

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

----- ::
IN THE MATTER OF THE INTEREST :: DOCKET NO. IA-2013-011
ARBITRATION ::

between ::

CITY OF ATLANTIC CITY, NEW JERSEY ::

Public Employer, :: **DECISION**

-and- :: **AND**

ATLANTIC CITY POLICE SUPERIOR :: **AWARD**
OFFICERS' ASSOCIATION, ::

Employee Organization ::
----- ::

BEFORE: MICHAEL J. PECKLERS, ESQ., INTEREST ARBITRATOR

DATE(S) OF HEARING: February 19, 2013; February 25, 2013;
March 4, 2013

POST-HEARING BRIEFS: March 8, 2013 (City)
March 9, 2013 (Association)

DATE OF AWARD: March 14, 2013

APPEARANCES:

For the Public Employer

Steven S. Glickman, Esq., RUDERMAN & GLICKMAN

For the Employee Organization

Mark Belland, Esq., O'BRIEN, BELLAND & BUSHINSKY, L.L.C.
Jeffrey R. Caccese, Esq. "

I. BACKGROUND OF THE CASE

Union Exhibit 3 Tab 5 is an excerpt from the OFFICIAL WEBSITE FOR THE CITY OF ATLANTIC CITY, which confirms that the City has had a long and varied history. It is approximately 11 square miles, and formally opened on June 16, 1880, to fanfare the likes of which had never been seen. This seaside resort was born, and by count of the census of 1900 there were over 27,000 residents. This was up from just 250 in the 45 years before. Atlantic City became "the" place to go, with entertainers from vaudeville to Hollywood performing on the piers and at its glamorous hotels.

The Miss America Pageant which was held in Atlantic City intermittently from 1930 - 1935, began to be held at Convention Hall in 1940 and became synonymous with it. After the conclusion of World War II, however, the City suffered a general deterioration and decline in tourism. See *generally*, HISTORY OF ATLANTIC CITY, by Barbara Kozek. *Ibid*.

In 1976, the State Legislature adopted the Casino Gambling Referendum, which continued the upward battle that had begun more than 100 years earlier. According to the Official Tourism Site of the State of New Jersey, Atlantic City is the gaming capital of the East Coast, thus making it one of the most popular tourist destinations in the United States. *Id* at Tab 9.

And although there are less than 40,000 residents, Atlantic City attracts more than 30,000,000 visitors on an annual basis. For 2011, the South Jersey Transportation Authority & NJ Transit reported that this included 24,293,056 trips

by automobile; 3,223,655 trips by casino bus; 448,756 trips by NJ Transit bus; 282,210 trips by air; and 205,365 trips by rail. *Id.* at Tabs 15-16. Furthermore, roughly 40,000 individuals commuted to work in Atlantic City last year.

In all, there are currently 12 high-rise casino hotel resorts employing 32,823 employees in 2011 and generating \$3,318,000,000 in revenue for 2011 prior to the opening of *Revel* last year. See AMERICAN GAMING ASSOCIATION website, *Id.* at Tab 12. As such, Atlantic City ranks second only to Las Vegas, on the American Gaming Association's TOP 20 U.S. CASINO MARKETS BY ANNUAL REVENUE. *Id.*, at Tabs 9; 11; 12, 15. On February 1, 2011 New Jersey Governor Chris Christie signed into law sweeping legislation that was designed to revitalize the ailing gaming and tourism industries in Atlantic City. Bill S-11 authorized the creation of a tourism district, while S-12 provides for the modernization of New Jersey's casino regulatory structure. *Id.* at Tab 18.

The Atlanticare Regional Medical Center, the Atlantic City International Airport, and numerous heliports are also found within the City's borders. Educationally, there is the Atlantic City High School, public & private elementary/middle schools, as well as the Atlantic City Free Public Library.

The Richard Stockton College of New Jersey and Rowan University are within proximity, in addition to several county colleges. Atlantic City additionally has an outlet shopping district, and many restaurants. *Id.*, at Tab 9.

Included within the Atlantic City Department of Public Safety is a Police Department consisting of approximately 330 sworn police officers. See City Exhibit 2, Tab 3 sub tab 2. The Atlantic City Police Superior Officers' Association

("the SOA" or "the Union") is the majority representative for collective bargaining purposes of those individuals holding the rank of Captain. Before and after the expiration of the January 1, 2008 through December 31, 2012 Collective Bargaining Agreement, the parties engaged in unsuccessful negotiations over a successor agreement on December 20, 2012, and January 16, 2013. On the later date, the SOA filed a PETITION TO INITIATE COMPULSORY INTEREST ARBITRATION per N.J.S.A. 34:13A-15 *et seq.* with the State of New Jersey, Public Employment Relations Commission ("P.E.R.C."). The record also indicates that the SOA had previously executed an UNFAIR LABOR PRACTICE CHARGE with P.E.R.C. on November 14, 2012, which was related to the City's perceived premature filing for interest arbitration in the instant case. See P.E.R.C. Docket No. CO-2013-120.

On January 29, 2013, P.E.R.C. notified the parties that an interest arbitration petition had been filed, as well as of my random selection and appointment as the interest arbitrator, pursuant to N.J.S.A. 34:13A-16e (1). Hearings were convened at City Hall in Atlantic City, New Jersey, on February 19, 2013, February 25, 2013 and March 4, 2013. Informal mediation did not resolve all issues, but there were several items that were agreed to, which have been incorporated into this AWARD. These included: the City withdrew its proposal concerning Article V GRIEVANCE PROCEDURE, while reserving the right to introduce the same in the PBA interest arbitration; the SOA agreed to the City proposal concerning Article XLIII, DURATION seeking to change the dates of the CBA as appropriate; the SOA agreed to the City's proposal on Article XIII,

SPECIAL LEAVES, which provided for 5 *consecutive* working days of paid leave commencing between the day of death and the day of the funeral; the City agreed to the inclusion of the words *Domestic or Civil Union partner*, within the definition of “immediate family,” and that the 250 miles would be calculated based on vehicular travel using MapQuest; the City withdrew its proposal related to Article XXIII, WORK WEEK; the SOA agreed that the PERSONNEL OFFICER language of Article XXVII would be incorporated into Article XXI, PERSONNEL COMMITTEE; the City withdrew its proposal on Article XXXVII, S.O.A. PRESIDENT, with a reservation of rights again indicated.

At the hearings, the advocates were provided with a full opportunity to undertake oral argument; to enter comprehensive binders of documentary evidence; and to examine and cross-examine witnesses under oath. SOA President Captain Frank Brennan testified for the Union on February 19, 2013, as did Municipal Finance Expert Vincent J. Foti on March 4, 2013. On February 25, 2013, Atlantic City Director of Revenue & Finance Michael Stinson provided testimony, with his cross-examination done on March 4, 2013. Post-hearing briefs returnable March 8, 2013 were later filed that date by the City and on March 9, 2013 by the SOA, with the consent of Mr. Glickman. In issuing this INTEREST ARBITRATION AWARD as provided by my conventional authority under law, I have carefully analyzed and fully considered the respective Final Offers, as prescribed by the required statutory criteria. The same is issued within the 45 day time period provided by N.J.S.A. §34:13A-16f(5)

II. FINAL OFFERS OF THE PARTIES WITH SUPPORTING POSITIONS &

AWARD ON EACH

The positions of the parties with their Final Offers on all open issues and supporting argument are initially set forth. The opposing party's response then follows in italics. As a practical matter, since the SOA only sought a 3 year deal at 2% each, while maintaining the *status quo ante* on all other contractual language, there is no City reply except for the salary increase. Finally, my AWARD on each issue appears in a text box. These considerations are then incorporated by reference and specifically addressed with regard to the articulated statutory criteria in Section III, STATEMENT OF THE CASE.

The Atlantic City Police Superior Officers' Association

The Atlantic City Superior Officers Association (hereinafter "SOA" or "Union") is comprised of employees employed by the City of Atlantic City Police Department in the title of Captain. Currently, there are only nine (9) Captains in the bargaining unit, however, there have been as many as 27 Captains. Despite the size of the bargaining unit, the value of the Captains to the City of Atlantic City (hereinafter "Atlantic City" or "City") as well as to its residents is invaluable. The Captains are the backbone of the City Police Force who tirelessly work to ensure that the Police Department operates smoothly and efficiently and that the City residents, employees as well as the tourists to the City are safe. Indeed, the reduced size of the unit makes the service of the existing Captains more important to the City.

It is these dedicated law enforcement officers who represent the command structure of the Police Department that supports the health, welfare and safety of the City. Nevertheless, the City administration is so vindictive and determined to prove a point that they are attempting to gut the Collective Negotiation

Agreement (hereinafter "CNA" or "Agreement") with the SOA to the detriment of the City as a whole. In that regard, it is evident that the City is seeking to payback the SOA by riding the tide of the current attack on public employees in the State of New Jersey and the highly publicized siege on public workers collective bargaining rights in the State of Wisconsin and across the Nation.

The City's draconian final proposals seek concessions so outrageous that, if implemented, would make it improbable that any current law enforcement officer of the City would want to attain the title of Captain and assume the significant responsibilities that go along with the position. This would leave the City without the necessary law enforcement leadership required to effectively run the Police Department. Such a result would jeopardize the integrity of the Atlantic City Police Department, which, in turn, would make it impossible to properly serve the City, including the casino and tourism industry the City and State so heavily rely upon. Moreover, the proposed concessions would dramatically demoralize the current SOA membership making it difficult to maintain the high level of service that these law enforcement leaders currently provide.

Conversely, the SOA's proposals simply seek a modest pay increase in an effort to keep pace with the cost of living (including increased medical cost share) over the term of the CNA as well as to maintain the status quo of the bargaining unit. As set forth more fully below, the SOA has submitted the necessary and compelling evidence to warrant granting its more than reasonable proposals. On the other hand, the City's proposals will only serve as a detriment to the SOA the

City, its residents and the entire casino industry. Therefore, the City's proposals must be denied.

PROCEDURAL HISTORY

The City's Department of Public Safety operates a Police Department comprised of approximately three hundred thirty (330) law enforcement officers. City 2, Tab2, sub tab 2. The exclusive bargaining representative of employees within the City Police Department in the title of Captain is the SOA. (U-3, Ex. 1). In that capacity, the SOA and the City are parties to a CNA which expired on December 31, 2012. (U-3, Ex.4).

Notably, prior to the expiration of the CNA and before the parties engaged in any negotiations whatsoever, on or about November 5, 2012, the City filed a petition to initiate compulsory interest arbitration with the New Jersey Public Employment Relations Commission (hereinafter "PERC"). In response to the City's untimely petition, the SOA objected to the filing of the City's petition as premature. PERC correctly recognized that the petition was, in fact, premature and did not process the petition. Additionally, the SOA also filed an unfair labor practice charge with PERC asserting violations of the Employer Employee Relations Act (hereinafter "EERA") due to the City's bad faith negotiation tactics and anti-union conduct. The charge is currently pending and will be processed by PERC.

On January 16, 2013, the instant petition initiating compulsory interest arbitration was filed with PERC. (U-3, Ex. 1). Thereafter, final proposals were

exchanged by the parties and the arbitration hearings were held on February 19, 2013, February 25, 2013, and March 4, 2013. (U-3, Exs. 2 & 3).

STANDARD OF REVIEW

Interest arbitration is a statutory method of resolving collective negotiation disputes between police and fire department employees and their employers. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 80 (1994). The Employer Employee Relations Act (hereinafter “EERA”) sets forth nine (9) factors that the arbitrator must consider in issuing an interest arbitration award. N.J.S.A. 34:13A-16(g)(1)-(9); see also Hillsdale, *supra* at 82. The nine (9) factors are as follows:

* * *

In general, the relevance of a factor depends on the disputed issues and the evidence presented. Hillsdale, *supra* at 82. The arbitrator is not required to rely on all of the factors, but only the ones that the arbitrator deems relevant. *Id.* at 83. It is the arbitrator who should determine which factors are relevant, weigh them, and explain the award in writing. *Id.* at 82. However, an arbitrator should not deem a factor irrelevant without first considering the relevant evidence. *Id.* at 83. In issuing an award, arbitrators are required to weigh the relevant factors and explain why the remaining factors are irrelevant. *Id.* at 84. In sum, an arbitrator’s award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why the other factors are irrelevant. *Id.* at 85.

Here, the SOA has submitted sufficient evidence to support the award of its minimal final proposals. Conversely, the City has failed to provide sufficient evidence, and often no evidence, to support its plethora of baseless and vindictive proposals, and, therefore, all of the City's proposals must be denied.

LEGAL ARGUMENT

In a good faith effort to negotiate a successor CNA with the City, SOA sought only to maintain the status quo along with a modest increase that would be below the cost of living. See (U-3, Ex. 7 & 8). In short, the SOA's proposal requested to maintain the status quo of the recently expired CNA and a modest wage increase in an attempt to keep up with the cost of living. *Ibid.*

On the other hand, the City seeks to eviscerate the CNA in its current form by requiring the SOA members to accept a significant pay decrease despite its acknowledgement of the members' hard work and dedication. In that regard, the City took a hard line on their negotiating position and, in essence, collectively slapped the dedicated SOA membership in the face. Incredibly, the City has, in bad faith, proposed to reduce terminal leave benefits, reduce vacation leave, reduce overtime pay, freeze and reduce longevity, reduce educational incentives, and to reduce the wages of current members and further reduce wages for new and promoted members. Undeniably, the City seeks to slash the overall compensation of Captains to a level where their compensation package will not only be significantly lower than all other comparable jurisdictions, but it would be less than those employees the Captains are charged to command. The City's proposals seek to overhaul the entire agreement to the detriment of the SOA in

every way, as if there existed no history of bargaining for benefits at anytime between these two (2) parties. The City's proposals are not only an insult to the Captains in the Atlantic City Police Department, but are an insult to all law enforcement officers in the State of New Jersey who risk their lives to protect and serve the citizens of this State.

Furthermore, but no less importantly, the City is keenly aware that the CNA for Police Benevolent Association Local 24 (hereinafter "PBA") which is the bargaining unit representing Patrolmen, Sergeants, and Lieutenants in the City Police Department also expired at the end of 2012. (U-3, Ex. 39). The City undoubtedly is using the SOA CNA as a template in order to attempt to unfairly and unnecessarily gut the contract of the PBA bargaining unit. The outcome of this Arbitration will determine the wages, benefits, and working conditions for hundreds of City law enforcement employees.

As the Arbitrator is aware, a little over six (6) months ago the bargaining unit representing Atlantic City Firefighters, IAFF Local 198, was involved with an interest arbitration with the City resulting in an Interest Arbitration Award (hereinafter "IAFF Award"). (U-3, Ex. 42). Traditionally, the City Firefighters and Police had maintained relative parity in terms of wages and benefits. However, as the result of the IAFF Award, the IAFF received the maximum increase permissible under the statutory hard cap of two percent (2%). See N.J.S.A. 40A:4-45. N.J.S.A. 34:13A-16(g)(9); (U-3, Ex. 42). In comparison to this matter, the City's proposals in the IAFF arbitration such as proposals related to benefits like vacation leave, education leave, wage scale and other contractual benefits

were similar, if not identical, to the City's proposals in this matter. Therefore, the IAFF Award has arguably created a template for many of the City's proposals in this arbitration.

Significantly, however, the IAFF Award was modified by mutual agreement between the IAFF and the City through a subsequent Memorandum of Understanding (hereinafter "IAFF MOU"). (U-3, Ex. 43). The IAFF MOU revised the IAFF Award in order to avoid compression between the ranks within the Department that ultimately would disincent employees from seeking promotions. The focus of the IAFF MOU was Education Incentive, Longevity, Vacation Leave, and Wage Scale and clearly articulated the City's position that the modifications in these areas by the Award applied only to new hires who were later promoted. *Ibid.*

Thus, if the Arbitrator deems it appropriate to follow the IAFF Award template, it is imperative that the IAFF MOU be incorporated in order to maintain parity, avoid potential inequities, and steer away from disincentives for promotions, which would decimate the rank structure. **Simply stated the IAFF MOU constitutes compelling precedent and a binding pattern of settlement which should not be ignored. [emphasis in original].**

Lastly, the City's attempts must fail because the City is unable to or flatly failed to produce any evidence to support its draconian proposals. If implemented, the proposals would undoubtedly destroy the morale of the current membership and make it much more difficult for the Police Department to recruit highly qualified Captains to effectively serve the City and the businesses that

support the City. In fact, even the City acknowledged its ability to pay the SOA's wage proposal during the hearing. This shows that the City's proposals, which seek to slash and burn the SOA compensation package, are not based on need, but, rather, are nothing other than vindictive. Accordingly, the Arbitrator should award the SOA proposals and strike down each of the City's proposals. If, however, the Arbitrator follows the IAFF Award, the IAFF MOU must be incorporated.

1. **SOA'S FINAL PROPOSAL SHOULD BE AWARDED AS IT IS IN THE BEST INTEREST OF THE MEMBERSHIP, THE CITY, AND THE PUBLIC.**

A. The SOA's Proposed Across The Board Pay Increase Should Be Approved Because The City Has The Ability To Pay And It Benefits The Interest Of The Public.

The SOA has proposed across the board (hereinafter "ATB") salary increases for 2012, 2013, and 2014 in the amounts of 2%, 2%, and 2%, respectively, which fall within the hard cap provisions as set forth in N.J.S.A. 40A:4-45.45 (hereinafter "hard cap"). Pursuant to the hard cap, an arbitrator has the ability to award increases of two percent 2% of the base salary items.

N.J.S.A. 34:13A-16.7(b). "Base salary" is defined by the EERA as follows:

The salary provided pursuant to a salary guide or table and any amount, including any amount included for longevity or length of service. It shall also include any other items agreed to by the parties, or any other items that was included in the base salary as was understood by the parties in the prior contract.
N.J.S.A. 34:13A-16.7(a).

With that understanding, the SOA proposes that the award be provided

within the bounds of the law. Accordingly, based on the information and documentation provided by the City, it is evident that there are sufficient funds within the hard cap to fund the full two percent (2%) ATB raises for the SOA membership. Moreover, there is sufficient flexibility within the tax levy cap and the appropriations cap to grant such a proposal. See City Exhibit 3.

Here, the calculation of base salary must include the salary, longevity, holiday pay (already included in salary), and education incentives, which were used for the base salary calculations in the IAFF Award. (U-3, Ex. 42). Additionally, the salary should include Command Differential and Shift Differential.

The CNA identifies the salaries of Captains as the midpoint between the Deputy Chiefs' salaries and the Lieutenants' salaries. (U-3, Ex. 4). Since the Deputy Chiefs' salary is \$141,095 and the Lieutenants' salary is \$118,335, the parties have agreed that the Captains base salary is \$129,740, not inclusive of longevity, educational incentive, or differentials.

As set forth more fully below, in calculating base salary the SOA followed the statutory guidelines. Since there are no salary increments, all SOA members received top longevity and Command Differential in 2012 and education incentives and Shift Differentials must remain static, the SOU undeniably is able to receive the maximum two percent (2%) salary increases under the hard cap. The SOA's proposal does not violate the hard cap. The 9th statutory criteria requires that an increase must not violate that statutory restrictions imposed on the employer by N.J.S.A. 40A:4-45.45. N.J.S.A. 34:13A-16(g)(9). Here, it is

evident that the SOA's proposal is within the statutory limits. On the other hand, the City did not present any evidence to refute the SOAs calculations, and, furthermore, the calculations are based on the same formula utilized by the parties as part of the IAFF Award.

The City does not even venture to calculate the salary increments for the SOA. The City's failure is likely because it is aware that the SOA is entitled to the full two percent (2%) increment each year the CNA is effective. The City is well aware that the definition of base salary specifically requires "the salary provided pursuant to a salary guide or table." N.J.S.A. 34:13A-16.7(a). It does not permit the City to prorate or exclude those salaries as it sees fit. With that understanding, the SOA members were at full longevity at the end of 2012 and are not entitled to salary increments, therefore, the SOA is permitted the full two percent (2%) ATB increases.

The SOA followed the statutory mandates by including the employees employed in 2012 in the base salary utilizing the salary guide salaries each employee received. See U-1. However, if it is determined that the SOA is somehow not entitled to the full two percent (2%) ATB increase, the Arbitrator must consider the fact that prior to the expiration of the SOA's CNA, the SOA membership did not contribute toward the costs of health care.

However, after the expiration of the CNA, and, throughout the term of the next CNA, the SOA membership will increasingly contribute to the cost of their health care costs. In fact, the testimony of SOA President Frank Brennan established that by January 1, 2017, the SOA membership will be required by

law to contribute a minimum of thirty-five percent (35%) of the cost of health care premiums, which clearly is a cost savings to the City. These contributions and savings by the City must be considered when determining the propriety of the SOA's salary proposal.

In that regard, the chart below sets forth the amount of money necessary to fund the maximum increase.

<u>Total 2012</u>	1,425,724.07
Base	
	2%
2013 Increase	28,514.48
<u>Total 2013</u>	1,454,238.55
Base	
Percentage Increase	2%
2014 Increase	29,084.77
<u>Total 2014</u>	1,483,323.32
Base	
Percentage Increase	2%
2015 Increase	29,666.47

The SOA scattergram illustrates that there are more than sufficient funds available under the hard cap to fund an ATB increase since there are no increments or longevity increases. (U-1). Moreover, the City has acknowledged it has the ability to pay these modest increases. Notably, the IAFF Award permitted the maximum allowable increase under the hard cap. (U-3, Ex. 42). The same should apply in this case. Accordingly, the SOA should be awarded the maximum amount allowable under the hard cap for ATB increases.

The proposals by the SOA do not have an adverse effect on the public. Quite to the contrary, the public receives a benefit from this proposal. Indisputably, the public is a silent party to the interest arbitration process. Hillsdale, *supra* at 82. The public is affected by police and fire salaries in many ways, but, most notably, by the cost and adequacy of police and fire protection. *Id.* at 82-83.

The fire and police presence is particularly important in the City of Atlantic City considering the City is primarily supported by tourism and the casino industry. In order for Atlantic City to remain a viable tourist attraction, the City must be safe for visitors to the City. In that regard, SOA President Frank Brennan testified that it is well-documented that the State has recently created a Tourism District of the City, which requires more intensive policing due to the State's focus on Atlantic City tourism.

As a result, the demand on the Police Department, but, especially the Captains, has increased, while the manpower has not. Importantly, SOA President Brennan testified that, in order to properly police the Tourism District, it would require over five hundred (500) police officers. However, the Police Department continues to police the Tourism District without any State assistance in terms of manpower.

For these reasons, the morale and the quality of the City's Police Department is critical. In order to attract top tier talent to the Police Department, and maintain an effective and efficient Department, the salary and benefits of the Captains as well as the entire police force must be a means of recruiting such

talent. Otherwise, potential recruits will simply seek other Departments with better wages and benefits. In order for the City to continue to provide a high level of service vital to the casino industry, the casino patrons, and other tourists, the City must continue to provide adequate wages and salaries to recruit Captains and maintain the morale of the existing Captains in order to effectively lead the City's Police Department. For that reason, it is in the interest of the public to award the ATB increases to the SOA.

In addressing the second and third criteria of the statutory analysis, the evidence undoubtedly demonstrates that the SOA bargaining unit has a wage and benefit package that is in line with and, in certain circumstances, less than the wage and benefit package of internal bargaining units and external bargaining units that most closely compare to Atlantic City. N.J.S.A. 34:13A-16(g)(2) and (3).

While the statute requires that the bargaining unit be compared to a similar private sector employer, the SOA submits that it would be patently unfair and a waste of resources to attempt to compare the Atlantic City Police Department to any private entity. See N.J.S.A. 34:13A-16(g)(2)(a). It has been routinely held that police work cannot be compared to private sector employment. Borough of River Edge and PBA Local 201, PERC No. IA-97-20. Similarly, the arbitrator should not consider private employment as part of the analysis of the proposals under the statutory criteria for Captains.

While internal and external comparability in the public sector should be considered, it is difficult to place great weight on this criterion because Atlantic

City is a unique municipality. See N.J.S.A. 34:13A-16(g)(2(b) and (c). As previously stated, Atlantic City is less than eleven (11) square miles and is home to less than 40,000 residents. (U-3, Exs. 6 &9). Yet, there are more than thirty million (30,000,000) visitors each year to the City and there are 12 high rise casinos. *Ibid* . In addition to being a tourist attraction for its casinos, Atlantic City is a beach community bordered by the Atlantic Ocean. (U-3, Ex. 5). Frankly, it would be difficult to point to another community like it in the country. Nevertheless, the SOA compared Atlantic City to the other municipalities in Atlantic County that have a paid police department. Also, the SOA compared the Police Department to other large municipalities that have tourist attractions such as Camden, Trenton, Newark, Point Pleasant, Barnegat, and Asbury Park. In these comparisons, the SOA wages and benefits are equal to or less than the external comparables, especially the larger municipalities, despite the unique situation that exists in Atlantic City.

Due to the unique position of Police Captains, the internal comparables are a less reliable comparison than the external comparables because the other bargaining units within the City do not have positions similar to a Captain in the Police Department. As addressed more fully in the "Pay Scale Proposal" section of this brief, the SOA's salary range is the same, similar, and in many instances less than comparable municipalities outside of Atlantic County.

Furthermore, PERC's salary analysis reflects an average increase resulting from interest arbitration awards in the amount of 1.82 in 2012 and 2.05 in 2011. See U-3, Ex. 20. The analysis also reflects an average increase of 1.83

in 2012 and 1.87 in 2011 for settled agreements. *Ibid.* Critically, it demonstrates that, even under a hard cap analysis, other public sector municipalities are able to fund ATB increases.

Based on the fact that other comparable employees and departments are equal to or greater than the SOA in terms of salary, and, in general police and fire bargaining units receive increases in the range that the SOA is requesting here, the SOA's proposal is appropriate and should be awarded.

In this regard, the City and the Supervisors' Union have entered into an agreement providing for a four percent (4%) salary increase in 2012. However, the increase will be paid in 2012 and 2013 in the amount of two percent (2%) each year. It should be noted that it is not known whether both parties have ratified this agreement, therefore, there is still the potential that the Supervisors will negotiate an even greater increase.

Further, the City and the AWCPA have entered into a Memorandum of Agreement providing for four percent (4%) salary increases for 2011 and 2012 the increases paid as follows:

2011- 2%
2012- 2%
2013- 2%
2014-2%

The City and IBEW have also entered into an agreement providing for a four percent (4%) salary increase in 2012. However, the increase will be paid in 2012 and 2013 in the amount of two percent (2%) each year. It should be noted that it is not known whether both parties have ratified this agreement, therefore, the IBEW may negotiate higher wage increases.

As is evident above, and regardless of the City's position that other bargaining units are receiving no wage increases after 2012, it cannot be refuted that the City is effectively providing two percent (2%) wage increases to other bargaining units beyond 2012 while offering the SOA no wage increase whatsoever. This is further compelling evidence of a pattern of settlement which must not be ignored.

B. The City Is Within Its Lawful Authority To Provide For The Proposals Of The SOA And The City Will Not Suffer Any Significant Financial Impact By Awarding The SOA's Proposals, Therefore, The SOA's Proposals Should Be Awarded.

The only proposal of the SOA that must be considered in regard to the fifth (5th) statutory criteria is the ATB increases. The only other SOA proposal seeks to maintain the status quo, so it will have no additional economic impact on the City. Among the factors to consider are the limitations imposed upon the employer by N.J.S.A. 40A:4-45.1 et seq.; N.J.S.A. 34:13A-16(g)(5).

The Arbitrator must also take into account, to the extent evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public 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. Hillsdale, supra, at 82.

Importantly, in this case, the City's own financial expert, Michael Stinson, acknowledged during the hearing that since the SOA's proposed salary increase would be less than \$30,000 in comparison to the City's budget of approximately \$240,000,000, **the City is able to pay** the proposed SOA increases. [*emphasis supplied in original*] In addition, the City has further admitted that it has the ability to pay based on the budget and within the statutory tax levy cap and appropriations cap limits, which are borne out by the City's 2013 introduced budget. The calculations below demonstrate the City's ability to pay under the levy cap and appropriations cap.

CAP EXPENDITURE CALCULATIONS (*Budget sheet 3c 2013*)

Expenditure CAP Total Allowable	\$211,321,934.29
Actual Budget Sheet 19	<u>189,306,967.00</u>
Available	\$ 22,014,967.29

CAP LEVY CALCULATION (*Budget Sheet 3b(A) 2012*)

Levy CAP Maximum Allowable	\$ 223,901,584.00
Amount to be Raised by Taxation	<u>204,195,412.00</u>
Below Allowable CAP Levy	\$ 19,706,172.00

Here, the SOA's financial expert, Vincent Foti, credibly testified that the City had the ability to fund the proposed increases and the City's expert, Michael Stinson, acknowledged that the City was within the limits of the statutory tax levy

cap and appropriations cap. Mr. Foti summarized his testimony regarding the City's financial condition and ability to pay as demonstrated in the charts below with explanations based on the documents he reviewed:

Results of Operations (AFS Sheet 19)

YEAR	AMOUNT
2012	\$200,495

Mr. Foti explained that the Results of Operations indicates the ability to re-generate surplus, which is the equivalent of the "bottom line" in the private sector. With that understanding, the City without a doubt has this ability.

Unexpended Balance of Appropriation Reserves (AFS Sheet 19)

Year	From	Amount
2012	2011	\$5,375,598

As noted by Mr. Foti, the City continues to generate excess budget appropriations. This affords them budget flexibility. Any agency would have negative numbers if they had serious financial problems. The City undeniably has excess budgeted funds. Additionally, Mr. Foti noted that AFS Sheet 19 provides for "miscellaneous revenues not anticipated" in the amount of \$1,986,318 which goes back to surplus. Finally, the evidence during the hearing demonstrated that the City's surplus as of December 31, 2012 was \$2,257,629.00, which further indicates that the City has the ability to pay the modest wage increase for the SOA. See City Exhibit 3, Sheet 39.

It is also important to note that the City's main argument regarding its ability to fund the wage increases in the IAFF interest arbitration was the pending tax appeals. Despite these tax appeals, the Arbitrator in the IAFF arbitration

found that the City had the ability to pay. Since the IAFF award, the City has conceded that the financial picture has not changed except for the fact that in December 2012 the City was able to bond for \$100,000,000 in order to pay the tax appeals over the next twenty (20) years. Mr. Foti gave the City credit for the bonding acknowledging that it was a sound financial strategy. Additionally, the testimony of Mr. Stinson revealed that the aforementioned bonds sold at a premium resulting in the City realizing an additional \$9,000,000.00 for 2013.

All other tax appeals and pending settlements are merely speculative, and, therefore cannot be considered as part of this arbitration. To do so, would open the door to suggest an arbitrator should speculate about potential non-recurring revenues (i.e. "one shot deals"). The parties are required to present evidence based on the facts at hand at the time of arbitration. It is an impossible task to base an award on potential future debt that may not occur during the term of a CNA just as it would be to speculate upon future growth. To even suggest that prospective tax appeal costs should be considered as part of this arbitration borders on desperation by the City.

Although the tax appeals are speculative, as are one shot revenue deals, the City has actually demonstrated the ability to effectively handle the tax appeals through bonding and there is no reason to believe the City will not be able to continue to do so going forward. Since the City has shown the ability to effectively resolve the tax appeal issues, the pending and potential tax appeals are purely speculative. Moreover, the City has the ability to pay increases despite the previous tax appeals. For these reasons the tax appeal argument

proffered by the City should be disregarded as meritless and speculative.

Amazingly, the City claims financial distress yet it deemed it appropriate to give raises to several high level, non-bargaining unit employees in November 2011, including the Director of Revenue and Finance, who testified on behalf of the City as to the alleged economic condition of the City. (U-3, Ex. 42, pg.42-43). Not only did the City increase the Director of Revenue and Finance's salary (\$10,000.00), it also raised the salary of the Director of Public Works (\$15,798.12), Director of Planning and Development (\$3,021.79), Director of Licensing and Inspection (\$6,012.91) and the Director of Health and Human Services (\$5,945.07). (U-3, Ex. 42). In total, the City saw fit to increase the aforementioned employees' salaries in the amount of \$40,777.89 in 2011. *Ibid.*. Additionally, on February 28, 2013 The Atlantic City Press reported that Atlantic City Mayor Lorenzo Langford recently received a salary increase of almost \$16,000.00 in April 2012. See Atlantic City Press dated February 28, 2012 "Christie Renews Verbal War With Langford."

In sum, the City cannot credibly suggest it does not have the ability to pay, which is why the City attempted to divert the Arbitrator's attention with a specious tax appeal argument. When pressed, however, the City acknowledged, and Mr. Foti confirmed, that the City has the ability to pay the less than \$30,000.00 annual increase to the SOA membership.

*C. The Cost Of Living Must Be Considered And
The Consumer Price Index (hereinafter "CPI")
Demonstrates A Cost Of Living Increase
Above The Hard Cap.*

The statutory criteria used in making a determination of the financial

impact of an interest arbitration award requires that the arbitrator consider the cost of living. N.J.S.A. 34:13A-16(g)(7). In this case, the analysis is simple. The CPI rose 3.2% from 2010 to 2011 and 2.1% from 2011 to 2012, which means that the cost of living has increased at a rate that exceeds the proposed increases. U-3, Exs.7 & 8. Yet the City is seeking to cut the overall wages of the bargaining unit in the face of the rising cost of living. Even if the SOA were to receive the maximum allowable percentage ATB increase, it would fall below the rise in the cost of living.

*D The Continuity And Stability In Employment Is
A Significant Concern For The SOA, Which Could
Affect The Membership If The SOA's Proposal Is
Not Awarded.*

An arbitrator must consider the continuity and stability of employment when determining whether to award a proposal. N.J.S.A. 34:13A-16(g)(8). In this case, it is of great concern to the SOA that any failure to award the SOA's proposal, and, conversely, award any of the City's proposals, will make it more difficult to fill vacant positions with the level of candidates necessary to effectively perform the duties of an Atlantic City Police Captain. In fact, it is a grave concern of the SOA that if the City's proposals are granted that no employee will seek promotion to Captain because they will be reduced in salary and benefits by accepting a promotion to the position.

Additionally, it is necessary for the casino patrons, tourists, and casino industry to have faith that they are able to be competently protected by the City's Police Department. It is vital to the City, the casino industry, the tourism industry, and the public in general that the City maintains a top notch Police Department.

If the City cannot present a salary and benefit package that meets or exceeds other police departments in the State, the City will invariably be unable to recruit “the best and the brightest” to the Police Department. Such a result could have a significant and lasting impact on the City, its residents, and the SOA. Furthermore, a cut in the salary and a reduction in benefits of existing SOA members can only result in a loss in morale, which will unfortunately have an adverse impact on the community. In sum, the SOA has overwhelmingly demonstrated that after evaluating the statutory criteria, the maximum available ATB increase is appropriate for and deserved by the SOA membership.

CONCLUSION

The City’s attempt to eradicate a generation of negotiated benefits at once should not be countenanced. Instead, the SOA’s reasonable proposals should be adopted. Those proposals are well within the City’s ability to pay and will serve the interest of all parties – particularly the public.

THE CITY OF ATLANTIC CITY

The City of Atlantic City (the “City”) advances a significant preliminary contention in this interest arbitration. First, because the Atlantic City Police Superior Officers’ Association (the “Association”) wage demands exceed the statutorily mandated maximum, the Interest Arbitrator must bar its consideration. As a preliminary matter the Interest Arbitrator must decline to consider the Association’s wage demand, which fails to comply with the two percent (2.0%) cap and, as a matter of law, cannot be entertained by the Interest Arbitrator. Public Law 2010, c. 105, codified at N.J.S.A. 34:13A-16, 16.7, 16.8 and 16.9 (the

“2010 Amendments”) requires that the award in this interest arbitration not exceed two percent (2.0%) of the “aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve (12) months immediately preceding the expiration of the collective negotiation agreement subject to arbitration” N.J.S.A. 34:13A-16.7(b). The Association submitted a wage demand averaging in excess of two percent (2.0%) per year, exclusive of step and longevity increases. Because the Association’s wage demand exceeds the two percent (2.0%) statutory salary cap, the Interest Arbitrator must reject it. Any award that exceeds the 2.0% statutory salary cap will be vacated on appeal.

THE POSITIONS OF THE PARTIES

A. COST OUT OF THE ASSOCIATION’S DEMANDS

1. 2013, 2014 AND 2015 SALARY DEMANDS

The Association proposes a three-year agreement and demands the following salary increases for 2013, 2014 and 2015, exclusive of incremental and longevity increases:

a. 2013 SALARY DEMAND

The Association demands an across the board salary increase of two (2.0%) percent.

b. 2014 SALARY DEMAND

The Association demands an across the board salary increase of two (2.0%) percent.

c. 2015 SALARY DEMAND

The Association demands an across the board salary increase of two (2.0%) percent.

d. COMPOUNDING COSTS OF SALARY DEMAND

Because salary increases involve compounding costs, the Interest Arbitrator cannot determine the true cost of the Association's salary demands to the City simply by adding the demanded percentage salary increases over the three-year period. Compounding costs result because the salary proposal for 2014 must be computed on the 2012 base plus the 2013 increase. Similarly, the salary proposals for 2014 and 2015 must be computed on the 2011 base plus the 2012 increase, plus the 2013 and 2014 increases, respectively.

In other words, if the Interest Arbitrator awarded the Association's salary demands, the maximum Police Captain's salary would increase from \$129,741.00 in 2012, to \$132,336.00 in 2013, to \$134,983.00 in 2014, and to \$137,692.00 in 2015. Over the contract term, the maximum Police Captain's salary would increase by \$7,941.00. Although the bargaining unit would receive a six percent (6.0%) straight percentage increase, the bargaining unit would actually receive a six and twelve-hundredths percent (6.12%) increase over the three (3) year period. The compounding cost equals point twelve percent (0.12%). The City will attribute zero point four percent (0.04%) or one-third of the compounding cost to each year of the contract.

e. STEP INCREASES

The parties agree that there are no step increases during the life of the

successor collective bargaining agreement.

f. LONGEVITY INCREASES

The parties agree that there are no longevity increases during the life of the successor collective bargaining agreement.

2. TOTAL COST OF THE ASSOCIATION'S DEMANDS

The Association's demands cost out as follows:

	<u>2013</u>	<u>2014</u>	<u>2015</u>
Salary Increase	2.00%	2.00%	2.00%
Compounding	0.04%	0.04%	0.04%
Step Increases	0.00%	0.00%	0.00%
Longevity Increases	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>
Step and Longevity Increases:	0.00%	0.00%	0.00%
Total:	2.04%	2.04%	2.04%
TOTAL STEP AND LONGEVITY INCREASES:		0.00%	
THREE YEAR TOTAL:		6.12%	
ANNUAL INCREASE:		2.04%	

B. COSTING OUT OF THE CITY'S PACKAGE

1. 2013, 2014 AND 2015 SALARY PROPOSALS

The City proposes a three-year agreement, and the following salary increases for 2013, 2014 and 2015:

a. 2013 SALARY PROPOSAL

The City proposes no salary increase for current employees for calendar year 2013.

b. 2014 SALARY PROPOSAL

The City proposes no salary increase for current employees for calendar year 2014.

c. 2015 SALARY PROPOSAL

The City proposes no salary increase for current employees for calendar year 2015.

d. COMPOUNDING COSTS OF SALARY PROPOSAL

Because the City proposes no salary increases, there is no compounding cost.

e. STEP INCREASES

The parties agree that there are no step increases during the life of the successor collective bargaining agreement.

f. LONGEVITY INCREASES

The parties agree that there are no longevity increases during the life of the successor collective bargaining agreement.

g. SALARY GUIDE

The City proposes to lower the salaries for Association members. This proposal will only affect new employees hired on or after January 1, 2013. The savings to the City from this proposal are speculative because it does not know the number of officers, if any, it will hire during the remainder of the contract term.

2. OTHER CITY PROPOSALS

The other City proposals do not decrease the compensation of current bargaining unit members. While future compensation for current employees and compensation for future employees will be effected, this has no

impact on the costing out of the City's proposals. These proposals will be addressed below with respect to the statutory criteria.

3. TOTAL COST OF THE CITY'S PACKAGE

The City's package costs out as follows:

	<u>2012</u>	<u>2013</u>	<u>2014</u>
Salary Increase	0.00%	0.00%	0.00%
Compounding	0.00%	0.00%	0.00%
Step Increases	0.00%	0.00%	0.00%
Longevity Increases Step and Longevity	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>
Increases:	0.00%	0.00%	0.00%
Total:	0.00%	0.00%	0.00%
TOTAL STEP AND LONGEVITY INCREASES:	0.00%	0.00%	0.00%
THREE YEAR TOTAL: ANNUAL INCREASE	0.00%	0.00%	0.00%

C. COMPARISON OF THE TWO PACKAGES

The City and the Association disagree on significant elements of the successor contract, including the amount of the wage increase, whether to increase the number of steps on the salary guide for new hires, whether to cap sick leave at \$15,000 for existing employees, whether to freeze longevity benefits at present dollars, whether to eliminate longevity for new hires, etc.

LEGAL ARGUMENT

N.J.S.A. §34:13A-16(g) states that the Interest Arbitrator must determine

the dispute based upon “a reasonable determination of the issues.” Because reasonableness requires the Interest Arbitrator to apply a subjective standard, the Legislature enumerated nine (9) statutory criteria which the Interest Arbitrator must give “due weight” in determining the appropriate award. More specifically, N.J.S.A. § 34:13A-16(g), as amended, provides,

The arbitrator 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 . . . shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award:

* * *

N.J.S.A. § 34:13A-16(g) [*emphasis added in original to highlight language added by the 2010 Amendments*].

A review of the enumerated factors reveals three underlying themes: (1) the financial ramifications of the offer; (2) comparability; and (3) the public interest. **The City will divide its arguments into these three “themes”.** Before the Legislature passed the Police and Fire Public Interest Arbitration Reform Act, the New Jersey Supreme Court decided two (2) companion cases that significantly impacted the interest arbitration process. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994); Township of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994). The Reform Act incorporated the principles set forth in these decisions. [*emphasis added in original*].

In Hillsdale, the Court instructed that “[i]n general, the relevance of a factor depends on the disputed issues and the evidence presented.” Hillsdale, 137 N.J. at 82 (citing N.J.S.A. § 34:13A-16(f)(5); N.J.A.C. §19:16-5.9). The Court also directed the Interest 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 (1) factor would be dispositive. *Id.*

Moreover, even if the parties do not introduce evidence on a particular factor, the Interest Arbitrator's decision must explain the Interest Arbitrator's rationale for deeming that factor irrelevant. *Id.* at 84. “Without such an explanation, the opinion and award may not be a ‘reasonable determination of the issues.’” *Id.* In summary, “an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant.” *Id.* at 84-85.

The Reform Act, among other things, codified the New Jersey Supreme Court's rulings in Hillsdale and Washington. The Reform Act expressly added the following requirement:

In the award, the arbitrator . . . shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

Therefore, the Interest Arbitrator's award must address all nine (9) statutory criteria.

The 2010 Amendments dramatically changed the interest arbitration process. Among other things, they emphasized that Interest Arbitrators must consider, among the other statutory factors, the impact of the New Jersey Local

Government Cap Law (the "Cap Law"), N.J.S.A. § 40A:4-45.1 *et seq.* in rendering an award and the limitations imposed upon the local unit's property tax levy. N.J.S.A. § 34:13A-16(g)(6). The tax levy cap limits the funds that municipalities can raise by taxation. The 2010 Levy Cap Law (the "2010 Cap") enacted on July 13, 2010 revised the 2007 Levy Cap Law (the "2007 Cap"). More specifically, to control cost increases, it reduced the 2007 Cap from four percent (4.0%) to two percent (2.0%) and amended exclusions. The 2010 Cap excludes pension contributions in excess of two percent (2.0%) and health benefit cost increases in excess of two percent (2.0%) and limited by the State Health Benefits rate increase (16.7% for 2011).

The 2010 Amendments addressed the Interest Arbitrator's duty to consider all the statutory factors. The Interest Arbitrator can determine that a factor is not relevant, and if so, explain why it is irrelevant. The 2010 Amendments imposed one exception: paragraph 6, the financial impact on the governing unit, its residents; the limitations imposed by the local units property tax levy and taxpayers. As to this sub factor, the 2010 Amendments require that the parties introduce evidence that addresses this sub factor. It further mandates that the Interest Arbitrator analyze and consider the elements of subsection 6 in any award.

The remainder of this section of the brief will analyze the statutory criteria as they apply to the present interest arbitration and will show that the City's proposals reflect a more reasonable approach than the Association's demands. Other than the "Lawful Authority of the Employer", which will be addressed

separately immediately below, repeating what was presented before and in the City's exhibits at the hearing due to the significance of this criterion, each of the City's proposals will be discussed separately with each of the applicable statutory criteria identified with each proposal.

1. FINANCIAL RAMIFICATIONS

This section incorporates the statutory criteria of N.J.S.A. § 34:13A-16g (3) overall compensation; (5) lawful authority of the employer; (6) financial impact on governing unit; and (9) statutory restrictions.

The City has submitted that in the narrow sense, "financial ramifications" is a relatively insignificant issue in that due to the size of the bargaining unit and the dollar amount that would be generated by the Association's demand. The most significant issue in this matter is comparability with other City employees and bargaining pattern. With respect to "overall compensation", there is no dispute that Association members enjoy the emoluments of virtually every possible contractual benefit, reasonable and otherwise.

N.J.S.A. §34:13A-16g(5) requires the Interest Arbitrator to consider the "lawful authority of the employer" in determining a conventional award. The "lawful authority of the employer" similarly relates to the employer's "statutory restrictions". The Reform Act specifically requires the Interest Arbitrator to consider, in evaluating this factor, "the limitations imposed upon the employer by [The New Jersey Local Government Cap Law (the "Cap Law"), N.J.S.A. 40A:4-45.1 et seq.]" N.J.S.A. 34:13A-16(g)(5). The Cap Law restrains the lawful authority of the employer by limiting overall budget increases. It thereby restricts

a municipality's ability to grant wage increases to its employees.

In enacting the Cap Law, the Legislature declared it to be "the policy of the [State] that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads." N.J.S.A. § 40A:4-45.1. The Legislature also recognized, however, that "local government cannot be constrained to the point that it would be impossible to provide necessary services to its residents." *Id.*

The Cap Law controls the cost of local government by prohibiting a municipality from increasing certain appropriations, including the cost of police officer salaries, by more than the "cost of living adjustment" over the previous year's similar appropriations. Several amendments to the Cap Law placed even tighter caps on spending to control local government expenditure. In 2007, Governor Corzine signed into law Chapter 62 of the Laws of 2007 (the "2007 Cap"). This law implemented a property tax levy cap which limited municipalities to a four percent (4.0%) increase over the previous year's amount to be raised by taxation. This change in the law eliminated significant flexibility in municipal budgets by creating a strict limit on increases on the major revenue sources, making it more difficult to balance the budget.

On July 13, 2010, Governor Christie signed into law Chapter 44 of the Laws of 2010 (the "2010 Cap"). The 2010 Cap reduced the 2007 Cap of four percent (4.0%) to two percent (2.0%) and modified exclusions, further increasing the limitation on major revenue sources. The 2010 Cap added several general exclusions. These include increases in debt service and capital expenditures,

extraordinary costs related to emergencies, such as inclement weather, pension contributions in excess of two percent (2.0)% and health benefit cost increases in excess of two percent (2.0)%, but limited by the State Health Benefits increase (16.7% in 2011). These limitations directly impact the City's ability to pay for the salary increases and accompanying increases in benefit costs for this bargaining unit.

Significantly, the 2010 Amendments demonstrate the Legislature's recognition of the need to control costs. The 2010 Amendments imposed a two percent (2.0%) cap on base salary increases. N.J.S.A. § 34:13A-16.7. The two percent (2.0%) cap on base salary increases reflects the permissible two percent (2.0%) 2010 Cap under the Local Government Cap Law. More specifically, the law prohibits an arbitrator from rendering an award,

which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.

N.J.S.A. § 34:13A-16.7(b). While the law precludes arbitrators from issuing more than a 2.0% increase in base salary, it does not bar unequal annual percentages. *Id.*

"Base salary" is defined as "the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. . . ." N.J.S.A. § 34:13A-16.7(a). "Base salary" also includes "any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties

in the prior contract.” N.J.S.A. § 34:13A-16.7(a). “Base salary” does not include “non-salary economic issues, pension and medical insurance costs.” Non-salary economic issues are defined as “any economic issue that is not included in the definition of base salary.” N.J.S.A. § 34:13A-16.7(a). Therefore, “base salary” includes salary increments and longevity increases but does not include pension or health and medical insurance costs. N.J.S.A. § 34:13A-16.7(a). Additionally, “[a]n award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.” N.J.S.A. §34:13A-16.7(b).

The salary limitation applies to all collective negotiations between a municipal employer and the exclusive representative of its police department that relate to a collective bargaining agreement that expires on or after January 1, 2011 but before April 1, 2014. N.J.S.A. § 34:13A-16.9. Because the collective bargaining agreement at issue in this interest arbitration expired on December 31, 2012, the salary limitation applies to this interest arbitration.

Because the Association’s package averages more than two percent (2.0%) per year, inclusive of compounding, salary increments and longevity increases (nonexistent in this case), the Interest Arbitrator must reject the Association’s demands. The Association’s package exceeds the six percent (6.0%) maximum increase on a three (3) year contract. The Legislature worded the statute in the obligatory. It provides, “An arbitrator shall not render any award . . . which, on an annual basis, increases base salary items by more than 2.0 percent.” N.J.S.A. § 34:13A-16.7(b). The language of the statute leaves no

room for interpretation: any award must average not more than six percent (6.0%) inclusive of compounding, salary increments and longevity increases. In contrast to the Association's demands, the City's proposed increase does not exceed the two percent (2.0%) statutory cap. Any award that exceeds the two percent (2.0%) statutory salary cap will be vacated on appeal. Therefore, unlike the Association's demanded package, the City's offer reflects the restraints imposed by the 2010 Amendments.

The City's proposals obviously seek to "reign in" both compensation and the benefit package received by the Association's membership without reducing current compensation. It is the position of the City that it can no longer afford the excesses of the past based upon current legislation, the economy, and the interest and welfare of the public.

a. Introduction

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 implemented 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. This situation has been magnified for 2011 and beyond with the modification of the tax levy cap downwards from four (4.0%) per cent to two (2.0%) per cent! 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 and two (2.0%) per cent beginning in 2011, the traditional analysis does not apply to the City's ability to pay. As outlined below, the City's "ability-to-pay" argument centers around the revenue portion of the City's budget. Additionally, there is no need to differentiate between Current Expense budgetary line items and expenditures excluded from the "cap", since the City's revenues are generated to cover both within "cap" and excluded from "cap" expenditures. Before providing the revenue analysis, it is critical to recognize that the City was required to enter into a Memorandum of Understanding with the State, providing for State Supervision. (City Exhibit Book, Tab 1, Sub tab 1). This document, drafted by representatives for the State, documents the "extraordinary pressures on the tax base in Atlantic City and the tax rates applicable to its residents and businesses" due to tax appeals. To emphasize its position, the State requires the City to provide Interest Arbitrators

with a letter confirming that the City has "been directed to seek appropriate concessions" and to "realistically acknowledge the unprecedented level of fiscal stress caused by unprecedented tax appeals". (City Exhibit Book, Tab 1, Sub tab 1, Attachment E).

b. Revenue

There are five (5) basic revenue sources: (1) surplus; (2) local revenues; (3) State Aid; (4) "one-shot deals", or non-recurring revenues; and (5) taxes. Since the economic downturn and its impact began in 2008, the revenue comparison will compare 2007 revenues to 2013 revenues.

Surplus history is illustrative of the City's financial woes. As of January 1, 2007, the City's surplus balance was \$14,395,615.00, allowing the City to anticipate \$13,800,000.00 as revenue in its 2007 budget. (City Exhibit Book, Tab 1, Sub tab 2). Due to the economic downturn beginning in 2008, the City's surplus balance as of January 1, 2013 was only \$2,257,629.00, or a reduction of \$12,137,986.00, or in excess of eighty-four (84%) percent. This forced the City to eliminate its surplus anticipated in 2013! (City Exhibit Book, Tab 1, Sub tab 5).

Just to maintain revenue anticipated in 2013, the City had to generate \$13,800,000.00 more from other revenue sources than only six years ago in 2007! Revenue from local revenues further illustrates the City's revenue woes. In 2007, the City anticipated \$11,401,000.00. (City Exhibit Book, Tab 1, Sub tab 1). By 2013, local revenues had decreased by approximately \$2,100,816.00, or in excess of eighteen (18%) percent, to \$9,300,184.00. (City Exhibit Book, Tab 1,

Sub tab 5). With no anticipated surplus, the remaining revenue sources had to cover this \$2,100,816.00 revenue slack.

State Aid is another revenue deficiency. From 2007 to 2013, State Aid was reduced by \$1,781,979.00, or in excess of twenty-two (22%) percent, from \$8,042,693.00 to \$6,260,714.00. (City Exhibit Book, Tab 1, Sub tabs 1 and 5). Therefore, State Aid is another revenue deficiency, in the amount of \$1,781,979.00, which remaining revenue sources must overcome.

While dedicated Uniform Construction fees are offset by appropriations and therefore have no impact on the remainder of the budget, to complete the analysis it must be recognized that from 2007 through 2013, this revenue source decreased by \$2,100,000.00 from \$4,100,000.00 to \$2,000,000.00. (City Exhibit Book, Tab 1, Sub tabs 1 and 5).

It is dangerous for a municipality to rely on "one-shot deals" (Section G) to balance its budget since these revenues, by their very nature, do not regenerate. A steady increase in reliance on "one-shot deals" by increased contributions from the capital fund surplus resulted in a \$13,902,580.00 increase in "one-shot" revenues from 2007 to 2013 (City Exhibit Book, Tab 1, Sub tabs 1 and 5). All in all, the City's anticipated revenue in 2013, other than from municipal taxes, decreased by \$5,880,215.00. (City Exhibit Book, Tab 1, Sub tab 5).

With respect to municipal taxes, from 2007 through 2013, revenue from municipal taxes increased from \$193,167,083.00 to \$209,455,419.00, an increase of \$16,288,336.00, or 8.43%, which translates to an annual increase of less than one and one-half (1.5%) percent! (City Exhibit Book, Tab 1, Sub tabs 1

and 5). The most significant issue facing the City transcends from revenue into appropriations: Debt Service.

The City was placed under State supervision by the New Jersey Local Finance Board ("Board") in November, 2010. The action of the Board was due in large part to extraordinary fiscal stress caused by the impact of tax appeals filed by casinos. A Memorandum of Understanding (City Exhibit Book, Tab 1, Sub tab 1) was executed by the State and the City to clearly delineate the parameters of State supervision and, in pertinent part, it required that fiscal distress be clearly communicated to interest arbitrators.

The City is unique amongst the 566 municipalities in that approximately seventy percent (70%) of its ratable base has come from only twelve (12) casino properties (2011 assessments totaled approximately \$13 billion). These properties were assessed in 2008 and the subsequent economic downturn resulted in every casino filing tax appeals from 2008 to the present. Eleven (11) of those appeals have recently been settled or are pending settlement and one (1) remains in litigation. These appeals/settlements cause fiscal distress in two ways: 1) large refunds are due for past years; and 2) the assessment value is greatly decreased moving forward. As the chart below demonstrates, of the eleven (11) tax appeals recently resolved or pending settlement, the City must refund \$185.5 million. The remaining Borgata appeal in litigation has the potential to increase the obligation to approximately \$200 million.

<u>Property Owner</u>	<u>Court Ordered Refund</u>	
Resorts (DGMB)	\$ 10,600,000	
Pinnacle	\$ 8,200,000	
ACE Gaming	\$ 1,700,000	
Prior Settlements	\$ 14,000,000	(compilation of old appeals)
Ceasars	\$ 28,000,000	
Triumph	\$ 54,000,000	
Hilton	\$ 19,500,000	
Tropicana	\$ 49,500,000	
Revel	none	
Borgata	pending	
Sub-Total	\$ 185,500,000	

This unprecedented tax refund forced the City to obtain special permission from the State Local Finance Board to execute Tax Appeal Bonds to borrow the money in order to pay the refunds. These bonds will take twenty (20) years to pay off. As a result of the Tax Appeal Bonds, the City's debt service has increased from \$16 million in 2011 to \$37 million in 2013. The refunds due Tropicana and Borgata have not been included in any tax appeal bonds due to timing and still have to be paid, which will further drive up debt service.

In addition to the fiscal stress of the above refunds, the decreased casino assessments, as the below chart demonstrates, have had a devastating effect on the City's total ratable base from which taxes are collected. In 2010, the City's ratable base totaled \$20.4 billion. In 2013, the ratable base totaled only \$14.4 billion, a decrease of \$6 billion, or approximately 30%, in taxable real estate!

<u>Name of Taxpayer</u>	<u>Property Assessed</u>	<u>Original Assessment</u>	<u>Post-Appeal Assessment</u>
Settled:			
Marina Associates	Harrah's Casino/Hotel	\$ 1,900,000,000	\$ 1,469,980,700
Adamar of New Jersey	Trop World Casino/Hotel	\$ 1,259,000,000	\$ 680,000,000
Bally Park Place, Inc.	Ballys Park Place Casino/Hotel	\$ 1,492,289,800	\$ 700,000,000
Boardwalk Regency	Caesars Casino/Hotel	\$ 1,698,906,000	\$ 1,048,906,000
Revel	Revel Casino/Hotel	\$ 1,475,000,000	\$ 1,150,000,000
Pinnacle	Former Sands Casino Site	\$ 224,331,800	\$ 70,000,000
Resorts International Inc	Resorts Casino/Hotel	\$ 475,000,000	\$ 165,000,000
RIH Acquisitions	Hilton Casino/Hotel	\$ 539,991,900	\$ 165,000,000
Golden Nugget (was Trump)	Golden Nugget Casino/Hotel	\$ 653,500,000	\$ 175,000,000
Trump Plaza Corp	Trump Plaza Casino/Hotel	\$ 725,100,000	\$ 250,000,000
Trump Taj Mahal Assoc	Trump Taj Mahal Casino/Hotel	\$ 1,655,353,800	\$ 1,000,000,000
		\$ 12,098,473,300	\$ 6,873,886,700
Appeal Still Pending:			
Marina District Dev. Corp	Borgata Casino/Hotel	\$ 1,845,715,900	pending

The negative effect of both increased debt service from the casino tax appeals and the dramatic decrease in taxable ratables is reflected in the proposed 2013 Municipal Budget. These two items are the driving force in a proposed thirty (\$0.30) cent local tax increase from \$1.13 to \$1.43, a 26.5% property tax increase. With the current average home assessment at \$210,000.00, the average homeowner is going to see their tax bill increase by \$630 per year!! Only approximately \$35 million of the above refunds have been accounted for in the 2012 budget (and even then, the \$35 million is being paid through a borrowing that is payable over five [5] years). The remaining refunds are not accounted for and still have to be paid. As of 2007, the City's debt service was \$21,464,470.00 (City Exhibit Book, Tab 1, Sub tab 2). Debt service increased by only approximately \$205,000.00 through 2011 to \$21,669,817.00 (City Exhibit Book, Tab 1, Sub tab 3), virtually the same as in 2007.

However, due to the above-referenced tax appeals, the City's debt service

in 2012 jumped to \$32,510,182.00, an increase of approximately \$10,500,000.00, or approximately fifty percent (50%)! (City Exhibit Book, Tab 1, Sub tab 4). In 2013, it is anticipated that debt service will increase by at least an additional \$4,242,148.00, or in excess of thirteen (13.0%)! Even though these increased appropriations are outside the “cap”, the City must still consider debt service when attempting to balance its budget.

This leaves the City with three (3) options: (1) reduce appropriations by the amount of the increased debt service; (2) maintain the same level of municipal taxes by shifting the tax burden, which will be discussed below, or: (3) a combination of (1) and (2). The City is attempting to implement the second option.

Even if the City is able to keep its spending perfectly stable with no increase in its levy, the City tax levy would remain the same and the tax burden would shift from casinos to residential home owners and other non-casino, commercial properties. Assuming the City budget stays the same and doesn't increase at all between now and 2014, taxes for all non-casino properties are going to increase by nearly twenty-six (26.0%) percent.

The State and the City are working together to try to control costs. However, with escalating debt service on recent and projected borrowings to facilitate resolution of tax appeals, it will be extraordinarily challenging to even keep the overall levy at its current level.

In summary, despite positive improvements, the City and its taxpayers face an unprecedented financial struggle because of the casino tax appeals.

Even with no increases in the current operational budgets, non-casino taxpayers are facing an approximate twenty-six percent (26%) tax rate increase. This will be made even more challenging with a need to deal with additional refunds for Tropicana (\$49.5 million) and Borgata (yet to be determined).

2. COMPARABILITY

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 in (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions. The Act also requires the Interest Arbitrator to consider the overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received. As discussed below, the comparable and overall compensation exhibits submitted at the interest arbitration hearing demonstrate that the City extends more reasonable proposals than the Association.

In Hillsdale, the Court criticized the Interest Arbitrator for over-emphasizing comparability with police departments in similar communities in rendering an award. Hillsdale, 137 N.J. at 86. The Court noted that the Legislature did not intend any one factor, including comparability to other police or fire departments in similar municipalities, to be dispositive. *Id.* In fact, section

16(g) “invites comparison with other jobs in both the public and private sectors.” *Id* at 85. As a result, the Interest Arbitrator should compare the City’s police superior officers’ compensation package not only to other municipal police compensation packages, but to other public and private sector jobs.

The amendment implemented under the Reform Act changes the weight the Interest Arbitrator should attribute to the consideration of compensation packages in private employment, public employment and in public employment in the same or similar comparable jurisdictions. Prior to the Reform Act, the Act required the Interest Arbitrator to consider a:

- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In public employment in the same or similar comparable jurisdictions.
 - (b) In comparable private employment.
 - (c) In public and private employment in general.

Under the Reform Act, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions.

Therefore, the Legislature altered the order of the three sub factors, moving comparability to employees in the private sector from the third sub factor to the first sub factor and moving comparability to public employment in the same or similar comparable jurisdictions from the first sub factor to the third sub factor. This amendment evidences legislative intent to reduce Interest Arbitrators’ over-

reliance on wage and benefit comparability to public employees in the same or similar jurisdictions—an over dependence criticized by the Court in Hillsdale and Washington--and increase Interest Arbitrators' under emphasis of comparability to private employees in general. Consequently, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions without unduly emphasizing comparability to public employment in comparable jurisdictions and without minimizing comparability to private employment in general.

As a result, this section compares the wages, wage increases and benefits demanded by the Association and the wages, wage increases and benefits offered by the City with the wage increases and benefits received by private and public employees in general. It also compares the wages, wage increases and benefits demanded by the Association and the wages, wage increases and benefits offered by the City with the salary and benefits the City provides to its other unionized employee groups and to its non-unionized employees. Additionally, it compares the wages, wage increases and benefits demanded by the Association and the wages, wage increases and benefits offered by the City with those provided by similar municipalities to their Police Captains.

a. WAGES AND BENEFITS IN THE PRIVATE SECTOR

Wage and benefit packages in the private sector highlight the reasonableness of the City's proposals in contrast to the Association's demands.

Wage increases in the private sector fall significantly below the annual increases demanded by the Association.

All the City needs to support its proposal compared to wages and benefits in the private sector is its first exhibit in the City Exhibit Book, Tab 3. This article cites a New Jersey Business & Industry Association Business Outlook survey. In 2011, less than fifty percent (50.0%) of private employers gave raises, with six percent (6.0%) implementing pay cuts. In 2012, less than fifty percent (50.0%) of private employers projected wage increases, with four percent (4.0%) implementing pay cuts. The City's proposal, unlike the Association's wage demands, is comparable with private sector wage and benefit actions.

b. WAGES AND BENEFITS IN THE PUBLIC SECTOR

Wage increases in the public sector highlight the reasonableness of the City's proposals. Voters have sent a strong message to local government that they will not support increases in property taxes to fund, among other things, salary increases for public employees. In 2011, under new law, municipalities who needed to exceed the two percent (2.0%) property cap have to put the issue before the public. Previously, local governments appealed to the State for approval if they needed to raise property taxes above the four percent (4.0%) cap. On April 27, 2011, in the first referendum of its kind, voters sent a strong message to local government when they voted down proposals to increase the tax levy above the two percent (2.0%) cap in twelve (12) out of fourteen (14) municipalities. Almost all of the municipalities that voted the referendum down voted no by more than double digits. In two (2) municipalities, voters rejected the

proposal by more than eighty percent. Only two (2) municipalities, Brick and Lambertville, passed the measure, which enabled residents to avoid the privatization of garbage collection. Although voters were aware that municipal jobs and services were at stake, the overwhelming defeat of the referendums emphasized the need to control public salaries. The recent deep economic recession caused a call for the reconsideration of public sector compensation packages.

3. PUBLIC EMPLOYMENT IN THE SAME JURISDICTION

It is axiomatic that benefit packages granted to non-public safety employees at best equal benefit packages granted to public safety employees. To the same degree, this holds true in Atlantic City.

The excessive annual salaries of Association members as compared to non-public safety City employees is astounding. As demonstrated (City Exhibit Book, Tab 3, sub tab 1), Association members have greater base salaries than all employees other than Fire Chief, Police Chief, Deputy Police Chief, Business Administrator, and Deputy Fire Chief, including Municipal Court Judge, Municipal Engineer, Tax Assessor, **Mayor**, Construction Official, Municipal Clerk, Assistant Planning Director, Municipal Attorney, Municipal Department Head, and **Director of Public Safety**, all of which, other than **Mayor**, require advanced degrees!
[emphasis added in original]

To properly evaluate the statutory criterion of comparability, it is necessary to look at the “big picture”. The City has established a pattern of contractual settlements based upon the Interest Arbitration Award with the City’s firefighting

employees (City Exhibit Book, Tab 5). Along with the firefighting employees, virtually all civilian bargaining units have settled for no wage increase for 2013 and 2014 (City Exhibit Book, Tab 3, sub tabs 4-6). As the City's exhibits demonstrate and will be discussed below, the City's patrol officers, by operation of the Interest Arbitration Reform Act, will receive virtually no wage increase in base salary for 2013, 2014 and 2015 (City Exhibit Book, Tab 3, sub tabs 2-3). For Association members to receive a wage increase while all other City employees have their salaries frozen is unconscionable, unreasonable and contrary to the statutory criterion. To grant Association members a wage increase when their subordinates' salaries are frozen would expand the salary differential without any justification and, the City submits, contrary to this statutory criterion.

The Association presented exhibits entitled "internal comparables". Suffice it to say that other than salaries, which was discussed above, economic benefits granted to Association members far exceed that of civilian employees, and should be equal to other public safety employees – those employed in the Fire Department – both current and those hired after January 1, 2013. Terminal leave for all other employees is limited to a payout of \$15,000. Education incentives for civilian employees are significantly lower. Vacation and personal leave at best is equivalent.

Based on the above comparisons **as presented by the Association**, the City submits that its proposals are reasonable, consistent with this statutory criterion, and should be granted by the Interest Arbitrator.

4. PUBLIC EMPLOYMENT IN "COMPARABLE" JURISDICTIONS

It is common for each side in interest arbitration to create its own "universe" of allegedly comparable municipalities. It is presumed that each universe is skewed to support the position of the party developing that universe. The City contends that due to the uniqueness of the City, there are no comparable municipalities. Very few municipalities in New Jersey have to deal with a "summer surge" of residents and tourists. No municipalities in New Jersey need to supply services for a casino industry. Certainly, no municipalities in New Jersey are faced with the significant revenue loss as is faced by the City due to the above-referenced casino tax appeals.

Examining the Association's "universe" in documents entitled "External Comparables", the City does not compare in size to Camden, Paterson, Elizabeth, Jersey City, Linden, Hamilton Twp. (Mercer County), or Newark. The City does not compare in wealth to Brigantine, Cherry Hill, Linwood, Longport, Marlboro, or Ventnor. However, for sake of argument, the City will accept the Association's "universe". The Association thereafter submitted additional exhibits covering municipalities Barnegat through Wall. Without extensive argument, it is apparent from these exhibits that the Association has attempted to "cherry-pick" additional municipalities in an attempt to support its positions.

With respect to salaries/salary increases, the Association referenced eighteen (18) municipalities, including the City. Only five (5) municipalities have resolved their contract for 2013, and none for 2014 and 2015. Therefore, there is no "going rate" to be considered. Of the seventeen (17) other municipalities,

Captain's salaries range from \$99,969 to \$155,086. Of the seventeen (17) other municipalities, only four (4) municipalities have Captains with higher salaries than the City currently pays its Captains and only slightly more than one-half of the municipalities have Captains with higher salaries than those proposed by the City for Captains hired after January 1, 2013.

With respect to longevity, the Association referenced seventeen (17) municipalities, including the City. While a majority of these municipalities still provide for longevity on a percentage basis, the pattern clearly shows lessening of longevity for newly hired employees and, in the case of neighboring Pleasantville, as proposed in this case, current employees receive longevity on a percentage basis while employees hired after 1998 receive longevity on a flat rate basis.

With respect to terminal leave, the Association referenced fourteen (14) municipalities, including the City. It must be assumed that the other municipalities cited by the Association do not provide for terminal leave. While the City's current terminal leave package is at least equal to those other municipalities, the City submits that none of these municipalities comply with the recommendations of the State's Commission of Investigation, the State Legislature, and the Governor.

With respect to education, the Association referenced fifteen (15) municipalities, including the City. Other than Ventnor, no other municipality provided for education compensation on a percentage basis. Furthermore, an insignificant number of municipalities provide for educational incentives for

anything but degrees. While not fully addressed in the Association's comparisons, it only makes sense that the education compensation be tied to degrees in Police Science or a related degree approved in advance by Administration.

Finally, combining vacation and personal days, no municipality equaled the time off granted to the City's Captains. Comparing these municipalities to the City's proposed time off for newly hired Captains, the City's Captains' time off would still exceed that granted by other municipalities.

Based on the above comparisons **as presented by the Association**, the City submits that its proposals are reasonable, consistent with this statutory criterion, and should be granted by the Interest Arbitrator.

5. PUBLIC CONSIDERATIONS

This section incorporates the statutory criteria of N.J.S.A. §34:13A-16g (1) interest and welfare of the public and (8) continuity and stability of employment. These statutory criteria are most applicable to the City's economic proposals providing for cost containment. As discussed above, the City is in the midst of a fiscal crisis due to the loss of substantial revenue from significant tax appeals by the casino industry. For the City to survive financially, it cannot continue to provide compensation and benefits to the same extent as presently. This was recognized by the Interest Arbitrator in the Firefighters' Association Interest Arbitration Award. (City Exhibit Book, Tab 5). That is why the City proposed a wage freeze for current employees; a reduced salary for employees hired on or after January 1, 2013; a freezing of longevity for current employees; the

elimination of longevity for employees hired on or after January 1, 2013 (although the City has indicated it would accept the same longevity schedule as awarded to the Firefighters Association); a new education and training incentives article (although the City indicated that it would accept the application of its proposal for employees hired on or after January 1, 2013, as with the firefighters); limiting terminal leave to a \$15,000 payout (although the City indicated that it would accept the application of its proposal for employees hired on or after January 1, 2013, as with the firefighters); deletion of the command differential; revision of the overtime eligibility calculation; a reduction of vacation time for Captains hired on or after January 1, 2013; elimination of personal days; and, elimination of the shift differential. If the City cannot counter its budgetary restrictions with respect to revenue by cost containment in the area of appropriations, it will have to reduce appropriations. Since personnel comprises the largest segment of the City's current expense budget, and since Public Safety is the largest component on personnel expenditures, it stands to reason that appropriation reductions would manifest themselves in Public Safety reductions. Such reductions would be contrary to the statutory criteria of interest and welfare of the public and continuity and stability of employment.

Based on the above, the City submits that its proposals are reasonable, consistent with these statutory criteria, and should be granted by the Interest Arbitrator.

C. CITY PROPOSALS (OTHER THAN WAGE INCREASES/PAY SCALE)

1. ARTICLE III – MANAGEMENT RIGHTS

The City proposes to remove the sentence that reads "The practical impact of the decisions on the above matters are subject to the grievance procedure". Since this is a non-economic proposal, the statutory criteria do not apply. (City Exhibit Book, Tab 4, sub tab 1).

The City contends that this language is meaningless and confusing, and can lead to unnecessary litigation. If management has the nonnegotiable prerogative to take certain actions, then the impact of those actions are also nonnegotiable, and therefore not subject to the grievance procedure.

In reply, the SOA contends that the City's Management Rights proposal serves no purpose other than to attempt to incite the Union. The claim is made that there was evidence supporting the reasoning for deleting the language. The Union further insists that language from a fully negotiated CNA should not be deleted on a whim. Observing that it appears the City seems to be attempting to eliminate the ability of the Union to engage in impact negotiations, the SOA believes the awarding of this proposal would dramatically effect its ability to arbitrate terms and conditions of employment impacted by the City imposing Management Rights.

THE CITY'S PROPOSAL IS DENIED. The proponent of a contractual change bears the burden of persuasion that it is entitled to the same. Here, no evidence of any difficulties with the language was provided. No argument was made that the SOA had filed frivolous grievances. Mr. Stinson confirmed his understanding that my acceptance of this would eliminate the potential rights some may have on grievable issues. Such a contractual right may not be forfeited without sufficient justification.

2. ARTICLE V – GRIEVANCE PROCEDURE

The City withdrew this proposal following the testimony of Captain Brennan on February 19, 2013. A reservation of rights was undertaken, however, as to any parallel proposal made by the City in the pending PBA interest arbitration case.

3. ARTICLE XIII – SPECIAL LEAVES

At hearing, the SOA agreed to this proposal, accepting the City's language of 5 *consecutive* days for funeral leave. Atlantic City correspondingly accepted the inclusion of *Domestic or Civil Union partner* into the definition of "immediate family," and the calculation of the 250 miles based on *vehicular travel using MapQuest*. These changes have been incorporated into the AWARD.

4. ARTICLE XV – LONGEVITY

The City's position was addressed above in the "comparability" and "public considerations" sections. While recognizing that the City's proposals exceed the Arbitrator's Award with the Firefighters' Association, the City submits that greater concessions provide continuity and stability of employment as well as protecting the interests of the public.

The SOA takes great offense to what is termed an outrageous proposal, which seeks to freeze longevity benefits for current employees and eliminate it for new employees. In the Union's view, considering that every other City employee receives longevity benefits akin to the SOA, the City's proposal is simply outlandish. Moreover, the longevity benefits received by SOA members are identical to the longevity benefits received by the PBA membership. Furthermore, if the City's position were granted, there would be no incentive for existing employees to seek promotion to the position of captain, understanding that subordinate law enforcement officers would receive greater longevity benefits. The SOA longevity benefits are also less than the Deputy Chiefs' longevity payments and are very similar to the other bargaining units in the City, as illustrated by the chart at pages 30-31 of the SOA brief. The Union additionally submits that its longevity benefits are often less than the longevity benefits received by other external police departments, both inside and outside of Atlantic County. Accordingly, the Union argues that understanding that the City's bargaining units are receiving greater, identical, or similar longevity benefits as the SOA and municipalities of similar size and scope are often receiving longevity benefits greater than Atlantic City, it would be unfair to the SOA and detrimental to the public, to freeze longevity benefits for current employees and eliminate longevity for new employees. This could also result in Lieutenants not seeking promotion to the position of Captain because they would lose benefits as a result of a promotion. In that regard, the SOA posits that if I decide to use the template

of the IAFF Award, the MOU must be incorporated to allow existing employees to maintain their current longevity scale even if promoted. On these bases, the SOA argues that the City's proposal must be denied, or alternatively, if the IAFF Award is implemented, the IAFF MOU must be incorporated.

ATLANTIC CITY'S PROPOSAL IS AWARDED IN PART. There is no rationale for freezing the longevity of current unit members. Such a result would be inconsistent with the internal pattern of all other Atlantic City employees. The Union also correctly notes that larger cities like Jersey City, Camden, Newark, Elizabeth, and Paterson receive greater longevity benefits, while others are similar. Elimination of longevity for new hires is a non-starter, as the rank and file would receive the benefit without their Captains. That would create a disastrous and nonsensical situation. The payment of exorbitant longevity costs must be reduced for new hires not currently on the City rolls, however. I am accordingly imposing the IAFF model, of converting the percentages to flat dollar figures. In doing so, I have followed the guidance offered by the MOU, and also note that there is not a salary guide for Captains as they are all at the max of \$129,741.

5. ARTICLE XVII – CONTINUATION OF BENEFITS NOT COVERED IN THIS AGREEMENT

Since this is a non-economic proposal, the statutory criteria do not apply.
(City Exhibit Book, Tab 4, sub tab 5).

While not proposed by either party, the City would agree to the same language as in the Firefighters' Association Collective Bargaining Agreement, which reads "[a]ll provisions of the January 1, 2013 through January 1, 2015 collective negotiations agreement which are not modified by agreement of the parties and/or interest arbitration are to be carried forward and included in the new contract with changes in the date where appropriate." This would help create consistency within the public safety collective bargaining agreements.

For its part, the Union reacts with righteous indignation to the City's initial proposal, which was to delete this article in its entirety. The posture is adopted

that by proposing the same, the City was effectively seeking to eliminate past practice. The SOA goes on to suggest that it is virtually impossible to include every benefit of employment in the CAM, so such a catch all position is essential to ensuring that the City continues to provide the benefits the bargaining unit has enjoyed in the past.

THE CITY'S INITIAL AS WELL AS REVISED PROPOSAL IS DENIED.

Initially, no justification was offered for what would amount to the evisceration of past practice within the SOA Collective Bargaining Agreement. Thereafter, and for the first time in its brief, and while acknowledging that neither side raised this, Atlantic City suggests that the parallel language in the IAFF contract should be awarded. As the SOA had no opportunity to respond to this, however, I have not considered it.

6. ARTICLE XVIII– EDUCATION AND TRAINING INCENTIVES

The City's position was addressed above in the "comparability" and "public considerations" sections. While recognizing that the City's proposals exceed the Arbitrator's Award with the Firefighters' Association, the City submits that greater concessions are necessary to provide continuity and stability of employment as well as protecting the interests of the public.

The SOA concludes that the City's Education Incentive proposal must be denied for 2 reasons. First, the City is putting less value on the need for the education of the Captains. Second, it is reducing the salary of the employees who currently receive the benefit. Currently, the education incentive is a component of base salary on which longevity and pension are calculated. To eliminate the education incentive would reduce the employees' salary and longevity benefit. Furthermore, from the Union's perspective, the City has not offered any evidence to support this proposal, so there is no rationale for the change. The Union asserts that the incentive associated with the education is a benefit that will assist in the recruitment of high quality Captains. A proffer is offered that the City must be aware of this fact, as the police bargaining units receive a slightly better education incentive as is demonstrated in the chart at page 36 of the SOA's brief. The Union acknowledges that Atlantic City will surely point to the recent change in the educational incentive of the City firefighters as part of the IAFF Interest Arbitration Award and IAFF MOU as a basis for changing the structure of the Captains. Emphasis is placed upon the fact that importantly, the City and the IAFF agreed in the MOU that the educational incentive should remain the same for all firefighters hired prior to the expiration of the CNA, but would change only for firefighters hired after the expiration of the CNA. To be clear, the Union

reiterates, the MOU revised the IAFF Award, so that employees promoted into the position who were hired prior to the expiration of the CNA (January 1, 2012) would not lose the benefit of the prior educational incentive system. And although the SOA does not believe the educational incentive should be revised for newly hired Captains, it allows that if I decide to amend the educational incentive, it should only apply to employees hired after January 1, 2013, which would be consistent with the IAFF Award as revised by the MOU.

THE CITY'S EDUCATION AND TRAINING INCENTIVE PROPOSAL IS AWARDED IN PART. My reasoning cited in the IAFF Award is also applicable to the SOA. No serious argument can be made that enhanced education does not inure to the benefit of the ACPD and the citizens and taxpayers. The critical problem, however, is that these exorbitant benefits roll over into the base salary and are therefore utilized in the computation of longevity as well as for pension purposes. It is amazing to me that under the current system, credit hours totally unrelated to police science or related fields may be aggregated in 15 credit increments for a percentage of the base salary, which of course escalates each time a salary increase is received. That is not to say that the City has provided evidence that the current SOA bargaining unit has taken advantage of the education program. However, on its face, the language is ripe for abuse. Consistent with the IAFF MOU, I will accordingly award a new incentive program which will reward future unit members for credits and courses taken that are related to police work. And as I found in the firefighters' case, while other Atlantic City employees receive an educational incentive, it is a flat dollar amount that does not remotely resemble the incentive enjoyed by the SOA. The benefit will therefore be reduced to a fixed dollar amount as in the IAFF Award, and like the instant longevity award. The Union has however raised a compelling argument that reducing the benefit for the current unit members would affect their base pay, and that will remain intact. All of the other language proposed by the City is substantially awarded.

7. ARTICLE XIX TERMINAL LEAVE WITH PAY

The City's position was addressed above in the "comparability" and "public considerations" sections. While recognizing that the City's proposals exceed the Arbitrator's Award with the Firefighters' Association, the City submits that greater concessions are necessary to provide continuity and stability of employment and well as protecting the interests of the public.

The SOA preliminarily affirms that the City's Terminal Leave proposal must be denied, as this provision of the CNA is appropriate and a distinct vested benefit relied upon by the SOA membership. The proposal seeks to cap terminal leave

benefits for all employees, including existing employees, at \$15,000.00, and after January 1, 2015, only allows employees to be paid for half of their accumulated sick leave. The City further seeks to reduce the sick pay at retirement for every sick day taken in the employee's last year of employment. The Union concludes that the concept of deducting from sick pay at retirement is an absurd concept. Rather, an employee should not be punished for legitimately using sick leave they have accrued over the years of service to the City. Moreover, the City should not dissuade employees from using sick leave when they are legitimately ill or injured. The other portion of the proposal seeking to cap sick leave at \$15,000.00 is in direct response to the SOA's arbitration victory in which Arbitrator Thomas Hartigan granted the SOA's grievance and ordered the City to pay the terminal leave. See U-3, Exs. 60-62. This terminal leave proposal is accordingly the City's attempt at retribution for the SOA challenge to the City's failure to pay terminal leave benefits. Notably, the City so steadfastly refused to pay the terminal leave benefits required by the CNA, that it necessitated an SOA application to the Atlantic County Superior Court seeking to confirm the award. Currently, the terminal leave provision caps the terminal leave benefits of the SOA membership between twelve (12) months and eighteen (18) months, which is determined by the hire date. Such a cap comports with the PBA terminal leave provision in the City and is similar to and less than other comparable municipalities, as reflected by the chart setting forth external comparability. The Union notes that interestingly, most smaller municipalities within Atlantic County, such as Margate and Northfield have only slightly lower terminal leave caps than Atlantic City. Neighboring Brigantine has no terminal leave cap except to limit the leave to seventy-five (75%) of unused sick leave. Both are more generous than the SOA terminal leave cap. Furthermore, more comparable municipalities in size and scope, such as Newark and Camden have significantly higher terminal leave caps than Atlantic City. Internally, the PBA and IAFF bargaining units receive terminal leave similar to the SOA. Moreover, non-law enforcement bargaining units also receive terminal leave. In fact, the Supervisors bargaining unit receives terminal leave benefits arguably greater than those received by the SOA. There are several reasons, however, why the City would likely save money in the event they had to pay terminal leave benefits during the proposed term of the CNA. First, the City only has to pay the maximum amount if an employee has accrued a sufficient amount of sick time to receive the maximum benefit. Second, if an employee had accumulated enough sick leave to receive the maximum terminal leave necessary, it likely would cost less than paying a new employee's full year of salary and benefits. With that understanding, the City is not obligated to fill the vacated position of Captain. Several other factors must also be considered when analyzing this proposal. Employees have relied upon this terminal leave benefit and spent their careers saving the taxpayers money by working when they could have utilized sick leave to usurp a vested benefit that employee's have relied upon is incomprehensible and potentially illegal. Second, New Jersey Governor Chris Christie is once again attempting to seize an opportunity to make public employment as unpalatable as possible by vetoing a bill that places a hard cap of \$15,000 on terminal leave payouts and eliminate the benefits completely. The

SOA has previously agreed to a terminal leave cap that is comparable, and, often more favorable to the City than in other jurisdictions. Finally, the IAFF bargaining unit retained their vested benefit as part of the IAFF Award. Likewise, the SOA bargaining unit should not have their terminal leave benefits affected as part of this Award. To do so would be patently unfair to this bargaining unit as compared to the IAFF bargaining unit.

THE CITY'S TERMINAL LEAVE PROPOSAL IS AWARDED IN PART. The issue of terminal leave is controversial and contentious both within and outside of Atlantic City. The New Jersey Legislature has entertained a bill that would cap the benefit at \$15,000, which the Governor has promised to veto. The State Commission of Investigation ("SCI") previously issued a report during the Corzine Administration excoriating municipalities and school boards for failing to rein in this perceived inflated benefit. In fact, Governor Christie criticized Mayor Langford at the Town Hall meeting previously referenced, due to the size of some payouts. The SOA has accurately summarized the City's proposal, which with the exception of reducing sick pay during the last year of service, has substantial merit. The Union has made several cogent arguments which should not be lost in the heat of battle. Initially, the reason that the Police superiors have accrued significant sick leave is that they diligently reported to work throughout their years on the job. As such, the ACPD and the taxpayers of Atlantic City realized significant savings in overtime and continuity of command on this basis. Second and perhaps most critically, this is a vested benefit that many individuals have carefully planned their entire retirement around. I therefore continue to refuse to disturb this benefit for current bargaining unit members or police officers subsequently promoted. The external comparability is mixed and reflects that the SOA is not unique in this regard. The fact remains, however, that terminal leave payouts in excess of \$15,000 are the relic of a bygone era. I will accordingly award the IAFF pattern for all new hires, with the concomitant MOU reasoning incorporated.

8. ARTICLE XXII – COMMAND DIFFERENTIAL

The City submits that there is no need for this Article. All members of this bargaining unit are "command officers", and therefore all bargaining unit members receive this "differential". This provision makes no sense and simply inflates the already comparably (external and internal) high salaries of bargaining unit members by three (3.0%) percent!

In reply, the Union charges that the City's Command Differential proposal would create a significant disparity between the SOA and the Deputy Chief, and would effectively result in a loss of pay for Captains. Accusing the City of attempting to cut the pay of the bargaining unit by three (3) percent, the SOA reasons that regardless of the Award in this case, the Deputy Chiefs will continue to receive their ten (10) percent command differential. The resulting disparity will therefore create animosity between the ranks and not be beneficial to the Police department or the community. Moreover, the SOA urges that Lieutenants receive a one (1) percent Command Differential. From the Union's seat at the table, the Captains are also on the lower end of the pay scale when compared to municipalities such as Hamilton, Jersey City, Barnegat, Lakewood, Wall Township, Point Pleasant, Piscataway, and Ewing Township, to name a few,

THE CITY'S COMMAND DIFFERENTIAL PROPOSAL IS DENIED. Deputy Chiefs receive 10% while Lieutenant's get 1%. Elimination of this benefit would cause instability within the command structure, and is not warranted given the increased work load, as the SOA argues. Finally, the City has not provided substantial credible evidence to support the change.

9. ARTICLE XXIV – CALL BACK

The City submits that it is unreasonable and unwarranted for the City to pay bargaining unit members at a premium rate for work performed during their regularly scheduled shift simply because they were called in before the start of the shift.

Similarly, the City submits that it is unreasonable to require the City to guarantee bargaining unit members four (4) hours at the overtime rate without allowing the City to require bargaining unit members to work all four (4) hours.

Calling this proposal overreaching, the SOA remarks that this is a 2 part proposal that seeks to redefine and effectively disembowel the original intent of the Article. Rather, the intent of the Article was to guarantee employees a minimum number of hours when they are called back to work. If the City only had to pay for the time actually worked when an employee is called back to work, there would be no consideration for the additional commute to and from work. Paragraph B. of the City's proposal should also be denied because the long standing past practice should guide the parties.

ATLANTIC CITY'S CALL BACK PROPOSAL IS DENIED. The City makes a number of common sense arguments in this regard. It pondered at the February 19th cross of Captain Brennan why a Captain should get 4 hours call in pay, if he reports 2 hours before his scheduled tour reporting time. The Captain accepted that proposition, and allowed that he could attempt to find out what the practice had been. The SOA argues in its brief that the practice in fact has been that a Captain would get the full 4 hours under that scenario. The bottom line is that this argument was not well developed by the City, with no testimony adduced to support it.

10. ARTICLE XXV – OVERTIME

The City's position was addressed above in the "comparability" and "public considerations" sections.

The SOA accuses the City of making a nonsensical proposal which serves no legitimate purpose. The Union argues that as with the vast majority of the City's proposals, no testimony or evidence was offered in support of the same with the Union expected to guess at the City's intent. The only logical conclusion is that Atlantic City is seeking to eliminate bargaining unit members' ability to receive OT for working in excess of 8 hours per day. Finally, pursuant to the Fair Labor Standards Act, the City is required to pay OT for all hours in excess of 40 in a workweek. The current CNA calls for OT for hours worked in excess of 8 hours in one day. The City has articulated no reason and presented no evidence for seeking a change in this Article.

THE CITY'S OT PROPOSAL IS NOT AWARDED. At the outset, I am still confused by this proposal, notwithstanding counsel's explanation at the February 19th hearing. At the risk of repetition, the City provided no rationale, justification or evidence of an existing difficulty with the existing CBA language. The existing language provides for the payment of overtime after 8 hours in a given day or 40 hours in a week. These are hard fought for benefits, and should not be disturbed arbitrarily.

11. ARTICLE XXVIII - PERSONNEL OFFICER

The parties have agreed that this language will be rolled into Article XXI,

PERSONNEL COMMITTEE.

12. ARTICLE XXVIII – SICK AND INJURED

The City submits that its proposal for Section 2 should be modified to comport with its terminal leave proposal or the Firefighters' Association Interest Arbitration Award in that it should apply only to the bargaining unit members hired on or after January 1, 2013.

The City's proposal with respect to Section 4 was modified during discussion at the hearing. The proposal was modified to be consistent with the Firefighters' Association Collective Bargaining Agreement in that a bargaining unit member must exhaust his or her sick leave prior to being eligible for extended sick leave. To grant bargaining unit members additional sick leave without having exhausted their own accumulated sick leave makes no sense and grants bargaining unit members a benefit not enjoyed by any employee outside of uniformed members of the City's Police Department.

The SOA recognizes that the City's Sick and Injured proposal is two-fold. First, Atlantic City seeks to cap payment of accrued but unused sick leave for Captains at \$15,000.00 when they are promoted to the position from Lieutenant. Second, the City seeks to wholly eliminate paragraph 4, which is the "extended sick leave" provision of the CNA. The City offered no evidence or testimony in support of this proposal, and furthermore, seeks to eliminate a long standing benefit without justification to do so. In seeking to cap payment of accrued sick leave payments when Lieutenants are promoted, the City is seeking an alternative avenue to impose a terminal leave cap that was rejected by the Arbitrator in the IAFF award. Frankly, this provision potentially saves the City money as it relates to terminal leave payments because it only requires the City to pay sick leave at a Lieutenant's rate instead of the Captains. Additionally, the City seeks to eliminate the extended sick leave provision of the CNA, which provides employees with up to one (1) year of leave for injury or illness if it is determined by the City that the illness or injury requires convalescing. It should be noted that the bargaining unit does not have short term disability payments other than the limited payments provided by the State. The Police Department has also recently instituted a light

duty program which has drastically reduced the need for employees to utilize this benefit. The City also cannot realistically claim that this program is being abused, as under the provisions of paragraph 4, it has the right to review the illness or injury. The provision is also expressly provided for by N.J.S.A. 40A:14-137, and many municipalities in the area offer extended sick leave. In an effort to maintain consistency, it should be noted that the City submitted an identical proposal for the IAFF interest arbitration that was denied.

THE CITY'S PROPOSAL ON SICK AND INJURED IS AWARDED IN PART.

The issues of sick leave and terminal leave are inextricably bound. It should by now be abundantly clear that the Legislature's intent in enacting the Reform Act was to limit the accumulation and payment for the same when possible. The City's proposal in this regard is two-fold as the SOA has described. Initially it seeks to cap the accumulated sick leave payment for Lieutenant's upon promotion to Captain at \$15,000. Given my related comments herein, this makes sense in that the City's financial liability will be limited. For its part, the SOA concedes that this provision allows a savings for the City, in that the leave is being paid at a lower rate. Without repeating my rationale expressed in the terminal leave and other sections, I decline to do this for current Lieutenants and the City has recognized the implications of the IAFF MOU. I disagree with the Union, however, that it rejected a similar proposal in the IAFF interest arbitration case. Rather, no cap was proposed. What I rejected were global revisions to the common sense arguments made by Atlantic City, which were not supported by sufficient credible evidence. For the same reason, I deny the second part of this proposal related to paragraph 4, which would require Captains to exhaust their accumulated sick leave before accessing extended sick leave. That also makes sense practically, but this proposal was not well developed by the City and there are significant safeguards already in existence to monitor abuse.

13. ARTICLE XXIX – VACATIONS

The City's position was addressed above in the "comparability" and "public considerations" sections. While recognizing that the City's proposals exceed the Arbitrator's Award with the Firefighters' Association, the City submits that greater concessions are necessary to provide continuity and stability of employment as well as protecting the interests of the public.

The SOA counters that the City's Vacation Leave proposal serves no purpose other than to negatively affect the morale of the employees. Again offering no

testimony or other evidence to support it, the proposal is particularly disconcerting because it strikes at the heart of the bargained-for benefits necessary to maintain morale in this high stress occupation that is potentially life threatening on a daily basis. It is difficult to compare vacation leave with other municipalities policies due to varying work schedules and methods for calculating the amount of time that constitutes a vacation day, all of which vary from municipality to municipality and even rank to rank. A better comparison therefore is to bargaining units within the City that receive vacation leave. Based on the chart, it is evident that the SOA bargaining unit members' vacation leave certainly is aligned with other bargaining units in Atlantic City. In the event the City contends, or it is deemed appropriate that the vacation proposal comport with the IAFF Award, the Arbitrator must consider that the IAFF Award was modified by the MOU between the City and the IAFF as it related to vacation leave, The MOU modified the Award, to provide that only employees hired after January 1, 2012 would be subject to the new vacation schedule. In fact, the parties clarified that employees hired prior to January 1, 2012 but who were promoted after January 1, 2012 would continue to receive the vacation leave schedule as set forth in the previous CAN. The reason behind the agreement was the fear that there would be no incentive for employees to seek promotions. That is precisely the problem the parties would once again have if the City's proposal was adopted or the IAFF Award was implemented. That is because the City in this case is seeking to reduce the vacation days for Captains from thirty-two (32) days to twenty-five (25) days. However, current Lieutenants receive twenty-nine (29) vacation days. That would result in a four (4) day loss in vacation days for Lieutenants who are promoted to Captain. With that understanding, if the Arbitrator deems it appropriate to issue an Award similar to the IAFF Award, the MOU should be incorporated to avoid an inequitable situation and maintain parity with the IAFF.

THE CITY'S PROPOSAL ON VACATION DAYS IS AWARDED IN PART. The SOA's argument is credited that due to variations in schedules, external comparability comparisons with other police departments is imprecise. The Union has additionally correctly observed that the vacation days received by the Captains are roughly internally equivalent though the highest of others measured, except for Deputy Chiefs, who receive 34 days per year. I further endorse the proposition that police work is inherently dangerous and stressful. In the balancing of the equities, however, the reality of the situation is that distressed municipalities such as Atlantic City can no longer afford to bestow such lavish benefits. I am mindful of the fact that as the SOA has argued, Lieutenants receive 29 vacation days, and it would foster instability within the Police Department to require the forfeiture of four (4) vacation days in order to seek and receive a promotion to Captain. The City's proposal of 25 days will therefore only be applied to new hires after January 1, 2013, within the ambit of the IAFF MOU.

14. ARTICLE XXX - PERSONAL DAYS

The City's position was addressed in the "comparability" and "public considerations" sections. While recognizing that the City's proposals exceed the Arbitrator's Award with the Firefighters' Association, the City submits that greater concessions are necessary to provide continuity and stability of employment and well as protecting the interests of the public.

The Union protests that all other law enforcement personnel in Atlantic City receive personal days. Yet, the City is looking to eliminate these leave days for Captains. If this benefit was discontinued, the PBA and Deputy Chiefs would still receive 2 personal days, the SOA reasons. Moreover, other comparable jurisdictions receive personal days, as reflected by the chart on page 54 of the Union's brief. And as the chart further indicates, many jurisdictions such as Linwood, Longport, Marlboro and Paterson receive more personal days than the Atlantic City Captains. There is accordingly no basis to eliminate these days, which are an important benefit that permit the unit members to utilize a personal day for unanticipated life events that require a day off from work. In addition, only one (1) personal day may be carried over per year otherwise the member will lose that time. Finally, the CNA allows the SOA to be paid for personal days at retirement, and to eliminate this benefit would reduce the current employees retirement benefits. For these reasons the SOA submits that it must be permitted to continue to receive personal days, so the ability to use a leave day other than sick or vacation may be preserved.

THE CITY'S PERSONAL DAY PROPOSAL IS DENIED. The Union identifies the need for personal days so that unit members may address the expected and unexpected contingencies of daily life. The external pattern for law enforcement officers within the State of New Jersey, and the internal pattern for Atlantic City Public Safety and civilian employees demonstrates that the two (2) personal days the Captain's receive per year is in line with the same. Moreover, only one (1) of the days is accumulative and may be carried over. Personal days are also payable at retirement. The City has not provided a scintilla of evidence that the current personal day scheme has been a problem or must be changed, and awarding this would foster labor relations instability.

15. ARTICLE XXXIII – SCHEDULE OF SALARY

Not to be addressed in this section.

16. ARTICLE XXXVII – S.O.A. PRESIDENT

This proposal was initially modified and then withdrawn by the City. A reservation of rights was exercised, however, regarding to the proposal in the pending PBA interest arbitration.

17. ARTICLE XLII – SHIFT DIFFERENTIAL

The City's position was addressed above in the "comparability" and "public considerations" sections. Since the Association's witness indicated that bargaining unit members rarely work other than the day shift, there is no need for this Article.

The Union dismisses the City's Shift Differential proposal, as unsubstantiated by any evidence. The SOA additionally argues that because the PBA receives a shift differential, this would create yet another reason employees would not want to be promoted to the position of Captain. Additionally, the shift differential is meant to compensate employees who work on undesirable shifts. It is not a significant amount (\$400 to \$500 once per year depending on the shift), but it serves a real purpose. The shift differential is an incentive for employees to work on those shifts. This proposal clearly does not benefit either party. It would create chaos within the Police Department because no employee would have an incentive to work an undesirable shift. Therefore, to permit such an abusive proposal cannot be tolerated, and the City's proposal must be struck down.

ATLANTIC CITY'S SHIFT DIFFERENTIAL IS DENIED. The Union makes persuasive arguments related to the purpose of this benefit. The City's proposal is buttressed by resort to the testimony of Captain Brennan, that because all current Captains work days, none of the nine (9) bargaining unit members receives shift differential. That is not to say such will be the case in the future if the City chooses to return to anything near its previous apex in the rank. The SOA also reminds me that because the PBA currently receives a shift differential, the elimination of the benefit may act as a disincentive for police officers like Lieutenants to seek promotion. The bottom line is that the justification offered by the City is insufficient to sustain its burden to prove a change is warranted, as no evidence was adduced that a problem currently exists which would permit me to eliminate this bargained for benefit.

CONCLUSION

The City's proposals more reasonably reflect the statutory criteria than the Association's demands. The City's proposals comply with the two percent (2.0%) statutory cap, and consider the impact of the Cap Law on the City's ability to grant wage increases, and the financial impact on the governing unit, its residents and taxpayers. The City's proposals also consider the interest and welfare of the public, the Association members' overall compensation package, salaries and benefits in the private sector, salaries and benefits in the public sector and the salaries and benefits provided to employees in the same jurisdiction and Captains in "comparable" municipalities.

The City's proposals further consider the modest increases in the cost of living. The City's proposals take into account its impact on the Captains' continuity and stability of employment. On the other hand, the Association's demands fail to comply with the two percent (2.0%) statutory cap; fail to consider the impact of the Cap Law on the City's ability to grant wage increases, and the financial impact on the governing unit, its residents and taxpayers; fail to consider the interest and welfare of the public, the Association members' overall compensation package, salaries and benefits in the private sector, salaries and benefits in the public sector and the salaries and benefits provided to employees in the same jurisdiction and Captains in other comparable municipalities; fail to consider the modest increases in the cost of living, and; fail to take into account its impact on the Captains' continuity and stability of employment.

Because the City's proposals more reasonably reflect the statutory criteria than the Association's demands, the City respectfully requests the Interest Arbitrator to issue a decision supporting the elements of the City's offer.

III. STATEMENT OF THE CASE

Effective January 1, 2011, the processing and adjudication of interest arbitration petitions was modified by the enactment of P.L. 2010, c. 105, as referenced in N.J.S.A. 34:13A-16 (2011). As provided for by subsection d: "[t]he resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria as set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L. 2010, c.104 (C.34:13A-16.7)." See also, Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994); Township of Washington v. New Jersey State Policeman's Benevolent Association, Inc., 137 N.J. 88, 644 A.2d 573 (1994).

Due to the December 31, 2012 expiration date of the Collective Bargaining Agreement, this interest arbitration case falls within the ambit of the "hard cap" provisions of P.L. 2010, c. 105, with N.J.S.A. 34:13a – 16.7, as amended. This provides:

- a. As used in this section:

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

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

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

The New Jersey Legislature enacted the current statute in response to escalating and oppressive property tax obligations, and Governor Christie has in fact made the reduction of perceived exorbitant public sector benefits one of the cornerstones of his administrative policy. It is axiomatic that all interest arbitrators must underpin their awards with *substantial, credible evidence* or be exposed to a collateral attack upon appeal. See In the Matter of Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53; In the Matter of Borough of Ramsey, and Ramsey PBA Local No. 155, P.E.R.C. No. 2012-60; see also In the Matter of Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J.Super. 298, 299 (App.

Div. 2002), *aff'd* p.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 P.E.R.C. No. 2012-53).

The City has initially raised a threshold consideration, which must be addressed. This argues that the SOA salary demand is in excess of the statutory maximum of 2% per year or 6% in the aggregate. The further argument is made that Atlantic City's 0% offer for each year is more reasonable under the articulated statutory criteria.

On April 9, 2012, the Commission issued its New Milford decision, P.E.R.C. No. 2012-53, *supra*, which for the first time provided arbitral guidance for the necessary calculations in ensuring that any economic award does not exceed the 2% "hard cap." At pages 12-13, P.E.R.C. found:

[t]his is the first interest arbitration award that we review under the new 2% limitation on adjustments to base salary. Accordingly, we modify our review standard to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in the base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must

make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

At page 15, the Commission continued:

******** Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. *The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.*

With these considerations in mind, the computation of the base salary follows. The record confirms and the scattergram at Union Exhibit 2 reflects that because all Captains are at a maximum salary of \$129,741.00 there is no existing salary guide for the Atlantic City Police Superior Officers. This figure is exclusive of longevity, educational incentive, command and shift differential, but does include holiday pay which has been rolled into it. And because the entire bargaining unit is at the top, there is no incremental cost to be taken into account in this case. The City has recognized this fact, and also agrees that there will be no longevity increases during the life of the successor agreement. It should be noted that historically, the salary for Police Captain was pegged at the midpoint between that of a Deputy Chief (\$141,095), and that of a Lieutenant (\$118,335).

The costing out of the respective packages will now be done.

From the perspective of the SOA, the computation of the desired 2% increase for each year is an elementary undertaking. The Union chart included in the brief takes the base salary using the above guidance of \$1,425,724.07 and, merely adds 2% to it for 2013; 2014; 2015. The result is that the year 1 increase is \$28,514.48. This figure is then added to the new base generating a figure of \$1,454,238.55. An additional 2% for year 2 then equals \$29,084.77. Again, when this is added to the new base by the SOA, \$1,483,323.32 is arrived at. Increased by another 2% for year 3, the final increase of \$29,666.47 occurs. Accordingly, and cumulatively, this amounts to an \$87,265.72 wage increase for the duration of the successor agreement.

In its zeal to break out the champagne, however, the SOA has omitted a critical consideration, *compounding costs*, as the City has loudly argued. Simply put and as explained succinctly in the Atlantic City brief, compounding costs result because the salary proposal must be computed on the prior year's base, plus the awarded increase. The 2014 increase, for example, must be calculated on the 2012 statutory base, *plus* the 2013 increase, if any. The same must be said for 2015. By the City's computations, this would cause the Captain's salary to \$132,336.00 in 2013; \$134,983.00 in 2014; and \$137,692.00 in 2015. And although the bargaining unit would receive a straight percentage increase of 6% over the 3 year period, it would actually come out to 6.12 %, when compounding is added in. Accordingly, the City correctly attaches .04% to each year of the SOA proposed wage increase to account for the compounding costs. By virtue of

the City's 0% offer in each year, there is no cost to its package as the salaries would be frozen.

Pursuant to the statutory criteria, the total cost of my AWARD may not on an annual basis increase base salary items by more than 2% of the aggregate expended by the Public Employer on this bargaining unit during the 12 months preceding the expiration of the contract. See P.L. 2010 c. 105; N.J.S.A. 34:13.a.16–7.b. The evidentiary record does not support the City's position that 0% raises are appropriate. In support of this proposition, Atlantic City points to the fact that I awarded the firefighters 0 % and 0 % in 2013 and 2014 in my interest arbitration award. See In the Matter of the Arbitration Between City of Atlantic City and IAFF Local 198, P.E.R.C. Docket No. IA-2012-045 (Pecklers, 2012). The fact that the civilian white collar population received 0 % and 0 % in 2013 and 2014 is further amplified by the City, which has heavily relied upon an internal pattern of settlement to support its offer.

There are several considerations, however, that militate against the City's arguments in this regard. The SOA correctly contends that I awarded the firefighters the full statutorily permitted 6% aggregate award in that case. A careful reading of that Award will reveal that were it not for the ballooning incremental and longevity costs with which the bargaining unit was saddled and must be included under the Act, it would have received much more than the 1.22 percent in 2012. Realistically, that was all the room I had left for a salary increase under the 2% hard cap. Such is not the case herein as the SOA has contended,

as incremental and longevity costs remain constant with all unit members at maximum.

In awarding the IAFF 1.22%, I cited the well-developed internal pattern of settlement with the uniformed services within Atlantic City for over a 30 year period. An editorial comment was also included regarding the fact that the City could choose to voluntarily give the PBA and instant SOA 4% for 2012, while then relying upon the 2% hard cap to essentially squeeze the firefighters. I also took a jaundiced view of the \$10,000 raises awarded to some administrators, while accepting that they had not received raises for many years. Finally, as previously referenced, with regard to the civilian population, I share the SOA's skepticism that the 4% increase in 2012, which was deferred 2% into 2103 and 2% into 2014 somehow amounts to 0 % and 0 % on the back end.

On these bases, I reject the City's proffer that the internal pattern of settlement within Atlantic City's Public Safety uniformed services and civilian employees requires 0% in 2013 and 2014. Instead, I will award 6 %, which is consistent with the IAFF award. It is also compatible with the external pattern for similarly situated law enforcement employees. The City has urged that based on the unique nature of Atlantic City, external comparison provided by the SOA like Jersey City, Elizabeth, Newark, etc. are unwarranted. That is a valid claim, however, I have afforded the external comparability diminished weight in this AWARD. The same will also be roughly in line with both voluntary settlements and awarded interest arbitration cases reported by P.E.R.C. within the State of New Jersey and cited by the Union for 2012 (1.82%); 2011 (1.87%). Accordingly,

as required by New Milford, the following computations of the AWARD are offered:

2012 SOA BASE:	\$1,425,724.07
— Total Available Over 3 Years	\$85,543.44 (6% of base)
— Compounded Costs	1,608.21
	<hr/>
	\$83,935.23 (Available for Wage Increases)

The computations prove as follows:

\$ 83,935.23	Available \$\$ to Finance Salary Increase;
+ 1,608.21	Compounding Costs For 3 Year Duration;
<hr/>	
\$ 85,543.44	Maximum Aggregate Amount of 6% Under Hard Cap

The City has also sought to reduce the starting salary for new Captains to a figure of \$110,000.00. I am concerned that as the SOA has argued, this may compromise Atlantic City's ability to attract individuals into the Captains rank. The Union has also persuasively argued that its external comparability data supports the view that the current pay scale is comparable or inferior to that of other large municipalities, and is in fact second in Atlantic County. Given this fact as well as that as a practical matter, a veteran Lieutenant could make more than a new Captain, I believe the best interests of the taxpayers will be served by freezing the current salary for new employees hired and promoted after January 1, 2013, while grandfathering existing personnel who may subsequently be promoted.

The parties' Final Offers as to all other open issues have previously been discussed in Section II, followed by my AWARD on each. Those findings are incorporated by reference into this section, which more particularly discusses the

same in the context of the statutory criteria, and the relative weight accorded each under N.J.S.A. § 34:13A-16 (2011):

* * *

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C. 40A-45.1 et seq.),

I endorse the general recognition among my arbitral colleagues that this is perhaps the most important of the statutory criteria. The City has provided an avalanche of newspaper articles lamenting the perceived state of public sector employment, and the seemingly inexorable nexus to escalating property taxes. See generally City Exhibit 2, Tab 2, sub tab 2. The legislative intent in rectifying the interest arbitration statute has previously been recognized. The record evidence before me supports the conclusion that the roughly 40,000 residents and taxpayers of the City of Atlantic City and 30,000,000 visitors are well-served by the Atlantic City Police Superior Officers. As argued by the Union, they are the backbone of the Police Department that answers over 100,000 calls per year, and ensure that it operates smoothly and efficiently. SOA President Frank Brennan provided credible testimony in this regard. Captain Brennan explained

that the current compliment of 9 captains is down from an historic level of 27 within the last 10 years.

After describing the duty assignments of each unit member, the president offered that he is currently the Executive Officer in Charge of Investigations, Tactical Patrol & Special Events. Captain Brennan recalled that there was a time, when each of those 3 units had a minimum of 1 captain assigned to it. The composition of the Atlantic City Police Department was then detailed. According to the testimony, while the numbers varied following layoffs and demotions in 2010, an agreement had been reached with the Mayor that the number of police officers would be 330. While this sometimes goes below it, the Captain urged that the City had attempted to hold to that number.

Captain Brennan went on to acknowledge that the Atlantic City Tourism District had been established by Governor Christie. While there was a question at first as to what that meant, the president allowed that the District ended up as still part of the City, with the Police Department still responsible for it. The unique quality of policing this City was then expanded upon, including the fact that it is a barrier island; has a significant homeless problem due to its Sister Grace Rescue Mission; and also has a high unemployment rate. There is also a needle exchange program. This requires the command to think "outside of the box" and the testimony underpins the Union's contention that the SOA has been asked to do more with less.

On the question of an economic increase, neither of the Economic Final Offers is countenanced by the statutory criteria. The SOA has proposed a wage

increase of 2% for 2013, followed by 2% for 2014 and 2015, but however does not account for compounding in its calculations. The City in response has properly adopted the position that this violates the 2% hard cap on its face, and counters with 0% for each of the 3 years.

After careful analysis of the financial data and consideration of the testimony of Mr. Stinson and Mr. Foti, I awarded an increase of 2 % (2013), 2% (2014), 1.88 (2015). This will fulfill my obligations under the hard cap, and will cost Atlantic City \$85,543.44 over the life of the contract, which is consistent with the permissible 6% hard cap figure of \$xx. As in the IAFF interest arbitration award, before awarding these increases, a determination was made that Atlantic City had sufficient flexibility to finance it. For his part, Mr. Stinson conceded the ability to pay due to the minimal number of captains that comprise the bargaining unit.

This result will also preserve the internal pattern of settlement within the Atlantic City uniformed services for years 1 & 2 of the C.B.A., notwithstanding the City's arguments to the contrary. Coupled with the freezing of the Captains' salary and the reduction in benefits for new employees hired after January 1, 2013 and not currently on the Atlantic City Police Department rolls, this statutory criteria has been satisfied.

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:

*(a) In private employment in general;
provided, however, each party*

shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or Similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C.34:13A-16.2); provided however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

I credit the City's position that the Reform Act moved the question of comparability to employees in private sector employment from the 3rd criteria to the 1st. This evidenced the intent of the Legislature that interest arbitrators not continue the pattern of essentially *reading out* this statutory requirement. Atlantic City goes on to correctly argue that after Hillsdale, interest arbitrators must no longer give short shrift to comparisons with the wages and benefits of private sector employment.

The evidentiary record does support the City's claim that the bargaining unit has salaries and emoluments that are far superior to those of private sector employees. A New Jersey Business & Industry Association BUSINESS OUTLOOK SURVEY is referenced. This provided that in 2011, less than 50% of private employers gave raises, with 6% implementing pay cuts, In 2012, less than 50% of private employers projected wage increases, with 4% implementing

pay cuts. See CITY EXHIBIT BOOK, Tab 3.

These facts are instructive. Nevertheless, I continue to believe that the inherent dangers associated with police and other public safety positions make any comparison of private sector employees for interest arbitration purposes imprecise. Rather, subparts (b) and (c), which relate to public employment in general, and public employment in the same or similar jurisdictions are far more germane and have been afforded more weight as there were no private counterparts to police superiors cited. Parenthetically, the SOA argues that it would be patently unfair and a waste of resources to attempt to compare the Atlantic City Police Department to any private entity. Moreover, it has been routinely held that police work cannot be compared to private sector employment. See Borough of River Edge and PBA Local 201, PERC No. IA-97-20.

Section g.2.(b) requires the comparison of the Atlantic City Police Superiors' wages, salaries, hours and conditions of employment with those of other public sector employees in general, and again the best evidence relates to police departments. The external comparability clearly demonstrates that the subject bargaining unit is well compensated in comparison in most if not all categories, as previously detailed. As previously discussed, the longevity schedule lags those of larger municipalities such as Jersey City, Elizabeth, Paterson and Camden, for example, but is consistent with most other reported municipalities. Salaries paid to Atlantic City Captains are also extremely competitive, and vacation days, while an inexact measure due to varying police schedules, compare well. The same may be said of terminal leave and the

education incentive. A finding must therefore issue that the wages, salaries, and conditions of employment for the SOA compare favorably with the other Atlantic County and major city police departments cited by the Union.

Section g.2. (c) mandates a comparison of the wages, salaries, hours and conditions of employment of SOA members with those of other public sector employees in the same or similar jurisdictions. The City makes the cogent and common sense argument that the police superiors make more than all Atlantic City employees except the Fire Chief, Police Chief, Deputy Police Chief, Business Administrator. They also make more than many positions that require advanced degrees, the City complains. These positions include the Mayor, Municipal Clerk, Municipal Court Judge, Municipal Engineer, Municipal Attorney. By then immediately referencing the IAFF interest arbitration award for the internal pattern of settlement proposition, however, the City exhibits its tacit understanding that the best evidence of internal comparability is frequently the relationship between uniform services collective bargaining agreements and awards. Initially, as previously discussed, any suggestion that the firefighters got less than the statutory maximum of 6% over the 3 year term has been rejected.

I previously found in the IAFF interest award that such a lockstep pattern of settlement was present between the Police & Fire Departments in Atlantic City and cited the finding of my colleague Arbitrator Gifford, that the same was dispositive. See In the Matter of the Interest Arbitration Between the Township of Springfield and PBA Local 76, PERC Docket No. IA-2012-003 (Gifford, 2011). That said, I do share similar concern with respect to the same exorbitant benefits

enjoyed by the SOA as the firefighters, however, and for that reason have sharply reduced them for new hires, using the FIREFIGHTERS' MOU as a template as the SOA has suggested in that event.

As to the increases received by the Atlantic City civilian employees, it may hardly be argued that any clear pattern has been established by the City. Exhibit C-2, Tab 3, sub tabs 4 contains the un-ratified MEMORANDUM OF UNDERSTANDING between the City and the White Collar Professional Association, for the duration of January 1, 2011 through December 31, 2014. This provides that effective January 1, 2011, all current employees are to receive a 4% wage increase, of which 2% shall be added to the base at that time, and 2% which shall be retroactive to January 1, 2013. Then, effective January 1, 2012, there is another 4% increase, with 2% rolled into the base then and the other 2% implemented January 1, 2014.

Sub tab 5 contains the un-ratified MOU between Atlantic City and the IBEW. This reflects a duration of January 1, 2012 through December 31, 2014 and provides a 4% wage increase. Two percent is to be effective January 1, 2012, with the other 2% added to the base salaries effective January 1, 2013. Finally, Sub tab 6 is the MOU between Atlantic City and the Atlantic City Supervisory Employees, a 2 year agreement covering January 1, 2012 through December 31, 2014. Again, 4% is agreed upon for 2012, with 2% applied to the base salary retroactive to 2012 and the remaining 2% implemented on January 1, 2013.

On these bases, the City has argued that all other employees accepted a

wage freeze of 0% for 2013 & 2104. From my perspective however, the SOA is right that the City is at once making payments to other bargaining units during 2013 and 2014 while at the same time offering the SOA 0% each year. Such a result is not contemplated by the statutory scheme. Call these what you will, a pig in lipstick is nevertheless a pig.

(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 other economic benefits received.

By virtue of the fact that all unit members of the SOA are at the contractual maximum of \$129,741.00, the expired CBA does not contain a salary guide. There is a percentage based longevity schedule that culminates in 10% after 20 years on the job. A shift differential is also present, as well as a clothing maintenance allowance.

SOA members receive hospitalization (which the Union has loudly reminded me they will begin paying an escalating portion of); prescription, dental and optical coverage. Generous sick and vacation benefits are also included. The CBA contains a comprehensive terminal leave and accumulated sick leave pay-out plan, and funeral leave benefits. Finally, unit members are enrolled in the PFRS, which allows retirement after 20 years of service at 50% of base pay, or at 25 years with 65% (and the Union has emphasized that these contributions also must now be made). See, N.J.S.A. 43:16A-11.1. By any measure, and notwithstanding any health benefits or pension contributions unit members are

now required to make, Captains are well compensated in both salary and emoluments.

(4) Stipulations of the parties.

The parties stipulated to a number of things during mediation, which must be included. They were: the City withdrew its proposal concerning Article V GRIEVANCE PROCEDURE, while reserving the right to introduce the same in the PBA interest arbitration; the SOA agreed to the City proposal concerning Article XLIII, DURATION seeking to change the dates of the CBA as appropriate; the SOA agreed to the City's proposal on Article XIII, SPECIAL LEAVES, which provided for 5 *consecutive* working days of paid leave commencing between the day of death and the day of the funeral; the City agreed to the inclusion of the words *Domestic or Civil Union partner*, within the definition of "immediate family," and that the 250 miles would be calculated based on vehicular travel using MapQuest; the City withdrew its proposal related to Article XXIII, WORK WEEK; the SOA agreed that the PERSONNEL OFFICER language of Article XXVII would be incorporated into Article XXI, PERSONNEL COMMITTEE; THE City withdrew its proposal on Article XXXVII, S.O.A. PRESIDENT, with a reservation of rights again indicated. These changes were incorporated into the AWARD.

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

Notice is taken that the original 1977 municipal appropriation and county

levy cap, as amended, still remains in effect. The Local Government Cap Law is codified at N.J.S.A. 40A:4-45 *et seq.* and states that: "[i]t is hereby declared to be the policy of the legislature that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to maintain their homesteads." Section 10 of the P.L. 2007 act originally established a Tax Levy Cap of 4% above a municipality's prior year tax levy.

The 2007 cap was subsequently amended to 2% under legislation signed into law by Governor Christie July 2010, with exclusions also modified. While Chapter 44 changed the 2007 cap, there was no change to the 1977 cap. Municipalities are accordingly subject to both the 1977 Appropriations Cap of 2.5% (3.5% upon municipal approval) and the 2010 Tax Levy Cap of 2%. The evidence in this case makes it clear that the City can accommodate the awarded salary increases for the SOA, as it has abundant flexibility under both of these statutory constraints.

SOS Municipal Finance Expert Vincent Foti provided testimony at the March 4, 2013 hearing, and initially offered a caveat that his comments with regard to the introduced 2013 budget were purely speculation, as the City Council could choose to make numerous changes to it.

Mr. Foti underlined that Atlantic City does not have either an Appropriations Cap or Tax Levy Cap problem that would serve as an impediment to the awarding of the Union's financial proposal. Rather, the EXPENDITURE CAP TOTAL ALLOWABLE is \$211,321.29, with the ACTUAL as reflected by Budget Sheet 19 \$189,306,967.00. These numbers accordingly demonstrate a total of

\$22,014,967.29 of available Appropriations Cap room. See City Exhibit 3, BUDGET SHEET 3c, 2013.

With respect to the TAX LEVY CAP, the maximum amount available to be raised through taxation is indicated as \$223,901,584.00, with the ACTUAL amount \$204,195,412.00. This is accordingly \$19,706,172.00 below the permissible statutory maximum. See City Exhibit 3, BUDGET SHEET 3b(A) 2012. The FOTI testimony was consistent with that of the City's Expert, Director of Finance and Budget Michael Stinson, upon cross examination.

Mr. Foti went on to point to RESULTS OF OPERATIONS for 2012, which amounted to \$200,495. He explained that this is a reflection of the City's ability to regenerate surplus, and is the public sector equivalent of the bottom line in the private sector. See AFS SHEET 19. The SOA similarly points to his testimony connected to the UNEXPENDED BALANCE OF APPROPRIATION RESERVES. This amounted to \$5,375,598 for year 2012 (from 2011) *Ibid*. Nothing in the record contradicts the further FOTI testimony that AFS Sheet 19 additionally provides for MISCELLANEOUS REVENUES NOT ANTICIPATED of \$1,986,318. This goes back to surplus, which as established by City Exhibit 3, Sheet 39, was \$2,257,629.00 as of December 31, 2012. .

Additionally, the witness directed my attention to Union Exhibit 3, Book 3, Tab 30, Sheet 3, which was indicative of TAXES RECEIVABLE in the amount of \$10,434,162, and PROPERTY ACQUIRED FOR TAXES of \$27,606,400, which establishes that these are viable assets acquired at some time, which at a later point will be realized. In conclusion of this g(5) discussion and on balance, the

foregoing findings illustrate that the subject INTEREST ARBITRATION AWARD complies with this critical statutory criteria.

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public 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.

Atlantic City argues at the outset that its surplus history is illustrative of its financial woes. As of January 1, 2007, the surplus balance was \$14,395,615.00, allowing the City to anticipate \$13,800,000.00 as revenue in its 2007 budget. See City Exhibit 2, Tab 1. sub. 2. Due to the economic downturn beginning in 2008, this surplus balance as of January 1, 2013 was only \$2,257,629.00, or a reduction of \$12,137,986, which was in excess of 84%. This forced the City to eliminate its surplus anticipated in 2013.

To maintain the revenue anticipated in 2013, the City had to generate \$13,800,000.00 more from other revenue for 2013 than it did in 2007. The City represents that revenue from local revenues further illustrates its revenue woes. In 2007, the City anticipated \$11,401,000. See City Exhibit 2, Tab 1, sub tab 1. By 2013, local revenues had decreased by approximately \$2,100,816.00 or in

excess of 18 per cent, to \$9,300,184.00 *Id.* at sub tab 5. With no anticipated surplus, the remaining revenue sources had to cover this \$2,100,816 revenue slack.

Atlantic City underlines the diminution in State Aid, which was reduced from 2007 to 2013 by \$1,781,979.00, or in excess of 22 percent. The City amplifies that therefore, State Aid is another revenue deficiency that remaining revenue sources must overcome. And while dedicated Uniform Construction fees are offset by appropriations and have no impact on the remainder of the budget, to complete the analysis it must be recognized that from 2007 through 2013, this revenue source decreased by \$2,100,000 from \$4,100,000 to \$2,000,000. See City Exhibit 2, Tab 1, sub tab 1 and 5. Cautioning against reliance on “one shot deals” to balance the budget, the City allows that from 2007 to 2013 it nevertheless did so by utilizing the capital fund surplus. This resulted in a \$13,902,580.00 increase in “one shot deals,” which are not regenerative.

According to the City, all in all, anticipated revenue, other than from municipal taxes, decreased by \$5,880,215.00. See City Exhibit 2, Tab 1 sub tabs 1 and 5. With respect to municipal taxes, from 2007 through 2013, revenue from municipal taxes increased from \$193,167,083 to \$209,455,419.00. This is an increase of \$16,288,336.00 or 8.43%, which translates to an annual increase of less than 1.5 percent. *Ibid.*

Characterizing it as the most significant issue facing the City, Atlantic City then launched a muscular financial argument that is linked to successful tax appeal decisions and settlements with virtually every casino, except Borgata,

which is pending. These figures are enumerated in the chart on page 27 of the City's brief, and cumulatively equal \$185,500,000.00. In that regard, Atlantic City has been ordered or agreed to both refund prior payments and issue future tax credits. These include e.g. \$10,600,000.00 to Resorts; \$8,200,000.00 to Pinnacle; \$1,700,000.00 to ACE Gaming; \$28,000,000.00 to Caesars; \$54,000,000.00 to Trump.

Atlantic City advises that these unprecedented tax refunds forced the City to obtain special permission from the State Local Finance Board to execute Tax Appeal Bonds to borrow the money, in order to pay the refunds. As a result, the City's debt service increased \$16,000,000.00 in 2011 to \$37,000,000.00 in 2013. Mention is also made of the fact that refunds due Tropicana and Borgata have not yet been included. The foregoing has also lead to a decrease in the ratable base due to reductions in assessed value, as reflected by the chart at page 29 of the City's brief. The 2013 base of \$14,400,000,000.00 therefore represents a decrease of \$6,000,000,000.00 from 2010 levels.

Finance and Budget Director Stinson provided credible testimony during his direct examination. He explained that if the Borgata tax appeal resolves, the total assessed value for the properties would drop to 13,400,000,000. The testimony also supported the City position, that if all things remained the same, there would be a 30 tax increase. Mr. Stinson renewed the City's argument that it was hampered by reductions in its sources of revenue, which were very limited with 90% coming from taxation. Atlantic City is also 1 of 2 municipalities in New Jersey that do not have a hotel room tax with Wildwood being the other.

Mr. Stinson urged that surplus had gone away, with the 2012 Audit not completed until June and the 2013 budget not anticipating any surplus. State Aid went down \$1,000,000.00 during the period, he recalled. A discussion followed regarding a capital surplus of 2,500,000.00 that was put into the 2012 budget. Turning to the bonding, the Director reported that the City floated a \$100,000,000.00 bond issue to pay off the tax credits. Due to the bonds selling at a premium, an extra \$9,000,000.00 was realized and went into the capital fund. This shows as a revenue, but basically nets to zero when you look at both sides, according to the testimony.

I credit the City's position that it is critical to recognize Atlantic City was required to enter into a Memorandum of Understanding with the State of New Jersey, which provided for State supervision. This was a document drafted by representatives for the State, which cited the "extraordinary pressures on the tax base in Atlantic City and the tax rates applicable to its residents and businesses" due to tax appeals. See City Exhibit 2, Tab 1 sub tab 1.

To emphasize its position, the City counsels that the State requires Atlantic City to provide Interest Arbitrators with a letter confirming that the City "[h]as been directed to seek appropriate concessions," and to "[r]ealistically acknowledge the unprecedented level of fiscal stress caused by unprecedented tax appeals." *Ibid.* I have received a copy of this draft letter, and it has been afforded due consideration within the context of this statutory criteria. This recognizes that layoffs could occur if runaway tax appeals decimated the budget. Thanks to prudent bonding measures by the City Administration, these concerns

have been ameliorated.

The City accepts this fact in arguing that while these costs which are reflected in its debt service obligations are outside of the relevant caps, but nevertheless submits that they must still be paid. The further argument is made that even if the City is able to keep its spending perfectly flat with no increase in its levy, the tax levy would remain the same with the tax burden shifted from the casinos to residential home owners and other non-casino, commercial properties. The end result according to the City is an anticipated increase of 26% in taxes or a proposed .30 per assessed value increase from 1.13 to 1.43. The practical implication of this is that with the average home assessed at \$210,000.00 the tax bill would increase by \$630 per year by 2014 due to the shift in ratables from the casinos to the home owners.

Notwithstanding these able arguments, a number of key factors have guided me in arriving at the consistent conclusion that Atlantic City has significant financial flexibility to fund an increase for the SOA. Initially, it must be stressed that the 2013 budget has been introduced and not yet adopted by the Atlantic City Council. A number of changes may and probably will take place which will have an impact of the anticipated 26% property tax increase. At the risk of stating the obvious, even if the SOA's economic proposal was fully awarded, the total amount would be almost *de minimus* in the face of the total Atlantic City budget and could not possibly impact the tax rate.

The SOA has also reminded me that the City realized a premium of \$9,000,000.00 on the \$100,000,000.00 sale of its bonds over a 20 year

period. Perhaps most importantly, the testimony of Mr. Foti provides the final word. This identified that the RESULTS OF OPERATIONS column on AFS Sheet 19 listed \$200,495, while the UNEXPENDED BALANCE OF APPROPRIATION RESERVES contains the figure of \$5,375,598 from 2011 to 2012. These figures are constant and will not change. This same sheet further provides \$1,986,318 for MISCELLANEOUS REVENUES NOT ANTICIPATED, which will go back to surplus. *Ibid.* Even accepting Mr. Stinson's representation that the surplus was eliminated in the 2013 budget, the subject INTEREST ARBITRATION AWARD accordingly satisfies this statutory requirement.

(7) *The cost of living.*

The Consumer Price Index ("CPI") tracks the cost of living, and is a measure of the average change in prices paid for goods and services that are purchased by households over time. The current index uses the period between 1982-1984 as its base year, with a value of 100 established. The cost of the same goods and services is then calculated for each following year, which then establishes an "index" for comparisons of consumer purchasing power.

The more comprehensive of the 2 CPIs published by the Bureau of Labor Statistics is the CPI for All Urban Consumers (CPI-U), which covers approximately 87 percent of the total population. This includes in addition to wage earners and clerical worker households, professional, managerial and technical workers, the self-employed, short-term workers, the unemployed, retirees and others not in the laborforce. See generally USDOL Bureau of Labor Statistics *NEWS RELEASE USDL-11-1748*, December 16, 2011. Based on the

current figures, the SOA submits that the analysis is quite simple. The Union thereafter properly records that the CPI rose 3.2% from 2010 until 2011 and 2.1% from 2011 to 2012. See Union Exhibit 3, Tabs 7-8. These figures reinforce the new paradigm of uniformed services collective bargaining, in that whereas in the past awarded increases generally by far outstripped the CPI, the onset of the "2% hard cap" virtually guarantees that employee increases will lag the operative CPI. This fact tips this statutorily significant criteria in favor of the SOA economic proposal, however, as I previously found in the IAFF case, it is not dispositive,

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

Atlantic City has proposed numerous modifications to the salary and benefits packages currently received by SOA unit members, as well as other non-economic language which ultimately impacts the conditions of employment and the continuity and stability of employment within the City. The Union emphatically opposes the same, and in what has become a continuing saga, accuses the City of what is tantamount to *anti union animus* and bad faith bargaining. The SOA adopts a parallel posture to the IAFF case, that the cumulative effect of such an award would undermine the morale of the work force, and make it impossible for the City to attract qualified applicants in the future.

As previously discussed, many of these proposals were rejected for the stated reasons, primarily the potentially corrosive effect on the command

structure within the Atlantic City Police Department. Some were modified to eventually provide some financial relief to the City, while preserving its ability to attract qualified superiors from the ACPD rank and file. I have accordingly imposed two-tiered plans related to salary guide; terminal leave with a cap on sick pay-out; vacation leave; longevity and the educational benefit. These contractual modifications comply with this statutory criteria by promoting the continuity and stability of employment within the City of Atlantic City, and harmonizing the competing interests of maintaining vested benefits for those who have relied upon the same for their entire police careers, while rein in the benefits for new hires in the future.

(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).

This criteria has previously been fully addressed in the discussion of statutory criteria g(1), g(5) and g(6). Based upon the totality of the foregoing findings of fact, it must be reiterated that the City of Atlantic City has substantial flexibility within its budget and under the hard and soft caps to finance the relatively meager awarded economic package. This result is consistent with the mandated statutory criteria and is awarded pursuant to my conventional authority. In so concluding, I have carefully considered and discounted Atlantic City's arguments to the contrary as the internal pattern supports the SOA case. This AWARD is therefore accordingly rendered pursuant to my statutory authority.

IV. CONCLUSION

In rendering this INTEREST ARBITRATION AWARD, I have closely and fully considered and deemed relevant each of the statutory criteria. However, the greatest weight was afforded to the interest and welfare of the public; the lawful authority of the Employer; the financial impact on the governing unit, its residents, and the statutory restrictions imposed upon Atlantic City by the hard cap language of P.L. 2010 c. 105; the overall compensation currently received; the internal comparability of the Atlantic City Police Superiors with uniformed and other personnel within the City; the external comparability of settlements reported by P.E.R.C. within the State of New Jersey and the County of Atlantic.

Accordingly, based upon the foregoing considerations, I find that in accordance with N.J.S.A. 34:13A-16.d, the total net annual economic changes for each year of the agreement as well as the non-economic changes are reasonable under the 9 statutory criteria set forth in subsection g., and certify that pursuant to subsection 5.f the statutory limitations imposed on the Local Levy Cap were taken into account.

V. AWARD

1. All open proposals submitted by the Atlantic City SOA and the City of Atlantic City that are not awarded herein are denied. Additionally, any initial proposals that were not raised at hearing and discussed in the briefs have been considered abandoned, and have not been addressed. Any City proposals withdrawn with a reservation of rights related to the PBA interest arbitration should be con-

sidered withdrawn with prejudice in the instant case, but without, for that purpose.

2. All provisions of the existing Collective Bargaining Agreement shall be carried forward into this successor agreement, except for those that have been modified by the terms of the instant AWARD.
3. Duration — The new C.B.A. shall be for a term of 3 years, covering the duration of January 1, 2013 through December 31, 2015, with renumbered Article XLII amended to reflect the same.
4. Wages — Article XXXIII SCHEDULE OF SALARY shall be amended to include.
 - 2013 — 2% Increase (Retroactive To 1/1/13)
 - 2014 — 2%; Increase Effective January 1, 2014.
 - 2015 — 1.88% Increase Effective January 1, 2015.

The existing Captain's salary of \$129,741.04 shall be frozen for all new employees hired by the Atlantic City Police Department after January 1, 2013, and subsequently promoted to the rank of Captain.

All current employees hired prior to January 1, 2013 shall receive the pay rate established by this Award. Furthermore, any employees hired by the Atlantic City Police Department prior to January 1, 2013, and subsequently promoted to the rank of Captain, shall be subject to the new pay rate in the instant Award.

5. Article XIII, SPECIAL LEAVES

Section B. Funeral Leave shall be amended to include language reading "5 consecutive working days of paid leave in the event of the death of a member of the officer's 'immediate family'."

The definition of "immediate family" will be modified to include *Domestic or Civil Union partner*.

The final sentence of Article XIII, Section B with respect to an additional two (2) working days of paid leave being granted for travel of more than two hundred and fifty (250) round trip miles for viewing and funeral, shall be changed so that the miles will be calculated based on *vehicular travel using MapQuest*.

6. Article XV LONGEVITY shall be amended as follows:

Section B shall be modified to read – “*For all Employees promoted before January 1, 2013 ... the practice governing longevity shall be as follows;*

New Section C to state

The following longevity schedule shall apply to all employees newly hired after January 1, 2013, and subsequently promoted to the rank of Captain:

<u>Years of Service</u>	<u>PAYMENT</u>
5 years	\$2,595.00
10 years	\$5,190.00
15 years	\$7,784.00
20 years	\$12,974.00

All current employees hired before January 1, 2013 shall continue to receive longevity according to the existing schedule contained in the expired CNA.

All City employees hired before January 1, 2013, but promoted after January 1, 2013 will receive longevity pay in accordance with the previous percentage schedule based on years of service.

7. Article XVII EDUCATION AND TRAINING INCENTIVES

is amended to include:

A New paragraph shall be inserted stating:

All current employees hired prior to January 1, 2013 will continue to receive previous educational incentives existing under the terms set forth in the expired CNA. Furthermore, those employees hired prior to January 1, 2013, but not receiving an educational incentive prior to January 1, 2013, will remain eligible to receive the educational incentive under the previous schedule set forth in the expired CNA. All employees hired after January 1, 2013 that receive police science or related training and incentives as set forth below shall be acknowledged with special salary increments, based upon the following "new" scheduled scale:

- a) Upon the completion of an Associate's Degree or sixty-four (64) credits, of which fifteen (15) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$2,500.00 additional increment on his base salary.
- b) Upon the completion of a Bachelor's Degree or one hundred and twenty-eight (128) credits, of which thirty (30) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$1,000.00 additional increment on his/her base salary.
- c) Upon the completion of a Master's Degree or one hundred and seventy-five (175) credits, of which thirty-six (36) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$1,000.00 additional increment on his/her base salary.

8. Article XIX TERMINAL LEAVE WITH PAY shall be amended to indicate:

Under Section B "PLAN B" –

the accumulated sick leave lump sum payment shall be capped at \$15,000.00 for all employees hired into the Atlantic City Police Department after January 1, 2013, and subsequently promoted to the rank of Captain.

All current Captains hired prior to January 1, 2013, will continue to receive the Terminal Leave pay-outs contained in the expired CNA. Furthermore, all those employees hired into the ACPD prior to January 1, 2013, but subsequently promoted to the rank of Captain shall receive the Terminal Leave pay outs contained in the expired CNA.

9. Article XXVII, PERSONNEL OFFICER shall be eliminated and placed into Article XXI, PERSONNEL COMMITTEE.
10. The remaining articles shall be renumbered as follows:
 Article XXVIII SICK AND INJURED to become Article Article XXVII; Article XXIX VACATIONS to become Article XXVIII; Article XXX PERSONAL DAYS to become Article XXIX; Article XXXI, DENTAL, PRESCRIPTION AND OPTICAL to become Article XXX; Article XXXII LEGAL PLAN to become Article XXXI; Article XXXIII SCHEDULE OF SALARY to become Article XXXII; Article XXXIV POLICE CARS to become Article XXXIII; Article XXXV TRADING TIME to become Article XXXIV; Article XXXVI ACCIDENT REVIEW BOARD to become Article XXXV; Article XXXVII, S.O.A PRESIDENT to become Article XXXVI; Article XXXVIII SAVINGS CLAUSE to become Article XXXVII; Article XXXIX PROBATION PERIOD to become Article XXXVIII; Article XL EXPUNGEMENT to become Article XXXIX; Article XLI SHOWER FACILITIES to become Article XL; Article XLII SHIFT DIFFERENTIAL to become Article XLI; Article XLIII DURATION to become Article XLII.

11. ARTICLE XXVIII SICK AND INJURED shall be modified to include the following language at the end of paragraph 2:
A cap of \$15,000.00 shall apply to all payments for accumulated sick leave made to employees hired by the City of Atlantic City after January 1, 2013 and subsequently promoted. Any current employees hired before January 1, 2013 who are subsequently promoted will be covered by the language in the expired CNA.

12. ARTICLE XXIX VACATIONS, shall be modified to reflect:

New Paragraph B:

Any employees hired after January 1, 2013 will be subject to the "new" vacation schedule of 25 days.

All current employees hired prior to January 1, 2013 will continue to receive the previous vacation schedule as set forth in the expired CNA. Furthermore, those employees hired prior to January 1, 2013, but promoted after January 1, 2013, will receive vacation leave in accordance with the previous vacation schedule set forth in the expired CNA.

Dated: March 14, 2013
NORTH BERGEN, N.J


MICHAEL J. PECKLERS, ESQ., ARBITRATOR

STATE OF NEW JERSEY

SS:

COUNTY OF HUDSON

ON THIS 14TH DAY OF MARCH 2013, BEFORE ME PERSONALLY CAME AND APPEARED **MICHAEL J. PECKLERS, ESQ.**, TO BE KNOWN TO ME AS THE INDIVIDUAL DESCRIBED HEREIN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND HE DULY ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.


NOTARY PUBLIC

ZOILA R. VARGAS #2374097
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 5/27/2013

MAR 14 2013