

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration Between:

**BOROUGH OF MIDLAND PARK**

-and-

Docket No. IA-2013-013

**MIDLAND PARK PBA Local 79**

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Before: Susan W. Osborn, Interest Arbitrator  
Appearances:

For the Borough:

Cleary, Giacobbe, Alfieri, Jacobs, LLC  
(Matthew Giacobbe, of counsel)  
(Bruce Padula, of counsel)

For the PBA:

Loccke & Correia, Attorneys  
(Richard Loccke, of counsel)

Witnesses:

Kenneth Junta, Midland Park Patrolman

**INTEREST ARBITRATION AWARD**

On January 24, 2013, PBA Local 79 filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over a successor collective negotiations agreement with Borough of Midland Park. The previous agreement expired on December 31, 2012.

On February 11, 2013, I was appointed to serve as the interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This statutory provision requires that an award be issued within 45 days of my appointment with no provision for any extensions.

An interest arbitration hearing was held on March 13, 2013 at the Borough Municipal Building. Both parties were offered testimony and documentary evidence. Both parties submitted Final Offers and calculations of the financial impact and calculations of their respective proposals. Post-hearing briefs were filed by March 21, 2013 and the record closed on that date.

**PBA LOCAL 79'S FINAL OFFER**

Term of Agreement: January 1, 2013 to December 31, 2014.

Wage Increases: 2.5% across-the-board increases in each year of the contract.

Educational Incentives:  
Delete the "Grandfathering" Clause.

Call-Back Time: Three hour minimum

**BOROUGH'S FINAL OFFER**

Recognition (Duration) (Article I): Three-year agreement  
(January 1, 2013- December 31, 2015)

Salaries (Article III and Appendices A-2 and A-3, Salaries):

A. Salary increases:

2013 - 1%  
2014 - 1.5%  
2015 - 1.5%

B. New Salary Guide for all officers hired on or after June 1, 2010, replacing Appendix A-3. New salary guide shall include fifteen steps and shall be equalized, as follows:

<b><u>Step</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>
<b>Increase</b>	<b>1.0%</b>	<b>1.5%</b>	<b>1.5%</b>
1	32,591.69	33,080.57	33,576.77
2	38,444.86	39,021.53	39,606.85
3	44,298.03	44,962.50	56,636.93
4	50,151.20	50,903.46	51,667.01
5	56,004.36	56,844.43	57,697.10
6	61,467.36	62,389.38	63,225.22
7	66,930.37	67,934.32	68,953.22
8	72,393.37	73,479.27	74,581.45
9	77,856.37	79,024.21	80,209.57
10	88,319.37	84,569.16	85,837.69
11	88,782.37	90,114.10	91,465.81
12	94,245.37	95,659.05	97,093.93
13	99,708.37	101,204.00	102,722.10
14	105,171.40	106,748.90	108,350.20
15	114,536.00	116,254.00	117,997.90

C. For all officers hired after September 25, 2006 and on Salary Guide A-2, add four steps and equalize the guide. Officers on this guide shall be at Step 7 in 2013. The Borough proposes the following annual salary increases to the equalized guide: 1% (2013), 1.5% (2014) and 1.5% (2015).

<b><u>Step</u></b>	<b><u>2013</u></b>	<b><u>2014</u></b>	<b><u>2015</u></b>
<b>Increase</b>	<b>1.0%</b>	<b>1.5%</b>	<b>1.5%</b>
6	82,078.66	83,309.84	84,559.49
7	88,569.93	89,898.48	91,246.96
8	95,061.20	96,487.12	97,934.42
9	101,552.50	103,075.80	104,621.90
10	108,043.70	109,664.40	111,309.40
11	114,536.00	116,254.10	117,997.90

D. Appendices A-1 through A-3 shall be amended to read "After X Year" rather than "During X Year", except for the first year, which shall read "During 1st Year." For example:

During 1st Year	32591.69
After 1st Year	38444.86
After 2nd Year	44298.03

Sick Leave (Article XII):

Paragraph B: Reduce annual sick leave to the following:

Up to 2 years	15 working days
2 years and up to 5 years	25 working days
5 years and over	40 working days

There shall be no carryover or accumulation of sick leave.

Paragraph G: Eliminate this paragraph (extra personal days for non-use of sick time)

Hospitalization (Article XXVII):

Employees shall contribute to the cost of health benefits in an amount equal to that required by P.L. 2011, C. 78.

Terminal Leave (Article XXIX):

Reduce terminal leave to twenty (20) days for current employees. Eliminate terminal leave in its entirety for all employees who commence employment on or after January 1, 2013.

**STIPULATIONS OF THE PARTIES**

1. The parties agree to change the language under Article XXVII, paragraph C. to provide that employees shall contribute to the cost of health benefits as required by Chapter 78, P.L. 2011.
2. The parties agree to modify Article X concerning call-back pay to increase the minimum number of hours from two hours to three hours.
3. The parties agree that police officers advance on the salary guide from step to step on their anniversary date. Employees eligible for step movement at the beginning of 2013 were paid their increment.

4. The PBA proposed, and the Borough agreed, to amend the terminal leave provision in the contract to provide that terminal leave would be paid out over three calendar years instead of in a lump sum, and that interest would not accumulate on the unpaid portion.

### **BACKGROUND FACTS**

#### **Demographics:**

Midland Park is a Borough on the western edge of Bergen County, New Jersey (B-1). Midland Park was incorporated as a borough on September 6, 1894, and consisted of portions of both Franklin Township and Ridgewood (B-1).

Patrolman Kenneth Junta, a nine-year veteran on the Midland Park Police force, testified that the Borough is surrounded by the towns of Wyckoff, Ridgewood, Waldwick, Allendale, Ho-ho-kus, Hawthorne, Franklin Lakes and Glen Rock. Junta testified that the Borough of Midland Park and its surrounding towns have a common aspect and approach for law enforcement, which enables them to work together in their efforts. He stated that issues with juvenile crime and narcotics are common to Midland Park and other surrounding towns. He stated that the main roads through the Borough are Godwin Avenue and Prospect Street. In addition, Route 208 in Hawthorne is the main access to Midland Park from major highways. If traffic backs up on 208, it backs up on local

roads, including those in Midland Park. The area often experiences traffic problems late in the day. The Borough is also home to a Burger King, Wendy's Sears Hardware, A & P, a strip mall and a shopping center.

As of the 2010 United States Census, there were 7,128 people in the Borough of Midland Park (B-1). However, Junta testified that there were currently around 7,700 residents in the Borough. The Borough consists of 1.563 total square miles; of which 0.008 square miles is water (B-1).

The chart below depicts the 2010 census profile of general population and housing characteristics for the Borough of Midland Park (B-2):

<u>2010 Demographic Profile Data</u>	<u>Number</u>
Total population	7,128
Persons under 5 years	5.6%
Persons 18 years and older	24.4%
Persons 65 years and older	16.0%
Housing units, 2010	2,861
Households, 2007-2011	2,665
Homeownership rate, 2007-2011	72.3%
Median value of owner-occupied housing units, 2007-2011	\$482,000
Median household income, 2007-2011	\$81,294
Persons below poverty level, percent, 2007-2011	2.7%

The Borough continues to gain some notable efficiency through shared services, including the shared use of the pistol range with Waldwick, dispatch services with Wyckoff and 9-1-1 services with Paramus (P-7). The Borough also shares the services of the Borough officials and positions such as the

Court Administrator with Waldwick, Tax Collector and Chief Financial Officer with Glen Rock and Construction Code Official with Allendale (P-7).

Area towns and Police Departments which form an area network of Police service include neighboring Ridgewood, Allendale, Ho-Ho-Kus, Oakland, Franklin Lakes, Wyckoff, Glen Rock and Hawthorne. Within a short distance are other Bergen County communities, such as Paramus, Mahwah and Waldwick. All of these municipalities are in the County of Bergen with the exception of Hawthorne, which is a bordering Passaic County municipality. Hawthorne shares a common border with Midland Park. The significance of the identification of area towns was described by Officer Junta in that these are the agencies with which the Midland Park Police Department regularly work and have common mutual aid alignments and common problems. Specifically identified were traffic issues, juvenile issues, narcotics issues, criminal issues and the regular working relationship with those area Police agencies.

**Borough of Midland Park Police Department:**

Junta testified that there are 10,000 to 12,000 calls for services a year. Over the last three years, he stated that criminal activities have increased. These activities included a rape, an attempted murder on a police officer, larcenies, assaults and domestic disputes. Junta believes the seriousness

of crimes is increasing. The following chart shows the crime rate in Midland Park as compared with other area towns, as well as the County average (excerpted from B-56,B-57).

Municipality	Violent Crimes	Non-Violent Crimes	Crimes Per 1,000
Allendale	0	58	8.9
Franklin Lakes	2	87	8.4
Glen Rock	0	71	6.1
Ho-Ho-Kus	0	27	6.6
<b>Midland Park</b>	<b>3</b>	<b>52</b>	<b>7.7</b>
Paramus	61	1,673	65.8
Ridgewood	8	185	7.7
Saddle River	0	25	7.9
Waldwick	2	80	8.5
Wyckoff	4	124	7.7

Junta testified that when he was hired nine years ago, the police force consisted of 15 officers, including the Chief. In May of 2012, the Borough hired a new police officer, Brendan Burke. However, Burke left in the fall of the same year to join another police department in the neighboring town of Hawthorne. In October of 2012, Lieutenant Michael Marra was promoted to Chief. Junta stated that in 2013, the force consists of 13 officers, which includes the Chief, one lieutenant, four sergeants, and seven patrol officers. Junta believes that the Borough needs additional police officers. He added that the police force has a good esprit de corps; it meets the public's needs; and the officers are well respected.



**Existing Salaries and Benefits**

The parties' last contract covered a three-year period and included three separate salary guides. Guide A-1 covers employees hired before September 25, 2006; Guide A-2 applies to employees hired after September 25, 2006; and Guide A-3 applies to employees hired after June 1, 2010. Each guide has a starting salary of \$32,269 and a top pay step of \$113,402. In Guide A-1, officers reach top pay after six years; in Guide A-2, officers reach top pay after seven years, and in Guide A-3, it takes an officer nine years to reach top pay.

The negotiated contract provided for 3% increases in 2011 and again in 2012 only for employees at the top of the salary guide. Employees still moving through the guide had the dollar value of each step frozen and employees in guide received step increases only (not across the board increases). This had the net effect of creating a "bubble step" when employees moved up to the top step in each of the salary guides. The bubble step in Guide A-1 is \$23,341, in Guide A-2 it is \$22,337, and in Guide A-3 it is \$14,805.

There are currently no employees working their way through the steps in Guide A-1. There are two employees currently on the "7<sup>th</sup> year" step on Guide A-2, who will go to top pay in January, 2014. There are currently three officers<sup>1</sup> at various

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<sup>1</sup>A fourth patrolman, Brendan Burke, resigned in November of 2012.

steps in Guide A-3.

Starting pay is currently \$32,269, while top pay for patrolmen is \$113,402. Sergeants are paid \$118,912, and lieutenants are paid \$124,425.

Unlike many neighboring towns, the police officers in Midland Park do not have a longevity program. Once officers reach the top step of the pay guide, they only receive further increases by across-the-board increases or by promotion.

The Borough's police force does have certain benefits not commonly seen among law enforcement groups. One such benefit is a "terminal leave" benefit, wherein retiring police officers with at least 25 years of service receive 60 days' pay upon retirement. Additionally, these officers have a generous sick leave policy that grants 28 days sick leave for two years or less of service, 56 days for more than two years but less than five years, and after five years, 96 days sick leave. Further, after this sick leave allotment is exhausted, officers are paid 50% of their pay if the disability continues, up to one year. Officers who use less than seven sick days in a year are also eligible for a bonus of additional personal days ranging from 1 to 4.

Unit members also have one personal day a year but may "trade in" unused sick leave for personal days. The County average of allotted personal days is 2.86% annually (B-76). In

addition, officers enjoy 12 holidays annually, six of which are to be worked and six may be requested as off-duty days. This is slightly below the County average of 13 (B-100). As to vacation days, officers have eleven vacation days after the first year of service, and gradually earn more over their service time to a maximum of 21 vacation days after 21 years' service (J-1, Appendix B). This is below the County average of vacation allotment which is 24.84 days after 20 years of service (B-98).

#### **STATUTORY CRITERIA**

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

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

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

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or

any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

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

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability

of jurisdictions for the arbitrator's consideration.

- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are

ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

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

In this matter, I have considered and given weight to the factors of unit continuity, employee morale, the employees' array of existing benefits and salaries as compared with police departments in surrounding municipalities, the Employer's statutory limitations, including the Appropriations CAP and Levy CAP, and the cost of living. Among the statutory factors

considered, I have given the interests and welfare of the public the most weight. However, the limitations imposed by the statutory 2% hard cap on an arbitrator's award have overshadowed consideration to these statutory factors at least insofar as the economic costs of this award.

### **ANALYSIS**

#### **Length of Contract:**

The PBA seeks a two-year contract covering 2013 through 2014. The Borough proposes a three-year contract extending through 2015. Neither party made an argument in favor of its proposed contract length.

There is not much doubt that a longer contract provides a period of labor peace and stability which is beneficial to the parties and furthers the public interest. If I award a two-year contract, the parties will be back to the negotiations table fifteen months from now for a successor agreement. However, both in New Jersey and nationally, we are in a period of economic uncertainty. Indeed, it is difficult to predict whether economic conditions will improve, deteriorate or remain stable. More importantly, I note that the provisions of N.J.S.A. 34:13A-16.7(b), which restricts an arbitrator's award to 2% ("the hard cap"), is due to sunset in 2014. It is impossible to predict whether that legislation will be re-enacted, with or without modification, or

be permitted to sunset. Because of the extreme impact of the hard cap on my ability to award a salary and benefit package which would more appropriately recognize the relevant statutory factors as set forth immediately above, I reluctantly conclude that the parties and the public interest would be better served if the parties were in a position to renegotiate the contract sooner rather than later. Therefore, I find that a two-year agreement is the best interest of the public and the parties themselves.

**Salary Proposals:**

The PBA proposes salary increases of 2.25% in each year of the contract. The Township offers increases of 1% in 2013, 1.5% in 2014, and 1.5% in 2016, but also seeks to increase the salary step guides. More specifically, it seeks to modify Guide A-2, which applies to employees hired after September 25, 2006 but before June 1, 2010, to add four additional steps to the current eight step guide. It also asks to modify Guide A-3 for its existing employees hired after June 1, 2010 and for future hires, from the current 10 steps to 15 steps, with equalized increments amounts.

The PBA argues that, notwithstanding the exceptional level of productivity and professionalism exhibited by Midland Park's police officers, their base pay as well as their overall compensation program, is far below



average. It notes that, based upon its comparative data, Midland Park's officers' current pay rate is \$4,616 below average, and would require 4% increases just for patrolmen to catch up to the established 2013 average top pay. It further observes that the \$118,912 sergeant's pay in Midland Park is also below the average of \$122,971, and the pay rate for lieutenants is also below average.

The PBA emphasizes that these police officers are handling an increasing workload with fewer sworn officers and that the employer has a less expensive work force than has been experienced in past years. It asks that I take note that there no alternative benefits, such as a longevity program, available in Midland Park to offset the enormous shortfall if the employer's offer is implemented.

With regard to the employer's references to private sector trends in its exhibits, the PBA maintains that the best comparisons are with law enforcement units. It notes that the greatest differentiation between police officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the state or not. N.J.S.A. 40A:14-152.1. A police officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying

of deadly force and around the clock obligation at all times within the State is not found in the private sector. Therefore, local comparisons are more relevant with Police wages

With regard to the Borough's ability to pay, the PBA points to two factors it suggests should be given weight: First, there is a history of Cap Banking, underutilization of the Cap Appropriation statutory available flexibility, in the last two years. Second, the amount of Cap Banking flexibility available from the most recent 2012 Budget into the next budget for 2013 is the highest in three years. There is now \$247,492.00 of Appropriation Cap Banking flexibility going forward for this municipality when it fashions its 2013 Budget. Clearly, the Appropriation Cap is not a negative issue. Further, the 2012 budget indicates an under Cap utilization of the Tax Levy Cap formula by \$78,547.00. Thus, the Tax Levy Cap flexibility carries forward as a form of Cap Banking into 2013.

The PBA further asserts that there is the actual reduction in net cost of \$81,176 to the municipality in operating the police department from 2012 to 2013. It argues then, that awarding the full proposal presented by the PBA in this case will result in a lesser cost for the entire PBA bargaining unit in 2013 as compared to 2012. It

also notes that police pension costs were reduced by \$108,547.00.

The PBA continues that there is no significant debt in this municipality and in fact there is less than a one-seventh of the statutory debt load. Municipal aid has remained the same (P-11). This town is stable and strong. This is a town which has strong fiscal indicators and can well afford an award of the PBA's position as presented in this case.

Finally, the PBA points out that its members' net earnings will decrease by virtue of pension increases and medical co-payments as a result of Chapter 78. The pension contribution has increased by 1.5% and the medical payment made by the Officers has increased and will increase in 4 plateaus up to 35%. It asserts that even an award of the PBA's proposal will result in reduced net earnings. The fact that the Bureau of Labor Statistics figures show an increase in the cost of living only supports the need for improved change.

The Borough argues that the state of the economy impacts its ability to provide a fair economic offer, while continuing to maintain the fiscal stability necessary to operate, and at the same time ensuring that it achieves its long term goal of continued financial stability. It contends

that the effect of granting an economic benefit in excess of its proposal will negatively impact on the Borough's long-term fiscal stability.

The Borough maintains that its offer represents a fair balance between reasonable salary increases in the face of an unstable economy in the State, ever-increasing health benefit and pension costs, decreases in State aid, and ensuring the financial stability of the Borough without overwhelming already strapped taxpayers.

The Borough points to several factors it asks that I consider. It notes that there has been a "dramatic increase" in the amount of overtime it is required to pay to Midland park police officers over the past few years. It emphasizes that it paid out \$72,450.65 more in overtime - a 73.28% increase - in 2012 than it paid in 2009. (B-72; B-34). Further, the Borough has recently seen a dramatic increase in the amount of tax appeal refunds paid out to its residents. In addition, the Borough has also seen a reduction in income from investments. In 2010, the Borough earned \$120,106.36 from its investments; that number dropped to \$70,540.55 in 2012. Moreover, it has also seen a reduction in its surplus balance and an overall reduction of its Total Fund Balance. Further, the lack of revenue and State Aid has forced the Borough to use its surplus to offset the budget rather

than to continually raise taxes. This has caused the Borough's surplus balance to decrease by \$21,247.17 from year end 2009 through year end 2012.

Over the past twelve months, from January 2012 through January 2013, the CPI Index increased by 1.6% (B-73). The Borough contends that its offer is in line with inflation and will not cause PBA members to suffer any detriment to their standard of living. The Borough also notes that its police officers are well-paid compared to New Jersey's private sectors workers, where the average 2010 salary was \$55,742, and the average annual wage in Bergen County was \$58,145.00 (B-4).

It also argues that its offer will ensure that the Borough's police officers do not receive far superior wages as compared with its civilian employees.

The Borough contends that adding additional steps to current salary guides will benefit the public interest because it will provide each officer with a salary increase. It points that, if additional steps are not added to current guides, then, under the 2% cap, all officers cannot receive raises. Additionally, it asserts that any argument that officers have an "expectation" of a permanent step guide in place at the time of their hiring is a false premise. Rather, it avers, such commitments can only be relied upon during the length of the contract.

The Borough contends that there is an established trend in Bergen County to add steps to the salary guide. It asks that I take note that at least 20 municipalities have added guide steps, ranging from 2 to 14 additional steps. It points out that in Norwood, 14 steps were added, creating a 20-step guide; while in River Edge, the addition of 13 more steps brought the guide to 18 steps (B-101). In examining these contracts however, it is noted that the revised and extended salary guides apply to new hires only.

In summary, the Borough asserts that, by applying its final offer, the salaries of the Borough of Midland Park police officers will stay comparable with the Bergen County averages even in these difficult economic times, while the PBA's offer is unreasonable and does not consider the impact of such award on the Borough's taxpayers.

With regard to the Borough's proposal new step guide, the PBA argues that if the Employer's position is awarded, employees still in steps will see a reduction of compensation and an obligation to pay back earnings already paid. The Employer's proposals with respect to step modifications for incumbents, and reductions in compensation are wholly unsupported and unjustified.

The PBA argues that the Employer's proposal to extend the step guide to 15 steps is not supported in the

Employer's proofs, and is far above any comparative data for the number of years patrolmen typically reach to pay, as illustrated in its chart below:

<b>Patrol Officer Steps to Reach Maximum Rate</b>	
<b>Municipality</b>	<b># of Steps</b>
Wyckoff	9
Washington Township	7
Closter	8
Allendale	9
Glen Rock	9
Hawthorne	9
Oakland	9
Paramus	9
Ridgewood	8
Saddle Brook	8
Wallington	<u>7</u>
	92
<b>Avg. # of Steps</b>	<b>8.36</b>
Midland Park	10 Steps

The PBA notes that Midland Park is already above that average of 8.36 steps, with 10 steps. In objecting to the Borough's proposal to extend the salary step guide to 15 steps, the PBA asserts that such an expansion is not found in any comparable area salary guide. Further, the PBA maintains that the Employer's modified step-guide proposal would reduce current pay for officers still working their way through the step guide. The adverse impact on current officers' steps, the

PBA illustrates as follows:

<b>Step</b>	<b>Current Rate</b>	<b>Employer Proposal</b>	<b>\$ Value Reduction</b>
During 1	\$32,269	\$32,591	+\$322
During 2	\$40,560	\$38,444	-\$2,116
During 3	\$48,851	\$44,298	-\$4,553
During 4	\$57,142	\$50,151	-\$6,991
During 5	\$65,433	\$56,004	-\$9,429
During 6	\$73,724	\$61,467	-\$12,257
During 7	\$82,306	\$66,930	-\$15,124
During 8	\$90,306	\$73,393	-\$16,913
During 9	\$98,597	\$77,856	-\$20,741
After 9	\$113,402	\$83,319	-\$30,083
New Steps		\$88,782	
		\$94,245	
		\$99,708	
		\$105,171	
		\$114,536	

The PBA contends that there is no precedent for this type of reduction, which would effectively lower compensation for existing employees and create a pay plan which would be non-competitive and therefore, not in the public interest. It would also destroy employee career paths and morale.

As to the financial impact of its proposal, the PBA asserts that, because of the savings the Borough will realize through attrition, it will cost the Borough less in 2013 for total base salary costs than it did in 2012, and therefore the 2.5% increases it seeks are possible within the 2% hard cap limits. I agree with the PBA that the Borough will in fact spend fewer dollars on total base pay in 2013 than it did in 2012. The total base pay paid in 2012 was \$1,199,170;



if the existing salary guide were maintained going forward and all increments were paid, the total base pay cost for the unit in 2013 would be \$1,139,496. Such savings from retirements, terminations, and promotions out of the unit are commonly referred to as "breakage." However, in Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶1116 2012), the Public Employment Relations Commission determined that it is not permissible to use such breakage money under the 2% hard cap. Rather, the maximum amount available for increases in base pay must be based upon 2% of the aggregate the employer spent for base pay in the base year, and further, that increases to employee base pay because of step increments and longevity payments must be included in the 2% cap calculation. Therefore, the PBA's proposal must be rejected as impermissible under the 2% hard cap.

The Borough's proposal is a combination of across-the-board percentage increases coupled with a guide restructuring plan. Although the Borough contends that no employee's salary would be decreased based upon its proposal, in fact, there would be decreases if the Borough's proposal were awarded. More specifically, the Borough offers a restructured guide wherein it proposes to place the two employees currently on the "seventh year" step of the A-2 guide on step 7 of its proposed new guide. These two

employees (Birch and Van Dyk) were already paid their increments in January 2013, bringing them to a new base salary of \$91,065. If the town's proposal were awarded, these two employees would be on step 7 of the new guide with a salary of \$88,570. This is, indeed a salary reduction of \$2,495. While the 2% hard cap severely restricts me from awarding increases, I do not believe it is necessary or appropriate to award a proposal that calls for salary decreases.

I have considered the parties' arguments and the facts as developed in the record. The following facts are relevant:

The 2012 Municipal Budget "Surplus Anticipated" shows an increase of \$137,827 from 2011 to 2012 (P-7, Sheet 11). The actual surplus at the end of 2011 was just under \$2.7 million dollars (P-7, Sheet 39). Of that amount, only \$1,661,734 was anticipated for the 2012 Budget (P-7, Sheet 39). The 2012 "Surplus Balance Remaining" was \$1,031,834.00 (P-7, Sheet 39). Even the line items for Police Salaries and Wages (P-7, Sheet 14) show a 3.65% increase from 2011 to 2012, notwithstanding a "Reserved" column depicting \$184,625<sup>2</sup>. In addition, the PBA states that the Total Operations within CAPS Including Contingent are reserved in the amount

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<sup>2</sup> This is a reserve amount under the Police Salaries and Wages portion of the 2012 budget; however, we cannot just assume that this is excess money which allows more flexibility within the budget.

of \$748,166 (P-7, Sheet 17)<sup>3</sup>. The PBA avers that clearly there is significant flexibility here.

With respect to the burden on the local taxpayers, one barometer is the percentage of the taxes paid on a current collection basis. PBA Exhibit P-10, the Annual Financial Statement for 2012, issued in February of 2013, shows at Sheet 22 that 98.94% of all taxes are paid in a timely fashion. Referencing taxes on the impact of the issues here, the total impact of all municipal expenditures, of which part is the Police Department, is only 25% of the total levy (P-7, Sheets 3b(1)5&6 of 7).

The maximum debt limit under New Jersey law is 3.5% of the ratable base. The Department of Community Affairs' Annual Debt Statement (P-9), for the year ending December 31, 2012, shows that in Midland Park, the net debt was 0.047% (P-9, Line 5). There is no significant debt in this municipality and in fact there is less than a one-seventh (1/7) statutory debt load.

The Borough states that they are struggling financially due to the reduction and stagnation in State Aid, the overall decline in surplus, the increase in pension and health benefit costs, loss of interest on the Borough's banks accounts and debt service (I-72).

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<sup>3</sup> I take notice that the reserved amount is for budget year 2011.

Midland Park has seen a reduction in State Aid. State Aid has fallen from \$864,537 in 2007 to its present day level of \$528,440<sup>4</sup>, or an overall reduction of \$336,097 or 38.88% (B-26).

The Borough's contributions to PERS have increased from \$85,881 in 2009 to \$110,280<sup>5</sup> in 2013 (B-27). Further, the Borough's contribution to PFRS has increased from \$270,706 in 2009 to \$331,037 in 2013 (B-28)<sup>6</sup>. The following charts depict the Employer's costs for PFRS and PERS pension payments:

<b>BOROUGH OF MIDLAND PARK'S PFRS PENSION COSTS</b>		
<b>YEAR</b>	<b>PFRS Pension Payment</b>	<b>Increase/Decrease from Prior Year</b>
2009	270,706	-----
2010	310,495	39,789
2011	335,409	24,914
2012	293,619	41,790
2013	331,037	37,418

<b>BOROUGH OF MIDLAND PARK'S PERS PENSION COSTS</b>		
<b>YEAR</b>	<b>PERS Pension Payment</b>	<b>Increase/Decrease from Prior Year</b>
2009	85,881	-----
2010	99,688	13,807
2011	119,827	20,139
2012	125,180	5,353
2013	110,161	15,019

<sup>4</sup> Exhibit P-11 reflects municipal aid for 2013 in the amount of \$546,706 for Midland Park.

<sup>5</sup> Exhibit I-72 reflects 2013 PERS costs in the amount of \$110,161.

I note particularly that the Employer's contribution amounts for PFRS and PERS are both decreasing for 2013.

There are a multitude of other costs which have continued to rise such as municipal debt service. From 2012 through 2013, the Borough dealt with an increase in Municipal Debt Service of 29,482.95 (B-25). The following chart depicts the Borough's debt service:

<b>BOROUGH OF MIDLAND PARK</b>		
<b>MUNICIPAL DEBT SERVICE</b>		
<u>Year</u>	<u>Debt Service</u>	<u>Change</u>
2009	49,758.50	----
2010	49,758.50	0.00
2011	49,758.50	0.00
2012	58,759.93	9,001.43
2013	79,241.45	<u>20,481.52</u>
<b>Increase in Debt Svc.</b>		<b>29,482.95</b>

The Borough has also seen a dramatic increase in the amount of overtime it is required to pay to Midland park police officers. In fact, the Borough paid \$171,316.95 in overtime to police officers in 2012 (I-72). The following chart depicts police officer overtime costs paid in 2009 through February of 2013:

<b>MIDLAND PARK POLICE DEPARTMENT OVERTIME</b>	
<u>YEAR</u>	<u>AMOUNT</u>
2009	98,866.30
2010	168,633.49
2011	128,909.43

2012	171,316.95
2013	<u>17,886.57</u>
	<b>585,612.74</b>
Note: Year 2013 represents the amount paid through Feb of that year.	

Midland Park has recently seen a dramatic increase in the amount of tax appeal refunds paid out to its residents. In 2010, the Borough paid \$26,813 in tax refunds; however, that number increased to \$109,199 in 2011 (B-35). Further, the Borough anticipates that between \$99,135 and \$148,701 tax appeal refunds will be paid in 2013 based upon estimated refunds of 10% and 15% respectively (B-35), but this projection is speculative.

Besides facing increased costs, the Borough has also seen a reduction in income from investments, a reduction in its surplus balance and an overall reduction of its total fund balance. In 2010, the Borough earned \$120,106 from its investments; that number dropped to \$70,540 in 2012. Through February 2013, the Borough has only earned a mere \$3,597 in interest income (B-11 through B-14 and B-24). Thus, the Borough earned 41.27% less on its investments in 2012 than it did in 2010. Further, the lack of revenue and State Aid has forced the Borough to use its surplus to offset the budget rather than to continually raise taxes. This has caused the Borough's surplus balance to

decrease by \$21,247 from year end 2009 through year end 2012.

The following chart depicts the Borough of Midland Park's Fund Balance from 2009 through 2012:

Year	Total Fund Balance	Decrease from Prior Year
2009	\$3,130,891.90	-----
2010	\$2,840,004.26	(\$290,887.64)
2011	\$2,693,568.63	(\$146,435.63)
2012	\$2,341,390.77	(\$352,177.86)
<b>Overall Decrease 2009-2012</b>		<b>(\$789,501.13)</b>

#### **Tax Levy and Appropriations Cap:**

In 2010, the New Jersey Legislature enacted the 2010 Cap Law that amended the 2007 Cap to a 2% cap with modified exclusions as follows:

- Allowable Shared Service Agreements Increase
- Allowable Health Insurance Cost Increase (in excess of 2% and limited by the increase in State Health Benefit rate increase (10.3% for 2012)
- Allowable Pension Obligations Increase (contributions in excess of 2%)
- Allowable LOSAP Increase
- Allowable Capital Improvements Increase
- Allowable Debt Service, Capital Leases and Debt Service Share of Cost Increases
- Recycling Tax Appropriation
- Deferred Charges to Future Taxation Unfunded
- Current Year Deferred Charges: Emergencies (Weather and other "Declared" Emergencies)

The Township is still subject to the 1977 CAP Law that

established the original municipal Appropriation Cap. The most recent amendments to this Cap in 2003 imposed a 2.5% limit on increases on municipal appropriations.

In 2012, the Borough's allowable appropriations before additional exceptions were \$6,481,923.70 (P-7). CAP banking monies from 2010 of \$209,709.50 and from 2011 of \$91,210.30 were used for the cap calculation along with the assessed value of new construction in the amount of \$6,098.34 and a COLA Rate Ordinance of \$63,238.28 (P-7). Total additional modifications to the CAP were \$370,256.42 (P-7). The total allowable appropriations within "CAP" were \$6,852,180.12 (P-7). The appropriations in the 2012 budget within "CAP" were \$6,604,688.48 (P-7). The Borough is under the 2.5% Appropriations CAP by \$247,491.64.

Midland Park's 2012 2% tax levy cap calculation resulted in a maximum allowable amount to be raised by taxation of \$6,367,479.98 (P-7). The amount to be raised by taxation for municipal purposes was \$6,288,932.97 (P-7). The Borough is under the 2% Tax Levy CAP by \$78,547.01.

The Appropriation CAP calculation for Midland Park for the 2013 budget had not been completed.

The 2010 CAP Levy Cap Calculation for Midland Park for the 2013 budget suggests the current budget plan is \$115,390 under the maximum allowable amount to be raised by taxation (B-23).



The Township is under the cap because of \$172,369 adjustments to the tax levy prior to exclusions (B-23).

In summary, I have considered the financial impact of my award on the Employer's ability to stay within the Appropriations CAP and Levy CAP. Although the Appropriations CAP has not been calculated for 2013, the cost of my award at 2% increase to base salaries will not exceed the cap of 2.5%. Further, because of attrition, it will cost the borough less in base salary costs in 2013 than it did in 2012. In addition, the Borough will not exceed the levy cap as it is already under the cap amount by \$115,390 and my award is well within that limit. Accordingly, I conclude that the award herein will not result in the Borough exceeding either its Appropriation CAP or its Levy Cap.

Internal Comparables:

According to Chief Financial Officer Laurie O'Hanlon, the salaries of the town's police officers exceed any department in the Borough (T-72). No other data was provided concerning pay increases or benefits for the Borough's civilian workforce.

External Comparables:

Both parties made comparisons of Midland Park's compensation package and benefits to other municipalities, but their respective universe of comparable data differs dramatically. The PBA offered these comparisons to other

municipalities, which it characterized as within the area. As to comparison of top pay for patrolmen, the PBA offers:

<b>MUNICIPALITY</b>	<b>2013 TOP SALARIES</b>
Wyckoff	117,281
Washington Township	110,407
Closter	122,785
Allendale	116,079
Glen Rock	113,594
Hawthorne	105,892
Oakland	116,492
Paramus	130,010
Ridgewood	130,244
Saddle Brook	119,623
Wallington	<u>115,796</u>
Total Salaries	1,298,203
<b>2013 Average Top Police Officer Rate</b>	<b>118,018</b>
Midland Park Police Officer 2012	<u>113,402</u>
Midland Park 2012 Salary vs. 2013 Avg.	(4,616)
Amt. Required to Increase Midland Park to Avg.	4.00%

The Borough used, for a universe of comparison, the entire County of Bergen, with its 57 municipalities. It summarizes its data, taken from exhibits B-5, 88, 92 and 94, with this chart<sup>7</sup>:

	2013	2014	2015
County Average Step 1	\$38,622	\$38,868	\$42,065
Midland Park Step 1	\$32,592	\$33,081	\$33,577
County Average Top Step	\$116,581	\$118,799	\$123,525
Midland Park Top Step	\$114,536	\$116,254	\$117,998
County Average Sgt.	\$124,979	\$127,062	\$130,787
Midland Park Sgt.	\$120,101	\$121,903	\$123,731
County Average Lt.	\$132,551	\$135,000	\$139,422
Midland Park Lt.	\$125,669	\$127,554	\$129,468

<sup>7</sup>The Town's estimates for Midland Park salaries include the town's proposed across-the-board increases.

Both sets of data seem to present less than an accurate picture of relevant comparable pay rates. It should be noted that Midland Park is near the western edge of Bergen County, just over a mile from the Passaic border. The PBA's choice of towns, including Closter (5 towns east of Midland Park, Wallington (5 towns south of Midland Park) and Saddle Brook (4 towns southeast of Midland Park) but not including area towns as cited by the PBA's own witness as area towns in the common service area of Midland Park) seems to be a cherry-picking approach. On the other hand, the County's 57 municipality comparison may be overly broad --- it is doubtful that, for example, Midland Park could fairly be compared with wealthy towns such as Alpine, Upper Saddle River, Englewood Cliffs or Tenafly.

That said, however, both the data presented by the PBA and that of the Borough show that Midland Park's police officers have a lower starting salary, a lower top-top salary for patrolmen, a lower sergeants pay, and a lower lieutenant's pay than the average. Further, the full award available under the 2% hard cap will still not bring these officers to average pay, especially in light of the fact that Midland Park police do not have a longevity program.

**Cost of Living:**

Nationwide, the Consumer Price Index for All Urban customers (CPI-U) increased 1.6% over the last 12 months

to an index level of 230.280. However, the Chained - Consumer Price Index - for All Urban Customers (C-CPI-U) increased 1.5% over the last 12 months (P12). The C-CPI-U is designed to be a closer approximation to a cost-of-living index in that it, in its final form, accounts for any substitution that consumers make across item categories in response to changes in relative prices (P-12). The 2013 indexes are initial estimates and are subject to two revisions.

The automatic Cost of Living Adjustment (COLA) is, by law, tied to the CPI. For 2012, Social Security recipients received a 3.6% increase in their monthly payments. This was the first increase since 2009. The January 2013 Cost of Living Adjustment was 1.7%.

Further, I take administrative notice of the salary increase analysis, periodically published by the Public Employment Relations Commission on its website, that the average wage increase for contracts awarded in calendar year 2012 was 1.86%, while the average increase achieved through voluntary settlement was 1.77%.

2% Cap:

I have considered all of the parties' arguments and the facts in the record. I have specifically considered that in comparison to other surrounding municipalities, Midland Park's

pay scales are below average and that their current benefits do not include a longevity plan. I have also considered the cost of living, Employer's ability to pay under the caps, and the need to have a competitive salary package while considering the public interest, and maintaining employee morale. However, in applying the statutory criteria, I find that absolute weight must be given to the statutory 2% "hard cap."

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

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

\* \* \*

Here, the base year is 2012, the last year of the expired contract. The police unit (excluding the chief) had a total of 14 officers, including superiors that worked at least some time in 2012.<sup>8</sup> Six of the patrolmen were in steps on the salary guides, two patrolmen were at top pay of \$113,402,

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<sup>8</sup> A 15<sup>th</sup> officer, Ptl. Joseph Gaeta, was on long-term suspension without pay for all of 2012, and continues to be in that status. Thereafter, I have not factored in his salary to any calculation herein.

four sergeants were at a contractual salary of \$118,918, and two lieutenants had a salary of \$124,425. Pursuant to the contract, employees move to the next step on the salary guide on the anniversary of their hiring date. This means that officers moving through the guide had to have their increments pro-rated to their anniversary date. In addition, one officer left the force mid-year, a lieutenant was promoted to chief mid-year, and a patrolman was promoted to sergeant mid-year. Salaries for each of these individuals were pro-rated to obtain a true aggregate cost of base pay the Borough actually paid to unit employees during 2012. The chart that follows reveals the calculations for how I arrived at total base salary paid in 2012:

Empl Name	Date of Hire	Rank	2012 Base Pay ( 1/1/12)	Step Incr	% of Year	Prorated Increment	Total Base Paid
Berninger Jr	7/1/2012	Patrol	32,269	0	50.0%	\$0	16,135
Burke *	5/10/2012	Patrol	32,269	0	47.3%	\$0	15,263
Bedoe	9/12/2011	Patrol	32,269	8,292	30.0%	\$2,488	34,757
Canonico	9/27/2010	Patrol	40,560	8,291	26.0%	\$2,156	42,716
Birch	1/1/2007	Patrol	71,466	9,800	100.0%	\$9,800	81,266
Van Dyk	1/1/2007	Patrol	71,466	9,800	100.0%	\$9,800	81,266
Gaeta +	6/1/2006	Patrol	113,402	0		\$0	0
Junta	1/1/2004	Patrol	113,402	0		\$0	113,402
Vander Pyl	1/1/2004	Patrol	113,402	0		\$0	113,402
Gibbons	7/1/2001	Sgt	118,912	0		\$0	118,912
Kasbarian	1/1/1994	Sgt	118,912	0		\$0	118,912
Powderley	1/1/1992	Det/Sgt	118,912	0		\$0	118,912
Van Vliet **	7/16/1997	Sgt	116,157	0		\$0	116,157
Vandenberg	8/21/1985	Lt	124,425	0		\$0	124,425
Marra ***		Lt	124,425	0	83.3%	\$0	103,646

						\$24,243	1,199,170.00
						2% =	\$23,983
+ Gaeta was suspended without pay for all of 2012							
* Burke resigned 11/1/12							
** Promoted to Sgt. 7/1/12							
*** Promoted to Chief 11/1/12							

As the chart<sup>9</sup> shows, the aggregate base salary paid was \$1,199,170. Therefore, 2% of the total base paid in 2012 is \$23,983. This is the maximum that I can allocate for salary increases for each year of the contract, although I am permitted to distribute that amount unevenly across the contract period. Therefore, for the life of a two-year contract, the total maximum increase may not exceed an aggregate of \$47,966 (\$23,983 x 2 years). Moreover, it must include the amounts needed to fund across-the-board increases and any step guide increments for each year of the contract as well. See, Borough of New Milford. This presents a troubling dilemma.

Under the present guide, in 2013, the cost of the increments will be \$28,395, while in 2014, the increment costs, counting the flow-through from 2013 increments, is \$53,471<sup>10</sup>, for a total

<sup>9</sup> This chart was developed based upon a list of employees provided by the Borough. The Borough's original list and its second attempt at a list did not include salary for Lt. Marra and Officer Burke, both of whom worked part of 2012. It also showed a salary for Gaeta. At the hearing it was revealed that Marra and Burke had both been paid salary for some periods in 2012 and that Gaeta had been on a long-term suspension for all of 2012. Therefore, at my direction, the Borough produced a revised list after the hearing but before the filing of briefs.

<sup>10</sup> In 2014, Birch and Van Dyk go from "7<sup>th</sup> year step" to "top step" with an increment cost of \$22,337 each. Berringer goes from 2nd year to 3rd year: \$40,560 to \$48,851, an increment of \$8291, on July 1. The cost of his increment pro-rated for 2014 is \$4145.50. In 2014, Bedoe will go from Step 3

of \$81,866. Thus, it is apparent that the cost of just funding the step increments for 2013 and 2014 on the existing guide already exceeds the two-year hard cap limitation on increases (\$47,966) by \$33,900.

In situations where the cost of maintaining the existing salary structure exceeds the allotted potential increase under the 2% hard cap, generally speaking, there are three alternatives. First, I could award a freeze of the salary guide, thus freeing up all of the potential increase money for across-the-board cost of living adjustments. Second, I could restructure the salary guide to provide a greater number of salary steps, each for a smaller increment amount, which would reduce the total cost of increments to be paid. Third, because the statute permits me to award increases year to year in unequal amounts, I could in essence, borrow money from the next years' 2% allotment to fund the current year's existing guide.

Here, however, because the Borough has already paid two employees their increments in 2013, option number one - freezing the salary guide for other employees still in step, would not be an attractive alternative. Giving some employees their increments while depriving other employees of their expected increments later in the year would advantage some unit employees

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to step 4: \$48,851 to \$57,142 on September 12. The cost of his increment pro-rated for 2014 is \$2496. In 2014, Cononico will go from step 4 to step 5 on September 27. The cost of his increment in 2014 will be \$2156.



and unfairly disadvantage others. I feel it is in the interest of maintaining unit stability and morale to pay all employees who are increment eligible some measure of their increment for 2013. However, paying all employees their increment in 2013 would create two negative results: it would deprive all employees at the top of the salary guide, as well as the superiors, from getting any raise at all; and it would eat up all of the pot of money available to 2013 as well as part of the 2014 pot.

At the same time, continuing the existing salary guide would continue to perpetuate the present problem, which will only get worse next year, as the two employees on Guide A-2 reach a "bubble step" of \$22,337. If this guide is continued as is, the increments for these two employees alone will need a payout of \$44,674, which will again exceed the 2% hard cap. It will also again leave no money left from which to give employees at the top of the guide and the superior officers any cost of living increase at all.

Therefore, choosing from among the least of all evils, I award the following:

**2013:**

-The following salary guide will be in effect for all employees all employees hired on or after April 1, 2013:

<u>Step</u>	<u>Salary</u>	<u>Diff</u>
During 1st Year	32,269	
During 2nd Year	39,644	7,375
During 3rd Year	47,019	7,375
During 4th Year	54,394	7,375
During 5th Year	61,769	7,375
During 6th Year	69,144	7,375
During 7th Year	76,519	7,375
During 8th Year	83,894	7,375
During 9th Year	91,269	7,375
During 10th Year	98,644	7,375
During 11th Year	106,019	7,375
After 11th Year	113,402	7,383
Sgt	118,912	5,510
Lt	124,425	

-All employees currently on Salary Guide A-1 will be placed at the top step of the new guide.

- Guide A-2 will be modified as follows:

<b>(Hired After 9/25/06)</b>		
<u>Step</u>	<u>Salary</u>	<u>Diff</u>
During 1st Year	32,269	9,800
During 2nd Year	42,069	9,798
During 3rd Year	51,867	9,800
During 4th Year	61,667	9,799
During 5th Year	71,466	9,800
During 6th Year	81,266	9,799
During 7th Year	91,065	7,445
During 8th Year	98,510	7,446
During 9th Year	105,956	7,446
During 10th Year	113,402	
Sgt	118,912	
Lt	124,425	

-Employees currently on 7<sup>th</sup> year step of the existing A-2 guide will move to the 8<sup>th</sup> year step on the revised guide on their next increment date (January 1, 2015).

- All employees currently on Guide A-3 will be placed on the new guide on their anniversary dates in 2013, and will receive adjustment pay in lieu of increment, as follows:

Berringer will go to step 2 (\$39,644) and will receive adjustment increase in lieu of increment of \$7375;

Bedoe will go to step 3 (\$47,019) and will receive adjustment increase in lieu of increment of \$6459;

Canonico will go to step 4 (\$54,394) and will receive adjustment increase in lieu of increment of \$5,543.

2014:

- Employees shall be frozen at the steps set forth above on the salary guide.
- Across-the-board increase of 2.0% effective 9/1/14.

**COST OF THE AWARD**

<u><b>Years</b></u>	<u><b>Cost of ATB Increases</b></u>	<u><b>Cost of Increments (Ees on A-2 Guide)</b></u>	<u><b>Cost of Adjustments in lieu of Increment (Ees on A-3 Guide)</b></u>	<u><b>Total</b></u>
2013		19,598	7,073	26,671
2014	7,659		12,304 *	19,963
<b>Totals</b>	<b>7,659</b>	<b>19,598</b>	<b>19,377</b>	<b>46,634</b>

\*This represents the flow-through costs from the 2013 pay adjustments.

Thus, the total cost to the Employer for the contract period

2013-2014 is \$46,634 which is below the total cap limit of \$47,966.

This award will provide employees still progressing through the step guide with some step movement, while also providing a small cost of living increase to all employees. At the same time, it will adjust the salary guides to provide a slightly slower progression to top step (in 12 years). The new guides will lower the increment burden on the employer and nearly equalize the amounts between steps. This in turn will also prevent all employees from slipping further below average wages in the County. Candidly, I can do no better, given the tight limitations of the 2% cap law, to address the issues of comparability with other municipalities and the effects this award might have on employee morale and the police force's ability to attract and retain quality staff.

I have taken the public interest and the limitations on the employer into account, including the Appropriations CAP and the Levy CAP. This award is well within the caps. In fact, the employer's total cost for base pay for the bargaining unit in 2013, including this award, is less in 2013 than its total base pay cost in 2012.

As to the Employer's proposal to re-label the guides, by replacing "during each year" with "after each year", I believe this proposal is merely semantics and is unnecessary.

**Sick Leave (Article XII):**

Midland Park police currently receives the following contractual allotment of sick leave:

<b>Length of Service</b>	<b>Sick Leave Allotment</b>
Under 2 Years	28 days
2-5 Years	56 days
5 Years and Over	96 days

Further, the contract provides that, if the employee's disability continues beyond the period for which full benefits are provided, benefits are then paid at 50% of the basic rate of pay for the period, not exceeding one year.

The Borough proposes to reduce sick leave allotments to the following:

Up to 2 years	15 working days
2 years and up to 5 years	25 working days
5 years and over	40 working days

In addition, the Borough seeks to add: "There shall be no carryover or accumulation of sick leave." It also seeks to eliminate paragraphs which provides for a bonus of extra personal days for non-use of sick time.

The Borough argues that its proposal to decrease the sick leave allotment and to eliminate the carryover of sick leave is reasonable given the Borough's attempt to achieve long-term economic stability and taking into account the fiscal health of the Borough's taxpayers. Further, the Borough argues, even the reduced allotment it proposes will still

exceed the average sick leave allotment in other Bergen County municipalities as shown in the following chart:

Annual Sick Leave County Average	14.16 working days
Annual Sick Leave County Low	3 working days
Midland Park Annual Sick Leave*	15 working days (up to two Years' service)  25 working days (two to five years of service)  40 working days (five years of service plus)

\*Pursuant to the employer's proposal

The Borough advances no argument about why sick leave should not be accumulated from year to year. Nor does it provide any data that would demonstrate that other municipalities have eliminated that provision. Further the Borough has not explained its rationale for eliminating the provision which permits officers to sell back some of their unused sick leave in exchange for personal leave days.

The PBA responds that this proposal, as well as the Borough's proposal to reduce terminal leave, is wholly unsupported by the Employer's proofs and both proposals are merely attempts to diminish the employees' compensation and benefits package. The PBA emphasizes that unlike virtually all area law enforcement groups, Midland Park officers have no longevity program. It argues that these two proposals would

ruin the compensation program for both incumbents and potential hires.

On its surface, the current sick leave allotment appears to be far more sick leave than an officer would be expected to ever need for illness or disability, particularly if it accumulates from year to year. Theoretically, a five-year officer could be out on fully paid leave for four and one-half months at taxpayers' expense. In addition, once leave time is exhausted, the officer then goes on half-pay status for the rest of the year. The provision seems extravagant, at least as compared with the allotment of sick leave granted by other municipalities. It is obvious that, with the size of this department, having more than one officer out on sick leave at any one time would very likely result in manpower shortages that would have to be filled with overtime. This leads to budgeting unpredictability and a potential for a major overtime bill for the Borough. It is also a benefit that far outpaces anything found in the private sector.

On the other hand, the Borough has not provided me with any actual data on sick leave usage among the unit employees, so it may be that the leave allotment, at least for current employees, is just a number in the contract.

I intend to reduce the amount of contractual sick leave allotment for officers hired after the date of this award to a

more realistic allotment. I reach this conclusion based on comparative data and with the belief that it is not in the public interest to continue such an extravagant benefit into the future. As to the PBA's argument that awarding such a modification for new hires will "ruin" the compensation plan and cause employees to turn away from careers with Midland Park, I would doubt that starting a job with this town with 15 sick leave days and being eligible for 40 working days sick leave after five years would be a deterrent to accepting a police officer position in Midland Park. I have also given weight to the Township's ability to pay in overtime expenses for such sick leave usage going forward.

For current employees, I will leave the existing sick leave allotment intact. I will also continue the existing practice of permitting employees to accumulate sick leave from year to year, and the contract provision that permits employees to trade unused sick days for personal leave. The latter provides an incentive to employees to conserve their sick leave days and take them as personal days in a pre-planned manner. I do so because the Borough has not provided sufficient proof that, for current employees, sick leave usage has been a problem. The Borough's proposal concerning the number of days' sick leave allotment for new hires is awarded. The remainder of the proposal is rejected.



**Terminal Leave Pay (Article XXIX) :**

Section A of this Article currently provides that,

Each employee who retires under the conventional retirement option shall be granted sixty (60) working days as Terminal Leave. Other types of retirement are explicitly excluded under this clause.

The Borough proposes to reduce terminal leave to twenty (20) days for current employees and eliminate the benefit entirely for all employees who commence employment on or after January 1, 2013. It argues this proposal is fair and reasonable, and will bring the Midland Park's terminal leave provisions in line with contracts between other Bergen County municipalities and their police unions. The Borough asserts that elimination of terminal leave for police officers is common-place in Bergen County, points out that numerous municipalities, including Allendale, Carlstadt, Cliffside Park, Garfield, Ridgefield Park, and Wallington, have already eliminated terminal leave allotments for their police officers (B-101). It contends that its proposal should be accepted because it will enable the Borough to stabilize its economy, reduce the financial burden to its taxpayers and decrease the continuous use of its surplus funds.

The PBA responds that this proposal is wholly unsupported by the Employer's proofs, and is merely another attempt to diminish the employees' compensation and benefits package. It offered instead, that officers could accept their terminal leave

payments over a three-year period, without interest accruing, rather than in one lump sum. It suggests that this would ease the burden of a big payment on the municipality, while at the same time, give retiring officers an easing-in period after retirement from the Borough, and soften the tax bite of a lump sum payment. The Borough has accepted this latter offer.

I award a modified version of the Borough's proposal. I will reduce the terminal leave benefit for new hires to 40 days pay, but the 60-day benefit will stay in place for all current employees. It is in the public interest not to have an obligation to continue to pay employees once they retire. However, I have specifically considered that senior officers and superiors in this department, unlike many others, do not have a longevity plan, nor are they able to cash out sick leave upon retirement. The terminal leave benefit, for existing employees, is roughly comparable to a longevity plan wherein employees are paid say 7% of their salary as a longevity "bonus" after so many years of service. Hypothetically, if an officer is paid 7% of his salary for each year of service after 20 years (as is not uncommon in towns where there is a longevity plan), 7% of a 260-day work year for the last five years of his employment (years 20 to 25) would equal 91 days' pay ( $7\% \times 260 \times 5 \text{ years}$ ). 60 days of terminal leave pay is still a "better deal" for the Borough than even a very modest longevity plan as described

above. Further, current employees, especially senior employees who are approaching retirement eligibility, would be cheated out of a long-anticipated retirement incentive if this benefit were now suddenly reduced. Accordingly, I will not award a reduction of the existing terminal leave plan for current employees.

**EDUCATIONAL INCENTIVES:**

The PBA proposes to eliminate the "grandfathering" language in Article XXXII. This article contains two provisions which have language grandfathering a benefit. Paragraph C entitles any officer who has attained a bachelor's degree or an associate degree from an accredited college or university in the field of Business Administration prior to January 1, 1985 to be paid a yearly stipend as described in Paragraphs A and B.<sup>11</sup>

Paragraph F of the same article provides,

Any unit employee employed on or prior to September 25, 2006 who is currently receiving or who may qualify in the future for the receipt of a stipend for having attained a college degree and/or EMT certification pursuant to the requirements set forth in Article XXXIII of the agreement that expired on December 31, 2004 shall, effective January 1, 2006 of thereafter, have such stipend placed into his or her base pay for all calculations purposes. Except for the continued application of the requirement and stipend amounts set forth in Article XXXIII of the Agreement that expired on December 31, 2004 for employees employed on the date of this award, Article XXXIII shall be eliminated from the Agreement.

The PBA has not provided an explanation or any argument

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<sup>11</sup> Paragraphs A and B entitle officers for receive a yearly stipend of \$1200 for a bachelor's degree or \$600 for an associate degree, but the degree must be in the fields of criminal justice, police science, public safety or police administration.

concerning what its proposal relates to, or what objective it seeks by the proposal. It is not clear from the proposal whether the PBA is asking to amend paragraph C or paragraph F or both. The Borough states in its brief that it believes the PBA is asking to modify paragraph F, but also makes no argument about this proposal.

It appears to me that the language of paragraph C has possible continued applicability to unit employees. Five unit employees are currently receiving college incentive stipends. It is not possible to tell from the record whether any of those stipends are based upon the language of paragraph C. Further, paragraph F refers back to benefits detailed in the contract which expired in 2004, which is not in the record. Therefore, I am at a loss to discern what the PBA's objective is in its proposal, nor is this proposal supported in the record. Therefore, the proposed modification must be denied.

#### **AWARD**

##### **Length of Contract:**

Two-year contract covering the period January 1, 2013 through December 31, 2014.

##### **Salaries:**

2013: A-3 Salary Guide shall be revised as follows:

<b>Revised A-3 Guide (Ees Hired After 6/1/10)</b>		
<u>Step</u>	<u>Salary</u>	<u>Increment</u>
During 1st Year	32,269	
During 2nd Year	39,644	7,375
During 3rd Year	47,019	7,375
During 4th Year	54,394	7,375
During 5th Year	61,769	7,375
During 6th Year	69,144	7,375
During 7th Year	76,519	7,375
During 8th Year	83,894	7,375
During 9th Year	91,269	7,375
During 10th Year	98,644	7,375
During 11th Year	106,019	7,375
After 11th Year	113,402	7,383
Sgt	118,912	5,510
Lt	124,425	

- All employees hired after April 1, 2013, shall be placed on the revised A-3 guide.
- All employees currently on A-3 Guide in the expired contract will remain on that guide/step until their anniversary date. On their anniversary date in 2013, they will be placed on the revised A-3 Guide as set forth above and will receive adjustment pay in lieu of increment, as follows:

Berringer will go to step 2 (\$39,644) and will receive adjustment increase in lieu of increment of \$7375;

Bedoe will go to step 3 (\$47,019) and will receive adjustment increase in lieu of increment of \$6459;

Canonico will go to step 4 (\$54,394) and will receive

adjustment increase in lieu of increment of \$5,543.

- A-2 Salary Guide shall be modified effective 1/1/2014, as follows:

<b>Salary Guide A-2 Eff 1/1/14 (Hired After 9/25/06)</b>		
<b><u>Step</u></b>	<b><u>Salary</u></b>	<b><u>Increment</u></b>
During 1st Year	32,269	9,800
During 2nd Year	42,069	9,798
During 3rd Year	51,867	9,800
During 4th Year	61,667	9,799
During 5th Year	71,466	9,800
During 6th Year	81,266	9,799
During 7th Year	91,065	7,445
During 8th Year	98,510	7,446
During 9th Year	105,956	7,446
During 10th Year	113,402	
Sgt	118,912	
Lt	124,425	

- Employees currently on the 7<sup>th</sup> year step will remain there for the remainder of 2013 and will move to the 8<sup>th</sup> year step on the above revised guide on their next increment date (January 1, 2015).

2014:

- Employees shall be frozen at the steps set forth above on the salary guide.
- Across-the-board increase of 2.0% effective 9/1/14.
- After 2014, employees will resume annual movement on the step guides.

**Call-Back Time:**

Modify Article X concerning call-back pay to increase the minimum number of hours from two hours to three hours.

**Sick Leave:**

Sick leave allotment for employees hired after April 1, 2013, shall be as follows:

- Up to 2 years	15 working days
- 2 years and up to 5 years	25 working days
- 5 years and over	40 working days

**Terminal Leave:**

Terminal leave benefits for employees hired after April 1, 2013, shall be as follows:

Each employee hired after April 1, 2013 and retires under the conventional retirement option shall be granted forty (40) working days as Terminal Leave. Other types of retirement are explicitly excluded under this clause.

Add the following provision:

Terminal leave may, at the option of the employee, be paid out in three equal installments over a three-year period following the employee's retirement date.

**Health Benefit Contribution:**

Modify the provision to provide that employees shall contribute to the cost of health care premiums in accordance with Chapter 78, P.L. 2011.

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

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

Susan W Osborn  
Susan W. Osborn  
Interest Arbitrator

Dated: March 28, 2013  
Trenton, New Jersey

On this 28th day of March, 2013, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

Pamela Jean Sutton Browning  
**PAMELA JEAN SUTTON-BROWNING**  
ID # 2424173  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
My Commission Expires August 20, 2017

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