

## NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

	X	
BOROUGH OF RAMSEY,	X	
	X	
Public Employer,	X	
	X	INTEREST ARBITRATION
-and-	X	DECISION AND AWARD
	X	
RAMSEY PBA LOCAL NO. 155,	X	
	X	
Labor Organization.	X	
	X	
PERC Docket No. IA-2012-015.	X	
	X	

### INTRODUCTION

#### The Parties, and Their Agreement

The Borough of Ramsey (the "Borough" or "Ramsey") is a public employer as defined by the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Ramsey Policeman's Benevolent Association, Local 155 ("Local 155", the "Union", or the "PBA"), is the exclusive representative for all police officers below the rank of Captain. These parties' previous Collective Bargaining Agreement (the "Agreement" or "CBA") covered the four years between January 1, 2007 and December 31, 2011, (Joint Exhibit 1.)<sup>1</sup>

The Agreement carried forward the terms of the prior labor agreement, as they were modified in an Interest Arbitration Award rendered by James W. Mastriani on July

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<sup>1</sup> The Agreement was the sole joint exhibit, and was marked as J-1. All other documents were received in evidence without objection. PBA Exhibits were marked "P-#". By way of example, the 29<sup>th</sup> PBA exhibit was marked "P-29." Borough Exhibits were marked "E-#, Section #, subsection #). By way of example, a comparison of maximum police officer salaries for Ramsey Borough and twelve other Northwest Bergen County municipalities is referenced as "E-1, §2. (1). This format will be used throughout this award.

31, 2009. (Exhibit P-29.)<sup>2</sup> Arbitrator Mastriani's award was issued after 2-years during which all concerned devoted significant time and effort to the matter. Following informal mediation sessions, a hearing was held on February 25, 2008. Thereafter the record was supplemented, and post-hearing briefs<sup>3</sup> were filed. (Exhibit P-29, Pages 2 & 45.)

Arbitrator Mastriani's award: set a five-year term; revised the health insurance provision; revised provisions for retiree insurance benefits; establish deferral of sick leave termination pay for a period of three years; and established a salary guide. (Exhibit P-29, Pages 42 - 45.)

The State of New Jersey Public Employment Relations Commission ("PERC", or the "Commission") considered an appeal filed on behalf of Local 155. The appeal, the Union submitted,

derived "from a failure of clarity in the Employer's position. The Arbitrator has attempted to deal with this lack of essential information however notwithstanding the Arbitrator's efforts, a sustainable award was not rendered."

(Exhibit P-30, p. 8.)

PERC declined to vacate the award, which thereafter was incorporated in Agreement's terms.

#### Negotiations for a Successor Agreement

In anticipation of the current Agreement's expiration the parties engaged in direct negotiations for a successor agreement. Bargaining sessions were held on several days including on October 20, 2011, November 11, 2011, and December 9, 2011. They also enlisted the assistance of Mediator Joel Weisblatt in the hope of narrowing, or fully resolving the issues in dispute. An overall agreement was not reached.

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<sup>2</sup> See Footnote 1, *supra*

<sup>3</sup> The Award was timely under The Police and Fire Interest Arbitration Act as then in effect. The Act, *inter alia*, then permitted the "two parties by mutual consent" to agree to an extension of time for the Interest Arbitrator to render an opinion and award."

The parties, however, had previously come to terms on Delegate Release Time (Exhibit P-2). Furthermore, on the morning of hearing--the Borough announced that it had accepted PBA proposal Number 4 as stated in the Union's Last Offer Proposal. (See Exhibit P-1) Accordingly, in their successor contract, "New Jersey Public Employment Relations Commission" will be substituted for the "New Jersey State Board of Mediation" in Step 2 of Article XV governing Arbitration. See Stipulations, *infra*.

My Award incorporates these agreements.

The Interest Arbitration; Pre-Hearing

On or about February 7, 2012, Local 155 submitted to PERC a Petition to Initiate Compulsory Interest Arbitration (the "Petition") The Borough was served with a copy. On February 7, 2012 the Commission marked the Petition as "Filed," and assigned the matter Docket No. IA-2012-15. Several issues were denoted in the Petition. (See Schedule A to Petition.) The issues were:

ECONOMIC

Wage Increase

Salary Schedule

Clothing Allowance

Article V – Sick Leave

Article XVII – Holidays

Article XXVI – Insurance Coverage

NON-ECONOMIC

Worker's Compensation Codification

Funeral Details

Arbitration Language

Article XXXIX – Existing T & C

Term and Renewal (New Article)

The Borough responded via letter dated February 8, 2012, where it designated six (6) issues, which were not listed in the Petition. They were:

Article V – Sick Leave – Cap Sick Leave Payment

Article XIV – Grievance Procedure – Definition

Article XV – Arbitration

Article XVIII – Vacations – 2-tier proposal

Article XIX – Personal Days – 2-tier proposal

Article XXXV – Longevity; 2-tier proposal, and freeze current employees

Pursuant to its Rules, the Commission designated the undersigned as Interest Arbitrator on February 27, 2012. The parties opted to forgo further mediation. Their final offer submissions were tendered to me, and exchanged in a timely manner pursuant to N.J.S.A. 34:13A-16f(1) and N.J.A.C. 19:16-5.7(f).

March 16, 2012 Hearing

A hearing was held on March 16, 2012 at which the parties were represented by competent and experienced counsel. At the start of the hearing the parties were reminded,

Under New Jersey Law interest arbitration may follow impasses in negotiations between public employers and law enforcement employees over disputed terms for a successor collective bargaining agreement. This case is one of those matters. The disputed issues appearing in your final offers will be resolved by “conventional arbitration.” This means that after carefully weighing proofs and arguments--as they appear on the record--I may award that your labor agreement incorporate new, and/or modified terms.

The statutory framework lists 9-factors that I must consider when resolving differences over your competing proposals. **Each party bears responsibility for presenting any evidence that it believes may be relevant to my application of these factors.** While I may occasionally ask questions, it is not my job to tell you what evidence to produce. Producing proof is your task. Arguing its significance, and application to each statutory factor, is also your task.

As you know, the page count for documents submitted as evidence in interest arbitrations frequently exceeds two, or three thousand pages. **After a document is admitted into evidence, I will not guess which sections, pages, or paragraphs may—in your opinion—be relevant. You need to tell me<sup>4</sup>.**

One the 2011 amendments interest arbitration law mandates that interest awards be issued within 45-days of assignment. I was appointed on February 27, 2012. My award is due no later than April 12, 2012. We will

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<sup>4</sup> The discussion *infra* addresses the Interest Arbitrator's duty to comply with the 9-factor statutory mandate when there is a failure of proof attributable to either and/or both parties.

set an expedited briefing schedule at the end of the oral hearings. I may, at that time, ask counsel to address particular issues.

(Emphasis added.)

### The Borough's Motions

#### A. To Exclude Evidence

Prior to the presentation of proofs, the Borough of Ramsey moved, *in limine*, to exclude proffers of evidence on Proposals 1 and 2 in the PBA's Last Offer Proposal.

(Exhibit P-1). These proposals read:

1. A 2.5% across-the-board wage increase on each January 1<sup>st</sup> of the three (3) year contract.
2. A maximum payment by any Employee or retiree would be that amount mandated under Chapter 78 of the Public Laws of 2011. This appeared as Item 7A<sup>5</sup> on the *Original Proposal Sheet*. (Emphasis added.)

The *Proposal Sheet* provided,

**ARTICLE XXXVI, RETIREE INSURANCE BENEFITS (p. 49 [of the Agreement]) and ARTICLE XXXVIII, INSURANCE COVERAGE FOR ACTIVE MEMBERS (p. 52 [of the Agreement])** – The PBA proposes that these articles be modified so as to provide that the maximum payment by any Employee or retiree would be that amount mandated under Chapter 78 of the Public Laws of 2011.

(Exhibit P-2.) (Emphasis in original.)

The Borough explained that its *in limine* motions were premised on the December 10, 2010 amendments to the Police and Fire Arbitration Act. It expressly cited the following statutory language:

An Arbitrator shall not render any award pursuant to Section 3 of P. L. 1997, Chapter 85 (C.34:13A-16), which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for members of the affected employer organization in the twelve months preceding the expiration of the collective bargaining subject to arbitration; provided, however, the parties may agree, or the Arbitrator may decide to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual

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<sup>5</sup> The proposal was listed as Number 10, not 7A, on the original proposal sheet.

percentages. An award of an Arbitrator shall not include any base salary items or non-salaried economic issues which are not included in the prior collective negotiations agreement.

(Transcript, pages 12 – 14; see also Exhibit E-§1(1).)

Under this limitation, the Borough asserted that the PBA's demand for a 2.50% per annum wage increase over three years--not even including increment costs--went well beyond the newly enacted two percent "hard cap." Accordingly, it argued that the award demanded by the PBA "cannot be submitted to you." (Transcript, pages 15.)

As to the proposal to cap employee/retiree contributions toward health insurance, the Borough's motion to exclude is premised on its conclusion that is a non-salaried economic issue not addressed in Article XXXVI, or Article XXXVIII. Ramsey, accordingly, argues that the proposal is barred under the statutory provision stating,

An award of an Arbitrator shall not include any base salary items or non-salaried economic issues, which are not included in the prior collective negotiations agreement.

(Transcript, page 14-15.)

The Union generally rejected both exclusionary motions, characterizing them as legal matters to be addressed in post-hearing briefs. (Transcript, page 15.) It also observed that as the Borough has known of these proposals since October 2011, and has had sufficient time to address its concerns by filing scope petitions. Under the circumstances, granting the public employer's last minute motions would be unfair.

I denied both *in limine* motions. From a technical perspective, even before N.J.A.C. 19:16-5.7(h) was suspended--to allow interest arbitrators increase flexibility--we were permitted to take evidence touching issues that were before the Commission on scope petitions. More to the point, the Borough's *in limine* motions would have "side tracked" the process, by requiring additional argument and perhaps testimony. They also might have enmeshed me in "framing" the two issues. While this is the practice in

grievance arbitration; barring my switching into a mediatory role, it is beyond the span of this “interests” based process. I am not required “to put on a mediator’s hat,” and concluded it would not be advisable in this instance.

Permitting the Union to present its proofs on Proposals 1 and 2 placed me in the best position to determine if the Borough’s concerns had a basis in law and fact. There was neither delay, nor prejudice to either party.

#### B. The Borough’s Motion to Reopen

The Borough also moved during the hearing to introduce evidence of its intent— at a Council Meeting scheduled for March 28, 2012—to approve and implement two promotions, i.e., one Sergeant to Lieutenant, and one Patrol Officer to Sergeant. (T. pages 86 – 89.) Local 155 opposed the admission of this evidence.

The Borough of Ramsey supported its motion by arguing that the filling, or not, of the vacancy created by the retirement of Lieutenant Hennessy will impact anticipated Union arguments about whether “breakage” offsets increments under any analysis of how the 2% “hard cap” is to be calculated and applied under the statute<sup>6</sup>.

Local 155 opposed granting the motion. Their attorney asserted “the employer has a level of discretion under law which they may or may not exercise, which they may change their mind, may enhance, modify. It is not relevant to this proceeding.” (T. p. 84.) Counsel further commented that “...should the facts change: either more promotions, less promotions, people hired, people retiring, there is ample opportunity for both parties to apply to reopen the record and submit something to you, should you approve it, but as of today I request that the record be closed as to the facts as they exist this date.” (T. p. 84.)

After considering their arguments, I ruled that, “to the extent that the Council

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<sup>6</sup> This evolving area of the law is discussed in greater detail later in this determination.

resolves at the March 28 meeting to make *promotions* either into the lieutenant position and/or a sergeant position, the record may be reopened in order that the municipality can file with the Arbitrator a copy of the resolution. This does not preclude Mr. Loccke from objecting." (T. p. 124.) (Emphasis added.)

On March 29, 2012, Ramsey moved to reopen the record to introduce "Resolutions Nos. 58-2012, 071-2012, and 59-2012 which shows the promotion of a success candidate to lieutenant and a successful candidate to sergeant and a resolution to hire a patrolman to replace the patrolman who was promoted to sergeant." Local 155 vociferously and vehemently opposed admission of the three resolutions into evidence.

By letter dated April 6, 2012, I notified the parties that Resolution No. 58-2012 and Resolution No. 59-2012 had been admitted into evidence, and assigned exhibit number E-2 and E-3 respectively. These two resolutions provide some information about salary guide movements.

Resolution No. 071-2012 was not admitted. It is a mere beginning to the hiring process. Authorizing the Chief of Police to advertise for candidates may, or may not, eventually add to Ramsey's patrol ranks. Moreover, the Borough neither requested, nor reserved a right to file a motion about the retention of an additional patrolman.

#### Presentation of Proofs

Local 155 and the Borough each sponsored a single fact witness<sup>7</sup>, as follows:

Called on Local 155's Behalf

Called on the Borough's Behalf

Sergeant Kevin Cherven

Councilman Bruce Vozeh

Their testimony was transcribed, and a copy of the transcript subsequently received by the Arbitrator.

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<sup>7</sup> Neither party exercised its option to call an expert witness.



As reflected in that transcript, in addition to their single witnesses, each party submitted multiple documents that were admitted into evidence. At the conclusion of the March 16<sup>th</sup> proceeding, the parties acknowledged that they had a full and fair opportunity to present proofs and testimony<sup>8</sup>. The Borough and Local 155 also agreed to file post-hearing briefs by March 26, 2012. The briefs were to include discussion on:

1. For both parties, the breakdown of its Base Salary calculation, showing:
  - A. Wages paid under Agreement's salary guide for 2011;
  - B. Longevity payments paid in 2011;
  - C. Any "other items included in the base salary as understood by the parties in the prior contract";
  - D. Any other items "agreed to by the parties";
2. For the Borough only, as required under the Police and Fire Arbitration Act, a written estimate of the financial impact on the Borough of Ramsey's taxpayers if the arbitrator accepts the municipality's final offer;
3. For Local 155 only, as required under the Police and Fire Arbitration Act, a written estimate of the financial impact on the Borough of Ramsey's taxpayers if the arbitrator accepts the Union's final offer;
4. For both parties, how would an award accepting Local 155's economic offer affect the municipal purposes element of the local property tax?;
5. For both parties, do the terminal leave payments to Lieutenant Hennessy impact the calculation of the 2011 Base Salary? If not, what do they impact?;
6. For both parties, does the lump sum payment of accrued sick leave to Lieutenant Hennessy impact the calculation of the 2011 Base Salary? If not, what does it impact?;
7. For both parties, what is the relationship between the two percent (2.0%) hard cap and step increases?; and
8. For both parties, cite New Jersey authority describing a party's burden, in conventional interest arbitration, to present sufficient proof to support its position on final offer economic and non-economic offers. Copies of relevant cases may be appended to your briefs.

The briefs were timely filed with the undersigned, who exchanged them between counsel on March 29, 2012.

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<sup>8</sup> The Borough of Ramsey notified of its intent to request reopening on March 29<sup>th</sup> in the event the Borough Council voted at a scheduled meeting on March 28, 2012 to fill the vacancy created by the retirement of Lieutenant from the force on December 31, 2011. The request to reopen would be restricted to the limited purpose of providing documentary proof that the Council had approved a promotion to fill the vacancy, and perhaps a related promotion to Sergeant.

## **FINAL OFFER SUBMISSIONS**

### **Borough of Ramsey's Final Offer**

The Borough's final offer is as follows:

#### **1. Article III Salary Schedules**

- i. 2012 -- 0% + increment of 2.67%  
2013 -- 0% + increment of 1.57%  
2014 -- 0% + increment of 1.94%
- ii. Employees hired after 1/1/12 shall work under a 12-Step salary guide with equal steps with Step 1 matching the current Step 1 through Step 12.
- iii. Employees hired after January 1, 2012 shall not have senior officer level.

#### **2. Article V – Sick Leave**

- i. Cap sick leave payment at \$15,000.00.

#### **3. Article XXXV – Longevity Compensation**

- i. Effective January 1, 2012 longevity pay shall be frozen under the dollar amount being received by each current full-time employee and shall remain at the current amount to the remainder of the said employee's employment with the Borough of Ramsey.
- ii. Employees hired after January 1, 2012 shall not be entitled to longevity.

### **PBA's Final Offer**

The seven point PBA Proposal was stated, as follows:

- 1. **Wage Increase** - The PBA proposes a 2.5% across-the-board wage increase on each January 1<sup>st</sup> of the three (3) year contract.
- 2. **Insurance Language** - The PBA proposes that a maximum payment by any Employee or retiree would be that amount mandated under Chapter 78 of the Public Laws of 2011. This appeared as Item No. 10 on the Original Proposal Sheet.
- 3. **Grievance Procedure Language** - The PBA proposes the deletion of all references to a Borough filed grievance or Borough filed appeal. This appeared as Item 7A on the Original Proposal Sheet.
- 4. **PERC as the arbitration agency**- The PBA proposes a modification of Step Two of the procedure by substituting the New Jersey Public Employment Relations Commission for the New Jersey

State Board of Mediation as the arbitral agency. This appeared as Item No. 7B on the Original Proposal Sheet.

5. **COMPENSATORY TIME OFF Codification**-The PBA proposes a formalization of the existing Compensatory Time Off Procedure. This item appeared as Proposal No. 9 on the Original Proposal Sheet.
6. **Existing Terms Language** - The PBA proposes the deletion of all that follows the first sentence. This appeared as Item No. 11 on the Original Proposal Sheet.
7. **Term and Renewal** - The PBA proposes the addition of new Term and Renewal language. This appeared as Item No. 12 on the Original Proposal Sheet.

The PBA characterized Proposals 1 and 2, i.e., wage increase & insurance, as “economic,” while classifying the remaining proposals as “non-economic.”

Under the revised Interest Arbitration Act, I have “conventional authority” to resolve the disputes inherent in the parties’ conflicting proposals. P.L. 2010 c. 105. The proponent of each proposal seeking to modify existing terms and conditions has a burden to produce sufficient evidentiary support for the proposed change.

## **FINDINGS OF FACT**

### Undisputed Facts

Based on the record, I find the following as undisputed facts:

1. The Borough is located in Northwestern Bergen County, and covers approximately 5.6 square miles. (Testimony of Sergeant Cherven, T. page 24.)
2. Ramsey is about 22 miles Northwest of New York City, and 5 miles south of Suffern, New York. (Testimony of Sergeant Cherven, T. page 24.) It is within a few miles of Interstate 287, and of the New York State Thruway both of which are heavily traveled corridors.

3. Among the 12-other Northwestern Bergen County municipalities are: Allendale, Franklin Lakes, Glen Rock, Ho-Ho-Kus, Mahwah, Midland Park, Oakland, Ridgewood, Saddle River, Upper Saddle River, Waldwick, and Wyckoff. (Hereinafter the "NW Bergen Comparators") (Exhibit E-1, §2(1).)
4. Of these municipalities Allendale, Mahwah, Saddle River, and Upper Saddle River border Ramsey. (Hereinafter "the bordering towns.") (Exhibit P-29, page 8.)
5. Approximately seven times each month, Borough Police coordinate with police forces in these bordering towns, under mutual aid agreements. (Testimony of Sergeant Cherven, T. page 26 & 33.)
6. Approximately 15,000 persons reside in the Borough, which has 5,363 properties. (Testimony of Sergeant Cherven.)
7. The median single-family home price is \$697,906, and the average assessment is \$428,000. (Testimony of Sergeant Cherven & Exhibit P-26.)
8. "Most of the town is made up of single family homes, stand-alone structures. Then also we have condominium complexes in town, town house complexes in town." (Testimony of Sergeant Cherven, T. page 34.)
9. Three large educational institutions are in Ramsey, i.e., a regional, public high school; a private parochial school; and Eastwick—a private college with approximately 900 enrolled students. (Testimony of Sergeant Cherven, T. page 34 & 35, and 41.)
10. The parochial school, Don Bosco, is a "football powerhouse," which at times has games that are attended by more than 10,000 spectators. (Testimony of Sergeant Cherven, T. page 40 & 41.)
11. Additionally, Ramsey has 3-elementary schools, and 1-middle school. (Exhibit P-31.)
12. Several "pre-K" private schools, serving about 400 students, are also in Ramsey. (Testimony of Sergeant Cherven, T. page 39.)

13. Additionally, approximately 895 commercial properties are situated in Ramsey.

(Testimony of Sergeant Cherven, T. page 34.)

14. Among other things, these sites are occupied by: 9-shopping centers; 4 car dealerships, i.e., Prestige Group (3-locations), Ramsey Group (4-locations), Radical Motor, & Joe Heidt Motors; several corporate headquarters; 12-full service restaurants; 1-college; 2-train stations; one golf and country club; 5-public schools; 2-parochial schools; 4-pre-schools; and 3-motels. (Testimony of Sergeant Cherven. T. pages 42 - 45)

15. Many of the commercial establishments are situated on State Highway 17, a divided roadway that may be used daily by as many as 125,000 vehicles. (Exhibit P-3; Testimony of Sergeant Cherven, T. pages 24 & 25.)

16. Where it traverses Ramsey, Highway 17 is 3-lanes in each direction. (Testimony of Sergeant Cherven, T. page 25.)

17. Vehicular traffic on this highway includes passenger cars, commuter buses, tractor-trailers, and commercial trucks. (Testimony of Sergeant Cherven, T. pages 32 – 33, & 41.)

18. Traffic flow is particularly high on Highway 17, Monday to Friday, during commuter hours. (Testimony of Sergeant Cherven, T. page 31.)

19. It is also heavy, and may backup, in the summertime when families are traveling to/from the Catskill Mountains in Southern New York State. (Testimony of Sergeant Cherven, T. pages 30 - 31.)

20. Accidents on Highway 17 generate calls for police services. (Testimony of Sergeant Cherven, T. page 26.)

21. On occasion accidents result in traffic diversions, and create a need for inter-jurisdictional cooperation with the police in the bordering towns. (Testimony of Sergeant Cherven, T. pages 26 – 27; Exhibit P-31.)

22. Some accidents result in hazardous materials spills, which often create an additional need for inter-jurisdictional cooperation. (Testimony of Sergeant Cherven, T. pages 32 – 33; see also T. pages 54 – 55.)
23. Ramsey Police Officers are cross-trained in dealing with HAZMAT. (Testimony of Sergeant Cherven, T. page 33.)
24. Several other roads in the municipality are heavily traveled. (Exhibit P-3; Testimony of Sergeant Cherven, T. pages 28 - 30.)
25. New Jersey Department of Transportation Traffic Count Surveys show Ramsey's vehicle flow with specificity. (Exhibit P-3)
26. The shopping centers and businesses along the Highway 17 corridor elevate Ramsey's population above its permanent residential base. (Testimony of Sergeant Cherven, T. page 24.)
27. There a high rate of occupancy, and a low rate of vacancy in these malls.  
(Testimony of Sergeant Cherven, T. page 37 – 38.)
28. Retail establishments on Highway 17 generate police service calls including ones involving suspicious persons, intoxicated patrons, and activated burglar alarms.  
(Testimony of Sergeant Cherven, T. pages 26 & 45.)
29. The motels situated off of Highway 17 have a high occupancy rate, and generate a disproportionate number of service calls. (Testimony of Sergeant Cherven, T. page 26 & 47.)
30. Without contradiction, Sergeant Cherven testified,  
  
hotels generally do not always bring in the best type of people in the town creating many, many calls for service involving criminal activity. We have to have heavy patrol in these locations in parking lots because we know this occurs and it's our responsibility, obviously, to try to stop any type of criminal activity.  
  
(Testimony of Sergeant Cherven, T. page 46.)

31. Commercial properties also are found on Main Street, and “off of” Williams Drive.  
(Testimony of Sergeant Cherven, T. page 34.)
32. Ramsey has two train stations; both operated by New Jersey Transit. (Testimony of Sergeant Cherven, T. page 35.)
33. On workdays these stations bring thousands of commuters into the Borough.  
(Testimony of Sergeant Cherven, T. page 35.)
34. One station is adjacent to East Main Street, and the other is off of Highway 17 South.  
(Testimony of Sergeant Cherven, T. page 36 & 47.)
35. “Law enforcement agencies in New Jersey now can attain accredited status through the NJSACOP Law Enforcement Accreditation Commission.” (Exhibit P-4.)
36. “Accreditation is a progressive and time proven way of helping law enforcement agencies calculate and improve their overall performances.”  
(Exhibit P-4.)
37. On March 27, 2010, the Ramsey Police Department received a certification from the Commission on Accreditation for Law Enforcement Agencies. (Exhibit P-4; Testimony of Sergeant Cherven, T. pages 48 & 49.)
38. As of December 31, 2011 the Ramsey Police Department had 30-Sworn Officers, including the Chief of Police and a Captain. (Exhibit E-1, §2(2).)
39. The corresponding numbers for previous years were: 37 in 2005; 34 in 2006; 32 in 2007; 31 in 2008; 28 in 2009; and 29 in 2010. (Exhibit P-4 & Exhibit P-29, page 8.)
40. Neither Chief of Police Bryan H. Gurney, nor Captain Baily are in the bargaining unit represented by Local 155. (See Joint Exhibit 1.)
41. The remaining 28-Sworn Officers, as of December 31, 2011, held the following

ranks: 2-Lieutenants; 7-Sergeants; and 19-Police Officers. (Exhibit E-1, §2(2).)

42. These 28-officers comprise the employee population for purposes of base salary calculations.

43. The collective relationship between officers in the bargaining unit, and the Borough of Ramsey is governed by a collective negotiations agreement (the "Agreement" or "CBA"). (Joint Exhibit 1.)

44. The Agreement contains Grievance and Arbitration provisions. (Joint Exhibit 1, pages 18-20.)

45 Article XV governing arbitration provides, in pertinent part, that "*Either party may institute arbitration proceedings when the grievance procedure has been exhausted...*" (Emphasis added.) (Joint Exhibit 1, page 20.)

46. During collective bargain preceding this arbitration the Union proposed, "the deletion of all references to a Borough filed grievance or a Borough filed appeal." (Exhibit P-1.)

47. Sergeant Cherven testified in support of this proposal noting that while the Borough has never grieved the clause creates a "gray area." (Testimony of Sergeant Cherven, T. page 67 & 74.)

48. Article XXXIX, states in full:

All existing terms and conditions of employment and all existing Rules and regulations governing the Police Department of the Borough shall continue in full force and effect. The foregoing may be amended and supplemented from time to time by Ordinance or resolution of the Borough adopted pursuant to N.J.S.A. 40A: 14-118 et seq. and by the rules and regulations established by the Chief of Police and approved by the Borough.

(Joint Exhibit 1, page 55.)

49. During bargaining preceding this arbitration the Union proposed deleting the second sentence of Article XXXIX. (Exhibit P-1.)

50. During the March 16, 2012 hearing there was no direct testimony about the proposal



to delete the Article XXXIX's second sentence.

51. During bargaining preceding this arbitration the Union further proposed "a formalization of the existing Compensatory Time Off Procedure." (Exhibit P-1.)

52. The parties' averred this issue might be addressed through continued bargaining, and stated they would consider entering discussions prior to the issuance of an interest award.

53. Article XXIX, entitled "Hours of Work and Overtime," establishes two 12-hour shifts, and governs overtime payments in Sections A. 2 and B. (Exhibit J-1, pages 39 - 41.)

54. Section A. 5 of Article XXIX governs a form of compensatory time off know as "Kelly Time."<sup>9</sup> (Exhibit J-1, page 40.)

55. This provision states,

(Kelly Time) per contractual agreement, any hours scheduled in excess of 2080, will be credited toward the officer's "Kelly Time." During the term of this agreement, Kelly Time shall be used by the end of the calendar year earned, unless it is carried over with the approval of the Chief of Police.

56. Sergeant Cherven testified that over the years Ramsey officers have received either overtime pay, or compensatory time in connection with extra hours worked. (Testimony of Sergeant Cherven, T. page 77,

57. When extra hours, either beyond a shift, or on regularly scheduled days off are mandatory, overtime is paid under the Agreement. (Testimony of Sergeant Cherven, T. page 77.)

58. Sergeant Cherven testified how the existing compensatory time practice operates when overtime is not approved for non-mandatory activities. He explained:

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<sup>9</sup> Kelly days are days off, or vacation days taken at a scheduled interval in addition to normal time off or vacation

...[G]enerally it would be overtime. However, there are many instances which -- myself, I'll use myself as an example.

I do a lot of school security work, presentations to the staff. If it occurs on my day off, many times the department won't pay overtime for that, but they'll compensate me for being there in some fashion.

If it's something that needs to be done, if I choose to do it at the same time, could I say no? Of course, but I think there are certain things that are important.

I also have a loyalty to the department, as well.

At that time they won't pay me overtime because it violates the overtime procedure, along with the fact that they might not be willing to do it, and then I will get some compensated time for that.

(Testimony of Sergeant Cherven, T. pages 77 – 78.)

59. "The PBA proposes a formalization of the existing compensatory time off procedure."

(Exhibit P-1.)

60. The PBA additionally proposes adding the following "Term and Renewal" language to the Agreement,

The Agreement shall have a term from January 1, 201\_ through December 31, 201\_. If the parties have not executed a successor agreement by December 31, 201\_, then this Agreement shall continue in full force and effect until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public Employment Relations Commission.

(Exhibit P-1)

61. Sergeant Cherven testified that the parties' practice has been to continue applying the terms of an expired contract until a successor has been negotiated. (Testimony of Sergeant Cherven, T. page 66.)

62. The Sergeant further testified, as follows:

Q. That if there is -- strike that.

In the present circumstance the term of the contract, J-1,  
was through December 31, 2011. Right?

A. Correct.

Q. The parties have lived by the terms subsequent to that  
and through this date?

A. Yes.

Q. Has that been the practice in prior years, prior contracts,  
if they expired without a new one being completed, just  
lived with whatever the terms were in the past?

A. Correct.

Q. You're seeking a codification of that practice here?

A. Yes.

(T. p. 66, lines 13-25 & p. 67, lines 1-3 .)

63. On December 31, 2011, Lieutenant Robert Hennessey turned-in his gun, and received  
a retirement ID. (Testimony of Sergeant Cherven, T. page 69.)

64. Thereafter, the Lieutenant received terminal leave payments though February 29,  
2012. (Testimony of Sergeant Cherven, T. page 69, 74.)

65. The Lieutenant went off payroll effective February 29, 2012. (Testimony of  
Councilman Vozeh, T. page 118.)

66. Subsequently, he was paid a lump sum--approximating \$60,000--for accumulated,  
unused sick time, and began receiving a pension effective March 1, 2012.

(Testimony of Sergeant Cherven, T. page 69, 74; Councilman Vozeh, T. page 118.)

67. Such compensation for accumulated, but unused, sick leave is permitted by Article of  
the Agreement.

68. At present the New Jersey Legislature is considering several bills aimed at limiting  
contractual payments similar to those received by Lieutenant Hennessey.

69. The Ramsey Borough Council, on March 28, 2012, passed Resolution No. 58-2012

and Resolution No. 59-2012, authorizing the promotion of Bryan Lyman to Lieutenant, and the promotion of Vasili Pieratos to Sergeant. (Exhibits E-2 and E-3.)

70. In 2010, The Ramsey Police Department received 23,470 calls for service. (Exhibit P-4.)

71. In the same year, it "conducted 3,827 motor vehicle stops resulting in 2,471 summons." (Exhibit P-4.)

72. Between 2006 and 2010 calls for service increased by 58%, and the number of motor vehicle accidents increased by 42%. (See Exhibit P-3.)

73. Between 2006 and 2011 the number of sworn officers in the Borough dropped from 34 to 29; a 15% decrease.

74. The Borough's law enforcement personnel assist Bergen County by providing support to the Prosecutor's Office and Parks Department, and by participation in the Fatal Accident Unit. (Testimony of Sergeant Cherven, T. page 55.)

75. Bargaining unit members assist with public outreach programs such as DARE.

76. A Mayor, and 6-member council govern the Borough of Ramsey is governed. (Exhibit P-24.)

77. It adopted a 2011 budget of \$23,209,417.36, and at year's end expenditures of \$23,210,700.13 were recorded. (Exhibit P-19.)

78. For that year it collected 98.63% of its tax levy. (Exhibit P-19.)

79. As of December 31, 2011 Ramsey had a cash surplus of \$4,241,080.35 (Exhibit P-19), which was slightly below the prior year's surplus, Exhibit E-1, §4(2).)

80. State aid was "flat" in 2010 and 2011, and most likely will remain at the same level in 2012.

81. In 2011, the Borough expended \$4,360,054.51 for Police Department salaries and wages. (Exhibit P-24.)

82. Approximately 68% of the Police Department's wages and salaries, exclusive of longevity, was spent to compensate bargaining unit members, i.e.,  $2,973,036/4,360,055 = 0.68\%$  (Exhibit P-24 & Exhibit E-1, §1(2).)
83. Officers hired before July 1, 2003 receive two percent (2%) longevity payments for each four years of service to a maximum of ten percent (10%). (Joint Exhibit 1.)
84. Officers hired on, or after, July 1, 2003 receive: 2.5% longevity after seven years of service; 5% longevity after thirteen years; 7.5% longevity after nineteen years; and 10% longevity after twenty-five years of service. (Joint Exhibit 1.)
85. Longevity payments in 2011 ranged from \$2,824 to \$13,440 averaging \$8,250 for each of the 21-officers eligible to receive them. (Exhibit E-1, §1(2).)
86. When calculated on a per bargaining unit member basis, the average drops to \$6,187.
87. The Agreement contains 8-Steps for Patrolmen, as well as a step each for Sergeant and Lieutenant. (Joint Exhibit 1.)
88. Steps 1 through 8 are one-year steps. (Joint Exhibit 1.)
89. Patrolmen, accordingly, reach Step 8 after seven years of service.
90. As officers advance from step to step they receive wage increments.
91. For 2011 step increments totaled \$83,893. (Exhibit E-1, §1(2).)
92. As of December 31, 2011 the number of Sworn personnel on each step was:  
**Step 1**, 1 Patrolman; **Step 2**, 1 Patrolman; **Step 3**, -0- Patrolman; **Step 4**, 5 Patrolman;  
**Step 5**, -0- Patrolmen; **Step 6**, -0- Patrolmen; **Step 7**, -0- Patrolmen; and **Step 8**, 11 Patrolmen. (Exhibit E-1, §1(2).)
93. After 23-years of service, top step patrolmen are placed in Senior Status, and compensated at a rate midway between the 8<sup>th</sup> Step and the Sergeant's Step. (Joint Exhibit 1.)

94. As of December 31, 2011 one officer was in the Senior Pay Status category. (Exhibit E-1, §1(2).)
95. Further, as of December 31, 2011, 7-Sergeants and 2-Lieutenants were on payroll.
96. Ramsey Officers on Step 1 have a starting salary of \$37,500, placing them at the median of the NW Bergen Comparators. (Exhibit E-1, §2(3).)
97. Ramsey Officers on Step 8 have a base of \$112,968. (Exhibit E-1, §1(2).)
98. Against maximum salaries for Patrol Officers in the NW Bergen Comparators, Ramsey's Step 8 base pay of \$112,968 is just above the \$112,314 median. (Exhibit E-1, §1(2) & §2(1).)
99. The maximum step for all 67-Bergen County municipalities ranged from \$96,061 to \$135,875, averaging approximately \$109,500.
100. Base pay for Patrol Officers who have reached Senior Pay Status is \$118,307. (Exhibit E-1, §1(2).)
101. For 2011 the pay earned by 21 of the 28 sworn personnel was enhanced by longevity payments totaling \$173,257. (Exhibit E-1, §1(2).)
102. For employees hired after July 1, 2003 longevity eligibility starts after 6-years of employment. (Exhibit E-1, §2(19).)
103. 11 of the NW Bergen Comparators have longevity payments in their collective contracts. (Exhibit E-1, §2(5).)
104. The formulas for calculating longevity differ substantially from municipality to municipality. (Exhibit E-1, §2(5).)
105. The total wage cost, *exclusive of longevity*, paid by the Borough of Ramsey to bargaining unit members in 2011 was \$2,973,036.
- 106 This includes annual stipends paid to Officers assigned to the juvenile division, detective bureau, or traffic division. (Joint Exhibit 1, Article XXIX, Section F, page 42.)

107. The Agreement does not reference night or rotational differentials, weapons' allowance, or hazardous duty pay. (Joint Exhibit 1.)

108. The total wage cost, inclusive of longevity payments totaling \$173,257, paid by the Borough to bargaining unit members in 2011 was \$3,146,293.

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

110. **In 2011, the base salary for represented Ramsey police personnel was \$3,146,293.** (Exhibit E-1, §2(2).)

111. The aforesaid "base salary" was calculated as follows: \$2,973,036 (wages under salary schedule including step increases) plus \$ 173,257 (Longevity) (Exhibit E-1, §2(2).)

112. The parties did not present evidence of any other item present in the expiring contract's base salary that was part of this calculation.

113. Nor, did the parties did not stipulate to any other item agreed to between them for inclusion in the base salary.

114. Two percent (2%) of \$3,146,293 for each year of a new three year contract equals \$188,778, arrived at, as follows: of \$3,146,293 (base salary) x .02 (maximum allowable arbitral award) x 3 (years) = \$188,778.

115. Absent arbitral modification of the parties' Agreement, applying the existing Salary Guide, Step increases for 2012 would impact 7-officers at a cost of \$83,893 to the Borough of Ramsey. (E-1, §2(2).)

116. Absent arbitral modification of the parties' Agreement, applying the existing Salary Guide and building on 2012 increments, Step increases for 2013 would impact 7-officers

at a cost of \$50,734 to the Borough of Ramsey. (E-1, §2(2).)

117. Absent arbitral modification of the parties' Agreement, applying the existing Salary Guide and building on 2013 increments, Step increases for 2014 would impact 7-officers at a cost of \$60,393 to the Borough of Ramsey. (E-1, §2(2).)

118. The cost of increments if the existing salary guide was carried over for 2012, 2013 and 2014 is \$195,020, arrived at as follows:  $\$83,893 + \$50,734 + \$60,393 = \$195,020$ .

119. These incremental increases equal 2.67%, 1.57%, and 1.94% for a total of 6.18%.

120. If the Borough's longevity proposal is factored-in the total increase over three years would be 6.33%.

121. In 2011 bargaining unit members were entitled to an annual clothing allowance of \$1,500; giving them the third highest allowance among NW Bergen Comparators.

(Exhibit E-1, §2(2).)

122. Under the Agreement bargaining unit members are entitled to 14-paid holidays.

(Joint Exhibit 1.)

123. With three exceptions, officers subject to the Agreement work twelve-hour shifts.

(Joint Exhibit 1, Article XXIX, Section A, page 39.)

124. International Brotherhood of Teamsters, Local 469 ("Local 469") represents the Borough's supervisory employees for the purposes of collective bargaining. (Exhibit E-1, §3(1).)

125. The 2011 compensation guide for Local 469 represented supervisors ranged from \$66,937 to \$138,324. (Exhibit E-1, §3(1), Appendix A.)

126. Ramsey's Road Department employees are represented for the purposes of collective bargaining by International Brotherhood of Teamsters, Local 945 ("Local 945"). (Exhibit E-1, §3(2).)

127. The 2011 compensation guide for Local 945 represented supervisors ranged from



\$33,130 to \$70,224. (Exhibit E-1, §3(1), Article 5.)

128. The United Public Service Employee Union, Ramsey Library ("UPSEU") represents employees of the Borough's Free Public Library. (Exhibit E-1, §3(3).)

129. The 2011 compensation for UPSEU represented library personnel ranged from \$14.90 to \$19.66 per hour. (Exhibit E-1, §3(3), pages 2 & 3.)

130. Employees of the Borough of Ramsey's Board of Public Works are represented for the purposes of collective bargaining by International Brotherhood of Teamsters, Local 11 ("Local 11"). (Exhibit E-1, §3(4).)

131. The 2011 salary guide for Local 11 represented employees ranged from \$34,680 to \$73,440. (Exhibit E-1, §3(4), Article 4.)

132. The Borough's White Collar employees are represented for the purposes of collective bargaining by UPSEU. (Exhibit E-1, §3(5).)

133. The 2011 compensation guide for UPSEU represented White Collar employees ranged from \$36,499.59 to \$77,098.08. (Exhibit E-1, §3(5), Appendix II.)

134. The parties' collective bargaining agreement expired on December 31, 2011. (Joint Exhibit 1.)

135. On the expiration of past contracts, the parties' practice has been to continue its terms and conditions in effect until a successor agreement has been negotiated.

(Testimony of Sergeant Cherven, T. page 66.)

136. The Borough's proposed a three year contract with salary increases of: January 1, 2012, 0%; January 1, 2013, 0%, and January 1, 2014: 0%.

137. The PBA's proposed a three-year contract with salary increases of: January 1, 2012, 2.50%; January 1, 2013, 2.50%; and January 1, 2014, 2.50%;

### Facts in Dispute

Given the length and breath of the record, factual disputes are bound to occur. The foregoing are relevant, “undisputed facts,” which I find are well supported in the record as show by my supporting citations. I note that the differences between the parties are largely legal, and not factual. As discussed, *infra*, the Commission’s April 9, 2012 decision in Borough of New Milford, P.E.R.C. No. 2012-53, will play a major role in addressing how the facts are applied to the law.

### **INTEREST ARBITRATION STANDARDS**

Under New Jersey Law interest arbitration follows impasse in negotiations between public employers and law enforcement employees over the terms for a successor collective bargaining agreement. In this matter, the disputed issues are to be resolved by “conventional arbitration,” meaning that after carefully weighing proofs and arguments of record the arbitrator will impose the terms of their new labor agreement. See N.J.S.A. 34:13A-16d. The parties were reminded of their role in this process, as follows:

Each party bears responsibility for presenting any evidence that it believes may be relevant to my application of these factors. While I may occasionally ask questions, it is not my job to tell you what evidence to produce. Producing proof is your task. Arguing its significance, and application to each statutory factor, is also your task.

(T. Pages 8 & 9.)

Municipal residents, and union members alike depend on their representatives to bring their insights and negotiation skills to the bargaining table. An arbitration award, no matter how wise, is never as good as the parties’ worst bargain. This aphorism is validated in each and every appeal, which parties bring to the Commission, from interest awards.

To guide and control the process our Legislature has developed a set of detailed set of 9-criteria. With regard to economic issues, I must use these criteria to determine

“whether the total net annual economic changes for each year of the agreement are reasonable.” Each relevant criterion must be given “due weight,” as explained in my determination. Should I find that a factor is not relevant, my obligation is to explain “why?” “Without such an explanation, the opinion and award may not be a ‘reasonable determination of the issues.’”

The factors are,

**The arbitrator [or panel of arbitrators] shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute.** In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant and provide an analysis of the evidence on each relevant factor; provided however, that, in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award.

(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 proceeding 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, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator’s consideration.

(3) **The overall compensation presently received by the employees,** inclusive of direct wages, salary, vacations, holidays, excused leaves,

insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) **Stipulations of the parties.**

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

(6) **The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c.62 (C40A: 4-45.45), and taxpayers.** When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the proceeding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award for each ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(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).

(Emphasis added.)

Each party bears responsibility for adducing evidence that it believes may be relevant and essential to the arbitrator's application of these factors. Indeed, "the arbitrator need not require the production of evidence on each factor." Hillsdale PBA

Local 207 v. Borough of Hillsdale, 137 N.J. 71, 83 (1994). This is the parties' job. A dearth, or an insufficiency of proof will negatively effect a party that is advocating a contractual proposal.

### **THE PARTIES' POSITIONS ON THE FACTORS**

The arbitrator's is duty bound to evaluate disputed issues, based on the record, using the legislature's enumerated factors. Due weight must be given to each factor that is deemed relevant. When comparing the wages, salaries, hours, and conditions of employment in the same, or similar jurisdictions the arbitrator is to consider PERC's published comparability guidelines.

The arbitrator may determine that a factor is irrelevant. In such instances, an explanation is required about why the factor was deemed irrelevant. Factor 6 is the sole exception to this rule. In every interest arbitration the parties shall introduce evidence on, and the arbitrator shall analyze and consider the "financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P. L. 2007, c.62 (C40A:4-45.45), and tax payers."

I will provide a general summary of the parties' submissions on the factors. While it will not extend to all of the evidence and argument, the totality of the parties' presentations have been considered and reviewed. The format for this factor analysis is:

A. The Boroughs Position, and

B. The PBA's Position.

When helpful to an understanding of this Opinion and Award, I will add a Section "C" containing my observations.

## **Factor 1: Interests and welfare of the public**

### **A. The Borough's Position**

Weighing the public's interest and welfare requires interest arbitrators to consider limitations on finite budgets under the Cap Law, P.L. 1976 (C.40A:4-45.1 *et seq.*) This involves balancing employment expenses against other expenditures essential for fostering government services at stable levels. This equilibrium includes recognizing the limitation imposed on property taxes by the Cap Law. (Ramsey Post-hearing Brief, p. 75.) "In short, the Legislature through the 2010 Amendments has declared that it is in the 'interest and welfare' of the public that total economic increases not exceed 2%." (Ramsey Post-hearing Brief, p. 75.)

Striking a fair balance can be a demanding task. On one hand, "the municipality should not sacrifice fairness to its employees so that it may provide its residents with an overabundance of frivolous government services. On the other hand, a municipality should not reduce essential government services to satisfy the economic demands of over-reaching public employees." (Ramsey Post-hearing Brief, p. 75.)

Factor 1, too frequently, is not given proper weight in the deliberations of interest arbitrators. In this regard, the Borough cites to the New Jersey Supreme Court's admonition that awards "run the risk of being found deficient if it does not expressly consider 'the interests and welfare of the public.'" PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82-83 (1994). Ramsey's taxpayers, silent parties to the arbitration, merit the neutral's consideration.

### **B. The PBA's Position**

"The Ramsey Police Department is a full service law enforcement agency providing a full range of facilities and law enforcement response to the residents...as well as the significant number of persons who pass through the Borough on a regular basis."

(PBA's Post-Hearing Brief, page 6.) Daily visitors and transients require a large measure of police response and protection. Bargaining unit members serve: the municipality's businesses; public and private schools; "moving population" e.g., travelers in autos, buses, & trains; and commercial traffic.

During daylight hours the Borough is a busy place. Residents, visitors, and commuters benefit from a range of services including responses to the increasing call volume in Ramsey. Officers are highly trained, and supply enhanced services.

Bargaining unit members, however, have been required to do more with less. This, Local 155 urges, is demonstrated by the following compilation:

**Ramsey Police Department Increase in Percentages from 2006 to 2010**

Category	Change from 2006 to 2010
Calls for Service	+58%
Total Arrests	+47%
Criminal Violation	+03%
Disorderly Persons Violations	+12%
Motor Vehicle Summonses	+12%
Accidents	+42%

Over the four-years covered in the chart, the number of sworn personnel decreased from 34 to 29 as the Department's work increased. Overcoming these obstacles, on March 27, 2010, the Department and its officers were recognized for maintaining the highest standards of professionalism.

"Clearly, the Ramsey Police Department has met all expectations and exceeded same in its excellent performance and achievement." (PBA Post-Hearing Brief, p. 11.) Decreased staffing, however, means the Department is operating with fewer and with less experienced personnel. "It is paying less per police officer on average than it did in the

past.” (Union Post-Hearing Brief, p. 13.) Officers, accordingly, are working at a high level of economic efficiency to the taxpayers’ benefit.

### C. The Arbitrator’s Observations

**Interests and welfare of the public are extremely relevant, but difficult to weigh.**

In Borough of New Milford and PBA Local 83, Docket No. IA-2008-070, Interest Arbitrator Jeffrey Tener explained that the public’s interest and welfare is difficult to quantify and apply. Id. at 48. It requires Interest Arbitrators to balance the public’s interest in effective law enforcement against reasonable and competitive wages and benefits for police officers. Id. The public deserves an equitable balance between the quantity/quality of law enforcement services, and the price tag. It also merits having other important government services preserved.

### **Factor 2: Comparison of the wages, salaries, hours, and conditions of employment**

#### A. The Borough’s Position

“[T]he comparable and overall compensation exhibits submitted at the interest arbitration hearing demonstrate that the Borough extends more reasonable proposals than the PBA.” (Ramsey Post-Hearing Brief, page 31.)

Of the three statutory comparators<sup>10</sup>, general private employment data merit most attention by the arbitrator. This is demonstrated by the Legislature positioning it as the first sub-factor in this category. (Ramsey Post-Hearing Brief, page 33.) In this notable light, the Borough stresses that throughout New Jersey, private sector wage increases fall below those demanded by Local 155. Even as Local 155 seeks a string of 2.5% per annum increases, Bergen County has fallen 0.5% below the state average with only “a

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<sup>10</sup> I.e., private employment in general, public employment in general, and public employment in the same or comparable jurisdictions.



1.7% increase in private sector wages.”<sup>11</sup> (Ramsey Post-Hearing Brief, page 34.)

Significantly, in the prior reporting period, private sector wages in Bergen County actually decreased.

Similarly, reports on “recent public sector salary increases reflect the impact of difficult economic times. “In New Jersey...public sector wages increased by 2.2% from 2009 to 2010.” (Ramsey Post-Hearing Brief, page 35.) This is a natural result of the “strong message” sent by voters to their local government leaders. (See E-1, Section 5.) This message is fittingly summarized in a recent article, which reported,

Thanks to taxpayer anger, salary caps and other cost-containing legislation, it’s sinking in: Public workers aren’t entitled to automatic raises and better benefits regardless of the economic conditions or job performance, and a public sector job without a raise is better than no job at all.”

(Ramsey Post-Hearing Brief, page 39.) (See also, Exhibit E-1, § 5(7).)

Another article points out that “Irvington, where the police department is already understaffed, will lay off twenty police officers, if the union refuses to agree to a pay freeze and other give-backs.” (Ramsey Post-Hearing Brief, page 37.) (See also, Exhibit E-1, § 5(7).)

When comparison is made to other NW Bergen municipalities, the Borough’s economic package is especially reasonable. Ramsey’s

- Starting pay of \$37,500 ranks seventh among the NW comparators, and ranks thirteenth when compared with all county municipalities
- Salary guide has eight steps, to maximum patrol officer pay whereas the NW comparators average is 10.31 steps
- “...provides among the most liberal longevity benefits”

Finally, comparing police economic compensation and benefits in Ramsey against those furnished to the Borough’s other employees “further demonstrates the

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<sup>11</sup> The Borough cited to a report of private sector wages circulated by the Public Employment Relations Commissions on August 21, 2011. Although it was not entered as an exhibit, I will take judicial notice of the report.

reasonableness of the Borough's proposals." (Ramsey Post-Hearing Brief, page 39.) By way of example, the "longevity proposal and sick leave cap that the Borough provides in this interest arbitration reflect terms that...[have been] negotiated with all of its other municipal bargaining units."<sup>12</sup> (Ramsey Post-Hearing Brief, pages 39 - 40.) Local 155 represents the only Ramsey bargaining unit whose new hires continue to receive longevity, and which has not adopted a longevity benefit cap for its current members.

Moreover, all "employees other than the PBA limit payment for accrued sick leave benefits upon retirement to \$15,000." (Ramsey Post-Hearing Brief, page 41.) The same holds true for Borough employees who are not represented. By way of summary, Ramsey asserts,

- The proposed sick cap has been negotiated with all of its other unions
- Every other union agreed to cap longevity for current employees, and to eliminate it for new hires
- Borough non-unionized employees do not receive longevity benefits
- All employees other than those represented by Local 155 limit accrued sick leave payout to \$15,000<sup>13</sup>

(Ramsey Post-Hearing Brief, page 42.) These internal comparisons strongly support the Borough's proposals to eliminate longevity, and limit sick leave payout to \$15,000. Therefore, Ramsey urges that the award entered in this matter reflect the terms of its bargains with other employee organizations.

#### B. The PBA's Position

"Notwithstanding the exceptional levels of productivity and professionalism found within the Ramsey Police Department, the Ramsey Police Officer is not highly compensated and in fact has a below average area compensation rate." (PBA Post-

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<sup>12</sup> Similarly, non-organized Ramsey employees do not receive longevity pay.

<sup>13</sup> Recent legislative activity, the Borough notes, further supports capping payments for accrued sick leave at \$15,000. "On March 21, 2010 Governor Christie signed Chapter 3 of the public laws of 2010...which precludes a local government entity from paying more than \$15,000 for accrued but unused sick leave for employees hired on or after May 21, 2010...[also] the Legislature considering several bills aimed at limiting unused sick leave for current public employees." (Ramsey Post-Hearing Brief, page 49.)

Hearing Brief, p.14.) By way of illustration, at \$112,968 the Borough's maximum step is well below the average of \$119,623 among area towns. (See PBA Post-Hearing Brief, p.15.) This "shortfall" from average is \$6,655. "It would take an increase of 5.89 percentage points on the Ramsey PBA police officer base pay rate for 2011 just to catch area average." (PBA Post-Hearing Brief, p.16.)

The Borough's comparability arguments to the contrary are based on incorrect data. (PBA Post-Hearing Brief, page 16.) In particular, the Borough's compilation uses Senior Rank Compensation (\$118,307), rather than the Step 8 rate (\$112,968) as the point of comparison for maximums among NW Bergen County Police Departments. (PBA Post-Hearing Brief, page 16.) Indeed, senior status is an "advanced longevity related pay differential," not a true step increase. Also, the top step amounts for Waldwick and Ho-Ho-Kus were misquoted. Adopting the corrections championed by the Union clearly proves that Borough police officers are compensated at a below average rate, (PBA Post-Hearing Brief, pages 15 & 16.) Even if those corrections were to be disregarded, and reliance placed on the Borough's data, a shortfall<sup>14</sup> would still exist between Ramsey and the top step average for the comparator towns.

Police officer pay levels are not static. Indeed, turning to several of its exhibits, the Union calculates that for 2012--in 35 municipalities--first year increases averaged 2.436%. (PBA Post-Hearing Brief, pages 17 & 18.) These increases included those achieved through bargaining, as well as interest arbitration awards. For 2013 it calculates average percentage increases as 2.635; and for 2014 as 2.443%. (See PBA Post-Hearing Brief, Chart No. 5 on page 19.)

Accordingly, the PBA's proposed increase of 2.5% over three years is eminently justified. Local 155 asserts,

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<sup>14</sup> Of approximately \$2,800

If one combines the three (3) years of average set forth in each for the three (3) years calculated, 2012 through 2014, the actual average rate of increase over those three (3) years is 2.505%. In fact, the actual data among all comparables placed into evidence by the PBA completely and accurately supports an award of the PBA's base wage position.

Ramsey's demand for "a three (3) year wage freeze is without precedent and has absolutely no empirical support in the record." (PBA Post-Hearing Brief, p. 20.) Perusing wage settlements following the recent amendments to the Interest Arbitration Act clearly shows that Ramsey's proposal is without basis. While the "PBA acknowledges that under the revised Interest Arbitration Act there are certain new considerations in reaching contract resolution...[t]his has not stopped many area towns from negotiating, and in only one case arbitrating, contract, results." (PBA Post-Hearing Brief, page 20.) These comparative data show,

**Recent Settlements Commencing January 1, 2012**

	2012	2013	2014
Cresskill	2	2	2
Elmwood Park	1.95	1.95	1.95
Closter	2.25	2.25	2.25
Garfield	1.95	1.95	1.95
Haworth	2	2	2
Hawthorne	1	2.5	2.5
Northvale	1	1.5	1.75
Saddle Brook	2	2	2
New Milford	1	2	2.5
<b>AVERAGES</b>	<b>1.683%</b>	<b>2.017%</b>	<b>2.10%</b>

(PBA Post-Hearing Brief, p. 21.) The employer, in turn, cannot produce settlements, contracts, or interest arbitration awards supporting its zero-zero-zero position. (PBA Post-Hearing Brief, p. 21.)

Turning to longevity, Local 155 describes it as “a common benefit found in virtually every PBA contract.” (PBA Post-Hearing Brief, p. 22.) The Union rejects the Borough’s contention that there is a trend toward longevity’s elimination. (PBA Post-Hearing Summation, pages 21 & 22.) Longevity has not been purged from police contracts in myriad municipalities including Glen Rock, Mahwah, Midland Park, Oakland, Ridgewood, Saddle River, Upper Saddle River, Waldwick, and Wyckoff. (See PBA Post-Hearing Brief, Chart 7 on p. 24.)

Local 155, additionally, rejects the proposition that comparing law enforcement personnel to private sector workers will add to the analysis of this matter. “In the first instance, there is no comparable private sector job to that of a police officer.” (PBA Post-Hearing Summation, page 29.) Among their unique obligations is a 24-hour a day obligation--whether “on or off the clock”--to enforce the law within the territorial limits of New Jersey. Sworn officers must reside in our State, be trained and recertified in firearms use, and function within strict regulatory limits. In summary, they serve the public “within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility.” (PBA Post-Hearing Summation, page 39.)

Contrary to the Borough’s assertion any comparisons to the private sector “must result in a strong justification for significantly higher compensation to be paid to police officers.” (PBA Post-Hearing Summation, page 28.)

### C. The Arbitrator’s Observations

The comparison of wages, salaries, hours, and conditions of employment receives considerable weight when analyzing negotiations over new terms. This will be discussed

later in the award. However, as a prelude to these later discussions, the Union's objection to "incorrect" employer statistics will now be addressed. In this respect, I find:

1. The Union's contention that Senior Status is a "longevity related pay differential" is unsupported in the record. The Agreement describes this singular status as a compensation rate midway between the 8<sup>th</sup> Step and the Sergeant's Step. It is not a separate rank. Nor is it referenced in either in Article II defining Covered Employees, or in Article XXXV governing Longevity. It is an inimitable Step.

2. Nevertheless, for comparison purposes with other NW Bergen County Police Departments, Step 8 (as the Employer urges) is most appropriate reference point. Senior Status is reached 17-years after Step 8, and at the time of hearing applied only to Patrolman Vasili Picratos<sup>15</sup>. Step 8 allows for a more accurate comparison of maximum pay rates.

3. A review of the Waldwick agreement (Exhibit P-9, Tab 42) proves that the maximum step for Patrolman rose from \$115,781 to \$118,097 effective July 1, 2011. The \$118,097 amount is being used for comparison with Ramsey in this category.

4. A review of the Ho-Ho-Kus agreement (Exhibit P-14) demonstrates that the maximum step for Patrolman rose from \$109,058 to \$111,239 effective July 1, 2011. The \$111,239 amount is being used for comparison with Ramsey in this category.

5. **Overall Finding:** Ramsey is in the "middle of the pack" when comparing maximum police officer salaries against the 12-other NW Bergen County municipalities. See Chart 1, herein on Page 39.

NW Bergen Comparable Towns	Top Step Amount
Saddle River	\$135,875

<sup>15</sup> He was subsequently promoted to the position of Sergeant "effectively immediately" via a resolution passed by the Council of the Borough of Ramsey on March 28, 2012. (Exhibit E-3.)

Franklin Lakes	\$122,426
Mahwah	\$121,638
Ridgewood	\$118,492
Waldwick	\$115,781
<b>Ramsey</b>	<b>\$112,968</b>
Upper Saddle River	\$112,314
Allendale	\$111,572
Wyckoff	\$111,358
Ho-Ho-Kus	\$111,239
Oakland	\$110,319
Midland Park	\$110,010
Glen Rock	\$96,061

This data reveals that Ramsey is \$615 above the median compensation for Patrolmen at maximum step.

Also, using starting salaries for comparison, Ramsey is exactly at the median paying for starting officers with a salary of \$37,500. (Exhibit E-1, §2(3).)

### **Factor 3: Overall Compensation Presently Received**

Overall compensation “requires an arbitrator to consider all of the economic benefits received by employees involved in a case, including direct wages, vacations, excused leaves, insurance, pensions, and medical benefits. It thus directs a focus on all employee benefits, not just the items at issue in the case.” Borough of Hasbrouck Heights and PBA Local 102, IA-2010-053, page 68.

#### **A. The Borough’s Position**

1. On Longevity: Longevity benefits impose significant costs, which as a percentage of pay increase with every salary increase. (Ramsey Post-Hearing Brief, page 15.) At the current rate longevity will cost the Borough an additional \$11,724 over the

life of a new three-year contract. This is a relatively expensive benefit, and one that other municipal police departments are starting to phase out. Significantly, Local 155 is the only bargaining unit in Ramsey that still has longevity.

2. Salary Guide: As currently configured the Salary Guide allows Patrolmen to reach maximum in seven years. Adding four steps would move the Borough toward the Bergen County average, as would ending senior officer level for employees hired after January 1, 2012. (Ramsey Post-Hearing Brief, page 16.)

3. Accumulated Sick Leave: "Presently, upon regular retirement, officers receive severance pay in an amount equal to 50% of the officer's accumulated sick leave days, or 50% of his accumulated sick leave days off." (Ramsey Post-Hearing Brief, page 16.) This rich formula netted Lieutenant Hennessey \$63,022 following his retirement. (Ramsey Post-Hearing Brief, page 2.)

These costs have driven the employer's proposal to cap sick leave payments at \$15,000.

4. Compounding: Under salary guides, compounding results because each year's salary proposal is computed on the prior year's base. By way of example, "if the Interest Arbitrator awarded the PBA's salary demands, the maximum police officer salary would increase from \$112,968 in 2011, to \$115,792<sup>16</sup> in 2012 to \$118,687<sup>17</sup> in 2013." (Ramsey Post-Hearing Brief, page 7.) Compounding works to the benefit of employees, and to the detriment of employers.

Applying these four items to the PBA proposals would result in a 14.23% wage increase over three years. The same items under the Borough's proposal, to add nothing

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<sup>16</sup> Arrived at, as follows  $112,968 \times .025 + 112,968 = 115,792$

<sup>17</sup> Arrived at, as follows  $115,792 \times .025 + 115,792 = 118,687$



to each step, results in a 6.33% increase over 3-years. (Ramsey Post-Hearing Brief, pages 13 & 17.)

The Borough of Ramsey exclaims also that the \$1,500 Police Uniform Allowance is the highest in all of Bergen County, and that officers enjoy generous personal leave, liberal sick leave, and 14-paid holidays.

#### B. The PBA's Position

Recent modifications to the pension and health care statutes deplete the buying power of police officers, and thus diminish their overall compensation. These statutory transformations operate to the public employer's benefit by shunting costs to employees.

The impact of the Legislature's changes to the laws governing health care is magnified by the operation of Articles XXXVI and XXXVIII. (PBA Post-Hearing Brief, page 51.) This unprecedented and onerous situation resulted from a prior Interest Arbitration Award. (Exhibit P-29.) The Union appealed that award (see Exhibit P-30), but without success. Its application causes bargaining unit members to pay in excess of contributions now required under the amendments of Chapter 78. The Union presaged the resulting unfairness, in its appellate brief, as follows:

...family contribution toward medical payments in 2010, of One Hundred Thirty-Seven Dollars and Fifty Cents (\$137.50) per paycheck costs Three Thousand Five Hundred Seventy-Five Dollars (\$3,572.00) per year. If this amount were compared to the stated 2010 Base Pay for Top Step Patrol Officer it represents a cost impact of 3.28%. This makes the state wage increase...a net of 0.007%. For a new officer hired in 2010 this represents a cost impact of 9.66%.

(Exhibit P-30, page 5.) It seeks escape from the Award by the placement of new language in the Agreement affirming that the amount mandated under Chapter 78 will be the maximum insurance contribution. (PBA Post-Hearing Brief, pages 2 & 52 – 53.) Ramsey, it observes, is enriched by insurance premium rebates “while employees are paying an

outrageous sum unparalleled among their peers.” (PBA Post-Hearing Brief, page 53.)

There is no reason why Ramsey should be receiving approximately ¼-million dollars in windfall rebates.

At the same time, other benefits in the total compensation package are either mid-range, or below average. Vacation and sick leave allowance are virtually the same throughout Bergen County.

#### **Factor 4: Stipulations of the Parties**

Although not stipulations *per se*, the parties have entered into understandings that have reduced the number of disputed issues. They are:

1. An interim Memorandum of Agreement (Exhibit P-2) regarding Delegate Time, which was previously directly negotiated between the parties, will be incorporated in the terms of the parties' new contract; and

2. The “New Jersey Public Employment Relations Commission” will be substituted for the “New Jersey State Board of Mediation” in Step 2 of Article XV governing Arbitration.

#### **Factors 5, 6 & 9: The Lawful Authority of the Employer, The Financial Impact on the Governing Unit, and Statutory Restrictions**

##### **A. The Borough's Position [Combined Statement Touching Lawful Authority, Financial Impact, and Statutory Restrictions]**

Fiscal responsibility is the cornerstone of the Borough's ability to provide adequate public services.

The 2010 Amendments to the Police and Fire Arbitration Act “dramatically changed the interest arbitration process.” (Ramsey Post-Hearing Brief, p. 27.) “Among other things it emphasized that Interest Arbitrators must consider...the impact of the New

Jersey Government Cap Law in rendering an award and the limitations imposed by the local unit's property tax levy." (Ramsey Post-Hearing Brief, p. 27.) (Citations omitted.) These amendments also introduced the Hard Cap; a two percent limitation on Interest Arbitrators' awards of base salary increases. This cap applies to municipal employers who are parties to police collective agreements that expire on, or after January 1, 2011 but before April 1, 2014.

#### The Appropriation Cap

While the Borough's ability to pay argument centers on the revenue portion of its budget, it is not to be forgotten that the Legislature has also restricted municipal expenses. In specific, Trenton has limited "increases within the Current Expense portion of the municipal budget to two and one-half (2.5%) percent (three and one-half [3.5%] per cent with municipal approval)." (Ramsey Post-Hearing Brief, p. 68.)

#### The Levy Cap

Arbitrators are obligated to focus on this Cap's restriction on raising revenue through taxes. This consideration, and others under the cap, "do not equate with a municipality's ability to pay." Hillsdale, 137, N.J. at 85. (Ramsey Post-Hearing Brief page 71.) Certainly, it is not enough for an arbitrator to assert that the public employer should raise taxes to cover the cost of an interest award."

In this case, Ramsey's 2012 budget "was \$74,399 below the tax levy cap after exclusions." (Ramsey Post-Hearing Brief page 71.) Everything else being equal, granting the Union's proposal would cause the Borough to exceed the levy cap. Moreover, the "state of the economy directly impacts the Borough's ability to raise revenue through taxes." (Ramsey Post-Hearing Brief page 71.)

The still weak economy, and high rate of unemployment “dramatically impact the Borough’s ability to pay for the salary increases and benefits sought in this arbitration.” (Ramsey Post-Hearing Brief page 74.)

The Borough’s surplus, other local revenue, State Aid, and one-shot-deals cannot close this gap. These funding sources, especially State aid, are not within the municipality’s complete control. “All in all, the Borough’s anticipated revenue in 2012, other than from municipal taxes, totals less than \$500,000.00” (Ramsey Post-Hearing Brief page 70.) (Exhibit E-1, §4(3).)

#### The Hard Cap

“The PBA’s package averages more than 2.0% per year, inclusive of salary increments and longevity increases,” and must be rejected under the Hard Cap. (Ramsey Post-Hearing Brief, p. 27.) This proposal, if adopted, would result “in a 5.38% increase in 2012, a 4.20 increase in 2013[,] and a 4.65% increase in 2014.” (Ramsey Post-Hearing Brief, p. 29.) These increases total 14.23% over three years.

By way of example, the percentage increase for 2012 is based on the data below:

<u>Actual 2011</u>		<u>PBA Proposal 2012 of 2.50% Increase to Salary Guide</u>	
2-Lieutenants	\$ 268,790	2-Lieutenants	\$ 275,510
7-Sergeants	\$ 865,515	7-Sergeants	\$ 887,152
1-Senior Officer	\$ 118,307	1-Senior Officer	\$ 121,265
11-Patrolman 8 <sup>th</sup>	\$1,242,648	11-Patrolman 8	\$1,273,712
0-Patrolman 7 <sup>th</sup>	---	0-Patrolman 7 <sup>th</sup>	---
0-Patrolman 6 <sup>th</sup>	---	0-Patrolman 6 <sup>th</sup>	---
0-Patrolman 5 <sup>th</sup>	---	5-Patrolman 5 <sup>th</sup>	\$ 451,900
5-Patrolman 4 <sup>th</sup>	\$ 386,525	0-Patrolman 4 <sup>th</sup>	---
0Patrolman 3 <sup>rd</sup>	---	1-Patrolman-3 <sup>rd</sup>	\$ 68,714

1-Patrolman 2 <sup>nd</sup>	\$ 53,751	1-Patrolman 2 <sup>nd</sup>	\$ 55,095
1Patrolman 1 <sup>st</sup>	<u>\$ 37,500</u>	0-Patrolman 1 <sup>st</sup>	---
Total Base w/o Longevity	\$2,973,036	Total Base w/o Longevity	\$3,133,348
Plus Longevity	<u>\$ 173, 257</u>	Plus Longevity	<u>\$ 182,440</u>
<b>TOTALS</b>	<b>\$3,146,293</b>		<b>\$3,315,788</b>

Using this data, and including longevity, the resulting 5.38% increase is calculated as follows:

$$\begin{aligned} & \$3,315,788 \text{ less } \$3,146,293 / \$2,973,036 = \\ & \$169,495 / \$3,146,293 = 5.38\% \end{aligned}$$

Using parallel data, and the same computational method, prove that the PBA's proposal for 2013 and 2014 would result in increases of 4.20% and 4.65%. Over three years, the Union package totals 14.23%, which averages 4.74% per year. (Ramsey Post-Hearing Brief, pages 29 – 30.) This economic proposal, beyond peradventure, is well outside of the Hard Cap.

Moreover, the arbitrator is asked to reject Local 155's suggestion that retirement of Lieutenant Robert Hennessey be factored into this mix. His retirement, for starters, resulted in the Borough paying \$63,022 for accrued sick time; a sum that amounts to almost six (6) months of additional compensation. (Ramsey Post-Hearing Brief, pages 19 – 20.) However, even if net/net Ramsey experienced a savings from the Lieutenant's retirement, a promotion from the lower ranks to fill that vacancy will eventually lead to the addition (and resulting cost) of a new officer on step. (Ramsey Post-Hearing Brief, p. 20.)

There is neither legal, nor logical reason to permit any savings from an officer's separation from the force to fund future police salaries. (Ramsey Post-Hearing Brief, p. 2.) This principle holds true whatever the cause of separation. The 2% cap would not

operate consistently from public entity to public entity, if employers were required to use such monies to fund wage increases. (Ramsey Post-Hearing Brief, p. 3.)

The same principle applies to officers hired during the contract term. The costs of the additional officers must be included within the 2% statutory maximum.” (Ramsey Post-Hearing Brief, p. 3.)

In summary, “[t]he 2% Cap was imposed by the Legislature as a measure to control property taxes. The objective is to restrain, not increase the cost of police salaries.” (Ramsey Post-Hearing Brief, p. 3.)

**B. The PBA’s Position [Combined Statement Touching Lawful Authority, Financial Impact, and Statutory Restrictions]**

“A consideration of the proofs in this case consistent with criteria g5, g6 and g8 provide no impediment whatsoever to an award of the PBA Position as presented herein. (PBA Post-Hearing Brief, p. 38.) The statutory limitations at issue are the “Appropriation Cap”, the later passed “Levy Cap,” and the so-called “Hard Cap”.

**The Appropriation Cap**

This cap “does not present a problem” for 2012, just as it did not present a problem under the 2011 budget. (PBA Post-Hearing Brief, p. 38.) The financial documentation for 2011 shows that budgeted appropriations were well within the total allowable, as follows:

<u>Total Allowable Appropriations</u>	<u>Budgeted Appropriations</u>	<u>Difference between Allowable &amp; Budgeted</u>
\$19,843,629	\$18,273,000	\$1,570,028

The preliminary budget for 2012 similarly reflects that budgeted appropriations are within “total allowable appropriations”, as follows:

Total Allowable	Budgeted	Difference between
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<u>Appropriations</u>	<u>Appropriations</u>	<u>Allowable &amp; Budgeted</u>
\$20,083,909	\$18,583,384	\$1,500,025

Thus, in 2011 and 2012 the appropriation caps do not impede granting the PBA's economic package. (PBA Post-Hearing Brief, pages 38 – 39.)

#### The Levy Cap

Similarly, the 2012<sup>18</sup> Levy Cap does not impede granting the PBA's economic package.

<u>Max Allowable Tax Levy</u>	<u>Amt. of Scheduled Tax Levy</u>	<u>Difference Max Allowable &amp; Scheduled Tax Levy Amt.</u>
\$15,138,679	\$15,064,271	\$74,408

As shown above, the Borough's 2012 scheduled levy is below the maximum allowable.

The Levy Cap, of course, only effects the levy. "While this may seem axiomatic, [the arbitrator should remember that] a municipality may raise funds from sources other than taxation. In Ramsey, the "other" is substantial. (PBA Post-Hearing Brief, pages 39 – 40.) This is shown, inter alia, by "the fact that only two-thirds (2/3) of the total revenue of the town comes from taxation." (PBA Post-Hearing Brief, p. 40.)

Finally, the Union emphasizes the Ramsey's annual budget surplus has risen (albeit not on a straight line). It notes,

While on the subject of Municipal Budget, one cannot overlook the fact that the Employer opines the reduction in surplus anticipated in the 2012 Budget (See Budget Sheet 4, line 1) from \$3.2 Million to Three Million Fifty Thousand Dollars (\$3,050,000.00). While this is acknowledged to be a One Hundred Fifty Thousand Dollars (\$150,000.00) or 4.6% reduction, the Employer omits the fact that in the preceding year's budget (P-25) at Sheet 4, line 1 the surplus increased from the 2010 number of Two Million Seven Hundred Eighty-Four Thousand Dollars (\$2,784,000.) Up to \$3.2 Million Dollars. This represents an increase of Four Hundred Sixteen Thousand Dollars (\$416,000) or fifteen percent (15%).

<sup>18</sup> Since 2011 budget year is now closed, its levy cap is not relevant. See PBA Post-Hearing Brief, p. 39.

The point is on cannot take a narrow view of any facts and try to establish a trend. The fact is that the budget surplus increased enormously in the preceding year and did retract four percent (4%) this year. That is not a significant change.

(PBA Post-Hearing Brief, pages 39 – 40.)

### **The Hard Cap**

#### **a) Introduction**

Under the Arbitration Reform Act, interest arbitrators shall not render awards which, on an annual basis increase, base salary items by more than 2.0 percent of the aggregate amount spent in the twelve months immediately preceding the expiration of the collective agreement subject to negotiation.

#### **b) Local 155's Position**

When applying the Hard Cap, the Union observes, arbitrators must *compare* the "arbitration year" to the prior twelve-month interval that is used to calculate base salary.

(PBA Post-Hearing Brief, p. 41.) The Union calculates bargaining unit base pay, as shown below:

#### **Bargaining Unit Base Pay Calculation as of 12/31/2011**

<b>(A) Rank</b>	<b>(B) Census</b>	<b>(C) Base Per (J-1)</b>	<b>(D) (B) x (C)</b>
Lieutenant	2	\$134,395	\$268,790
Sergeant	7	\$123,645	\$865,515



Patrolman	18	\$112,968	\$2,033,424
<b>TOTAL</b>	<b>27</b>		<b>\$3,167,677</b>
			<b>1% = \$31,677</b>

This Base Salary calculation, which “may be slightly high,” is premised on all police officers being at maximum. (PBA Post-Hearing Brief, p. 42.) This calculation differs from the employer’s total of \$3,148,293 as of December 31, 2011.

In comparison, Local 155 argues that in carrying salary cost into 2012 the Borough’s calculations go far afield. In particular, the Borough has failed to account for savings resulting from Lieutenant Robert Hennessey’s retirement. Once he was no longer employed in the Ramsey Police Department, the Borough avoided \$184,814 in annual expenses. Even were the vacancy to be filled, sufficient savings would result to fund the PBA economic proposal for 2012, and beyond. (PBA Post-Hearing Brief, pages 45, 49.)

In sum, Local 155 points out that the Hard Cap must be applied in context.

One cannot escape the clear statutory mandate and definition that one must consider the base salary factors in ‘aggregate’....[This] concept require[es] a consideration of the conjunction or collections of particulars, a mass or a sum, an assemblage of all parts. The Legislature gave clear standards for assessment when it used the work (sic) aggregate. Some cost increase and some cost decrease. The net is the aggregate. (PBA Post-Hearing Brief, p. 49.)

## **Factor 7: The Cost of Living**

### **A. The Borough’s Position**

The Borough of Ramsey explains that this factor requires arbitrators “to consider the Consumer Price Index (“CPI”) in determining the reasonableness of the parties’

economic proposals.” (Ramsey Post-Hearing Brief, p. 76.) Wage increases that parallel the CPI theoretically allow workers to maintain their standard of living. “The present CPI and the fact that the CPI increases in recent years were at their lowest level in many years emphasize the reasonableness of the Borough’s proposals.” (Ramsey Post-Hearing Brief, p. 76.) Even though recent statistics for the New York Metropolitan area—which includes Northern New Jersey—show a 2.75 CPI increase this rise is below the national average.

Significantly, between 1997 and 2011 pay increases received by the bargaining unit exceeded the CPI, as follows:

<u>Year</u>	<u>PBA Percent Increase</u>	<u>CPI</u>
1997	3.75	2.3
1998	3.75	1.6
1999	4.00	2.2
2000	3.90	3.4
2001	5.30	2.8
2002	4.00	1.6
2003	3.50	2.3
2004	3.50	2.7
2005	3.50	3.4
2006	3.50	3.2
2007	4.00	2.8
2008	4.00	3.8
2009	4.00	(0.4)
2010	3.75	1.6
2011	3.50	3.2
	<u>M= 3.86</u>	<u>M= 2.46</u>

The Borough urges me to consider “the dramatic gap between the CPI and the PBA’s salary demands in rendering a conventional award.” (Ramsey Post-Hearing Brief, p. 78.)

#### The PBA’s Position

Local 155 succinctly argued:

“Both parties submitted proofs on the cost of living and both parties’ proofs established a Consumer Price Index increase to be beyond that sought by the PBA in this case:

*Employer Exhibit Section 4, Tab 2* contained Consumer Price Index information through December 2011 which showed a CPI-U rising 2.7%.

The PBA’s exhibit (*P-28*) showed the U.S. Department of Labor Statistics indicating a total rise over the preceding twelve (12) months of 3.4% in its December 16, 2011 publication.”

Either set of proofs, it stresses, support the Union’s Position.

(PBA Post-Hearing Brief, p. 50.)

### **Factor 8: Continuity and Stability in Employment**

#### **A. The Borough’s Position**

The Borough observes that acceptance of its proposal will best allow it “to maintain and continue a stable workforce and avoid additional layoffs in the Police Department<sup>19</sup> and throughout the municipality.” (Ramsey Post-Hearing Brief, p. 78.) Thus, officers’ stability and continuity of employment will be more reasonably protected.

#### **B. The PBA’s Position**

A Factor 8 analysis, the Union reminds, involves more than wages. Multiple dynamics touch workers’ continuity and stability of employment. Seniority rights impact them as does, the full array of other issues ordinarily considered during negotiations over wages, hours, and conditions of employment. “Prevailing rate” and “area standards” are also included within the analytical variables. (PBA Post-Hearing Brief, p. 51.) In this latter regard, Local 155 stresses that the record clearly proves its members are paid less than area standard.

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<sup>19</sup> The record is devoid of evidence demonstrating that either sworn, or civilian personnel were placed on layoff by the Ramsey Police Department.’

Local 155 also, albeit indirectly, argues that the present insurance language in Articles XXXVI and XXXVIII negatively impacts continuity and stability of employment. The current level of contributions for health care substantially reduces each officer's net earnings. (PBA Post-Hearing Brief, pages 51 - 52.)

**C. The Arbitrator's Observation**

At present, the continuity and stability of the workforce has limited relevance in Ramsey, and elsewhere. The economic climate assures that private and public sector employees have limited prospects, and motivation for changing employers. Additionally, the salary guide is on a par with other NW Bergen departments, and should not detract from recruiting persons to join the force.

**Factor 9: Statutory Restrictions**

Statutory restrictions involve the Appropriation, Levy and "Hard" caps. Although the parties acknowledge the caps' role, they differ as to calculation and/or application. See discussion of Factors 5, 6 & 9 beginning on page 42 *supra*.

**DISCUSSION**

Interest arbitrators are required to issue written reports explaining how each statutory criterion played into their final determination, and why their decision is reasonable as a matter of law. We also are required to certify that the statutory limitations imposed by the levy cap have been accounted for in our awards. In this matter, the record consisting of more than five thousand pages has been culled, the parties positions reviewed and analyzed, and the determination explicated in keeping with the statutory criteria.

The 9-criteria in New Jersey's interest arbitration statute are guides toward resolving economic conflicts touching protective services personnel, and the citizens they serve and defend.

I first address the proposals that are denied in their entirety. Denials flow from one of two general reasons. Some are based on my determination that the proposal is not supported by sufficient credible evidence. Although not un-sympathetic to the constraints placed by the 45-day interval on interest arbitration advocacy, I can only issue awards based on the evidentiary record. Arbitrators are not to engage in speculation, or to make “good guesses” about what a party really meant.

Alternatively, well-supported proposals warrant rejection if their impact on unit employees, or on the municipality would not be commensurate with, or balanced by, the terms of the overall award.

### **Denied Non-Economic Proposals**

Parties pursuing a non-economic contractual changes have the burden of justifying each proposal. “This tenet applies to an arbitrator’s analysis of the evidence presented by the parties in rendering an award.” (Borough Post-Hearing Brief, p. 51.) (Citing to Teaneck Township, P.E.R.C. No. 2000-33, 25 NJPER 450, 455 (¶ 30199 1999), aff’d in part, rev’d in part, rev’d and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), aff’d o.b. 177 N.J. 560 (2003).

#### **1. Local 155’s proposal to modify all references in the Agreement to a Borough filed grievance is Denied.**

Sergeant Kevin Cherven was the sole witness who testified about this proposal. He has been employed in the Ramsey Police Department for over 15-years; first as a patrolman, and subsequently as a Sergeant. (T. Pages 22 & 23.) He is a member of the Local 155’s Bargaining Committee, and is familiar with the CBA. (T. page 23.) He testified in support of modifying the Agreement to expunge reference to the Employer’s contractual right to move unresolved grievances into arbitration. While the Borough has never exercised this right, it was the Sergeant’s conclusion that the clause would allow

management to arbitrate contractual “gray areas” with the potential for resulting confusion. (T. pages 67 & 74.)

In opposition, the Borough argues simply, “the PBA failed to carry its burden in favor of the change.” (Borough Post-Hearing Brief, p. 20.) I concur.

The record is devoid of evidence of mischief, or abuse caused by Ramsey’s entitlement to move unresolved grievances into arbitration. It has never done so. While anyone can conjecture a “parade of horrors,” which *might* occur, the record is devoid of any proof that bad outcomes are likely. The Union’s concerns are unsupported by an evidentiary foundation.

Additionally, grievance arbitrators are adept at dealing with attempts by either party to manipulate the dispute resolution system for inappropriate purposes. In the event of a future “dirty trick,” virtually any arbitrator on PERC’s roster will fairly deal with contractual violations; whether procedural or substantive.

In summary, I decline to accept this proposal since nothing in the record reflects adverse consequences to either party if the Agreement’s language remains unchanged.

**2. Local 155’s proposal to delete the second sentence of Article XXXIX title Existing Terms and Conditions is Denied.**

Article XXXIX, states in full:

All existing terms and conditions of employment and all existing Rules and regulations governing the Police Department of the Borough shall continue in full force and effect. The foregoing may be amended and supplemented from time to time by ordinance or resolution of the Borough adopted pursuant to N.J.S.A. 40A: 14-118 et seq. and by the rules and regulations established by the Chief of Police and approved by the Borough.

(Joint Exhibit 1, page 55.)

This proposal was not the subject of testimony, or argument at hearing. Nor was it addressed in Local 155’s post-hearing brief. In opposition, the Borough emphasizes that

the absence of evidence gives the arbitrator no choice but to reject the Union's proposal "because the PBA failed to carry its burden showing the need for language modification." (Borough Post-Hearing Brief, p. 52.)

I concur with the Borough of Ramsey.

Before making a determination on this proposal many questions would have to be answered. These include: Does the second sentence incorporate existing municipal prerogatives under state law? Which portions of N.J.S.A. 40A: 14-118 *et seq.* are applicable?; What rules and regulations have been established by the Chief of Police?; Which rules and regulations have been approved by the Borough?; Is the "approval" in question administrative, or does it require a Council vote?; What harm has the second sentence caused? When, how, and to whom has harm resulted? What benefits would flow from deleting the sentence? What detriments could follow from deleting the sentence?

The record is insufficient for me to weigh this proposal.

**3. Local 155's proposal to formalize the existing Compensatory Time Off Procedure is Denied**

This proposal seeks to bring an alleged past practice into the CBA's ambit. As explained Sergeant Cherven's testimony, Ramsey officers receive either overtime pay, or compensatory time in connection with extra hours worked. Mandatory extra hours result in overtime payments. For non-mandatory activities, the Chief of Police may approve compensatory time. Local 155's proposal "seems"<sup>20</sup> geared to identify and codify the guidelines controlling grants of compensatory time off, as opposed to overtime.

The Borough of Ramsey opposed this proposal. It was concerned that any "codification" might impose costs "by permitting officers to bank compensatory hours earned at a current rate, which will ultimately be paid at a future higher rate." (Ramsey

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<sup>20</sup> The record is incomplete.

Post-Hearing Brief, page 12.) This said the Borough suggested: “provided that this provision does not impose overtime costs and it is implemented with notification and approval requirements, the parties may be able to reach an agreement on its terms.” (Ramsey Post-Hearing Brief, page 12.) During the March 16<sup>th</sup> hearing following an assurance from Local 155 that the proposal would not increase overtime, the Borough again suggested,

this is a subject, which if the PBA sat down directly with the Chief, perhaps in the next week or so, they can have it resolved so we don’t have to proceed forward [with this issue.]

(T. page 82.) The parties were reminded of this option on April 6, 2012, but never advised me whether a resolution, *vol non*, had been achieved. Accordingly, I move forward with my ruling.

The record does not disclose the complete nature of the past practice that Local 155 wishes codified. I have no basis to grant this proposal absent more complete information about the practice’s full “metes and bounds.”

The record does not contain sufficient evidence to permit this proposal to be granted. It is denied.

#### **Denied Non-Salary, Economic Proposals**

#### **4. The Borough’s Proposal to Cap Sick Leave Payment at \$15,000.00 is denied.**

The Borough of Ramsey notes that upon retirement officers receive anywhere from 25% to 50% of accumulated sick leave as severance pay. In contrast, all “employees other than the PBA limit payment for accrued sick leave benefits upon retirement to \$15,000.” (Ramsey Post-Hearing Brief, page 41.) The same holds true for Borough employees who are not represented.

Ramsey observes that while the proposal will result in savings, they are too speculative to calculate. (Ramsey Post-Hearing Brief, pages 16 – 17.)



Local 155, in opposition, challenges the Employer's position as unsubstantiated by hard evidence. It comments that the "only reference in real dollars to the terminal leave cost was a fractional part of accumulated sick leave totaling Sixty Thousand Dollars (\$60,000.00) paid to a recent retiree." (PBA Post-Hearing Brief, page 26.) If Ramsey's proposal had been in effect, this former employee would have lost \$45,000. "This is not an adjustment or a modification, it represents a forfeiture of a longstanding benefit that was negotiated and maintained over the course of an entire career." (PBA Post-Hearing Brief, page 27.) One might add that it is a benefit the to the public and the Employer that sick leave is not used whenever possible and that it is banked for future use.

The current contract language serves the public. It increases the probability that an officer who is "under the weather" will report for duty, thereby saving the municipality the added expense of backfilling him/her on short notice, at a premium rate. Sick leave accumulation motivates employees "to cooperate with the public interest by banking sick time." (PBA Post-Hearing Brief, page 28.)

The PBA acknowledges that bills are pending to change New Jersey law governing access to accumulated leave. Such legislation would give public employers a windfall at the expense of their employees. For now, however, there is no justification for a "taking" by Interest Arbitrators of compensation for days that has been earned, vested, and reserved for future use.

I concur with Local 155, and decline to adopt the employer's proposal to cap accumulated sick leave payments at \$15,000.00 per separated employee. The other Ramsey bargaining units to have this limitation have done so through voluntary agreement.

A well-known maxim is that the law abhors forfeitures, i.e., the total loss of a

right. In this instance, the Borough's proposal would result in the loss of an earned and vested right to be proportionately compensated for accumulated sick leave. The analysis would be different if the issue arose under a statute that had been adopted with due process. This, however, is not the case.

Nor is it the case that I am being asked to apply a fully bargained contract clause. Instead, I effectively legislate rules that parties, like it or not, are obligated to follow. Given the Borough's inability to calculate, with some certainty, the savings that may accrue from its proposal, I reject placing a \$15,000 cap on accrued benefits.

Additionally, legislation is pending that may bring this matter to closure throughout New Jersey. Indeed, such legislation once made it Governor Christie's desk here it was conditionally vetoed. Other bills are still pending in the legislature.

**5. The Borough's Proposal to Place Employees hired after January 1, 2012 on a 12-Step Salary Guide, With Equal Steps, with Step 1 matching the current Step 1 Through Step 12, is denied.**

For new hires only the Borough proposes adding "four steps to the existing salary guide, [thereby] expanding the present salary guide from eight to twelve equidistant steps." (Ramsey Post-Hearing Brief, page 16.) It candidly acknowledges savings associated with this proposal "are speculative because it does not know the number of officers, if any, it will hire during the remainder of the contract term." (Ramsey Post-Hearing Brief, page 16.)

Local 155 strongly counters that the record offers no support for the Employer's wish to increase the number of Steps from 8 to 12. To the contrary, the proofs demonstrate that the number of steps for a Ramsey Police Officer to reach maximum is eight (8) against an average of average 7.806 for the Bergen County municipalities<sup>21</sup>.

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<sup>21</sup> See Chart 8 in the PBA Post-Hearing Brief, page 26.

(PBA Post-Hearing Brief, pages 25 -26.) There are no municipalities in evidence with a twelve-step progression; the range is from 7 to 11. (PBA Post-Hearing Brief, pages 25-26.)

The employer's proposal to increase the number of steps is denied.

Adding steps slows a new hire's progression to top rate, and generally saves on payroll costs. For this reason, employers often are eager to increase the step count. In this case, however, Ramsey has candidly acknowledged that the financial impact of moving from eight to twelve steps is not readily foreseeable. As arbitrator, I would have benefited from a savings breakdown premised on a reasonable projection of hiring between the present and December 31, 2014. A fifty percent (50%) increase in the number of steps is disproportionate when viewed against Ramsey's NW Bergen Comparators. Absent an economic forecast, or other reasoned explanation the proposed increase lacks foundation and is confounding.

This said, the Borough's related proposal to eliminate the Senior Officer level for persons hired after January 1, 2012 has been granted.

**6. The Borough's proposal to freeze longevity pay for each current full-time employee is denied**

The parties introduced much evidence, and expended considerable effort arguing whether longevity should be removed from the compensation schedule. Among the facts touching longevity, which I have found as well supported, are:

- Officers hired before July 1, 2003 receive two percent (2%) longevity payments for each four years of service to a maximum of ten percent (10%);
- Officers hired on, or after, July 1, 2003 receive: 2.5% longevity after seven years of service; 5% longevity after thirteen years; 7.5% longevity after nineteen years; and 10% longevity after twenty-five years of service;

- Longevity, as presently structured, benefits officers at the 8<sup>th</sup> Step, and beyond
- Patrol personnel on Steps 1 through 7 do not receive longevity payments
- Longevity payments in 2011 ranged from \$2,824 to \$13,440 averaging \$8,250 for each of the 21 eligible officers;
- Calculated on a per bargaining unit member basis, the average is \$6,187
- If the current longevity language were to be carried forward until December 31, 2014, over three years the Borough will cost an additional \$11,724 in longevity payments

The Union characterizes longevity as common throughout NW Bergen County, and rejects any contention that there is a trend toward its elimination. Ramsey, in turn, essentially characterizes longevity as the benefit that “keeps on taking.” It imposes significant costs on municipalities, which--as a percentage of pay--increase with every salary increase. It estimates that, at the current rate, longevity will cost the Borough an additional \$11,724 over the life of a new three-year contract. Other municipal police departments are starting to phase out this relatively expensive benefit.

The Borough’s proposal to freeze longevity for all employees on payroll prior to January 1, 2012 is denied.

Employer Exhibit 1 §2(19) is a three page list titled “2011 Longevity Comparison Police Officers, Bergen County.” It contains a synopsis of longevity programs in 67-municipalities, including Ramsey. As presented, the data allows some generalizations about the state of longevity throughout Bergen County. I find:

- The vast majority of municipal police departments have longevity benefits
- Longevity is, virtually always, calculated as a percentage of base pay
- 10 towns have maximums at, or above, 12%
- A few municipalities have dollar maximums
- Of those listed, 10 municipalities either do not have longevity, or have restrictions denying the benefit to new hires

The record does not contain sufficiently detailed data to allow for an in-depth comparison

of Ramsey to these other Bergen County municipalities.

However, the record does include Ramsey's un-rebutted argument that Local 155

...is the only unionized unit whose new hires continue to receive longevity benefits and who do not have longevity benefits capped at a flat dollar maximum. All of the other five collective bargaining units agreed eliminate longevity benefits for new hires and cap longevity benefits at a flat dollar maximum between 2003 and 2009.

(Ramsey Post-Hearing Brief, page 40.)

In denying the Borough's longevity proposal, I find that this benefit remains a vital--although slowly shrinking--factor in municipal/police compensation schemes. The great majority of Bergen County municipalities include longevity payments in their collective contracts with PBA locals. Too, the Legislature acknowledged longevity's prevalence when it included "any amount providing for longevity" in the definition of base salary. This inclusion recognizes longevity's continuing role in determining police officer compensation. Even if it might be naturally eroding, the legislature has not identified longevity as a benefit that must disappear from the bargaining landscape.

For "off-step" officers, longevity is the predominant path to increased wage income. Unlike their brother and sisters on step who receive a "raise" once every twelve months, they receive longevity increases in stages over the years. Freezing longevity in this context would most impact those who have given longest service to the Borough of Ramsey.

This said, the Borough's related proposal to eliminate longevity for persons hired after January 1, 2012 has been granted.

Also, owing to the operation of the 2% cap some longevity payments during the life of the contract have been reduced on a one-time basis.

**7. Insurance Contributions: The Union's proposal to limit the health care contributions of employees, and retirees to the amount(s) mandated under Chapter 78 is denied.**

## Introduction

Chapter 78 of the Laws of 2011 mandates that public sector employees and retirees, who participate in employer paid health plans, must pay a share of health benefit premiums. These contributions are being phased-in over four years. They cannot be less than 1.5% of an employee's pensionable compensation, or 1.5% of a retiree's retirement allowance.

## PBA's Position

Chapter 78—during the first year of the four-year phase-in—requires 1.5% of base pay go toward health care premiums. Thereafter, in the Union's words, there is an "8.75% factor of the premium in like amount each year so that there will be a thirty-five percent (35%) co-payment by the full phase-in." (PBA Post-Hearing Brief, page 51.)

As the result of a previous arbitration award (Exhibit P-29), which pre-dated the recent amendments to Chapter 78, "[t]he amount being paid by a Ramsey police officer is at present more than the statutory requirement." At present, these Officers are contributing more than the statutory amount for health insurance. The same is true of retirees. (PBA Post-Hearing Brief, page 51.)

"No other entity, no other contract in evidence by either the Employer or the employee organization has such cost assessment for health care." (Union Post-Hearing Brief, p. 51.) With the passage of time the differential between employee contributions under the Agreement, and those mandated by law will decrease. The present condition is unparalleled and onerous, especially as it has resulted in more than \$250,000 in premium rebates going to the Borough. (Union Post-Hearing Brief, p. 52 & 53.)

As well as substantive concerns, the Borough of Ramsey raises a jurisdictional defense against the Union's proposal to limit insurance contributions to the statutory level.

Jurisdictionally, the Borough urges that the proposal runs afoul of the 2010 amendments to the Police and Fire Interest Arbitration Act that bar arbitrators from rendering awards on non-salaried economic issues that were not included in the expired collective negotiations agreement. (Ramsey Post-Hearing Brief, page 2.) Applying this prohibition, Ramsey argues that since:

- 1) Insurance premium contributions are non-salaried economic issues; and
- 2) Chapter 78 was modified after the parties' 2009 Agreement was effectuated, therefore
- 3) Proposals touching the interaction of the recently enacted mandates, and contractual obligations under Articles XXXVI and XXXVIII must be excluded from my award.

In summary it urges, "As a result, the Interest Arbitrator must decline to consider the PBA's insurance modification language as a preliminary matter." (Ramsey Post-Hearing Brief, page 2; see also pages 30 -31.)

Turning to the merits, the Borough stresses, "Health insurance premium costs continue to skyrocket...A review of historical costs highlights the rapid, spiraling increase in costs over the past six years." (Ramsey Post-Hearing Brief, page 61.) In consequence, the New Jersey Legislature and state regulatory agencies have responded to the social policy and economic crunch. Citing Interest Arbitrator Timothy Hundley, the Borough emphasizes,

Nothing in either the new legislation or the interest arbitration statute entitles employees to salary adjustments that balance out the new statutorily mandated contributions...These health benefit changes will eventually apply to all New Jersey public employees while the pension changes will be effectuated for all public safety workers.

County of Union and FOP Lodge 103 (Sheriff's Superior Officers), Docket No. IA-2010-118.

To the extent that bargaining unit members have been more severely impacted than sworn officers in other jurisdictions, relief will come as Chapter 78's payment scheme advances through its four-year cycle<sup>22</sup>.

I am denying the Union's insurance contribution proposal.

In rejecting this proposal, I have intentionally not addressed the Employer's jurisdictional argument. The law of interest arbitration is evolving. Weighty questions exist about the meaning and application of the statutory bar precluding awards on non-salaried economic issues that were not included in the prior collective agreement. The parameters touching the legal issue have not been fully explored at hearing, or in the parties' briefs. In any instance, in light of my ruling on the merits, I need not reach this question.

"Skyrocketing" health care costs have risen to the level of a national calamity. The New Jersey and federal legislatures have addressed portions of the problem, and the Supreme Court of the United States is focusing on one of the legislative "cures." Given all of the moving pieces this is not the best time to address an issue that--as all concerned agree--will be ameliorated, as Chapter 78's mandatory contributions are being phased-in throughout New Jersey.

More significant, from my vantage, is Interest Arbitrator Mastriani's July 31, 2009 award. (Exhibit P-29.) This determination, carefully explicated over seven-pages, created the premium co-pay requirement from which Local 155 now seeks relief. (Exhibit P-29, pages 31 - 37.) Arbitrator Mastriani focused on health insurance benefits being maintained at its historical high level. He described the existing PPO plan as nothing less "than a solid and comprehensive program that offers substantial insurance protection to

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<sup>22</sup> Local 155, in a different but related vein "acknowledged that the statutory mandate will increase the thirty-five percent (35%) by the fourth year of the phase-in and the differential in the PBA Proposal and that ultimate thirty-five percent (35%) will be reduced." (PBA Post-Hearing Brief, page 65.)



the police officers.” (Exhibit P-29, page 32.) He also noted that this protection came “at a significant cost to the Borough.” (Exhibit P-29, page 32.)

In ratifying the changes, which the Union now challenges, Arbitrator Mastriani viewed the issue against the reasonableness of his entire award. In other words, his decision affirming the Borough’s proposal to increase co-pays was made in context. It was part of a well-considered, integrated award. I am disinclined to unravel the balance that Arbitrator Mastriani set even though co-pays reduce net earnings.

Nor does the Borough’s receipt of premium rebates weigh strongly in the Union’s favor. These cost savings are part of the legislative scheme to foster property tax relief for residents. Such savings also work to the Borough’s benefit with respect to setting tax levies. This said, I adopt Arbitrator Hundley’s observation that “[n]othing in either the new legislation or the interest arbitration statute entitles employees to salary adjustments that balance out the new statutorily mandated contributions.” County of Union and FOP Lodge 103, *supra*. at 68<sup>23</sup>.

#### **Adopted Non-Economic Proposals**

#### **8. Local 155’s proposal to add “Term and Renewal Language” is Adopted.**

The Union proposed the addition of the following new language to the Agreement:

The Agreement shall have a term from January 1, 201\_ through December 31, 201\_. If the parties have not executed a successor agreement by December 31, 201\_, then this Agreement shall continue in full force and effect until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public Employment Relations Commission.

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<sup>23</sup> The Borough is in error to the extent that it interprets the Interest Award in Borough of New Milford and PBA Local 83, Docket No. 1A-2012-008, to reach a contrary result. The quoted language (*see* Ramsey Post-Hearing Brief, pages 57 – 58) references one party’s position, not the arbitrator’s conclusion.

(Exhibit P-1)

Local 155 styles this proposal as a codification of an existing practice. The testimony of Sergeant Cherven supports this characterization. This is demonstrated by the following Questions and Answers from the transcript of the March 16, 2012 hearing:

Q. Has that been the practice in prior years, prior contracts, if they expired without a new one being completed, just lived with whatever the terms were in the past?

A. Correct.

Q. You're seeking a codification of that practice here?

A. Yes.

(T. page 66, lines 21–25 & page 67, lines 1-3 .)

No rebuttal testimony was offered. The Borough, what is more, acknowledged the practice's existence. (Borough Post-Hearing Brief, pages 53-54.) However, it argued that the parties' adherence to the practice, mak[es] any modification unnecessary." Local 155, in turn, characterizes the proposed clause as "basically boilerplate language...found in virtually all contracts...[adding that it] "probably should have been included in the contract many years ago." (PBA Post-Hearing Brief, page 54.)

Unlike its other non-economic proposals that have been denied, the Union's "Term and Renewal" language has an evidentiary base. The parties agree that their practice has been to continue agreements in full force and effect pending execution of successor contracts. This is a wise practice. It maintains the stability of their relationship during collective negotiation's rigors, and impedes either party from selective contract performance as an economic weapon.

#### **Adopted Non-Salary, Economic Proposals**

**9. The Borough's proposal that Employees hired after January 1, 2012 shall not have senior officer level is Adopted**

**10. The Borough's proposal that Employees hired after January 1, 2012 shall not be entitled to longevity is Adopted**

Each of the above-proposals touches and concerns future recruits who will join the Ramsey Police Department after January 1, 2012. Additionally, these proposals share in common events that, if ever, will not occur until the passage of several years. The contractual right to longevity does not accrue until an officer ends his/her seventh year on-the-job. Entry into senior officer status does not accrue until an officer's eighteenth year. Both are temporally far removed from the present. New recruits, accordingly, should not be dissuaded from joining the Borough's Police Force. This is especially so since the salary guide is quite competitive within NW Bergen County.

Adopting the "new hire" proposals creates a balance between anticipated cost savings, and not dampening the morale of officers who have given Ramsey years of service. Sergeant Cherven's testimony reveals a dedicated force that has constantly "stepped-up to the plate" as call volume has increased. They are responsible for the certification from the Commission on Accreditation for Law Enforcement Agencies. In particular, I am disinclined to penalize them by freezing longevity. The officers beyond Grade 8 have an expectation of longevity payments; as do those who have been at that Grade level for a number of years. The increase in longevity costs, over three years when combined with step increments would run afoul of the hard cap. Rather than dismantle longevity, I have reduced payments for a limited time so that the cap will not be not violated.

**Economic Proposals Regarding Salary & Term of Agreement**

**Traditional Analytical IA Rules**

In Borough of New Milford, P.E.R.C. No. 2012-53, the Commission ruled on the first interest arbitration award that it reviewed under the new 2% limitation on base salary

adjustments. In explaining its decision to vacate and remand, PERC reaffirmed the traditional--Commission and court tested--framework for interest arbitration awards. Inter alia, it reminded that,

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the Award which of the [9 statutory] factors are deemed relevant, satisfactorily explain why the other are not relevant, and provide an analysis of the evidence on each relevant factor.

Id. at 8. An award will be vacated if an appellant demonstrates that the arbitrator failed to give “due weight” to the relevant subsection 19g factors, or was not supported by substantial credible evidence. Id. at 8. At day’s end, an arbitrator must:

- a) Provide a reasoned explanation for the decision;
- b) State what statutory factors were considered to be most important;
- c) Explain why they were given significant weight; and
- d) Explain how other evidence, or factors were weighed and considered

Id. at 11.

#### Template for Analyzing the “Hard Cap”

Noting that New Milford was the first award to be reviewed under the 2% limitation on salary adjustments by interest arbitrators, the Commission set forth review standards for measuring whether an arbitrator “established that the award will not increase base salary by more than 2% per contract year or 6% aggregate for a three-year contract.” Id. at 12.

The Commission explained that the arbitrator is obligated to “state what the total base salary was for the year that the last year of the expired contract and (sic) show the methodology as to how the base salary was calculated.” Id. at 13. Should the parties have conflicting theories of how this amount is to be computed the arbitrator must explain what he/she determined should be in the base.

“Next, the arbitrator must calculate the costs of the award to establish that the award will not increase base salary costs in excess of 6% [over three years] in the aggregate.” *Id.* at 13. “Accordingly, the arbitrator must review the scattergram of the employees’ placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded.” *Id.* at 13. Thereafter, he/she must include the cost of any other economic benefit that was included in the base. At minimum, this must include a determination of the cost of longevity. Finally, the arbitrator “must make a final calculation that the total economic award does not increase the employer’s cost for base salary by 2% per contract year,” or 6% in the aggregate over three years. *Id.* at 13.

Under the new law, the arbitrator “is required to *project costs* for the entirety of the duration of the award.” *Id.* at 14-15. (Emphasis added.) One approach to this end would be calculating purported savings from staff reduction, and increased costs from hiring and/or promotions. The Commission, however, determined that this approach would be “too speculative.” *Id.* at 15. Accordingly, it stated:

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

*Id.* 15. “Thus, *both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments* to the Interest Arbitration Reform Act.” *Id.* at 15. (Emphasis added.)

**Interest Arbitrator’s Award on Term of Agreement, and Salary Adjustment**  
**The Supporting Record**

Conventional arbitration takes place in the “disputed issue” context. A reasoned interest arbitration analysis must be preceded by proposals having been: identified; examined; debated; and ultimately recognized as in dispute. These obligations were clearly met so far as contract term and salary. The record contains sufficient evidence to support my award on these two critical issues. However, as discussed, evidence related to Lieutenant Hennessy’s retirement, and the promotion Patrolman Vasili Pieratos as his replacement, played no role in my determination.

#### **Contract Term**

The parties’ respective proposals envision a three-year contract. I have accepted their *de facto* stipulation.

#### **Salary Adjustment**

As explained, herein, the economic award for 2102, 2013, and 2014 comes within the Hard Cap, and does not run afoul of either the Appropriation Cap, or the Levy Cap. This is in keeping with our Supreme Court’s determination,

The statutory direction to consider the financial impact on the municipality demands more than answer the question whether the municipality can raise the money to pay the salary increase. Given the existence of financial constraints and budget caps...an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget.

Hillsdale PBA Local 207 at 86.

#### **Salary Award Analysis**

As set forth in the Findings of Fact, the Base Salary is \$3,146,293 (see Exhibit E-1, §2(2)). It was computed, as follows: \$2,973,036 (2011 wages under salary schedule, including step increases) plus \$173,257 (Longevity paid for 2011.)

The PBA proposed “Base Pay” as an alternative. This computation is premised on all police officers being at maximum. Using this calculation, total Base Pay is

\$3,167,677. The Union observes that this method removes step movement as a factor (since everyone is presumed to be at maximum), and produces a figure within a few dollars of the Borough's computation.

Whatever the practical merits of the Union's alternative approach, it varies from the statutory formula. I am required to follow the definition of Base Salary as:

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

For 2011 the salary guide as applied resulted in \$2,973,036 in compensation to bargaining unit members. This amount included that year's step movements. The addition of longevity took the total Based Salary to \$3,146,293. The record is devoid of evidence of other items that the parties agreed would be included in this base. The record similarly is devoid of evidence of other items that were included in the base salary in the prior contract. Accordingly, the applicable Base Salary totals \$3,146,293.

The law does not free me to use Local 155's proffered alternative. Nor, may I take account of the impact of Lieutenant Hennessy's retirement, or replacement.

Prior to the Commission's New Milford decision, public sector labor and management advocates debated the roles that staff reductions, and increased costs from hiring and/or promotions could play in applying the 2% hard cap. One group favored Interest Arbitrators applying these variables to fine-tune economic awards. Another group argued that any 2% increase should simply be carried forward with the onus on the parties to cope with unpredictable, but eventual, workforce changes.

The Borough of Ramsey, in its March 26, 2012 Post-Hearing, urged me to reject "the PBA's contention that savings due to an officer's separation of employment frees up

additional money to fund police salary increased. This argument presaged PERC's New Milford ruling by 9-days.

Accordingly, using \$3,146,293 as the Base Salary, and assuming arguendo an award of the 2% maximum, over three years at most \$188,775 may be awarded. This is calculated, as follows:

$$\$3,146,293 \times .02 = \$62,925 \text{ per year}$$

$$\$62,925 \times 3\text{-Years} = \$188,775 \text{ 3-year total}$$

Before addressing the award based on this figure, it should be noted that between 2012 and 2014 step increments under the current guide would total \$195,020. This exceeds the lawful maximum award by \$6,245, i.e.,  $\$195,020 - \$188,775 = \$6,245$ . However, a question exists about the impact of the Borough of Ramsey's economic proposal on the 2% Cap's application herein.

In its Post-Hearing Brief, the Borough "costed-out" its economic proposal, as follows:

	<u>2012</u>	<u>2013</u>	<u>2014</u>
Salary Increase	-0-	-0-	-0-
Compounding	-0-	-0-	-0-
Salary Increments	2.67%	1.57%	1.94%
Longevity	0.15%	0.07%	0.15%
Freeze Longevity	--	[0.07%]	[0.15%]
Salary Guide	--	--	--
 TOTAL	 2.82%	 1.57%	 1.94%

THREE-YEAR TOTAL = 6.33%

This demonstrates that the Borough's proposal edged passed the Cap. Translated into dollars the proposal advances,

Funding Salary Increments in 2012 with \$83,893 - the amount reached by applying the present guide;



Funding Salary Increments in 2013 with \$50,734 - the amount reached by applying the present guide;

Funding Salary increments in 2014 with \$60,393 - the amount reached by applying the present guide; and

Funding Salary longevity 2012 with \$4,733

These amounts total \$199,753, and are \$10,978 above the 6% cap. Outside of interest arbitration, Ramsey could have closed on this economic deal so long as the Appropriation and Levy caps permitted.

However, my responsibility is to remain within the hard cap. In this regard, I do not interpret the Borough's offer as consent to bypass the Cap. Instead, I find the proposal to be an admission that Borough has the financial ability to fund a wage increase within the six percent area. My independent examination of the Levy Cap confirms its ability to pay.

An analysis of the Factors leads me to reasonably conclude that awarding the 2% maximum is within the law's bounds. This determination is supported by Factors 2, 3, 6, 7, and 9. In particular, the Consumer Price Index, and rising health care and pension contributions assure that--work as they will--the Officers' buying power will decrease.

Rising prices place economic demands on wage earners and on organizations tied to budgets. Since they have multiple income streams, organizations often are in a better position to cope with rising costs than are employees who receive predictable sums in their paychecks. While the Borough negates the strength of income sources other than the tax levy, it has an enviable surplus, other local revenue, and some aid from Trenton.

The United States Department of Labor recently reported that inflation continues to outpace wages. Health care, rents, gasoline, and used car prices have risen in recent months. An award of two percent to Ramsey's police officers is reasonable.

To award a 2% increase, totaling \$188,775 over three years, temporary adjustments to step increments, and longevity payments have been included in my arbitral order. These will amass \$17,150 to close the gap between what is awardable under the hard cap, and the costs associated with of leaving the structure of salary guide, and longevity formula unchanged through December 31, 2014.

Any Proposal Not Granted is Denied.

## **AWARD**

1. There shall be a three-year agreement effective from January 1, 2012 through December 31, 2014.

2. The following new provision shall be added to the Agreement:

### **Term and Renewal**

The Agreement shall have a term from January 1, 2012 through December 31, 2014. If the parties have not executed a successor agreement by December 31, 2014, then this Agreement shall continue in full force and effect until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public Employment Relations Commission.

2. The current Salary Guide shall remain in effect throughout the term of the 2012 to 2014 contract, except that Patrolmen who in 2012 advances a step, shall have their incremental step payment, for that year only, reduced under the following schedule:

Officers advancing to the 2<sup>nd</sup> Step shall have their increment, for that year only, reduced by \$1,500.00;  
Officers advancing to the 3<sup>rd</sup> Step shall have their increment, for that year only, reduced by \$1,000.00;  
Officers advancing to the 5<sup>th</sup> Step shall have their increment, for that year only, reduced by \$850.00

3. The Agreement shall be modified to state that employees hired after January 1, 2012 shall not be eligible to advance to Senior Officer level

4. The Longevity provision in the Agreement shall remain in effect throughout the term of the 2012 to 2014 contract, except that each officer who receives a longevity increase shall have his/her incremental pay, for the first year of the increase only, reduced under the following schedule:

Officers who become entitled to longevity compensation at an increased level shall have their payment reduced, for the year of the increase only, by \$2,100.00

5. The Agreement shall be modified to state that employees hired after January 1, 2012 shall not be entitled to longevity

6. As agreed to by the parties, the "New Jersey Public Employment Relations Commission" will be substituted for the "New Jersey State Board of Mediation" in Step 2 of Article XV governing Arbitration.

7. As agreed to by the parties, the Memorandum of Agreement regarding Delegate Time, which is attached hereto as Exhibit A, will be incorporated into their Agreement.

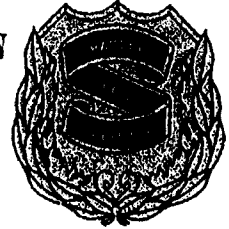
8. All items not specifically awarded as proposed by the Borough, and the PBA are denied.



## EXHIBIT A

**RAMSEY**  
**POLICEMEN'S BENEVOLENT ASSOCIATION**  
**Local # 155**

A Branch of the NJ State Policemen's Benevolent Association  
P.O. Box 92 • Ramsey, NJ 07446  
201-327-2400



July 19, 2011

Memorandum of Agreement

Concerning the issue of Delegate release time the parties agree to the following:

To provide Bergen County Conference PBA meeting dates as soon as possible to the Scheduling Officer.

To discontinue the past practice of the meeting date being a reverse training day where the Delegate starts work, leaves for the meeting and is off for the remainder of the day.

The Delegate will return to work at the completion of the Bergen County Conference meeting.

If the Delegate is not scheduled to work then there will be no change in scheduling and the Delegate will attend the meeting on their own time.

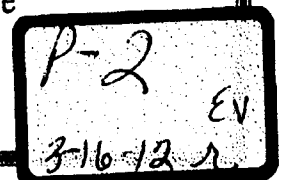
Delegate will be permitted to attend the Bergen County Conference meeting and committee meetings commencing before or after the main meeting when he/she is working, provided that the delegate is a member of that particular committee.

When the meeting date falls on a Delegate work day, the Delegate will be scheduled for consecutive day tours (the Delegate will not be required to work one midnight and one day tour).

When the meeting date falls on a Delegate work day he/she will be switched from night tours to day tours to ensure meeting attendance.

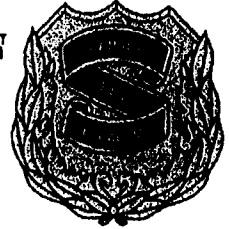
The Delegate will be permitted to attend the Bergen County Conference meetings. The administration will make adjustments to schedules and assignments to assure attendance, pursuant to policy and procedures and the CBA. However, the

[www.RamseyPBA.com](http://www.RamseyPBA.com)



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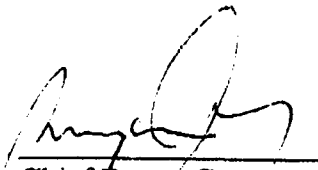
delegate will not be relieved from duty to attend if he/she is committed to an assignment that requires him/her to remain on duty, or if there is a major incident that the tour was involved in that relief would be impossible. Example: A major ambulance call, major accident, major fire, any other major incident, criminal arrest etc....

\*\*\*\*\*

Both parties agree that there will be no change in the Delegate's attendance at the NJ State PBA Delegate meetings. The Delegate will be provided the entire day off to attend the State meeting.

\*\*\*\*\*

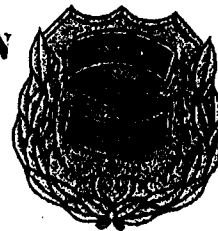
Both parties agree to memorialize this agreement in the next Borough of Ramsey and PBA contract without further negotiation. The current contract expires December 31, 2011.

  
Chief Bryan Gurney

  
Craig Weber, President

**RAMSEY**  
**POLICEMEN'S BENEVOLENT ASSOCIATION**  
**Local # 153**

A Branch of the NJ State Policemen's Benevolent Association  
P.O. Box 92 • Ramsey, NJ 07446  
201-327-2400



July 19, 2011

Chief Gurney,

The Ramsey PBA rescinds the grievance dated July 6, 2011. We are satisfied with the outcome of the settlement.

  
Craig Weber  
President



**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of the Arbitration Between:

	X	
BOROUGH OF RAMSEY,	X	
	X	
Public Employer,	X	
	X	ARBITRATOR
-and-	X	CERTIFICATION
	X	
RAMSEY PBA LOCAL NO. 155,	X	
	X	
Labor Organization.	X	
	X	
PERC Docket No. IA-2012-0015__	X	
	X	

I, THE UNDERSIGNED INTEREST ARBITRATOR, pursuant to N. J. S. A. 34:13A-16(f), certify that I have taken "the statutory limitation imposed on the local levy cap into account in making the award." The terms of the Decision and Award executed on April 17, 2012 include an explanation of how each of the statutory criteria "played into the arbitrator's determination of the final award."

Dated: April 17, 2012  
Matawan, NJ

  
Patrick R. Westerkamp, Esq.