

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

XXX )  
In the Matter of the Arbitration Between )  
TOWN OF HACKETTSTOWN, )  
**EMPLOYER** )  
AND )  
PBA LOCAL 369, )  
**UNION** )  
XXX )

**INTEREST ARBITRATION  
OPINION AND  
AWARD**

DOCKET NO. IA-2009-111

**BEFORE  
GERARD G. RESTAINO  
INTEREST ARBITRATOR**

APPEARANCES:

FOR THE TOWN OF HACKETTSTOWN  
STEVEN GLICKMAN, ESQ.

COUNSEL FOR TOWN

FOR PBA LOCAL 369  
JAMES METS, ESQ.

COUNSEL FOR PBA

## **PROCEDURAL BACKGROUND**

The parties in this dispute, the Town of Hackettstown and PBA Local 369, are signatories to a collective negotiations agreement that expired on December 31, 2008. The parties notified the New Jersey Public Employment Relations Commission (PERC) that they have selected the undersigned to be the Interest Arbitrator in the instant dispute.

On June 22, 2009, I received formal notification from PERC that I was appointed the Interest Arbitrator.

I held informal mediation sessions with the parties on August 31, October 20, 2009, and April 4, 2010, in the hopes of reaching a voluntary successor agreement. It became apparent that a voluntary successor agreement could not be reached, and a formal interest arbitration hearing was scheduled for November 22, 2010. During February 2011 the parties submitted voluminous documentation in support of their positions. I continued efforts to try and reach voluntary closure on a successor agreement. The parties submitted post-hearing briefs in December of 2011.

The parties did not agree upon an alternative terminal procedure. Accordingly, the procedure in the instant matter will be covered by conventional arbitration. Conventional arbitration is a much more flexible process that allows the Arbitrator to review all of the facts and documents submitted, as well as to review the testimony in the record and make a determination away from the requirement of selecting any component of a final offer by either party.

I am required by N.J.S.A. 34:13(a)-16(g) to separately determine whether the total net annual economic changes for each year of the Agreement are reasonable

under the non-statutory criteria set forth in subsection (g) of this section. These factors, which are commonly referred to as the statutory criteria, are set forth below:

- (g) 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 of each relevant factor:
  - (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. 40aA: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 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 jurisdiction, 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:4-45.1, 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 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 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; 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 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 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).

## **FINAL OFFERS OF THE PARTIES**

### **FOR THE TOWN OF HACKETTSTOWN**

#### **1. Duration**

The Town proposes a two (3) year contract commencing January 1, 2009 and expiring on December 31, 2011.

## **2. Contract Proposals**

The Town proposes the status quo for the life of the contract. In other words, the Town proposes that the collective bargaining agreement currently in effect remain in effect through December 31, 2011 without any changes whatsoever awarded.

### **PBA LOCAL 369'S FINAL OFFER**

#### **1. ARTICLE IX, SALARIES**

A. All base salaries to be increased effective and retroactive as follows:

January 1, 2009	3.50%
January 1, 2010	1.50%
January 1, 2011	2.25%
July 1, 2011	\$1300
January 1, 2012	2.50%

B. Add the following section: "The base pay for Sergeants shall be 15.0% above the top base pay step for a rank-and-file patrol officer. The base pay for Lieutenant shall be 10.0% above the top base pay step for Sergeant."

C. Delete the steps for Sergeants.

#### **2. ARTICLE XIII, SICK LEAVE**

Add the following section:

Each Officer shall have the option to cash-in accumulated, unused sick leave twice annually (First week of June and first week of November) to a maximum of 10 days per year. To be eligible, the officer must maintain 30 days in his bank at all times and shall provide the Town with 60 days' notice of June 1 and November 1 of his intent to cash-in sick time. Payments shall be made in the first pay period of July for the June cash-in and the first pay period in December for the November cash-in at the rate of pay in effect at the time of cash-in.

#### **3. ARTICLE XVII, CLOTHING ALLOWANCE**

Add the following:

Effective January 1, 2011, officers will no longer receive an annual clothing allowance. The cleaning allowance shall continue.

4. **ARTICLE XIX, HOSPITAL AND LIFE INSURANCE BENEFITS**

A. Add the following to Paragraph A:

Effective after May 21, 2010, all employees will contribute the statutorily required amount towards health insurance unless the employee elects to "opt-out." The legally mandated contribution shall replace all contractual contributions.

5. **ARTICLE XX, EDUCATION BENEFITS**

Increase each level of college credit (degree compensation) by 10% each January 1 of the contract. Also, delete the reference to "enrolled in the course of police science" and replace with: "enrolled in a course of study for a degree in police science, criminal justice, political science, history, public / business administration, education, accounting, sociology or psychology."

6. **NEW ARTICLE, OFFICER IN CHARGE ("OIC") PAY**

All officers who serve in the capacity of OIC shall be compensated at the Sergeant's rate of pay for each hour or part thereof for such service; each partial hour worked shall be rounded up.

7. **ARTICLE XXVII, DURATION OF AGREEMENT**

The PBA proposes a four-year term: January 1, 2009 through December 31, 2012.

**POSITION OF THE PARTIES**

**FOR THE TOWN OF HACKETTSTOWN**

**III. LEGAL ARGUMENT**

**A. LEGISLATION**

The New Jersey Employer-Employee Relations Act (the "Act"), N.J.S.A. 34:13A-1 et seq., has been amended with respect to interest arbitration. A "reemphasis" and "redirection" of the statute now provides greater awareness and significance of the

interest and welfare of the public. This is demonstrated by the following additional statutory provision:

It also is the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public; and

Further, it is the public policy of this State to prescribe the scope of the authority delegated for the purposes of this reform act; to provide that the authority so delegated be statutorily limited, reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good; and to mandate that in exercising the authority delegated under this reform act, arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved.

In rendering their awards, interest arbitrators are required to consider:

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 monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget.

Arbitrators must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under all the criteria set forth in the statute.

Significantly, this statute has been revised to provide for conventional arbitration, giving the interest arbitrator greater flexibility in rendering his or her award. The arbitrator is permitted to award the economic position of either party with respect to each and every economic item. The interest arbitrator is further permitted to reject the economic position of either or both parties on any economic item, and to fashion his or her own economic package. The same analysis holds true for non-economic items.

**B. BURDEN OF PROOF**

The New Jersey Supreme Court decided two companion cases which have had a significant impact upon the interest arbitration process. See Hillside PBA Local 207 v. Town of Hillsdale, Docket No. A-68 (May 17, 1994); Town of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, Docket No. A-69 (May 17, 1994). In Hillsdale and Washington, the Court examined the sufficiency of the evidence which the parties must present to an Interest Arbitrator and the relevance of the various eight statutory criteria. In Hillsdale, the Court instructed that "[i]n general, the relevance of a factor depends on the disputed issues and the evidence presented." Hillsdale, Slip Op. at 11 (citing N.J.S.A. 34:13A-6(f)(5); N.J.A.C. 19:16- 5.9). The Court also directed the Arbitrator to "determine which factors are relevant, weigh them, and explain the award in writing." Id. Further, the Court cautioned that the Legislature did not intend that any one factor would be dispositive. Id. The Court further explained,

As the statute states, an arbitrator need rely not on all factors, but only on those that the arbitrator deems relevant. An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence. An arbitrator who requires additional evidence may request the parties to supplement their presentations. . . . [T]he arbitrator need not require the production of evidence on each factor. Such a requirement might unduly prolong a process that the Legislature designed to expedite collective negotiations with police and fire departments. Id. at 14.

The Town contends that the Association has failed to meet its burden of proof with respect to its economic demands. The Association failed to present any testimony, argument or direct "evidence" to support any of the statutory criteria. Specifically, the Association failed to present any evidence to support its wage increase demand; the demand for increasing Sergeant's and Lieutenant's differential; its demand for incorporating clothing allowance in base salary; its demand regarding sick leave; its demand to increase educational benefits; and demand for Officer in Charge pay.

The Town asserts that the statute and relevant case law do not find the Association's presentation as meeting the burden of proof with respect to the statutory

criteria. The Association has failed to meet its burden of proof, and the Association's argument must be rejected in total!

On the other hand, the Town, through its exhibit book, supported its position of maintaining the status quo for the entirety of the new collective bargaining agreement.

**C. THE STATUTORY CRITERIA**

N.J.S.A. 34:13A-16(g) states that the Arbitrator must determine the dispute based upon "a reasonable determination of the issues." "Reasonableness" requires the Arbitrator to apply a subjective standard. The Legislature enumerated nine (9) statutory criteria to which the Arbitrator must give "due weight" in fashioning their decision. .

The Town submits that since the Legislature's amending of the Interest Arbitration statute "redirects" interest arbitrators, in rendering their awards to consider the impact of the award on the ability of the governing body to maintain existing local programs and services, expand existing local programs and services, or (c) initiate any new programs and services, the Town's ability to pay in this case takes priority over all other statutory criteria and supports the Town's economic position in its entirety.

The remainder of this section of the Brief will analyze the statutory criteria as they apply to the present interest arbitration matter, and will demonstrate that the Town's economic offer should be awarded as is, considering the statutory amendments to the criteria and even considering the conventional authority of the Interest Arbitrator.

**1. The Interest and Welfare of the Public**

The Act requires the Arbitrator to consider "the interest and welfare of the public" in reaching his or her determination. N.J.S.A. 34:13A-16g(1). This criterion focuses upon the priority to be given to the public employee's wages and other economic benefits within a municipality's finite budget and plans. Hillsdale PBA Local 207 v. Town of Hillsdale, Docket No. A-2750-91T5, Slip Op. at 28 (App. Div. March 17, 1993), rev'd on other grounds, Hillsdale PBA Local 207 v. Town of Hillsdale, Docket No. A-68 (May 17, 1994).

Generally, a public employer best serves the public interest by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services. While a municipality may have difficulty balancing these competing interests within the available budget, the municipality should not sacrifice fairness to its employees so that it may provide its residents with a plethora 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.

The Supreme Court recognized that although compulsory interest arbitration is an adversarial process between a public employer and its employees, the public is a "silent party" to the proceeding. Hillsdale, Slip Op. at 12. The Court described the impact the interest arbitration process has on the public:

This case arises from a salary dispute between a municipality and its police department, but its resolution inevitably will affect the public. In an era of rising costs and budget caps, a municipality feels the initial impact of salary increases for police and fire departments. The taxpayers, however, feel the ultimate effect.

Id. at 3. The Court also observed,

Compulsory interest arbitration of police and fire fighters' salaries affects the public in many ways, most notably in the cost and adequacy of police and fire-protection services. Indeed, section 16g expressly requires the arbitrator to consider the effect of an award on the general public. Hence, an award runs the risk of being found deficient if it does not expressly consider "the interest and welfare of the public." Id. at 12-13 (citations omitted).

Although the Act requires interest arbitrators to consider the impact of an award upon "the interest and welfare of the public," interest arbitrators frequently do not give this factor its proper weight in deliberations. The Arbitrator must consider the effect the award will have on the citizens and taxpayers of the Town of Hackettstown.

The public has criticized the interest arbitration process because of the high awards it produces. The average award granted wage increases to police and fire

personnel dramatically exceed inflation. This generalization holds true for Town police officers as well. If wage increases continue to outstrip inflation and private sector salary increases at the current pace, the relative burden on the taxpayer will continue to increase. The Town's economic package supports the public interest because it considers the interest of its taxpayers while still providing the PBA with a reasonable salary increase.

When the PBA developed their economic demands, they most obviously and properly take into account the wants and desires of their members while placing little weight, if any at all, on the interests and welfare of the public, the Town's ability to pay, the lawful authority of the Town and the financial impact on the governing unit, its residents and taxpayers. When the Town derives its economic proposal, it takes into account not only the needs and desires of the bargaining unit, but also the above-mentioned criteria. The Town is better equipped to properly gauge, weigh and consider these statutory criteria. The Town submits that its proposal, which is reasonable and takes into account all of the statutory criteria, must be the position awarded by the Interest Arbitrator, even though the Interest Arbitrator has conventional authority.

An important element in determining the interests and welfare of the public is the demographics of the municipality. The demographics of the Town are also important as they relate to the issue of comparability. The residents of the Town, are "fighting" an extremely low per capita income, median family income, median household income, net valuation taxable, and state equalized value, and are "saddled" with a high percentage of persons in poverty, households receiving public aid, percentage of households receiving social security, and a comparatively high municipal tax rate, effective municipal tax rate, and general/total tax rate.

It is in the interest and welfare of the public to maintain present benefit levels as best it can without increasing current or adding unwarranted benefits creating an additional fiscal burden upon the Town. There is no rationale for increasing the

compensation package for the Union's bargaining unit members. The additional fiscal burden is not in the interest and welfare of the public and there is no countervailing argument put forth by the Union to support its demand.

On the other hand the Town's economic proposal is reasonable, warranted, and in the interest and welfare of the public.

## **2. Comparability and Overall Compensation**

The Act requires the Interest Arbitrator to consider a 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 in (a) public employment in the same or similar comparable jurisdictions (b) in comparable private employment and (c) in public and private employment in general.

The Act also requires the Interest Arbitrator to consider 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. N.J.S.A. 34:13A-16(g) (2) and (3). The comparable and overall compensation exhibits submitted at the interest arbitration hearing demonstrate the reasonableness of the Town's position.

The Town respectfully suggests that the comparables and overall compensation exhibits support the Town's offer. A fortiori the Town's package must be selected, placing the burden upon the Union to make the strongest of showings on the comparables in light of the interests and welfare of the public, the lawful authority of the Town and the financial impact on the governing unit, its residents and taxpayers.

The Town submits that the "comparability" criterion does not mean that all municipalities must provide the same benefit or benefits. If this were the case, benefits would never change and all municipalities would provide the exact same benefit package. Encompassed within the "comparability" criterion is a consideration of trends

throughout the State and the nation, as well as a consideration of when “enough is enough.”

**(a) Comparable Municipalities**

The Town's salary exhibits reveal that in 2008, the Town's patrol officers ranked second (2<sup>nd</sup>) out of the eleven (1) reporting Warren County municipalities with respect to maximum salaries, \$3,000.00 above the County average (Town Exhibit Book, Tab 3). The Union failed to present any testimony or evidence regarding comparability that would support any of its economic demands.

**2008**

**WARREN COUNTY COMPARISON OF MAXIMUM POLICE OFFICER SALARIES**

<b>No.</b>	<b>Municipality</b>	<b>Date Effective</b>	<b>Salary</b>
1	Washington	1/1/2008	\$75,033. + CPI + 1%
2	Hackettstown	1/1/2008	\$73,048
3	Mansfield	1/1/2008	\$73,040
4	Phillipsburg	1/1/2008	\$72,018
5	Greenwich	1/1/2008	\$71,153
6	Lopatcong	1/1/2008	\$70,847
7	Independence	1/1/2008	\$70,505
8	Pohatpong	1/1/2008	\$70,285
9	Blairstown	1/1/2008	\$66,817
10	Oxford	1/1/2008	\$62,711
11	Belvidere	1/1/2008	\$62,209

**Average: \$69,788**

**Median: \$70,847**

**WARREN COUNTY COMPARISON OF STARTING POLICE OFFICER SALARIES**

No	Municipality	Date Effective	Salary
1	Mansfield	1/1/2008	\$49,402
2	Washington	1/1/2008	\$48,750 + CPI + 1%
3	Belvidere	1/1/2008	\$48,686
4	Phillipsburg	1/1/2008	\$47,439
5	Greenwich	1/1/2008	\$44,488
6	Lopatcong	1/1/2008	\$42,165
7	Independence	1/1/2008	\$42,147
8	Oxford	1/1/2008	\$40,123
9	Pohatcong	1/1/2008	\$40,000
10	Hackettstown	1/1/2008	\$39,545
11	Blairstown	1/1/2008	\$37,800

**Average: \$43,686**

**Median: \$42,165**

Based upon the above analysis, the Town submits that its economic offer must be accepted as is in that the Union has failed to meet its burden of proof and failed to establish any basis for its economic demands, especially in light of the other statutory criteria.

**(b) Other Employee Groups Within the Municipality**

The Association presented no testimony or evidence regarding other Town employees to support any of its economic demands.

**(c) National Wage Trends/Private Sector Employment**

National wage trends and private sector employment also highlight the reasonableness of the Town's economic offer. With State, County, and municipal governments calling for wage givebacks, wage freezes, other economic givebacks, furloughs, and layoffs, the Town's economic position is not unreasonable, while the Associations' demands are unrealistic and unaffordable.

### **3. The Lawful Authority of the Employer**

N.J.S.A. 34:13A-16g(5) requires the Interest Arbitrator to consider the "lawful authority of the employer" in determining whether the municipality or the union has proposed the more reasonable economic package.

As stated previously, the recent legislative amendments to the interest arbitration statute and budget laws have not only redirected the focus of interest arbitrators, but have also "reprioritized" the statutory criteria upon which interest arbitrators base their awards.

Because of this significant shift in emphasis and because the Town submits that its ability to pay and the interest and welfare of the public are now paramount, the Town respectfully requests that the Interest Arbitrator consider the Town's revised financial analysis, which include the 2011 and 2012 budget years, and will repeat the introduction of its financial analysis.

Traditionally, a municipality's "ability to pay" argument has focused on the Current Expense Budget appropriations. If a municipality was budgeted up to "cap", there was no need to consider long-term versus short-term budgetary strategies, capital expenditures, debt service, revenues, etc. If a municipality was budgeted up to "cap" it could appropriate no additional monies within its Current Expense Budget. The sole focus was on whether the municipality had reasonably appropriated monies on each and every line item in the Current Expense Budget.

If a municipality was not budgeted up to "cap", this did not mean that the municipality had the "ability to pay." In the narrow sense, if a municipality was not

budgeted up to "cap", there was room in the Current Expense Budget to appropriate monies for additional expenditures. However, to narrowly focus on this fact excluded the necessary considerations of long-term versus short-term budget strategies, necessary capital improvements, debt service and revenues.

However, the "traditional" analysis became virtually obsolete when Governor Corzine signed into law Chapter 62 of the Laws of 2007, which implements a property tax levy cap limiting municipalities to a four percent (4.0%) increase to the previous year's amount to be raised by taxation.

Previously, municipalities had discretion and flexibility in dealing with budgetary issues. So long as a municipality had room within the "Cap", it had discretion and flexibility in the expenditure side of the budget. Without a tax levy cap, a municipality had greater discretion and flexibility in the revenue side of the budget because of its ability to raise revenue through taxes.

With the implementation of the tax levy cap the discretion and flexibility of municipal budget strategies changed dramatically, with revenues playing a more significant role and expenditures becoming reactionary to the impact of revenues. Revenue inflexibility has also caused municipalities to consider long-range revenue projections when formulating current budgets.

Previous revenue analyses reviewed a municipality's surplus history, State Aid, and "one-shot deals", indicating that the inability of these revenue sources to fund budgetary expenditure increases left the remaining revenue burden to be shouldered by municipal taxes. With the statutory limitation on tax levy increases, there is virtually no revenue source over which the municipality has any control, discretion or flexibility to counter budgetary shortfalls in other revenue sources. This lack of control, discretion and/or flexibility requires municipalities to curtail expenditures in order to balance their budgets.

Due to the restrictions in New Jersey's "Cap" law, PL 1976, Ch. 68, as revised by PL 1990, Ch. 89 and PL 1990, Ch. 95, limiting increases within the Current Expense portion of the municipal budget to two and one-half (2.5%) per cent (three and one-half [3.5%] per cent with municipal approval), and due to the above-referenced recent legislation limiting municipal tax increases to four (4.0%) per cent, the traditional analysis does not apply to the Town's ability to pay. As outlined below, the Town's "ability-to-pay" argument centers around the revenue portion of the Town's budget. Additionally, there is no need to differentiate between Current Expense budgetary line items and expenditures excluded from the "cap", since Town revenues are generated to cover both within "cap" and excluded from "cap" expenditures.

#### **4. The Financial Impact on the Governing Unit, Its Residents and Taxpayers**

N.J.S.A. 34:13A-16g(6) requires the Interest Arbitrator to consider the economic offers' financial impact on the governing unit, its residents and taxpayers in determining whether the municipality or the employee representative presents the more reasonable final offer. The considerations under this factor "do not equate with a municipality's ability to pay." Hillsdale, Slip Op. at 17. The New Jersey Supreme Court emphasized that "[i]t is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award." Id. (quoting 263 N.J. Super. at 188 n.16). Moreover, the municipality does not carry the burden of proving its financial inability to meet the union's final offer. Id.

The Town's economic package considers the financial impact its award will have on the governing unit, its residents and taxpayers because it takes into account the State's bleak economic condition. The economy, as well as the legislative budget

amendments, impacts the Town's ability to raise taxes to pay the Association's economic demands. The effect of granting an economic benefit in excess of that proposed by the Town will have a detrimental impact on the Town's attempt to balance the budget while minimizing potential service reductions and/or layoffs.

However, as explained previously, any economic increase granted to the Association's members exceeding the Town's offer will have a detrimental impact on the Town's "ability to pay" with respect to municipal services and required projects.

In its amendments to the Interest Arbitration statute, the Legislature specifically requires the Interest Arbitrator to consider how the award will impact on the tax rate and the ability of the municipality to "(a) maintain existing local programs and services, (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget."

Based on the arguments set forth above, it is the position of the Town that awarding any economic package beyond that offered by the Town would have a detrimental financial impact on the governing unit, its residents and taxpayers, and therefore the Interest Arbitrator must award the Town's economic offer as is.

**5. The Consumer Price Index/Cost of Living**

N.J.S.A. 34:13A-16g(7) requires the Interest Arbitrator to consider the consumer price index ("CPI") in determining whether the municipality or the employee representative has proposed the more reasonable economic package.

The CPI measures a wage earner's purchasing power. When a wage earner receives a salary increase equaling the CPI increase, the wage earner theoretically will be able to continue to maintain his or her standard of living.

The Town contends that in light of the present and projected cost of living figures and considering the Town's ability to pay and the impact on the Town's residents and taxpayers, the Town's proposal is more realistic and reasonable than the Union's economic demands or any package in between, and should be awarded as is.

#### **6. Continuity and Stability of Employment**

N.J.S.A. 34:13A-16g(8) requires an Interest Arbitrator to consider the "continuity and stability of employment" in determining whether the municipality or the employee representative presents the more reasonable economic package. The continuity and stability of employment is an important statutory criterion. The Town contends that its economic proposal would best allow the Town's work force to maintain and continue at present levels. If the Interest Arbitrator were to award an economic benefit in excess of that offered by the Town, the ability of the Town to maintain the continuity and stability of present levels of employment would be hampered as explained above.

In both the public and private sectors, the economy has tumbled into a recession. When composing its economic position, the Town took the continuity and stability of employment into consideration, since its goal is to maintain as much as possible a stable level of governmental services. To the contrary, the goal of the PBA's is to obtain the greatest economic advantages for their members.

Based on the above, the Town contends that when the Interest Arbitrator considers the criterion of stability and continuity of employment, he must award the Town's economic proposal as is.

#### **IV. CONCLUSION**

These are unusual times that call for what some might consider unusual fiscal measures. The nationwide recession was magnified by the events of September 11. The new administration in New Jersey is faced with an unprecedented budget shortfall.

The full fiscal impact of these circumstances on municipalities and their residents will not be known for some time. This is not the atmosphere to blindly grant salary increases based upon the "going rate." This is not the time to increase benefits. It is the time to implement wage freezes and cost containment measures such as the Town's proposed insurance change, which have no detrimental impact on Town employees while recognizing the Town's inability to pay and honoring the legislative directive to consider the impact and welfare of the public.

The Union's presentation fails to meet their burden of proof. The Union failed to produce any evidence regarding any of their demands to meet the statutory criteria. The Union's failure to present evidence in support of the statutory criteria and established case law precludes the Interest Arbitrator from legally considering, let alone awarding, any of the PBA's demands.

The Town's economic package more reasonably reflects the statutory criteria than the Union's economic package. It considers the interest and welfare of the public, the officer's overall compensation package, salaries and benefits of other

employees including police employees in nearby communities, public sector employees in New Jersey and nationwide, and private sector employees in New Jersey and nationwide.

The Town's package also considers the Town's inability to pay and the financial impact on the governing unit, its residents and taxpayers in light of modest increases in the cost of living and the other statutory criteria.

Finally, the Town's package takes into account its impact on the officers' continuity and stability of employment. As a result, the Town of Hackettstown respectfully requests the Interest Arbitrator to issue an award supporting the Town's economic package as is.

## **FOR PBA LOCAL 369**

### **I. Town of Hackettstown Demographics and Finances**

#### **A. Demographics**

Hackettstown is home to approximately 9435 residents and sits in a suburban community occupying 3.7 square miles. (Exhs. B-5, B-8). The Town lies in the eastern most region of the Lehigh Valley and runs along the banks of the Musconetcong River. (Exh. B-7). Located in Warren County, the Town borders the municipalities of Washington, Mansfield, Allamuchy, Independence and Mount Olive. Id.

The Town is home to the headquarters of a few notable corporations and institutions. Most notably, the headquarters of Mars Chocolate USA Inc. ("Mars"), makers of Milky Way, Mars, M&M's, Twix and Snickers bars, resides in Hackettstown. Id. The industry giant generates more than \$7 billion in annual sales from its chocolate

brands in the United States alone.<sup>1</sup> The Mars corporate headquarters occupies a 100,000 square foot facility in Hackettstown and also contains the largest ground-based solar facility in New Jersey. Id. The 18 acre solar garden alone employs more than 1,200 associates. Id.

The corporate headquarters of Mars is also home to Pet Foods Inc., the well-known pet food manufacturer of Pedigree brands, Whiskas. Id. Together with Mars, Hackettstown hosts a corporate presence that provides the community with a fertile source of employment and wealth. Id. In addition, hosting the national headquarters for Mars also provides the Town with national recognition for environmental awareness. Id. In 2010, Mars' headquarters was recognized as the first private sector commercial facility in New Jersey to receive LEED Gold Certification, an internationally accepted benchmark for designing, constructing and operating green buildings. Id.

Centenary College has also been a significant facet of the Town for approximately 150 years. (Exh. B-7). Centenary College is the primary educational and cultural resource for students in Northwest New Jersey. Id. The College enrolls approximately 3000 students each year, 87% of which are from New Jersey and 53% who live on the main campus in Hackettstown.<sup>2</sup> Centenary College's presence in Hackettstown has benefitted the Town both culturally and financially. In 2008, the Hackettstown Business Improvement District ("BID") retained the JGSC Group of

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<sup>1</sup> See N.J.Com, Mars Chocolate Headquarters in Hackettstown Earns 'Gold Certification' for Green Building Strategies (Saturday October 2, 2010), *available at* [http://www.nj.com/warrenreporter/index.ssf/2010/10/mars\\_chocolate\\_headquarters\\_in.html](http://www.nj.com/warrenreporter/index.ssf/2010/10/mars_chocolate_headquarters_in.html) (last visited July 6, 2011).

<sup>2</sup> See Centenary College Fact Sheet-2009/2010 Academic Year, *available at* [http://www.centenarycollege.edu/cms/fileadmin/user\\_upload/about/centenary\\_college\\_fact\\_sheet.pdf](http://www.centenarycollege.edu/cms/fileadmin/user_upload/about/centenary_college_fact_sheet.pdf) (last visited July 6, 2011).

Merchantville to conduct its trademarked Community Insights Study to determine how to best revitalize the Town's downtown district.<sup>3</sup> This study revealed that the Town's most distinctive characteristic was that it was a "college town." Id. Thereafter the study became the impetus for a new revitalization committee formed by the BID in 2008 to bolster business with the college community in mind. Id.

Since the revitalization committee's creation in 2008, the Town has experienced rapid financial growth and revenue from the college community. Id. Most notably, Centenary College has introduced a student ID card called the "Cyclone Card," which allows students to use the card as a debit card for purchases at downtown merchants. Id. As a result, the program has already increased sales at local Town stores by as much as \$1000 per month. Id. Although the Town has already experienced unprecedented financial growth in this regard, there is still plenty of room to tap into the annual \$8.1 million in spending power that Centenary College students have. Id. Thus, Centenary College serves as a substantial asset for the financial growth of the Town and provides unlimited opportunities for continued growth.

In addition to student life at Centenary College, the Town hosts a well educated, diverse and family oriented population. (Exh. B-5). Out of its approximate 9435 residents, approximately 51% are females. Id. The Town's median age is 35.4 years. (Exh. B-5). The Town's population has grown approximately 5.5% since 2000 approximately 19% of its residents are foreign born. (Exhs. B-11, B-5). Approximately 87% of the Town's population has received a High school degree or higher. (Exh. B-6).

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<sup>3</sup> See New Jersey League of Municipalities, Michael B. Laveyr, *Reaching Out to College Customers*, available at <http://www.njslom.org/magart-2009-06-pg16.html> (last visited June 24, 2011).

This is 7% more than the average population for the U.S. Id. The Town is also composed of a thriving family oriented community. According to the 2010 US Census, the Town had a total of 3500 households with 67% composed of families. (Exh. B-5).

The Town's residents also experience considerable financial wealth and stability. The median income for a household family is \$64, 382. (Exh. B-7). Although much of the State has faced economic hardship as of late, the Town's has a very low 2.7% unemployment rate and at least 70% of its residents are employed in the labor force which is 7% higher than the national average. (Exhs. B-6, B-8). The Town also expects a future job growth of about 21%. (Exh. B-11). Additionally, only 2.3 % of families in Hackettstown are below the poverty line. (Exh. B-9). This is an impressive statistic when considering that the percentage of families living below the poverty line is 9.20% in America and 8.7% statewide. (Exh. B-9).

The foregoing demographics support why the Town was ranked No. 72 among *CNN's Money Magazine's Top Places to Live in the United States* in 2005. (Exh. B-13). Notwithstanding the recognition it has already earned, the Town has demonstrated unlimited opportunity for improvement and growth which can already be witnesses by new business projects created by the BID to keep the community together and bolster small business. The Hackettstown's Downtown Farmer's Market runs every Monday from June to October and includes live music and a variety of vendors selling foods to the community.<sup>4</sup> In addition, the BID hosts annual car shows, Town-wide yard sales, and a summer concert series which are designed to stimulate local business. Id.

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<sup>4</sup> See Hackettstown Business Improvement District-Hackettstown Summer Events, available at <http://www.hackettstownbid.com/hackettstown-summer-events.html> (last visited July 6, 2011).

## B. Finances

The Town has done exceedingly well financially through monies received as grants and stimulus funding as well as monies generated through revenue and surplus. The Town is therefore well equipped to meet the terms of the PBA's Final Offer in its entirety.

First, the Town's financial strength is buoyed by the generous grants and stimulus funding it has received over the past few years and funding that it is expected to receive in the near future. At the end of 2011 or early 2012, the Town is expected to complete its Sidewalk Renovation Project along Main Street to Willow Grove Street, a distance of 2900 feet.<sup>5</sup> In 2009, the Town earned a stimulus grant from Federal Government that will reimburse the Town approximately \$1 million for this project. Id. According to a recent article from N.J.com on May 4, 2011, it appears that the Town is optimistic in receiving additional Federal grants to be reimbursed for the entire project. Id.

In addition to Federal monies received for the Streetscape Improvement Project, Hackettstown also received \$631,000 in State grants.<sup>6</sup> The grants were obtained as a Transportation Enhancement Grant via the American Recovery and Reinvestment Act (ARRA) and the New Jersey Department of Transportation's Fiscal 2010 Capital

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<sup>5</sup> See Lehighvalleylive.com News, *Hackettstown ready to finish Main Street sidewalk improvements, searching for another federal grant* by Stephen J. Novak (Wed. May 04, 2011), available at <http://www.lehighvalleylive.com/warren-county/index.ssf?base/news-3/130448192917854> (last visited July 6, 2011).

<sup>6</sup> See N.J.Com, *Hackettstown, Franklin Town land state grants for streetscape, sidewalk improvements*, by Kevin Lechiski (August 17, 2009) available at [http://www.nj.com/warrenreporter/index.ssf/2009/08hackettstown\\_franklin\\_Town.htm](http://www.nj.com/warrenreporter/index.ssf/2009/08hackettstown_franklin_Town.htm) 1 (last visited July 6, 2011).

Program. *Id.* In all, the Town shared in nearly \$20 million of Transportation Enhancement Grants that were provided to New Jersey Municipalities in 2009. *Id.*

The Town has also benefitted from funding for its firefighters and police officers through Federal and State grants. In 2008, the Fireman's Fund Insurance Company awarded \$13,337 in State grants to the Hackettstown Fire Department for the purchase of a new power rescue system to enable firefighters to cut through debris that could otherwise prevent crews from rescuing firefighters in emergencies.<sup>7</sup> In 2010, the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) also awarded the Hackettstown Fire Department a \$261,250 Federal grant to improve emergency service equipment within the Department.<sup>8</sup>

In addition, the Hackettstown Police Department has shared in Federal grant money to assist in funding its operations. In 2010, the Warren County Department of Public Safety, in conjunction with U.S. Representative Scott Garrett, secured a \$1.25 million dollar grant from the Office of Community Oriented Policing Services (COPS) to Warren County Municipal Police Departments.<sup>9</sup> The majority of this Federal grant money will be used by the Hackettstown Police Department to upgrade equipment and

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<sup>7</sup> See N.J.Com, *Hackettstown fire fighters to receive grant*, by Craig Turpin (Wed. April 16, 2008) available at [http://blog.nj.com/warrenreporter/2008/04/hackettstown\\_fire\\_fighters\\_to.html](http://blog.nj.com/warrenreporter/2008/04/hackettstown_fire_fighters_to.html) (last visited July 6, 2011).

<sup>8</sup> See Hackettstown Life, *Congrats Hackettstown Fire Dept. Receives Second AFG Grant*, available at <http://www.hackettstownlife.com/forum/187719> (last visited July 6, 2011).

<sup>9</sup> See N.J.Com, *Federal grant money to fund police equipment upgrades around Warren County* by Paul Mullin (Wed. March 3, 2010) available at [http://www.nj.com/warrenreporter/index.ssf/2010/03/federal\\_grant\\_money\\_to\\_fund\\_p\\_o.html](http://www.nj.com/warrenreporter/index.ssf/2010/03/federal_grant_money_to_fund_p_o.html) (last visited July 6, 2011).

purchase new radios that provide tools to communicate more efficiently with neighboring departments. Id.

In addition to grant monies received by the Town, an analysis of the Town's finances also demonstrates that it can fund PBA Local 369's requested salary increases for prior, current and future years. (See Vincent Foti's Financial Analysis Submitted by the PBA on February 16, 2011 (hereinafter referred to as "Foti Analysis")). The Town's own financial documents that were reviewed and analyzed by the PBA's financial expert, Vincent Foti, C.P.A., establish that the Town is financially healthy. Id. In his report, Mr. Foti examined the Town's financials in comparison to the applicable cap laws and unequivocally determined that the Town has the ability to pay the PBA's requested increases because it is below both the Property Tax Levy CAP and the Expenditure CAP. Id. Mr. Foti also concluded that the Town has more than sufficient flexibility within its appropriations that would allow it to fund the PBA's Final Offer. Id.

According to the Foti analysis, the primary issue concerning the Town's finances is the CAP Levy. Id. However, Mr. Foti concluded that the Town is currently below the Property Tax Levy CAP (2010 Budget Sheet 3B-1) and \$437,599 below the Expenditure CAP. Id. Mr. Foti therefore concluded that the Town can afford the PBA's requested salary increases while not raising taxes. Id. In sum, Mr. Foti opined that the Town is in sound financial condition and has the ability to pay for the PBA's requested increases. Id.

In reaching his conclusion, Mr. Foti observed that the Town has had stable Tax Rates and a stable Fund Balance (Surplus). Id. The tax collection rate is 98% whereas

the State average is only 93%. Id. The following chart demonstrates the Town's success in generating substantial revenue through successful tax collection

**Tax Rates (Report of Audit 2009)**

Year	<b>Municipal</b>	County	Local School Tax	County Open Space Tax	Tax Rate
2009	<b>0.892</b>	0.884	2.363	0.107	4.246
2008	<b>0.854</b>	0.884	2.311	0.107	4.156
2007	<b>0.761</b>	0.817	2.301	0.101	3.980

Id.

As the above chart illustrates, the Town's tax rate for the last 3 years has remained relatively stable. Id. Rating agencies prefer reasonable increases in tax rates like that above. Id. From 2007-2009, the municipal portion of the tax rate increased by a meager 1.3% which is below the applicable Tax Levy Caps. Id. Tax rates are expected to increase within the CAPs in the future and will keep pace with normal cost increases thereby providing the Town with adequate finances to fund the PBA's requested salary increases. Id.

Mr. Foti also observed that another important factor supporting the Town's financial strength was the fact that it has generated significant surplus and excess revenue from its operations. Id. Specifically, in the Town's 2010 Budget, the Town had achieved a substantial surplus from appropriations as of December 31, 2009. Id. These balances are as follows:

Salary and Wages-----\$73, 491.95  
Other Expenses-----\$139, 801.71

Id.

The above clearly indicates budget flexibility and suggests that the Town has the discretion to reallocate budget appropriations to adequately maintain staffing levels, comply with the Tax Levy Cap and still have a remaining fund balance. Id. This means that the Town has consistently received miscellaneous revenues and has generated more funds than it had anticipated. Id. Thus, the Town has created fund balances and generated excess revenue from its operations to allow the use of fund balance as surplus revenue to hold down costs. Id. In essence, the Town has collected more revenue than budgeted and/or less appropriations spent than budgeted throughout these years. Id. The Town will be able to extend these unanticipated revenues into future years and fund the PBA's final offer. Id.

Moreover, Mr. Foti reviewed the Town's 2009 audited financial documents and found it significant that the Town's assessed valuations of property have increased steadily over the last few years. Id. Since 2007, assessed value has increased by \$11,000,000. Id. Even more impressive, the Town's assessed valuations have increased by over \$200,000,000.00 since 1998. Id. Mr. Foti determined that the Town will continue to receive the revenues from these valuations in years to come which are clear indicators of financial stability. Id. The below chart indicates these substantial increases.

**Assessed Valuations (Report of Audit 2009)**

2009	\$612, 767, 363.00
2008	\$606, 160, 638.00
2007	\$601, 497, 001.00

Id.

Another positive indication of the Town's sound financial condition is reflected in its Statutory Debt Limit. Id. The below chart indicates that the Town is well above the lawful public debt limit by at least \$33,319,748. Id. The Town's ability to remain above the statutory debt limit illustrates its strong financial condition because it will have significant borrowing power remaining to assume any increased costs thereby enabling it to maintain more than enough funds to pay the PBA's Final Offer. Id.

**Statutory Debt**

Average Equalized Valuation Basis	December 31	\$1, 083, 883, 406
Equalized Value	3.50%	\$37, 935, 919
Net Debt	.43%	\$4, 616, 170
Remaining Bargaining Power		\$33, 319, 748

(Source: 2009 Report of Audit, Pg. 5)

Id.

The above chart demonstrates that the Town is well below the statutory debt limit and is financially healthy. Id. The Town's strong borrowing power could be used to fund current costs over future periods rather than fully absorbing them in the current year's operational costs. Id.

In his conclusion, Mr. Foti determined that the Town has the ability to pay for PBA Local 369's requested salary increases. Id. The Town is below both the Property Tax Levy CAP and the Expenditure CAP and has more than sufficient flexibility within the Appropriations Budget that would allow it to fund the reasonable salary increases requested by the PBA. Id. Thus, in light of the Town's financial stability as evidenced by Mr. Foti's Financial Analysis, coupled with the Town's innovative ways to increase revenues, the Town is in a financial position comfortable with funding the PBA's proposal.

## **II. Town of Hackettstown Police Department and The Duties of PBA Local 369 Unit Members**

### **A. Department Organization**

The Town Police Department ("Department") is commanded by Chief James A. Macaulay. (Exh.E-1). The Department is a civil service jurisdiction and therefore subject to the Civil Service Rules contained in Title 11A of the New Jersey Statutes as well as Title 4A of the New Jersey Administrative Code. The Department has seventeen (17) officers on staff. (Exh. E-1). The Department is composed of a chief, a lieutenant, four (4) sergeants, three (3) detectives and eight (8) patrolmen. Id.

There are three (3) members of the Town Council who are appointed by the Mayor to serve as the Town's Police Committee. (Exh. E-3). The Police Committee is given authority under the Town's General Code Ordinances to recommend policy to the Mayor and advise the Mayor in his administration of the Department. Id. However, the Police Committee acts in all matters relating to the function of the Department through the Mayor as the Chief Executive of the Town. Id.

**B. Schedules**

Police officers in the Town's Police Department are assigned to what is commonly known as a "Pitman Schedule". The Pitman Schedule requires that officers work twelve (12) hour shifts which can be exhausting for most professions. The twelve (12) hour schedule rotation is two (2) days on duty, two (2) days off, three (3) days on, two (2) days off, two (2) days on and three (3) days off in a two (2) week period.

Patrol officers are assigned to the twelve (12) hour day or night shift. The day shift begins at 7:00 a.m. and concludes at 7:00 p.m, at which time the evening shift will commence and end at 7:00 a.m. the following morning. The Detective Bureau operates on twelve (12) hour shifts from 8:00 a.m. through 8:00 p.m.

**III. Private Sector Employment Comparison**

Private sector employment wage changes compiled by the New Jersey Department of Labor and Work Force Development established that from 2008 to 2009 the net change in annual income for private sector wages was minus .7%. (\$54,932 to \$54,542). (Exh G-1.). The median net change, however, was minus .6% or \$282.00 per annum. Id. Warren County saw its private sector wages increase for that period by .7%

(\$43,319 average in 2008 to \$43,609 in 2009). Id. The total increase for State and local government was 2.2%. Id.

For the period of 2007 to 2008, the net change in annual income for the private sector was \$1338 per annum, or an increase of 2.5%. (Exh. G-2). The median net change however, was a \$1552 increase or a 3% increase. Id. The total increases for State government employees in New Jersey for 2007 through 2008 was 5.8% and for local government 3.4%. Id. The total percentage change for both the private and public sector from 2007 to 2008 was 2.6%, on average. Id.

For the period 2006 through 2007, the total private sector average net change was \$2213 increase, or a 4.3% average. (Exh. G-4). The median change in the private sector for that same period was an increase of \$2073, or 4.0%. Id. The average increase for State government employees for that same period was 5% and for local government, 3.5%. Id. The total net change from 2006 to 2007 for both the private and public sectors was a 4.3% average increase. Id.

The 2008 American Community Surveys data determined that in 2008, New Jersey had the second highest median income in the Nation (\$70,378) next only to Maryland, and was 35% above the National median of \$52,079. (Exh. G-6). New Jersey's 2008 median family income was the highest among the 50 states and the District of Columbia at \$85,761. Id.

Public employers contribute an average 34.1% of employee compensation expenses to benefits whereas private employers devote 30.8% to benefits. Id. Retirement benefits also account for a substantially greater share of public employee compensation, 8.1% compared to 3.7% in private sector. Id. On the other hand, public

employees receive considerably less supplemental pay in vacation time, and public employers contribute significantly less legally mandated benefits. Id.

**IV. Comparability**

**A. External Comparisons**

External comparisons have been presented by the PBA for comparable police officer bargaining units in Warren County. This comparison reveals that the median salary for Warren County police officers ranks in the bottom third of all counties in New Jersey. (Exh. I-5). Specifically, the median top salary for Warren County police officers is 16th out of the 21 counties in New Jersey. Id. Warren County's median salary is nearly \$30,000 behind Bergen County police and nearly \$20,000 behind Middlesex County police. Id. Warren County ranks far below many counties in median police pay despite that the cost of living for municipalities in Warren County such as Hackettstown, is 25.80% higher than the U.S. average. (Exh. B-11). The following chart ranks the median police pay in each county in the State:

**MEDIAN POLICE PAY BY COUNTY**

<b>Rank</b>	<b>County</b>	<b>Median Police Pay</b>
1	Bergen	\$109,700
2	Middlesex	\$97,022
3	Ocean	\$95,946
4	Morris	\$95,164
5	Monmouth	\$95,016
6	Somerset	\$94,486
7	Mercer	\$93,246
8	Passaic	\$92,756
9	Essex	\$90,160
10	Hudson	\$90,082
11	Union	\$88,150
12	Sussex	\$86,690
13	Cape May	\$84,572
14	Atlantic	\$83,440
15	Hunterdon	\$81,864

16	Warren	\$80,420
17	Burlington	\$80,011
18	Camden	\$79,686
19	Gloucester	\$78,872
20	Cumberland	\$72,100
21	Salem	\$68,792

(Exh. I-5).

In addition, PBA Local 369 unit members' salary and benefits lag behind many bargaining units within Warren County as well. The following chart illustrates the starting pay for police officers in municipalities within Warren County for years 2008-2012. The following chart observes only those units who currently have signed agreements as of the date this Brief is submitted. The salaries represented for Hackettstown reflect a calculation of PBA Local 369's requested increases in its Final Offer.<sup>10</sup>

**PATROL OFFICER STARTING PAY**

<u>Municipality</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Hopatcong	N/A	N/A	\$36,000	\$37,350	\$38,751
Belvidere	\$38,530	\$39,685	N/A	N/A	
Lopatcong	\$38,915	\$40,472	\$42,091	N/A	
Hackettstown	\$39,545	\$40,929	\$41,543	\$42,478	\$43,540
Greenwich	\$40,017	\$41,417	\$42,867	N/A	
Independence	N/A	\$43,833	\$45,149	\$46,052	
Washington	N/A	\$44,879	CPI+1%	CPI+1%	
Phillipsburg	\$47,440	\$49,622	\$51,954	\$54,396	

(Exhs. I-1, I-3)

<sup>10</sup> These charts that were submitted with the PBA's exhibits. However, they have been amended only to reflect recent updates to CNA's for Phillipsburg and Hopatcong as indicated above.

**PATROL OFFICER TOP PAY**

<u>Municipality</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Belvidere	\$62,209	\$65,421	N/A	N/A	
Lopatcong	\$70,847	\$73,681	\$76,628	N/A	
Greenwich	\$71,154	\$74,644	\$76,222	N/A	
Independence	N/A	\$73,325	\$75,526	\$77,036	
Hackettstown	\$73,048	\$75,605	\$76,739	\$78,466	\$80,428
Phillipsburg	\$72,019	\$75,332	\$78,872	\$82,579	
Hopatcong	N/A	\$79,871	\$86,646	\$89,896	\$93,267
Washington	N/A	\$80,766	\$82,866	\$86,678	

(Exhs. I-1, I-3)

**SERGEANT PAY**

<u>Municipality</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Belvidere	\$66,209	\$69,421	N/A	N/A	
Independence	N/A	\$73,325	\$75,526	\$77,036	
Greenwich	\$75,360	\$77,997	\$80,727	N/A	
Lopatcong	\$75,893	\$78,929	\$82,086	N/A	
Hackettstown	\$80,767	\$86,946	\$88,250	\$90,236	\$92,492
Washington	N/A	\$86,575	\$88,826	\$92,912	
Phillipsburg	\$82,386	\$86,176	\$90,226	\$94,467	
Hopatcong	N/A	\$83,021	\$90,064	\$93,441	\$96,445

(Exhs. I-1, I-3)

LIEUTENANT PAY

<u>Municipality</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Belvidere	N/A	N/A	N/A	N/A	
Independence	N/A	\$79,693	\$82,084	\$83,725	
Greenwich	\$77,593	\$80,309	\$83,120	N/A	
Lopatcong	\$78,493	\$81,633	\$84,898	N/A	
Hackettstown	\$86,367	\$95,641	\$97,075	\$99,260	\$101,741
Washington	N/A	\$89,766	\$92,100	\$95,416	
Phillipsburg	\$87,643	\$91,674	\$96,983	\$100,494	
Hopatcong	N/A	\$94,520	\$97,120	\$100,762	\$104,541

As set forth in the above charts, PBA Local 369 still lags behind other bargaining units in Warren County in many economic areas. It must be stressed that the above salary charts reflect PBA Local 369's rank among other bargaining units in Warren County *if the PBA's final offer is awarded*. The data demonstrates that the median salary for PBA Local 369 unit members would still only rank in the middle of the observed police departments in Warren County if the PBA's Final Offer is awarded in its entirety. Lopatcong, Phillipsburg, Pohatcong and Washington Town still remain ahead of Hackettstown in this regard. In addition, if the PBA's requested increases are awarded, the PBA would still rank just fifth out of the eight bargaining units observed in Warren County in starting pay for patrol officers. The only bargaining units receiving less starting pay than PBA Local 369 are Lopatcong, Hopatcong and Belvidere. PBA Local 369 patrol officers would also rank fifth out of the eight units observed in Warren

County in top pay for patrol officers, sergeants, and lieutenants. The PBA would still rank behind Washington Town, Hopatcong, and Phillipsburg in these categories even if the PBA's requested salary increases are awarded.

In addition, PBA Local 369 unit members receive less total compensation than other patrol officers in the County. The salaries for PBA Local 369 unit members includes thirteen (13) holidays whereas other bargaining units in Warren County such as Independence, Hopatcong, Phillipsburg, Pohatcong, and Washington receive holiday pay in addition to the base salaries set forth above. (Exh. I-4). PBA Local 369 unit members are also capped at 25 vacation days whereas other units cap out at much higher figures. (Exh. I-2). For example, Hopatcong provides officers with 27 vacation days, Phillipsburg provides officers 29 vacation days, Phillipsburg SOA provides 31 vacation days, Washington Town provides 31 vacation days, Pohatcong provides 30 vacation days, Lopatcong provides 30 vacation days, and Greenwich provides 31 vacation days. Id. The only bargaining units still capped at 25 vacation days in Warren County along with Hackettstown is Belvidere and Independence. Id.

## **V. Cost of Living**

The Consumer Price Index ("CPI") is a measure of the average change over time in the prices paid by consumers for a market basket of consumer goods and services. (Exh. C-1). Goods and services measured by the CPI include food and beverages, housing, apparel, transportation, recreation, education and communication, and all other goods and services. Id. The CPI is the most widely used measure of inflation. Id.

The CPI for all urban consumers in the United States increased by 2.7 percent over the past year according to March 2011's CPI data. (Exh. C-2). In March 2011

alone, the CPI increased by 0.5 percent. Id. The indices for food, energy, used cars and trucks, airline fares, apparel, and lodging all rose during this period. Id. The energy index has risen by 15.5% in the past 12 months, with the gasoline index up 27.5 percent. Id. The food index has risen 2.9 percent and the food at home index has also increased by 3.6 percent. Id.

The CPI for the Northeast region of the United States has also increased substantially over the past year and has maintained increases consistent with the national average.<sup>11</sup> The Northeast region, which includes the CPI data for Pennsylvania, New Jersey, Allentown-Bethlehem-Easton Metropolitan area, increased by 3.2% from May 2010 to May 2011 while the U.S. increased by 3.6%. Id.

In addition, the CPI for the New-York-Northern New Jersey area has reported increases.<sup>12</sup> Prices in this area have increased by 0.6 % in May, after rising 0.4% in April. Id. For the 12 months ending in October 2011, the CPI advanced 3.6 percent, the highest rate posted since October 2008. Id. Accordingly, the cost of living has increased in the United States, Northeast region and New York-Northern New Jersey Region. Thus, this data clearly demonstrates that the buying power of PBA Local 369 has decreased while the Town seeks to pay unit members trivial increases. PBA Local 369's requested increases are consistent with CPI data and should therefore be awarded.

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<sup>11</sup> See U.S. Bureau of Labor Statistics, Selected BLS Economic Indicators: Allentown-Bethlehem-Easton, *available at* [www.bls.gov/ro3/Allentown.pdf](http://www.bls.gov/ro3/Allentown.pdf) (last visited July 6, 2011).

<sup>12</sup> See U.S. Bureau of Labor Statistics, New York-New Jersey Information Office-Consumer Price Index, New York-Northern New Jersey-May 2011, *available at* <http://www.bls.gov/ro2/cpinynj.htm> (last visited July 14, 2011).

The PBA submits that when the evidence is applied to each proposal in the parties' Final Offers and reviewed against the statutory criteria, the Arbitrator must award the PBA's Final Offer in its entirety.

**I. THE INTEREST AND WELFARE OF THE PUBLIC**

**A. Compensation**

An Arbitrator must give due weight to the interest and welfare of the public when issuing his award. In the instant matter, the interest and welfare of the public supports the Union's Final Offer. The facts in the record clearly show that the public interest is fostered by the PBA's Final Offer, while the Town's Final Offer is detrimental to the well-being of Town residents. Accordingly, the Arbitrator must award the PBA's Final Offer in its entirety.

The PBA's Final Offer is in the public interest. "Arbitrators have reviewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale." See Sayreville -and- PBA Local 98, I.A. 2006-047 (Hartigan, T. 11/2/08). Thus, in considering what is in the best interest and welfare of the public, an Arbitrator must consider the impact on the morale of the bargaining unit when rendering an award. Here, awarding the Town's Final Offer will damage the morale of an already underpaid bargaining unit and therefore will not be in the best interest and welfare of the public. On the other hand, awarding the PBA's Final Offer would benefit both the public and bargaining unit members.

The Town has sufficient funds available to pay the wage increases sought by the PBA. Unlike many other areas in the State and Country, the Town and its residents are

financially stable. The median income for a household family in Hackettstown is an impressive \$65,383. (Exh. B-11). The Town also has a 2.7% unemployment rate with at least 70% of its residents employed in the labor force which is 7% higher than the national average. (Exhs. B-6, B-8). The Town also expects a future job growth of about 21% and only 2.3 % of families are below the poverty line. (Exh. B-9). This is also impressive considering that the percentage of families living below the poverty line is 9.20% in America and 8.7% statewide. (Exh. B-9). The Town was even ranked No. 72 among *CNN's Money Magazine's Top Places to Live in the United States* in 2005. (Exh. B-13). Thus, the Town's residents are financially healthy.

The Town is also in a good financial position, especially when compared to other areas of the State and Country. The Town is currently below the CAP Levy and \$437, 599 below the Expenditure CAP. (See Foti's Analysis). The Town has a low debt burden and positive cash flow. Id. The Town's tax collection rate is also 98%, 5% more than the State average. Id. The Town has had more than stable tax rates and can expect increases in future years. Id.

The Town is also adept at generating surplus. The Town has consistently generated surplus since 2008. (Exh. F-1). The following data shows the Town's Fund Balances as of December 31, 2008:

	<b><u>FUND BALANCE (Millions)</u></b>			
<u>Year</u>	2008	2009	2010	2011(expected)
Surplus	\$1.1	1.432	1.458	1.358
Net Change	30.19%	1.87%	-6.91%	

(Exh. F-4)

As the above data suggests, the Town has consistently generated more funds than it had anticipated resulting in significant surplus. Id. From 2008-2009 alone, the Town experienced a 30% increase in its fund balance. Id. The Town again experienced an increase in surplus in 2010 and only through speculation, suggests that in 2011 its fund balance will be marginally decreased.

Additionally, the Town has experienced reasonable increases in taxes each year while remaining below the CAP. The following chart illustrates these increases:

	<b><u>AMOUNT COLLECTED IN TAXES (Millions)</u></b>				
Year	2007	2008	2009	2010	2011
\$ Raised	4.570	5.176	5.466	5.779	6.108
% Change	-	13.26	5.60	5.72	5.70

(Exh. F-4)

**B. PBA Local 369**

PBA members are highly trained personnel that perform vital functions necessary for a safe and secure community. PBA unit members must undergo a rigorous twenty-two week course of academy training prior to their employment with the Town. The course accounts for over 600 individual mental tasks that officers must perform on a daily basis and requires that officers achieve highly demanding performance objectives.

The PBA bargaining unit members serve in various assignment areas: the Detective Bureau, the Traffic Bureau and Patrol Division. Each assignment has its own inherent dangers. The brave officers of PBA Local 369, however, face these dangers each day in order to keep the public safe. Officers may be called upon any given day to assist and investigate all major crimes that occur within the Town including arson, auto

thefts, death investigations, employee backgrounds, fatal traffic crashes, fraud, suicides, runaways, kidnappings, missing persons, narcotics, robbery, sexual assaults, aggravated assaults and various other crimes. Unit members are also frequently called upon to assist other County, State, and Federal Law Enforcement agencies with criminal investigations. Thus, the jobs that PBA Local 369 unit members perform day in and day out is inherently dangerous and demanding.

The PBA's offer frontloads salary increases in 2009 to accommodate the Town's obligations under the 4.0% CAP restrictions and lowers increases to 2.25% and 2.50% towards the end of the contract to account for the Town's obligations under the recent 2.0% CAP restrictions.

In addition, the PBA's Final Offers seeks to have sergeants compensated 15.0% above the top base pay step for a rank and file patrol officer and the base pay for lieutenant to be 10.0% above the top base pay for sergeant. The PBA's Final Offer is designed to ensure that the Town maintains highly trained and skilled officers to ensure the public's safety. PBA Local 369 unit members must face the constant dangers inherent in their profession each day they take the streets to protect the Town's residents. Therefore it is vital to the community that officers continue to be highly motivated and render the high level of public service that unit members have provided to the community for the past several years. To maintain the morale of the unit, the PBA's proposal only seeks modest raises, incentives not to use sick leave, educational incentives and increased pay for patrol officers who perform duties above and beyond their duties as patrol officers and act in place of a sergeant as officer in charge of a shift.

(Exh. U-1). The increases sought by the PBA will certainly increase the morale of the department, and are therefore in the best interest of the public.

In light of P.L. 2011 c. 78, if the Town's proposed salary offer is awarded the PBA's requested increases would be whittled away as a result of the astronomical increases in statutorily mandated health care contributions. These employee contributions will also negate any alleged increase in pension and health costs the Town expects to experience. The 1.5% contribution set previously by Chapter 2 of 2010 is now the minimum contribution set by Chapter 78 with many PBA Local 369 unit members absorbing up to 35% of the cost of the premium by the expiration of the contract. This scenario is devastating to the morale of a department.

PBA Local 369 also proposes a sick leave buyback program. Currently, PBA Local 369 unit members are entitled to 15 days sick per year with unlimited accumulation. (Exh. A-1). The PBA has made a proposal that would reduce both sick leave abuse and minimize overtime without making disruptive changes to work schedules. Pursuant to this proposal, PBA unit members will have the option to cash in accumulated, unused sick leave semi-annually upon reasonable notice given to the Town. The proposal reasonably limits the number of accumulated unused sick days that a unit member can cash in to 10 days per year and permits an officer to cash-in these 10 days within 60 days notice of June 1 and November 1. In addition, the PBA limits this option to officers who have at least 30 unused sick days in his or her bank at all times. The buyback program is in the public interest because it awards unit members who have not abused sick leave and will further encourage unit members to preserve their sick days.

The PBA also proposes to increase each level of college credit degree compensation by 10% each January and to expand the class of college courses that unit members may be reimbursed the cost of tuition and books for attending. Article XX of the expired agreement unnecessarily limits reimbursement for officers “enrolled in the course of police science” at colleges and universities. (Exh. A-1). Aware that interacting with the community on a daily basis requires education and skills that are not necessarily limited to courses in police science, the PBA proposes to expand the courses eligible for reimbursement to the following: a course of study for a degree in police science, criminal justice, political science, history, public/business administration, education, accounting, sociology or psychology.

The PBA seeks to include a new article to provide a Sergeant’s rate of pay to patrol officers who perform duties as the “Officer in Charge” (“OIC”) of a shift. Patrol officers who are OIC for any time during a shift will be compensated at the Sergeant’s rate of pay for each hour or part thereof for such service. Each partial hour worked shall be rounded up for performing these elevated duties.

In addition, providing patrol officers with OIC pay will defray higher overtime costs that the Town would normally pay for calling in other superior officers to assume the OIC role. Accordingly, the PBA’s OIC proposal supports the interests and welfare of the public.

The PBA proposes to end the annual clothing allowance unit members receive but to continue the annual cleaning allowance. Article XVII of the expired Agreement already provides unit members with a reasonable clothing allowance of \$1300.00 each

year as well as a maximum of \$25.00 uniform maintenance allowance each month. (Exh. A-1). The PBA seeks to eliminate the \$1300.00.

The PBA seeks a four (4) year agreement, effective January 1, 2009 through December 31, 2012. (Exh. U-1). This will provide two years of relative labor peace between the parties, which both parties will benefit from. The Town, however, seeks a three year agreement that will end on December 31, 2011. (Exh. C-1). Under the Town's offer, the parties will be negotiating for a successor agreement prior to the issuance of this Award. The morale of the department will improve with a brief respite from tense negotiations. The public will benefit from labor peace. Moreover, notwithstanding the economic uncertainty that many municipalities allege to be facing, multi-year contracts are not uncommon.

II. **COMPARISON OF WAGES, SALARIES, HOURS AND CONDITIONS OF EMPLOYMENT OF THE EMPLOYEES INVOLVED WITH THOSE OF SIMILARLY SITUATED EMPLOYEES IN COMPARABLE JURISDICTIONS**

This criterion requires a thorough comparative examination of the compensation package received by members of this bargaining unit with that received by other employees in comparable public and private employment. When appraising this criterion, the Arbitrator must consider the duties required of unit members, training, job related hazards and overall working conditions. The following section compares public and private sector employment in New Jersey, as well as the PBA's Final Offer with other similarly situated public employees.

**A. Comparison to Private Employment in General**

From 2008 to 2009, the net change in private sector income was minus .7%. (Exh. G-1). However, for Warren County, private sector wages increased by .7%. Id. For State and local government the total increase for the same period was 2.2%. Id.

A 2008 American Community Surveys data determined that in 2008, New Jersey had the second highest median income in the Nation (\$70,378) next only to Maryland, and was 35% above the National median of \$52,079. (Exh. G-6). New Jersey's 2008 median family income was the highest among the 50 states and the District of Columbia at \$85,761. Id.

Public employers contribute an average 34.1% of employee compensation expenses to benefits whereas private employers devote 30.8% to benefits. Retirement benefits also account for a substantially greater share of public employee compensation, 8.1% compared to 3.7% in private sector. On the other hand, public employees receive considerably less supplemental pay in vacation time, and public employers contribute significantly less legally mandated benefits. Id.

Standard Earnings Equation produces the result that full time state and local employees are under compensated by 4.05% compared to their private sector counterparts. This gap becomes wider as employee's educational level increases. High school graduates earn approximately equivalent compensation packages in both the private and public sector in New Jersey. That earning cycle reverses when comparing the college educated labor force, with the private sector paying substantially higher wages than the public sector. State and local workers with some college earn

4% less than private sector workers. Private sector wage premiums jumped to 43% for a Bachelor's Degree, 41% for a Master's Degree and 94% for professional degree. Id.

**B. Comparison to Public Employment in the Same or Similar Jurisdictions**

When compared to similarly-situated public employees, PBA Local 369 bargaining unit members are underpaid and receive fewer benefits. As set forth above, the Town can afford PBA Local 369's Final Offer. If the Arbitrator were to award the Town's Final Offer, however, PBA Local 369 members would continue to lose ground and earn less when compared to other police bargaining units in Warren County and in the State, and would receive fewer benefits. PBA unit members provide a valuable service to the community. Awarding the PBA's Final Offer will ensure that they are compensated accordingly.

**1. Salary Proposal**

Hackettstown and other bargaining units in Warren County already rank far below other counties in the State in median police pay. The median police pay for bargaining units in Warren County in 2009 ranked sixth to last among the 21 counties in New Jersey with \$80,420 as the median salary for police officers. (Exh. I-5). The median police pay for the top five counties in New Jersey were as follows: 1) Bergen \$109,700; 2) Middlesex: \$97,022; 3) Ocean: \$95,946; 4) Morris: \$95, 164; and 5) Monmouth: \$95,016. Id. Warren County bargaining units rank far beyond other counties despite that the cost of living remains high in Warren County as the CPI for this area

has increased by 0.6% in May alone, after rising 0.4% in April.<sup>13</sup> The CPI has increased 3.6% in this region since May 2010. Id.

Awarding the PBA's Final Offer would also place unit members on par with other bargaining units in Warren County and reflect recent awards and settlements that have been rendered for Warren County bargaining units. According to a 2009 Star Ledger survey of median police pay by county, Hackettstown police ranked fifth out of the ten towns in Warren County that were ranked regarding median police pay. (Exh. I-5). PBA Local 369's median salary of \$80,172 ranked exactly in the middle among bargaining units in a county that already ranks close to last in median police pay among all counties in the State. Id. It is therefore fair to say that PBA Local 369 unit members rank among the lowest paid police bargaining units in the State.

The low salaries paid to PBA Local 369 unit members are also evident when considering the starting and top pay unit members receive compared to other bargaining units in Warren County. The starting pay for Hackettstown police officers effective January 1, 2008 was \$39,545. (Exh. I-1: I-3). The only towns with less starting pay for officers in Warren County are Blairstown (\$37,800), and Belvidere (\$38,530). Id. The PBA's Final Offer would increase starting pay for patrol officers to \$43,540 in 2012. This increase will still only dwarf the starting pay that was recently awarded for patrol officers in Phillipsburg's new agreement. (Exh. I-12). Patrol officers in Phillipsburg will receive \$54,396 in starting pay for 2012, a \$10,000 difference. Id.

Further, the top pay for patrol officers in Hackettstown also ranks behind bargaining units in Warren County. Effective January 1, 2008 the top pay for officers in

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<sup>13</sup> See U.S. Bureau of Labor Statistics, Selected BLS Economic Indicators: Allentown-Bethlehem-Easton, supra at fn. 16.

Hackettstown was \$73,048, which ranks behind Washington (\$75,033.22 + CPI+1%) and Hopatcong (\$78, 113). (Exh. I-3). The PBA's Final Offer will increase top pay for patrol officers in 2011 to \$78,466.

The salary for sergeants and lieutenants in Hackettstown also do not fair well with other bargaining units in Warren County. PBA Local 369 seeks to have sergeants compensated 15.0% above the top base pay step for patrol officers and the base pay for lieutenants to be 10.0% above the top base pay for sergeant. If the PBA's Final Offer is awarded, the PBA would still rank behind other bargaining units in Warren County in sergeant pay. For example, from 2010-2012, PBA Local 369 sergeants will top out at \$88,250, \$90,236 and \$92,492 respectively. On the other hand, sergeants in Hopatcong just agreed to top pay for those years at \$90,064, \$93,441 and \$96,445 respectively. Id. Sergeants in Phillipsburg will receive \$90,226 in 2010 and \$90,467 in 2011 as well. Id.

Likewise, if the PBA's Final Offer is awarded in its entirety lieutenants will receive top pay at \$97,075 in 2010, \$99,260 in 2011 and \$101,741 in 2012. These increases are at most on par or less than other Warren County bargaining units such as Hopatcong and Phillipsburg.

The PBA's Final Offer is also consistent with recent Interest Arbitration Awards or voluntary settlements. The Public Employment Relations Commission ("PERC") maintains an Interest Arbitration Salary Increase Analysis, which shows the average salary increase of all awards issued in specific years. The chart below shows that the salary increase proposed by PBA Local 369 is comparable to recent decisions and settlements, and the Town's proposal is a clear departure.

YEAR <sup>14</sup>	NUMBER OF AWARDS	AVERAGE SALARY INCREASE OF AWARDS	VOLUNTARY SETTLEMENTS	AVERAGE SALARY INCREASE OF SETTLEMENTS
2009	16	3.75%	45	3.60%
2010	16	2.88%	45	2.65%

The PBA's proposal seeks increases ranging from 1.5% to 3.5%, with the average annual increase of the entire award at 2.4% which is below both the average increase of awards in 2010 (2.88%) and the average increase of settlements (2.65%). The PBA's Final Offer is comparable to the current trend.

The PBA's Final Offer is comparable to recent Interest Arbitration Awards and the terms of the offer will aid in bridging the gap between bargaining unit members' salaries in Warren County and other counties in the State. The Town's Final Offer, on the other hand, seeks unrealistic terms unsupported by facts or financial analysis. Accordingly, the Arbitrator must award PBA Local 369's Final Offer in its entirety.

**2. Sick Leave Proposal**

PBA Local 369 also proposes a sick leave buyback program that is consistent with other bargaining units in Warren County. According to its proposal, PBA members will have the option to cash in accumulated, unused sick days semi-annually with proper notice to the Town. The proposal limits the number of accumulated unused sick days that a unit member can cash in to 10 days per year and permits an officer to cash-in these 10 days within 60 days notice of June 1 and November 1. In addition, the PBA

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<sup>14</sup> See Public Employment Relations Commission Salary Increase Analysis (Interest Arbitration), available at [www.perc.state.nj.us](http://www.perc.state.nj.us).

limits this option to officers who have at least 30 unused sick days in his or her bank at all times.

**3. Education Incentive Proposal**

The PBA also proposes to increase each level of college degree compensation by 10% each January and also to expand the class of college courses that are eligible for reimbursement by the Town. The PBA's proposal for additional education incentives is consistent with many bargaining units in Warren County.

**4. Clothing Allowance**

The PBA's proposal to end their annual clothing allowance and to continue a cleaning allowance is reasonable and consistent with other Warren County bargaining units. The PBA requests an end to the \$1300 annual clothing allowance unit members receive each year effective January 1, 2011. This is certainly a reasonable proposal considering that all bargaining units in Warren County continue to pay for the cleaning, replacement and maintenance of all uniforms for their officers.

**5. Officer In Charge Proposal**

In addition, the PBA's OIC pay proposal is reasonable and compatible with other bargaining units in Warren County which provide additional compensation for officers who perform greater responsibilities or out of title work; therefore, the PBA's OIC pay proposal must be awarded by the Arbitrator. The rationale for including the PBA's OIC pay proposal as Lopatcong did is to compensate officers who perform responsibilities of a higher rank and assume responsibility over police personnel. The PBA's proposal is fair and consistent with this rationale and should therefore be awarded.

**III. THE OVERALL COMPENSATION PRESENTLY RECEIVED BY BARGAINING UNIT MEMBERS**

The evidence presented regarding the overall compensation presently received by members of this bargaining unit reveals several areas of insufficiency. The current level of compensation is below average in several areas, including vacations, holidays, and other forms of additional compensation.<sup>15</sup>

The salaries paid to PBA Local 369 unit members are even more depressing when considering the overall compensation package provided to unit members compared to other units in Warren County. PBA Local 369 unit members have 13 holidays which are included within their annual base pay. (Exh. A-1). However, Independence, Hopatcong, Mansfield, Oxford, Blairstown, Phillipsburg, and Washington receive additional compensation for holidays. (Exh. I-4). PBA Local 369 unit members are also capped at 25 max vacation days whereas other units are capped at much higher figures. For example, the following units top out at more than 25 vacation days: Hopatcong-27 vacation days, Phillipsburg PBA-29 vacation days, Phillipsburg SOA-31 vacation days, Washington Town-31 vacation days, Pohatcong-30 vacation days, Lopatcong-30 vacation days, and Greenwich-31 vacation days. (Exh. I-2). The only bargaining units still capped at 25 vacation days in Warren County along with Hackettstown are Belvidere and Independence. (Exh. I-2).

There is no evidence indicating that awarding any of the PBA's proposals would have an adverse impact on the Town, its residents, or taxpayers. Rather, the Union's proposals merely bridge the gap between current compensation and the compensation packages provided to police officers working in municipalities within Warren County.

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<sup>15</sup> Inadequacies relating to base compensation, education incentives, sick leave, clothing allowance, etc. are fully discussed under Section B, Comparability, *supra*.

Awarding the PBA proposals can only have a stabilizing affect on the workforce, aid in retaining experienced officers, improve self-esteem and foster good community relations.

**IV. STIPULATIONS OF THE PARTIES**

The parties have not stipulated to any issues and therefore this criterion is irrelevant.

**V. THE LAWFUL AUTHORITY OF THE EMPLOYER**

The Arbitrator is required to consider the parties' proposals in light of the Local Government Cap Law, N.J.S.A. 40A:4-45.1 et. seq.. As set forth above, the evidence establishes that the Town is financially capable of funding the Union's proposals, and the Cap Law is not implicated. The Town will not need to raise taxes to pay for the PBA's Final Offer. Indeed, the Town has sufficient flexibility within appropriations without exceeding the CAP.

The cost of the PBA's wage proposal can be satisfied by the Town without violating its lawful authority. The PBA's Offer frontloads salary increases in 2009 at a requested 3.5% increase to accommodate the Town's obligations under the 4.0% CAP restrictions and lowers increases to 2.25% and 2.50% towards the end of the contract to account for the Town's obligations under the recent 2.0% CAP restrictions.

The Town has generally kept taxes low and has kept a large surplus of funds available to finance the PBA's proposal. Indeed, the Town can fund PBA Local 369's proposal with surplus. The Town's Fund Balance as of December 31, 2009 was \$1,458,850. Id. Town is currently below the CAP Levy and \$437,599 below the Expenditure CAP in 2010. Thus, the wage increases sought will not require the Town to raise taxes.

Moreover, as the PBA's financial expert established, the Town has ample spending room to increase PBA member salaries by the proposed amount. Thus, the Town would not exceed its spending limits or need to raise taxes above the cap to pay the PBA's Final Offer.

Conversely, the Town's Final Offer is clearly an attempt to bootstrap its finances to those of the State and Country as a whole. To now claim an inability to afford pay raises in 2010 and 2011, when many experts have predicted an end to the recession is dubious at best. The Town's disingenuous arguments must be dismissed, and the Arbitrator must award the PBA's Final Offer.

**VI. FINANCIAL IMPACT ON THE GOVERNING UNIT, ITS RESIDENTS AND TAXPAYERS**

The Town has not presented any evidence of an inability to pay. Rather, the economic evidence presented clearly and unequivocally shows that the Town has the ability to pay, and has indeed already budgeted for a wage increase. Accordingly, the Arbitrator must grant the PBA's Final Offer in its entirety.

P.L. 2010 c. 44 caps the amount of any Town tax increase at 2.0%. However, the relevant financial data clearly shows that the Town has a surplus of over \$213,000 from salary and other expenses and has already budgeted \$35,609 for raises in 2009 (where a 4% cap applies) that has not been spent. Moreover, the Town will not be forced to raise taxes if the Arbitrator awards the PBA's Final Offer. The PBA's Financial Analyst, Mr. Foti, concluded that in 2010 the Town was below the CAP Levy and \$437,599 below the Expenditure CAP. (Exh. F-2). Additionally, the Town's Fund Balance as of December 31, 2009, was \$1,458,850.00. Id. Thus, the wage increases sought will not require the Town to raise taxes.

Moreover, there is no evidence that the Town has been forced to cut back on services to its residents or taxpayers. Rather, the evidence shows that the Town has been innovative in obtaining Federal and State grant monies to fund local improvement projects such as its Streetscape Improvement Project. Thus, the financial outlook of the Town and its residents is bright in the future.

The financial impact of the PBA's Final Offer on the Town will be minimal in light of the Town's current financial situation. The recently enacted Pension and Health Care Reform Legislation, P.L. Ch. 78, will save the Town considerable expenses as unit members will be contributing as much as 35% of the cost of their health insurance premium. Chapter 78 will significantly infringe on the PBA's requested increases. Therefore, the Arbitrator must not permit the County to jump on the "sky is falling" bandwagon when the financials clearly indicate that Town is in a better position than other parts of the State and Country. Accordingly, the PBA's Final Offer should be awarded in its entirety.

## **VII. COST OF LIVING**

The PBA proposes modest salary increases to bridge the gap between unit members' salaries and the rising cost of living in the Northeast Region of the United States. The CPI for all urban consumers in the United States increased by 3.6 percent over the past year according to October 2011's CPI data. (Exh. H-2). In addition, the energy index has risen by 15.5% in the past 12 months, with the gasoline index up 27.5 percent. Id. The food index has risen 2.9 percent and the food at home index has also increased by 3.6 percent. Id.

The CPI for the Northeast region of the United States has also increased substantially over the past year and has maintained increases consistent with the national average. The Northeast region, which includes the CPI data for Hackettstown, increased by 3.2% from May 2010 to May 2011.<sup>16</sup> In addition, the CPI for the New-York-Northern New Jersey area has reported increases.<sup>17</sup> For the 12 months ending in October 2011, the CPI advanced 3.6 percent. Id.

The cost of living in the Northeast Region is clearly rising. However, the Town's wage proposal actually creates a net loss for PBA Local 369 members. Any wage increases will be substantially infringed upon by the contribution required by P.L. 2010 c. 2 in 2009 and 2010, and further eroded by the substantial contributions required under P.L. 2011 c. 78 in 2011 and 2012. If the Town's proposal were accepted, bargaining unit members would experience a wage "increase" is not in line with the CPI and must be rejected. Accordingly, the Arbitrator must grant the PBA's Final Offer in its entirety.

#### **VIII. CONTINUITY AND STABILITY OF EMPLOYMENT**

Awarding the PBA's Final Offer will bolster the continuity and stability of employment of officers employed by Town. Awarding the Town's Final Offer, however, will have disastrous effects on a group that is already underpaid and whose turnover already generates great concern from the public. The Town's proposed salary "increase" will not keep pace with inflation during the term of the contract and will defeat

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<sup>16</sup>See U.S. Bureau of Labor Statistics, Selected BLS Economic Indicators: Allentown-Bethlehem-Easton, supra fn. 16

<sup>17</sup> See U.S. Bureau of Labor Statistics, New York-New Jersey Information Office-Consumer Price Index, New York-Northern New Jersey-May 2011, supra fn. 17.

the self-esteem and motivation of the police force. Accordingly, the Arbitrator must grant PBA Local 369's Final Offer in its entirety.

There is no evidence that the implementation of the PBA's proposal will have a detrimental effect on the continuity of employment of PBA unit members. However, the Town's proposals, if implemented, will have a negative impact on continuity and stability within the bargaining unit. The Town's dismal offer would only aid in plummeting the morale of a unit who will already be required to contribute as much as 35% of their base salary towards statutorily mandated health contributions due to recent legislation.

In contrast to the Town's offer, the PBA's Final Offer will encourage younger officers to continue their employment with the Town. Starting pay for PBA Local 369 unit members is currently \$39, 545 which ranks second to last among other bargaining units in Warren County according to the Town's exhibits. Awarding the PBA's salary increases would provide an incentive for younger officers to remain on the job longer. This will ensure that the Town's Police Department runs smoothly and will prevent the hazards created by turnover. Younger officers who remain on the job are the lynchpin of continuity and stability. Accordingly, these officers must be provided an incentive to remain in the Town's employ. Awarding the Town's Final Offer, however, creates an incentive for them to move on as quickly as possible.

The level of wages and benefits must be enough to retain qualified and competent officers and to counteract the lure of better paying positions within the law enforcement community as well as in the private sector, where there is less hazardous employment. A fair compensation package is necessary to maintain the morale and outstanding level of services provided by the members of this bargaining unit. The

PBA's proposal is one such package, and as such, the Arbitrator must award it in its entirety.

#### **IX. STATUTORY RESTRICTIONS**

As set forth in Section F, above, P.L. 2010 c. 44 has been recently enacted to impose 2.0% cap on tax levy increases at the Town level effective for tax year 2011 and beyond. This replaced the previously enacted 4% tax levy cap that is in operation for the first two years of the Agreement.

As a result of the Town's budget surplus, ability to continue amassing a large surplus, its unanticipated revenues and other financial data, it is apparent that the Town will not have to raise taxes to meet its obligations if the Arbitrator awards PBA Local 369's Final Offer. Accordingly, this element of the analysis falls in favor of the PBA, and the Arbitrator must award the PBA's Final Offer in its entirety.

#### **CONCLUSION**

For the foregoing reasons, the Arbitrator must award PBA Local 369's Final Offer in its entirety.

#### **DISCUSSION AND OPINION:**

The Arbitrator, by statute, is required to separately determine whether the total annual economic changes for each year of the Agreement are reasonable under the nine statutory criteria set forth on pages 2-3. Each criterion must be considered, and those deemed relevant must be explained. The Arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence that has been presented, as well as the arguments of the parties. I have considered the evidence and arguments in light of the

statutory criterion as discussed below. I have considered each criterion and have found each to be relevant, although the weight to be given to their factors varies as discussed. I have determined the net total economic annual change for each year of the Agreement and concluded that those changes are reasonable under the criteria.

It is appropriate to set forth the terms of the Award at this time, which will allow anyone reviewing this Award to follow the analysis which led to the Award.

The parties, by necessity, based their arguments upon and correlated the evidence they presented to the office of the other party. I have the authority and responsibility to fashion the terms of the award in this conventional arbitration proceeding. Conventional arbitration is a much more pliant process which grants the Arbitrator more comprehensive authority to fashion the terms of an award based upon the facts in evidence and without the limitation of addressing any component of a final offer submitted by the parties.

It is axiomatic in Interest Arbitration and/or in collective bargaining/negotiations that in consideration of wages, hours and conditions of employment, the party seeking to change any existing term and condition of employment bears the burden of showing the need for such a change. That guiding principle has been followed throughout this Award.

I shall award an agreement for the duration of January 1, 2009, through December 31, 2012. I shall award the following salary increases retroactive to January 1, 2009:

- A. January 1, 2009, -2.5% across the board. Increase Sergeant differential by 2.5%. Increase Lieutenant differential by 7%.
- B. January 1, 2010 - 2.0% across the board.

- C. January 1, 2011 – 2.0 % across the board
- D. January 1, 2012 – 2.0 % across the board.

All other proposals of the parties are rejected.

**COST OF THE WAGE INCREASE**

**2008:**

The bargaining unit consists of 1 Lieutenant, 4 Sergeants, 3 Detectives and 8 Patrolmen for a total of 16. Sheet 15 of the 2008 budget, Current Fund Appropriations, shows \$1,872,902 for salaries and wages, plus \$116,000 for other expenses. A 2008 base for the bargaining unit was not submitted into evidence; therefore, I created one based on specific variables as follows:

Steps 1-6 of the 2008 guide total \$350,690.00

\$350,690 ÷ 6 = \$58,448 average Patrol salary x 11 =	\$ 642,928
4- Sergeants @ top step of \$80,767 =	\$ 323,086
1- Lieutenant	<u>\$ 86,367</u>
	<b>\$1,052,381 2008 base</b>

The 2008 base number is probably not accurate, but for purposes of this award it is a good starting point to show the yearly increases and total cost to the Town for the term of the Award.

**2009:**

The 2008 base was increased by 2.5% effective January 1, 2009. That new base is \$1,078,691.00.

**2010:**

The 2009 base was increased by 2.0% effective January 1, 2010. That new base is \$1,100,264.00.

**2011:**

The 2010 base was increased by 2.0% effective January 1, 2011. That new base is \$1,122,269.00.

**2012:**

The 2011 base was increased by 2.0% effective January 1, 2012. That new base is \$1,122,715.00.

My analysis and salary increases are based on the base salary alone and has nothing to do with longevity or any other amounts of money the employees are entitled to receive.

My Award increases the 2008 base salary by \$92,334.00 which equates to 8.77% for the period of January 1, 2009, through December 31, 2012. The yearly increase is \$23,084 or 2.2%. Remember that these are estimated yearly and total costs. Various statutory mechanisms have a major impact upon an Interest Arbitration Award. In 1976 there was an expenditure CAP (See 40A:4-45.1, *et. seq.*). In 2007 there was a tax levy CAP (See 40A:4-45-45), which allowed the tax levy to be increased by 4%. P.L. 2010 c.44 reduced that 4% to 2%. It was not an increase on salaries; it was an increase on the levy CAP for a budget.

In 2010, P.L. 2010, c.2 established that all public employees must pay 1.5% of their base salary for health insurance. That law was amended in 2011 with the passage

of P.L. 2011, c.78, which establishes the 1.5% as a minimum and is increased based on annual base salary.

The 1.5% payment for health insurance was effective in May of 2010. With a 2010 base of \$1,100,264.00, 1.5% of that generates \$16,503.00. Dividing that by 12 equals \$1,375.00 per month. From June 1, 2010, through December 31, 2010, \$8,251.00 was deducted from bargaining unit members' base salary for health insurance. I am not addressing c.78 because this Interest Arbitration started before that statute was enacted. Nevertheless, for 2010, 2011 and 2012, the following shows the amount of money that has been or will be deducted from this bargaining unit to pay for health insurance contributions:

**2010:** \$8,251.00

**2011:** \$1,122,269 x 1.5% = \$16,834.00

**2012:** \$1,144,715 x 1.5% = \$17,170.00

That generates \$42,255.00 that bargaining unit has or will contribute for health insurance during the term of the Agreement as required by statute.

My Award generates \$92,334.00 over the 2008 base. Bear in mind that my Award only references the base salary and has nothing to do with longevity or any other additional compensation that PBA members receive. Deducting \$42,255.00 from my Award leaves a balance of \$50,079.00 ÷ 4 or \$12,150.00/1.19% as a cost to the Town per year (2009-2012).

P.L. 2010, Ch.2, which requires all public employees to pay 1.5% of their base salary, basically indicates that public employees will be funding their own salary increases. The days of 4, 5, 6, 7 and 8% salary increases are way beyond us. P.L.

2011, Ch. 78, which requires at least 1.5% for the health insurance, is not being addressed by me because I am simply carrying the 1.5% from P.L. 2010, Ch. 2 forward into 2012. There may very well be some police officers who would pay more than the 1.5%, but that has not been factored into my analysis.

My Award increases the 2008 base by \$92,334.00 for 48 months or 2.2% over that base, reduced by health insurance contributions. That certainly is not something that will create a catastrophe for the Town. Nothing has been presented to me to show that the Town cannot fund my Award.

I have carefully considered the evidence and arguments of the parties in relationship to the statutory criterion. My Award does not interfere with the lawful authority of the Employer and, in fact, does not infringe upon, impede or set aside that lawful authority. The interests of the public are a major factor in an Interest Arbitration award. Here, the bargaining unit has been without a contract since December 31, 2008. That certainly is not in the best interests of the public nor of the members of the Police Department.

While the negotiations and mediation sessions were occurring, the public was not being properly served because there was no agreement. This is not an attack upon either party; it is just a reality based upon the facts I was presented with. My Award will not have a deleterious impact on the governing unit or its residents and taxpayers. More importantly, the municipality will not have a CAP problem. In the future round of bargaining, P.L. 2010, c. 105 mandates that the salary base cannot exceed 2%, which includes longevity and increments. While that law is effective January 1, 2011, and

even though it is not controlling in the instant matter, my Award shows deference to that statute.

My Award also protects the continuity and stability of employment and offers a competitive salary for all police officers. My Award does not impact upon the ability of the Town to function.

I recognize that the Town may argue that the impact of this Award into the future will be devastating to the Town. That may be true if the salary increases continue to escalate. However, the maximum salary increase for public employees effective January 1, 2011, is 2% of the base and that 2% includes longevity and increments. While that statute is not operative here because this Agreement expired prior to January 1, 2011, it is indicative of salary increases for successor settlements.

The financial data submitted by both parties clearly establishes the positions set forth by both parties. However, at the end of the day, the Town does have a funding mechanism to support my Award and, in fact, the Town, as it reviews my Award, will have a savings when health insurance and increased employee pension contributions are factored into the equation as to the total cost for the Town. Bargaining unit members will now pay 10% of pensionable base salaries towards their pensions. That is another savings to the Town

Again, I must reiterate the fact that my Award has nothing to do with longevity, clothing, overtime, or any other compensation that the employees receive. It is strictly on the base salary and nothing else. Historically, that is what interest arbitration awards have done, and I am continuing with that historical trend.

## PERC INTEREST ARBITRATION SALARY INCREASE ANALYSIS

YEAR	NUMBER OF AWARDS	AVERAGE SALARY INCREASE OF AWARD	VOLUNTARY SETTLEMENTS	AVERAGE SALARY INCREASE OF SETTLEMENTS
2009	16	3.75%	45	3.60%
2010	16	2.88%	45	2.65%
2011*	13	2.39%	21	2.09%
2011**	23	2.29%	28	1.96%

\* January 1, 2011 through June 30, 2011

\*\* January 1, 2011, through October 21, 2011

My award of 2.5% (2009), 2.0% (2010) 2.0%, (2011), and 2.0% (2012) is in compliance with the above PERC analysis.

The PBA's financial analysis clearly shows that the Town has experienced reasonable tax increases each year and most importantly, has remained below the CAP levy and expenditure CAP. The Town can therefore expect reasonable tax increases in future years while still fitting under the Levy CAP.

The Town has sufficient flexibility within its budget to pay the dollar amounts set forth in my Award. Even though the PBA's Offer frontloaded salary increases of 3.5% retroactive to 2009, I considered that to be excessive in light of current settlements from the PERC analysis set forth above. In addition, the Town has received miscellaneous revenues and has generated more funds that it had anticipated. My Award does not impact the Town's obligations under the 4.0% CAP restrictions and lowers increases to 2.0% towards the end of the contract to account for the Town's obligations under the recent 2.0% CAP restrictions.

Moreover, sheet 15 of the 2008 Budget, Current Fund Appropriations for Public Safety Functions, shows the following:

Salaries and Wages	\$1,872,902.00
Paid or Charged	\$1,784,343.44
Reserved	\$ 23,588.56
Other Expenses	\$ 116,000.00
Paid or Charged	\$ 32,979.14
Reserved	\$ 8,020.86
<b>Total Reserved</b>	<b>\$ 31,579.42</b>

Sheet 15 of the 2009 Budget, Current Fund Appropriations for Public Safety Functions, shows the following:

Salaries and Wages	\$1,908,511.00
Paid or Charged	\$1,881,539.01
Reserved	\$ 26,971.99
Other Expenses	\$ 133,970.00
Paid or Charged	\$ 110,200.68
Reserved	\$ 23,769.32
<b>Total Reserved</b>	<b>\$ 50,741.31</b>

The 2008 and 2009 Budget sheets for Police Functions shows a total of **\$82,320.73** reserved or unexpended. That amount is \$10,014 less than my Award. I fully understand that unexpended funds are used in the following year's budget; nevertheless, it specifically shows that the Town does have the ability to fund my Award. Moreover, this budget flexibility suggests that the Town has the discretion to reallocate budget appropriations to adequately maintain staffing levels and fund my Award.

The record reflects that since 2007, assessed value has increased by \$11,000,000 and the Town's assessed valuations have increased by over \$200,000,000.00 since 1998.

While in other municipalities I have awarded more than a four year agreement, after listening to the presentations of the parties, it became obvious to me that anything beyond a four year agreement was not going to be acceptable to the Town and, more importantly, would have seriously impacted upon the ability of the parties to compromise/modify their positions before they gave me their final offers. While I fully recognize that a four year agreement simply means that sometime in 2012 the parties will begin to meet to negotiate a successor agreement, I think the variables established by new State statutes make it a lot clearer for the parties to reach a successor agreement.

My wage offer is higher than the Town wanted and less than what the PBA asked for. The PBA proposed a four year agreement with salary increases ranging from 3.5% to 1.5% over the four years or 9.75% + \$1300.00 per step effective July 1, 2011. I awarded 8.5% over four years.

**SUMMARY:**

I have carefully considered the evidence and arguments of the parties in relation to the statutory criteria. My Award does not interfere with the lawful authority of the Employer, and furthermore, the Award is consistent with the interests of the public and will not have deleterious impact on the governing unit or its residents and taxpayers. The municipality will not have a CAP problem. Into the future round of bargaining, P.L.

2010, c.105, mandates that the salary base cannot exceed 2%, which includes longevity and increments.

I respectfully enter the terms of the Award as a reasonable determination of the issues in dispute based upon the facts in evidence. Accordingly, I hereby issue the following Award.

**AWARD**

1. DURATION: January 1, 2009, through December 31, 2012

2. WAGES:

January 1, 2009, through December 31, 2009 – 2.5% across the board

Increase Sergeant 1 differential of 3.75 by 2.5 = 6.25%  
Increase Lieutenant 6.93 differential by .07 = 7%

January 1, 2010 – 2.0% across-the-board

January 1, 2011 – 2.0% across-the-board

January 1, 2012 – 2.0% across-the-board

Current 2008 Sergeant differential of 3.28% step 1 to 2 remains the same

Current 2008 Sergeant differential of 3.18% step 2 to 3 remains the same

3. All other proposals of the parties are rejected.

SALARY GUIDES

1/1/08	1/1/09	1/1/10	1/1/11	1/1/12
Patrolmen				
39,545	40,534	41,344	42,171	43,015
51,437	52,723	53,777	54,853	55,950
56,812	58,232	59,397	60,585	61,797
62,221	63,777	65,052	66,353	67,680
67,627	69,318	70,704	72,118	73,561
73,047	74,874	76,372	77,899	79,457
Sergeants				
75,788	79,554	81,145	80,768	84,423
78,277	82,163	83,807	85,483	87,192
80,767	84,776	86,472	88,201	89,965
Lieutenant				
86,367	90,701	92,525	94,375	96,263

Dated: January 30, 2012

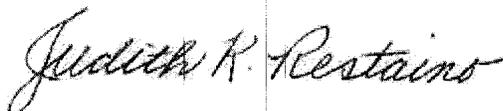


Gerard G. Restaino, Arbitrator

State of Pennsylvania )

County of Wayne ) ss:

On this 30<sup>th</sup> day of January, 2012, before me personally came and appeared GERARD G. RESTAINO to me known to be the person who executed the foregoing document and he duly acknowledged to me that he executed the same



Notary Public

Lake Twp., Wayne County

My commission expires on November 10, 2013.