattison to work during the day shift, when normal business is conducted in the Township, it is ever more important for him to receive adequate PBA Days to be able to address his PBA duties.

The PBA further seeks to have three days allocated to the PBA Delegate. The PBA Delegate is required, at a minimum, to attend two State PBA meetings per month. Currently, the Delegate goes to these meetings on her own time and without time off from work. However, in order to properly and fully perform her duties, allowing her three days per month for PBA matters would be appropriate.

The Township argued that it cannot afford to have officers off on more paid leave time. The PBA points out that this is time off to help ensure that Police Department Operations from a Labor-Management perspective remains running smoothly.

The Township argues that the PBA's proposal for additional time off is both unnecessary and especially unwarranted in this economic climate. It points out that Gattison is already

permitted reasonable time during regular shifts and is given two paid days to attend to union business. There has been no obstruction of the Union President attending to union duties, nor are PBA delegates being denied pay leave to attend to representation conventions.

I am inclined to award a modified version of the PBA's proposal. The PBA correctly notes that many large departments have paid time off for Union leave for its president. Conducting Union business often includes meeting with Township leaders over contract issues and issues of mutual importance to the Township and the PBA membership. These release-from-duty events are not simply "time off" -- they are a valuable investment of time because they contribute to the overall harmony of the department and therefore the stability and continuity of the bargaining unit. Maintaining labor peace is always in the public interest. Two days a month does not appear to be a sufficient allotment of time considering the size of the PBA's bargaining unit. The PBA's proposal to increase the number of Union leave days for its president in Article XXII, paragraph 12, is awarded. Paragraph 12 shall be modified as follows:

The PBA President shall be granted leave without loss of pay for attendance to PBA President duties up to two (4) days each month upon written request.

There is insufficient justification in the record to award Union leave time to the PBA Delegate to attend State PBA meetings. Therefore, this part of the PBA's proposal is not awarded.

Bidded Positions (New Article):

The PBA proposes to add a new provision that would permit officers to annually bid for special assignments (Jailer, school resource, court officer, etc.) based upon seniority.

The PBA did not include argument concerning this proposal in its brief. The Township alleges that such a provision is in conflict with current practice and the needs and experience of the administration and should therefore be denied.

On its face, this proposal just makes good sense. Giving employees an opportunity to select their assignment based upon seniority gives recognition to the employee's length of service and in turn boosts morale. It also eliminates possible favoritism to the assignments. However, I do not have enough information to evaluate the proposal. What would be included in the special assignments? Do the assignments require any unique skills or qualifications or specialized training? In the absence of sufficient information to properly evaluate the proposal, it is denied.

"Shootings" Policy (New Article):

The PBA proposes a new article be added to the contract to provide as follows:

Police-Related Shootings:

In the event of a police-related shooting, the officer involved shall receive administrative leave for stress for a minimum of two (2) days with pay. No report will be required of the officer involved for a period of forty-eight (48) hours from the time of the incident. The officer shall also have the opportunity to consult with an attorney prior to submitting his report.

According to President Gattison, on average a police-related shooting occurs in Irvington anywhere from every ten to twenty months. According to the Uniform Crime Reports (UCR) for 2010, Irvington had 3,062 criminal incidents; 901 of the incidents were categorized as violent crimes. (PBA-23) In 2010 there were 14 murders, 29 rapes, 374 robberies, and 484 aggravated assaults. In 2011 there were 13 murders, 24 rapes, 362 robberies, and 333 aggravated assaults. (T-50)

The PBA argues that there is real concern with the manner in which the Police Department has conducted its investigations regarding police-related shootings in the past. Former PBA President Ramos testified that in at least one instance, the Internal Affairs detectives sought to take the statement of an officer who was involved in a shooting. The Internal Affairs investigators sought to interview the officer at the hospital while he was in a state of shock and essentially incoherent.

The Union argues that the importance of the initial

statement cannot be understated. There could be criminal implications to a statement when a police-related shooting occurs. To require that an officer provide a statement or report to Internal Affairs immediately after the shooting and while possibly in a state of shock or under other impairments, could have profound adverse impacts for an officer.

In addition, Director Santiago testified that he has an unofficial policy to permit an officer engaged in a police related shooting to have a two-day rest period or modified duty. The Director stated that the purpose of this policy is to ensure the officer is not interacting with the public for that period and that he/she is fit to return to patrol. This helps ensure that the officer is not too quick to engage in a future shooting or too slow to do so.

The PBA notes that the Police Director's unofficial policy is not in writing. The PBA argues that a cooling off period should be incorporated into the contract to provide necessary protections to PBA members who have a real likelihood of being involved in a police-related shooting during the course of his/her career in Irvington.

Ramos testified that the PBA conducted research on such a policy in other police departments. It learned that the Trenton Police Department and the New York City Police Department have similar provisions.

The PBA further notes that its proposal does not state that the officer shall become incommunicado for two days. The proposal does not prevent the Prosecutor's Office or other law enforcement agency, which is not party to the contract, from engaging the police officer involved in the shooting in order to obtain information that may be necessary for an ongoing investigation.

The Township contends that the PBA's proposals concerning "Police-Related Shootings" should be denied in its entirety. The proposal as written is unclear as to the impact of its provision. Here, it cites the testimony of Santiago who stated that the proposal, if adopted, would have a negative impact on the police department's ability to conduct an investigation. According to Santiago, the current policy is to place the officer involved in the shooting on desk duty until he/she receives medical clearance to return to full duty. This policy helps the police officer have a smooth transition to return to full duty.

Santiago further stated that the proposed contract language would ultimately harm the public in the capturing of a potential gun-wielding/armed suspect, if the involved officer could not be questioned for 48 hours. Moreover, Director Santiago testified that it is the police department's current practice that after each shift and/or incident, each officer involved must produce a

report. Thus, this new proposal would negatively impact the police department internal process for processing paperwork, which is a managerial prerogative and infringes on the Township's governmental policy decision making.

I have carefully considered both sides of this sensitive issue. First, I note that President Gattison testified that by its proposal the PBA intends "involved in a shooting" to mean an officer who discharges his weapon, as well as an officer who has been shot (but not those who were merely witnesses to the event). From the police officer's point of view, certainly little else in a police officer's career could be as traumatic as having to shoot a perpetrator or a suspect. It certainly could be expected that such an officer may be physically injured himself or cognitively impaired. An investigation by Internal Affairs at this juncture potentially places the officer's career at risk by statements made while the officer may not be medically stable or mentally fit to make such statements. In addition, it has long been held by the Public Employment Relations Commission and the Courts, that employees are entitled to Union representation during an interview from which a disciplinary action might flow. N.L.R.B. v. Weingarten, 420 U.S. 251(1975).

On the other hand, the Township certainly has an interest in quickly gathering the facts to complete an investigation

concerning the shooting event, particularly if the suspect has not yet been apprehended. In balancing the interests of both parties and the public, I award the following new contract provision:

When an officer is involved in a shooting, said officer shall not be required to respond to any questions or supply any statement or written reports until he is released by the evaluating physician or other medical professional. Such delay shall not exceed two business days unless the officer is physically or mentally incapacitated. Nothing in this provision shall prevent an officer from voluntarily answering questions or making a statement to the Township's Internal Affairs investigators.

Similar language to that above was awarded in Union County Sheriff v. PBA Local 108, Docket No. IA-2012-37 (6/11/2012), aff'd. PERC No. 2013-04 (7/19/12); aff'd. App. Div. Docket No. 6193-11T3 (4/23/14). This language adequately meets the needs of the police officers and the needs of the department to conduct an investigation. Nothing in this contract provision would prevent the County Prosecutor's Office from conducting its own investigation.

AWARD SUMMARY

CONTRACT DURATION (Article I):

January 1, 2011 through December 31, 2014

SALARIES (Article XI):

2011: Effective and retroactive to January 1, 2011 increase all salary rates by 1%

2012: Effective and retroactive to January 1, 2012 increase all salary rates by 1.5%

2013: Effective and retroactive to January 1, 2013 increase the dollar value of the sixth year step by 2%. All other steps will remain frozen at the 2012 dollar values.

2014: Effective and retroactive to January 1, 2014 increase the dollar value of the sixth year step by 2%. All other steps will remain frozen at the 2012 dollar values.

RETROACTIVE PAY (Article XI):

Pursuant to the parties' past practice, the payment of retroactive increases as set forth above shall include payments to employees who have retired or were promoted out of the bargaining unit since January 1, 2011.

CANINE UNIT STIPEND (Article XI):

Eliminate sub-section 5 providing for a stipend to members of the canine unit.

VACATION LEAVE (Article XIV):

Add the following language to the vacation leave Article:

For employees hired on or after July 1, 2014 vacation leave shall be as follows:

1-10 years: 10 days
 11-15 years: 15 days
 16+ years: 20 days

Section 2: Add the following

Effective with vacation time earned on or after January 1, 2014 any unused vacation time may be carried forward into the next succeeding year only.

Officers will be permitted to keep their current banks of vacation leave time intact.

TERMINAL LEAVE (Article XXI)

Add the following to Article XXI:

3. Terminal leave will be eliminated for all employees hired on or after July 1, 2014.

4. Retiring employees will have an option of being paid their terminal leave benefit and cash-out of unused accumulated leave balances in either of the following methods: (a) lump-sum payment of all monies due within 30 days of the employee's final paycheck; or (b) in two equal lump sum payments, the first of which shall be payable within 30 days of the employee's final paycheck, and the second of which payable by January 30 of the year following retirement.

BEREAVEMENT LEAVE (Article XVII):

Modify Article XVII, Section 2 to add "any individual regularly residing in the employee's household" to the definition of immediate family.

UNION LEAVE (Article XXII):

Modify Article XXII, paragraph 12 as follows:

The PBA President shall be granted leave without loss of pay for attendance to PBA President duties up to two (4) days each month upon written request.

COMPENSATORY TIME (Article X):

Add the following provision to Article X, Section 2:

8. All requests for the utilization of Emergency Time Due shall require the identification of the specific emergency and shall be immediately communicated to the appropriate Bureau Commander for approval or denial.

The following general requirements shall apply to these requests:

1. **Requests shall not be unreasonably denied.**
2. The need for overtime shall not constitute an express reason for denial, unless significant staffing issues are present and documented.
3. Requests shall be addressed and answered within two days of the request to provide the requesting member sufficient opportunity to finalize personal plans

Request Process:

Time Due: Officers requesting Time Due (TD) or Compensatory Time shall make the request no later than five days before the date of the Time Due. Time Due shall be granted based upon adequate staffing levels for the particular date, shift and the requesting officer having sufficient hours on the books.

Emergency Time Due: Emergency Time Due (ETD) is meant to provide officers with an alternative to the five-day advance request procedure only when a "true" emergency arises that is absolutely unforeseen. If any officer has prior knowledge of an upcoming event, even though it may be short notice, he/she must seek Time Due through the regular Time Due system, explaining why they could not provide 5 days' notice.

HEALTH BENEFITS (Article XVII):

The following provision shall be added to Article VXII:

Subsection 8- New provision- Health care contributions shall be made by all current employees in accordance with New Jersey State law, N.J.S.A. 40A:10-21.1.

"SHOOTINGS" POLICY (New Article):

I award the following new contract provision:

When an officer is involved in a shooting, said officer shall not be required to respond to any

questions or supply any statement or written reports until he is released by the evaluating physician or other medical professional. Such delay shall not exceed two business days unless the officer is physically or mentally incapacitated. Nothing in this provision shall prevent an officer from voluntarily answering questions or making a statement to the Township's Internal Affairs investigators.

* * * *

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 and any prior agreements between the parties.¹⁸

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 the award. My Award also explains how the statutory criteria factored into my final determination.

Susan W Osborn

Susan W. Osborn
Interest Arbitrator

Dated: June 16, 2014
Trenton, New Jersey

On this 16th day of June, 2014, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

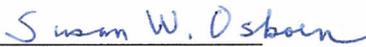
¹⁸ The PBA identified numerous typographical errors in the prior contract. I leave it to the parties to modify the contract accordingly.

questions or supply any statement or written reports until he is released by the evaluating physician or other medical professional. Such delay shall not exceed two business days unless the officer is physically or mentally incapacitated. Nothing in this provision shall prevent an officer from voluntarily answering questions or making a statement to the Township's Internal Affairs investigators.

* * * *

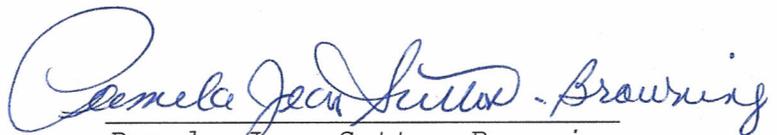
All proposals by the Township and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements between the parties.¹⁸

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 the award. My Award also explains how the statutory criteria factored into my final determination.


Susan W. Osborn
Interest Arbitrator

Dated: June 16, 2014
Trenton, New Jersey

On this 16th day of June, 2014, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.



Pamela Jean Sutton-Browning

ID # 2424173

NOTARY PUBLIC

STATE OF NEW JERSEY

My Commission Expires August 20, 2017

¹⁸ The PBA identified numerous typographical errors in the prior contract. I leave it to the parties to modify the contract accordingly.