

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

In the Matter of Interest Arbitration Between	:	
	:	
BOROUGH OF FORT LEE	:	INTEREST ARBITRATION
"the Borough or Employer"	:	DECISION
	:	AND
and	:	AWARD
	:	
PBA LOCAL 245	:	Docket No: IA-2007-087
"the PBA or Union"	:	

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE BOROUGH:

J. Sheldon Cohen, Esq.
DeCotiis, Fitzpatrick, Cole & Wisler
Of Counsel & On the Brief
Hadley J. Groft, Esq.
On the Brief

FOR THE PBA:

Richard Loccke, Esq.
Loccke, Correia, Schlager, Limskey & Bukosky
Of Counsel & On the Brief

Procedural History

The Borough of Fort Lee (the "Employer" or "Borough") and PBA Local 245 (the "PBA" or "Union") are parties to a collective bargaining agreement (the "CBA") which expired on December 31, 2006. Upon expiration of the CBA, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA filed a petition with the New Jersey Public Employment Relations Commission ("PERC") on April 10, 2007, requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on May 17, 2007 from its Special Panel of Interest Arbitrators.

I conducted mediation sessions on July 12, August 21 and December 2007 which proved unsuccessful. Formal interest arbitration proceedings were invoked and a hearing was conducted on February 14, 2008, when the parties presented documentary evidence and testimony in support of their positions. On February 8, 2008, the Borough filed a scope of negotiations petition with PERC seeking a determination that a PBA proposal to include holiday pay in base salary during an interest arbitration proceeding is an illegal subject and may not be considered by an interest arbitrator for inclusion in a successor contract.

On February 15, 2008, I confirmed the following schedule for the submission of certifications and briefs in the above captioned interest arbitration matter:

March 6, 2008: The Borough's Financial and Insurance Certifications are due on March 6, 2008. As I directed at the arbitration hearing, if the Borough's Financial Certification includes any reference to the 2008 Temporary (Preliminary) Budget, the submission must include a copy of the 2008 Temporary or Preliminary Budget. Any other financial documents cited by the Borough in the Financial Certification that are not in the record must be submitted with the Financial Certification.

- March 20, 2008:** The PBA's Financial and Insurance Certifications are due on March 20, 2008.
- March 27, 2008:** The Borough may file a response to the PBA's Financial and Insurance Certifications within seven (7) days of receipt of the PBA's Financial and Insurance Certifications.
- April 20, 2008:** Briefs are due on April 20, 2008. Please submit the briefs to me directly and I will exchange the briefs simultaneously with the parties.

On February 15, 2008, I advised the parties that the current record included six Joint Exhibits, 23 PBA Exhibits and 11 Borough Exhibits. I indicated that I had pre-marked 16 Borough exhibits and that the following five Borough exhibits were not in the record and must be submitted no later than March 6, 2008:

- B-9 Municipal Data Sheet
- B-10 Insurance Coverage Companion Table
- B-11 Holiday roll-in Costs Worksheet
- B-12 Health Care Cost (Increase) Table
- B-14 Settlement Agreement with United Service Workers Union

Finally, I indicated that the record will be closed upon receipt of the parties' briefs on April 20, 2008.

On March 5, 2008, the Borough submitted the additional exhibits (listed above) that were pre-marked at the arbitration hearing. In addition, the Borough submitted the following additional exhibits:

- B-16 Certification of David J. Vozza, Borough Insurance Broker
- B-16.A Letter from Borough Administrator dated October 11, 2006
- B-16.B Borough of Fort Lee current active Horizon rates
- B-16.C Borough's annualized additional cost over and above the contractual obligation of \$200 per PBA member.
- B-16.D Borough's annualized additional cost over and above the contractual obligation of \$541 per PBA member.
- B-17 Certification of Steven D. Wielkottz, Borough Auditor
- B-17.A Proposed 2008 Budget for the Borough of Fort Lee.
- B-18 Certification of Peggy Thomas, Borough Administrator
- B-19 Text of Governor Corzine's February 26, 2008 Budget Address.

On March 14, 2008, the Borough submitted the Amended Certification of Steven D. Wielkottz, Borough Auditor, and the Introduced 2008 Budget for the Borough of Fort Lee. These documents replaced Exhibits 17 and 17.A.

On April 3, 2008, the PBA advised that it would not file a Financial Certification and that it would rely on the financial documents in the record and the appropriate arguments presented in its brief.

The Borough and the PBA filed their respective briefs which were received by April 23, 2008. I exchanged the briefs simultaneously to the Borough and the PBA. On April 29, 2008, the PBA objected to the Borough's inclusion of four additional exhibits (B-20, B-21, B-22 & B-23) in its brief.

By letter dated August 27, 2008, I sustained the PBA objection to the inclusion of the four additional exhibits in the record and advised the parties that the record was now complete:

The Commission's interest arbitration rules at *N.J.A.C.* 19:16-5.7 (k) specifically state, in relevant part, as follows:

"The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator."

The Borough did not request special permission to introduce new factual material in its post-hearing brief. Also, the PBA did not have the opportunity to review such material before filing its post-hearing brief nor did it have an opportunity to offer argument in response to the new factual material submitted by the Borough. Accordingly, I find that the exhibits submitted by the Borough in its post-hearing brief are not part of the record in this matter.

The case was held in abeyance pending resolution of the Borough's Scope of Negotiations petition seeking a ruling from the Public Employment Relations Commission ("PERC") regarding the negotiability of the PBA's proposal to place holiday pay in base salary.

On June 26, 2008, PERC issued its Scope of Negotiations Determination dismissing the Borough's petition as untimely. The Commission further stated that "it is clear from their submissions that both parties recognize that the placement of holiday pay into base salary is mandatorily negotiable and that only the Division of Pensions may determine whether that form of holiday pay is credible for pension purposes."

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

The parties did not agree on an alternate terminal procedure. Accordingly, the terminal procedure is conventional arbitration. I am required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria in subsection g. of this section."

Statutory Criteria

The statute requires the arbitrator to:

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 factor.

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

(2) Comparison of the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 c. 34:13A-16.2); provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or municipality, the arbitrator or panel of arbitrators shall take into account to the extent the 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 budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.

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

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

PARTIES' LAST OFFERS

PBA

1. **Term of Agreement:** January 1, 2007 to December 31, 2010.

2. **Salary:**

The PBA proposed a five percent (5%) increase across-the-board on each rank, step and position in each calendar year.

3. **Holiday Pay:**

The PBA proposes that holiday pay be included in base salary as compensated time, paid with regular payroll and that the holiday value be utilized for all computation purposes.

4. **Medical Opt-Out:**

The PBA proposes a Medical Opt-Out provision of fifty percent (50%) of the amount of premium saved by the Borough. The PBA proposes that the payment would be made to the Officer not later than November in each calendar year.

5. **IRS Plan Code Section 125 (b) Cafeteria Plan:**

The PBA proposes the establishment of an IRS Plan Code Section 125 (b) Cafeteria Plan to allow for the voluntary allocation on a pre-tax basis various covered costs as provided for under the Code.

6. **Clothing Allowance:**

The PBA proposes that the current clothing allowance of \$700 be increased by \$100 annually to \$800 in 2007, \$900 in 2008, \$1,000 in 2009 and \$1,100 in 2010.

7. **Legal Representation:**

The PBA proposes a modification of Article XLII by providing that the Borough pay the PBA \$150 annually for the provision of legal services.

BOROUGH

1. **Term of Agreement:** January 1, 2007 to December 31, 2010.

2. **Salary:**

The Borough proposes a 3% annual increase on January 1 and an additional 1% increase on June 1 in 2007, 2008, 2009 and 2010. The Borough proposes that the starting pay/Academy Step be frozen in 2007, 2008, 2009 and 2010.

3. **Health Benefits:**

Effective July 1, 2008, the Borough shall change health insurance carriers for all police officers to a new health insurance plan through Horizon Blue Cross Blue Shield of New Jersey ("HBCBSNJ").

A. Additionally, it is proposed that the following health benefit changes be made for all members of the bargaining units:

I. **HBCBSNJ Traditional Plan** - The Borough will continue to provide a Traditional Plan to covered employees that is substantially equivalent to the CSHBP Traditional Plan except for the following changes:

1. **Deductible** – A deductible of \$300.00 per person and \$600.00 per family. Any combination of family members can satisfy the family deductible.
2. **Coinsurance** – An increase in the out-of-pocket maximums, excluding deductibles, which shall upon ratification of this Agreement, be \$1,000 per person and \$2,000 per family per calendar year. Any combination of family members can meet the family maximum.
3. **Lifetime maximum** – The maximum lifetime benefit shall be increased to \$5,000,000.

- II. HBCBSNJ Direct Access Plan – The HBCBSNJ Direct Access Plan shall provide substantially the same health coverage, co-pays, deductibles, co-insurance, plan limits and exclusions as the existing plan, except for the following mutually agreed upon changes:
1. Gatekeeper – The HBCBSNJ Direct Access Plan shall not have a gatekeeper or a referral requirement;
 2. In Network Benefits – A \$5.00 co-pay for all in network outpatient services;
 3. Mental Health Benefits – In network inpatient mental health benefit shall be 25 days per benefit period at 100%, then 90% up to 20 days per benefit period, and 100 days per lifetime combined in and out of network.
 4. Out of Network Benefits:
 - (a) Co-insurance – The out of network level of co-insurance has been increased from the current NJ PLUS benefit of 70%/30% to 80%/20%, with out-of-pocket maximums remaining unchanged;
 - (b) Deductible – The out of network deductible shall be \$100 per individual/ \$250 per family. Any combination of family members can satisfy the family deductible.;
 - (c) Lifetime benefit – The maximum out of network lifetime benefit will be increased from the current NJ PLUS benefit of \$1,000,000 to \$5,000,000 with the new Horizon Direct Access Plan;
 - (d) Mental Health – An increase in the out-of-network mental health benefit to twenty (20) days.
- III. Prescription co-payments shall be increased to \$5/Generic/\$15 Brand Name per 30-day supply (or \$10/Generic/\$30 Brand Name for a 90-day supply mail order).
- IV. All health benefit changes, including, but not limited to, those listed above, are to be expressly agreed upon by the parties to these agreements and are to be set forth in a health plan spreadsheet, which will be attached in any final agreements among the parties.
- B. The Borough agrees to establish and pay the administrative fees for a voluntary Medical Savings Account for covered employees;

- C. Newly Hired Employees - All qualifying employees hired after the ratification of these Agreements shall only receive health insurance through the Horizon Blue Cross – Blue Shield Direct Access health plan, or its then appertaining equivalent plan, at the now and later applicable terms and conditions of coverage and payment.
- D. It should be noted that the Borough has the right to change insurance carriers and to substitute substantially equivalent insurance policies. See Article VI (Medical Benefits) of the Agreement between the Borough of Fort Lee and the Fort Lee Police Administrators Association, January 1, 2003 through December 31, 2006. (J-6).
- E. Eliminate existing Article V, #3, Second Paragraph, which requires reopening negotiations on the prescription plan if the premium exceeds \$541 per year.

In the alternative, the Borough offers to maintain bargaining unit members (as a unit, not by individual choice) in a health care plan which is substantially equivalent, in employee costs and benefits, to the New Jersey State Health Benefits Plan (“NJSHBP”), as NJSHBP shall be, from time to time amended, during the term of the contract.

4. **Legal Representation:**

Amend Article XLII, to eliminate paragraphs 2 and 3. Add to contract language a Borough payment of \$150 per contract year, per officer, who so designates, toward legal defense insurance to be purchased by individual police officers through the PBA.

5. **Article XXXXIV:**

The Borough proposes to update text to reflect current order numbers.

6. **Article XXIII:**

The Borough proposes to amend Article XXIII to provide the PBA will provide the Borough with a copy of a lawful and applicable Demand and Return system.

7. **Holiday Roll-In:**

The Borough notes that it filed a Scope of Negotiations Petition with the Public Employment Relations Commission (“PERC”) on February 8, 2008, seeking a ruling that the PBA’s proposal concerning the fold-in of holiday pay into base pay constitutes an illegal subject of negotiation. Thus, pursuant to N.J.A.C. 19:16-5.7(h), an interest arbitration award with respect to holiday pay should not be issued until the Scope Petition is finally determined.

PARTIES' POSITIONS

PBA POSITION

The following are the PBA's arguments and contentions in support of the statutory criteria:

Interests and Welfare of the Public

The PBA submits that the Fort Lee Police Department is one of the busiest in Bergen County. Its 109 sworn officers of various ranks serve a rapidly expanding resident population as well as an enormous transient population including an exceptionally large number of commuters on a daily basis. P-2, a map of Fort Lee, illustrates the elaborate network of interstate roadways which pass through the Borough and lead to the George Washington Bridge. Major roadways through the Borough of Fort Lee include, but are not limited to, U.S. Route 95, U.S. Route 80, U.S. Route 46, U.S. Routes 1 & 9, U.S. Route 9W, New Jersey Route 4, New Jersey Route 5, New Jersey Route 67, Bergen County Route 505 and the Palisades Interstate Parkway.

The PBA cites the testimony of Detective Kevin Kosuda who stated that passing through the Borough's approximately 2.5 square miles on a daily basis are commuters going both North and South, as well as using the Bridge, and that the Borough is a crossroads of virtually everything that moves through northeast New Jersey to New York.

The testimony established that the George Washington Bridge traffic alone exceeded 300,000 vehicles per day and over 108,000,000 vehicles per year. The Palisades Interstate Parkway carries approximately 21,000,000 vehicles per year. All of the statistics show Fort Lee to be a major traffic hub demanding exceptional services from its Police Department.

In a report issued by the "Police Executive Research Forum" dated December 18, 2006, the impact of the George Washington Bridge on the Fort Lee Police Department was described as follows:

The greatest challenge to the Fort Lee Police Department is the impact of the George Washington Bridge on traffic conditions throughout the Borough. From the time the Bridge was first opened in 1931, traffic volume seemed to exceed expectations. The capacity of the Bridge was increased with the addition of two (2) lanes just fifteen (15) years later in 1946. As traffic volume continued to grow, the lower level of the Bridge was opened in 1962. This made the George Washington Bridge the only fourteen (14) lane suspension bridge and one of the busiest in the world. (P-7 at 8).

In addition to the calls for service above noted, the Police Executive Research Forum also analyzed the traffic generated workload on the Fort Lee Police Department.

To examine patrol workload in Fort Lee, the Department provided the Study Team with the Dispatch data from January 1, 2006 through November 16, 2006. This data base was composed of forty-four thousand seven hundred forty-one (44,741) unique events. About one-third ($\frac{1}{3}$) of these events required more than one (1) Officer because of the need for back-up. As a result a total of sixty-five thousand twenty-five (65,025) records were reviewed, one (1) record for each unit that was assigned to each recorded event. (P-7 at 14).

The Study Team went on to examine the nature of these calls and the types of needs that exist in Fort Lee. The resultant conclusions were significant. The PBA submits that the Fort Lee Police Department is an exceptionally busy Department caused by the large influx of commuters through its jurisdiction.

The Borough itself is a rapidly expanding municipality whose citizens enjoy a level of wealth far above the State averages in New Jersey. The PBA offered United States Census Bureau data on these points at hearing. (P-1). Diversity is part of this growing population. This was noted in the Report of the Police Executive Research Forum:

The U.S. Bureau of Census Report estimates the growing population of Fort Lee in 2003 was thirty-seven thousand one hundred thirty-nine (37,139). This represents an increase of 11.2% from 1990 to 2000 and an additional 4.9% from April of 2000 to July 2003. In 2000, New Jersey had the fifth largest American Asian population in the United States after a growth of ninety-five percent (95%) in the 1990s. According to a 2000 census, the Borough of Fort Lee has the third largest Asian population residing in the State; 44.7% of the Borough's population was foreign born and 55% speak a language other than English at home. (P-7 at 7).

The PBA cites data from its Power Point presentation which described Fort Lee as a rapidly growing town with extremely costly new homes and condominiums being built. Older, larger parcels are being bought, the current dwellings being knocked down, and multiple dwellings being put in its place. Photographs illustrated the development of these properties and the exceptional costs of the new dwellings replacing the older uses. New hotels are being built within the Borough and many projects are proposed for future development. (P-23).

According to the PBA, the growing population of Fort Lee is a population of wealth and high expectations. These residents expect the best facilities and are clearly willing to pay for them. Examples include the new Fort Lee Community Center which had an acquisition of property cost of \$5.95 Million Dollars and a cost of construction exceeding \$9,000,000. The Fort Lee Middle School field had an artificial turf field installed which cost approximately \$2,000,000. The citizens and residents of the Borough certainly expect and are entitled to the best. (P-23).

The PBA notes that the Borough's Police Department has seen significant development. Calls for service over recent decades have increased astronomically as shown by the chart:

Chart 1
Fort Lee Police Department Calls for Service

Year	Number of Calls	% of Change
1990	5,902	
2005	49,411	+837%
2006	52,090	+5.4%
2007	59,028	+13.3%

The PBA submits that the change from the “old Fort Lee” to the recent years is enormous and the increase in recent years is very significant.

One may ask how the Police Department is able to cope with this type of enormous increase in calls for service, varied types of needs for service, and of course the burgeoning population. The PBA submits that the Police Department has risen to the challenge and continues to provide the highest quality of service. The Police Department has not only met all needs as they have arisen, in addition the Fort Lee Police Department has provided numerous new types of services and facilities to aid and assist the public. Some examples of the additional services and facilities include, but are not limited to the following:

- 1) Traffic/Emergency AM radio run by Police Department - Reverse 911.
- 2) School Resource Officers (SRO) (9 PO Trained).
- 3) Child Safety seat installation and Instruction by Police Officers to Fort Lee residents (Several Trained).
- 4) Crime Prevention Seminars by Community Policing Unit residents and businesses.
- 5) Junior Police Academy/Child Fingerprinting/DARE Camp/Cop Card Program/Bike Registration & Safety Program/Citizen Police Academy/Gang Resistance and Training/Internet Safety Program (ISAFE)/Board of Education School Security Crisis Team.
- 6) President of the New Jersey State SRO Association is a Fort Lee Police Department Sergeant.

- 7) Involved in the First SRO Training Law to be passed in New Jersey.
- 8) Serving on Governor Corzine's School Safety Task Force.
- 9) Law Enforcement Officer Award of the Year by the James S. Brady Center to Prevent Gun Violence.
- 10) Funeral Escorts, one or two per day, minimum of two Police Officers per detail, the size of the funeral determines the number of Officers.
- 11) Ceremonial Motorcycle Unit (Harley Davidson Motorcycles).
- 12) Seven Accident Investigation Officers.
- 13) Nineteen Member Honor Guard - Public Events/Local Residents/Veterans.
- 14) Eighteen Member Emergency Services Unit (ESU).
- 15) Five Detectives Assigned to the BCPO Arson Unit.
- 16) One Detective Assigned to the BCPO Computer Crimes Task Force.
- 17) Three Detectives Assigned to the BCPO Gang Task Force.
- 18) One Detective Assigned to the BCPO FAIU.
- 19) Three CPR Instructors for Certification of Police Officers in CPR.
- 20) Several Officers are Police Motorcycle Instructors at the Bergen County Police Academy and Responsible for Aiding in the Instruction of Motorcycle Officers throughout the State.
- 21) The only two Officers in the State of New Jersey to be certified as Experts in Accident Reconstruction are from Fort Lee.
- 22) Two Officers Certified as Master Motorcycle Instructors only seven certified in New Jersey and twenty certified in the United States).
- 23) One Officer is Certified as a Master Mechanic for Harley Davidson Motorcycles (Savings to Borough keeping Motorcycle Fleet in Service).
- 24) \$500,000 Mobile Command Post for Police, Fire, EMS, OEM.
- 25) High Tech Surveillance Vehicle used for Narcotics Investigations.
- 26) State of the Art Prisoner Transportation Unit.
- 27) Defibrillators in all 41 Marked Patrol Units.
- 28) Medical Bags and Oxygen Units in all 41 Patrol Units.
- 29) Laptops in All Marked Patrol Units.

- 30) 44 Digital Mobile Video Cameras Installed in All Marked Units and Motorcycles.
- 31) 9 Variable Message Sign Boards.
- 32) 1 Speed Board.
- 33) 12 Speed Alert Sign Posts.
- 34) New K-9 Dog (now two)/One Drug Detection/ One Drug Detection and Patrol.
- 35) Emergency Services Unit #1 Dodge Durango.
- 36) Emergency Services Unit #2 Ford F-550.
- 37) Thermal Imaging (Night Vision) Camera Used to Detect Criminal Activity.

In addition to all of these new services and enhanced benefits to the public, the Police Department has also met the needs under the general category of "Homeland Security."

The PBA submits that the Police Department clearly and without question meets and exceeds all needs of the public and well serves the interest and welfare of the public. The PBA cites the testimony of Detective Kosuda that Borough police officers are held in the highest esteem among their peers and have an excellent working relationship with the public. Individual morale is excellent and *esprit de corps* is at a very high level.

Comparison of the Wages, Salaries, Hours and Conditions of Employment

The PBA contends that the exceptional productivity and performance of the Police Department has not been matched by compensation. Compensation paid to Borough police officers lags significantly behind peers in comparable positions in comparable municipalities. The PBA contends that the most appropriate universe of comparison is to other comparable police departments.

The PBA contends that the following chart shows that the maximum step salary for Borough police officers in 2006 is significantly below average:

Chart 2
Comparison - 2006 Maximum Step Patrol Officer

Municipality	2006 Base Patrol Officer
Bergen Prosecutor	\$103,411
Bergenfield	\$96,714
Demarest	\$89,153
East Rutherford	\$92,084
Edgewater	\$89,395
Elmwood Park	\$96,732
Englewood	\$96,054
Fairview	\$85,864
Garfield	\$93,466
Glen Rock	\$97,119
Hackensack	\$97,128
Hasbrouck Heights	\$95,653
Leonia	\$99,175
Lyndhurst	\$94,997
Mahwah	\$102,521
Norwood	\$96,368
Northvale	\$91,188
Paramus	\$110,000
Ridgewood	\$93,154
Rutherford	\$95,535
Saddle Brook	\$94,276
AVERAGE	\$95,705
Fort Lee 2006 Base	\$90,910
Fort Lee Compared to Average	(\$4,795) (5.27%)

According to the PBA, Chart 2 shows that the salary for a maximum step patrol officer in Fort Lee is approximately \$5,000 below average. It would take more than a 5% increase in the 2006 maximum step salary to bring a Borough police officer to average. Notwithstanding the volume and nature of work performed, the Borough police officer has one of the lowest maximum salaries when compared to other comparable municipalities.

The PBA submits that the following comparability data regarding salary increases in certain municipalities in Bergen County:

Chart 3
Comparability Data - Salary Increases

	2007	2008	2009	2010
Bergen Prosecutor	3.9	5.2 (2.6/2.6)		
Bergenfield	4.75(2.75/2)	4.75 (2.75/2)		
Demarest	4.25	4.25		
East Rutherford	5 (2/3)	5 (2/3)	5 (2/3)	
Edgewater	4	4	4	
Elmwood Park	4.2			
Fairview	4	4	4	4
Garfield	4.2			
Glen Rock	3.9	4	4	4
Hackensack	4	4	4	
Hasbrouck Heights	4	4	4	
Leonia	4			
Lyndhurst	4	4		
Mahwah	4	4	4	4
Northvale	4	4	4	4
Norwood	4	4		
Oakland	5.25	5.25	4.25	4.25
Palisades Park	4	4	4	4

Paramus	4			
Ridgewood	4.4 (2/2.4)	4.4 (2/2.4)		
River Edge	4.6	4.25	4.25	
Rutherford	4.2			
Saddle Brook	4.5			
Average	4.224%	4.3%	4.14%	4.042%

The PBA notes that the four-year total of the average salary increases is 16.7%. Adding the shortfall of 5.27% from Chart 2 above brings the total needed for Borough officers to reach average to nearly 22% requiring an average increase of nearly 5.5%. This is, of course, higher than the PBA's proposed 5% annual salary increases. The PBA submits that the award of its Last Offer would result in little more than reaching average.

The PBA submitted comparability data in Chart 4 showing that maximum vacation leave in Fort Lee lagged behind other municipalities by an average of nearly six days annually. The PBA submits this data to show that Borough police officers are working more than their peers in other municipalities and that there are no offsetting benefits to justify lower salaries.

The PBA submitted the following comparability data in support of its position on clothing allowance:

Chart 6
Comparability Data - Clothing Allowance

Municipality	Annual Allowance
Bergenfield	\$950
Demarest	\$1,000
East Rutherford	\$1,350
Edgewater	\$800

Elmwood Park	\$675
Fairview	\$900
Garfield	\$600
Glen Rock	\$950
Hackensack	\$850
Hasbrouck Heights	\$1,550
Leonia	\$1,100
Lyndhurst	\$750
Mahwah	\$700
Northvale	\$625
Norwood	\$600
Oakland	\$1,200
Palisades Park	\$800
Paramus	\$600
Rutherford	\$650
Average	\$876
Fort Lee Clothing Allowance	\$700
Fort Lee Compared to Average	(\$176) (25.2%)

The PBA submitted the following comparability data in support of its position on holiday pay included in base salary:

Chart 7
Comparability Data - Holiday Pay in Base Salary

Municipality	Holidays Pay in Base
Bergenfield	Yes
Demarest	No
East Rutherford	Yes
Edgewater	Yes

Elmwood Park	Yes
Englewood	Yes
Fairview	Yes
Garfield	Yes
Glen Rock	No
Hackensack	Yes
Hasbrouck Heights	Yes
Leonia	Yes
Lyndhurst	No
Mahwah	Yes
Oakland	Yes
Palisades Park	No
Paramus	Yes
Ridgewood	Yes
River Edge	Yes
Rutherford	Yes
Saddle Brook	Yes
TOTAL	17 Holiday Pay in Base 4 Holiday Pay not in Base

The PBA submits that the inclusion of holiday pay in base salary is a “win-win” situation for the parties. When holiday pay is included in base salary, the Borough gets additional police services at straight time compensation rates. In addition, it reduces the Borough’s exposure to fringe benefits which it would have to pay if it hired additional police officers. The PBA maintains that it is seeking no more than what is commonly paid to police officers in other departments in the area.

The PBA disputes the Borough's reliance on the CBAs it has negotiated with its blue and white collar employees. The PBA contends that these CBAs are not controlling. According to the PBA, there is no evidence in the record to make a fair comparison of these salaries in relation to other blue and white collar employees in Bergen County. The PBA submits that such comparisons would be an important element in evaluating the blue collar and white collar salaries.

The PBA notes that the Borough presented some evidence with respect to private sector compensation. The PBA contends that these comparisons should not be given great weight since there are significant differences between public law enforcement and all other job titles.

The PBA maintains that due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparison to private sector employees (as compared to other police officers) must result in a strong justification for significantly higher compensation to be paid to police officers. The PBA cites the following excerpt from Arbitrator Carl Kurtzman's interest arbitration award in support of its argument regarding private sector comparisons:

"As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight." (Borough of River Edge and PBA Local 201, PERC IA-97-20, at 30).

The PBA respectfully asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that of a police officer. A police officer has obligations both on and off duty. This is most unusual in the private sector. A police officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. Certainly this is not seen in the private sector. The police officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Again such public franchise and unique provision of statutory authority is not found in the private sector. There is no portability of pensions in the law enforcement community after age thirty-five. Police officers may not take their skills and market them in other states as one may market one's own skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

The following represents certain statutory and other precedential laws controlling the relationship of police officers to their employers:

1. The Federal Fair Labor Standards Act, 29 USCA §201, *et seq.* applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7 day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.
2. The New Jersey State Wage & Hour Law, NJSA 34:11-56a, *et seq.* does not apply to the employment relationship between a police officer and the officer's Public Employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, Perry v. Borough of Swedesboro, 214 N.J. Super. 488 (1986).

3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. NJSA 40A:14-118. There is no such statute covering private employment in New Jersey.
4. NJSA 40A:14-122 provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, NJSA 40A:14-122. No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under 40A:14-122.2. There are no such private sector limitations on promotion.
7. A police officer in New Jersey must be resident of the State of New Jersey, NJSA 40A:14-122.8. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute 40A:14-123.1a. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, 40A:14-127.1. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, NJSA 40A:14-127.3. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage NJSA 40A:14-131. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed 6 days in any one week, "except in cases of emergency". NJSA 40A:14-133. The Fair Labor Standards Act gives superior protection to private sector employees.

11. NJSA 40A:14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65-year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, NJSA 40A:14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

The PBA submits that the greatest differentiation between police officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the state or not. Police Officers are statutorily conferred with specific authority and “ . . . have full power of arrest for any crime committed in said officer’s presence and committed anywhere within the territorial limits of the State of New Jersey.” NJSA 40A:14-152.1. A Police Officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector. Police Officers are trained in the basic Police Academy and regularly retrain in such specialties as fire arms qualifications. This basic and follow up training schedule is a matter of New Jersey statutory law and is controlled by the Police Training Commission, a New Jersey statutorily-created agency. Such initial and follow up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of police officer certification and the police officer’s job. This is rarely found in the private sector.

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one state to another, there is more of a global competition to be considered. The New Jersey private sector employee must consider the possibility that his industrial employer might move that plant to another state or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The employees must work locally and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other states, even in Mexico.

The PBA contends that local comparisons are more relevant to police salaries. The PBA cites the decision of Arbitrator William Weinberg in support of its argument:

"Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take

place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g, (2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct Employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such as contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, at pages 29 - 31).

The PBA argues that any time there is a comparison made between a police officer and a private employee generally, the police officer's position must gain weight and be given greater support by such comparisons. The police officer lives and works within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility. The level of scrutiny, accountability and authority are unparalleled in employment generally. The police officer carries deadly force and is licensed to use said force within a great discretionary area. A police officer is charged with access to the most personal and private information of individuals and citizens generally. A police officers' highly specialized and highly trained environment puts great stress and demand on the individual. Private employment generally is an overly generalized category that includes virtually every type of employment. The PBA notes that in such a wide array of titles as the nearly infinite number covered in the general category of "private employment" there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in police work. A police officer is a career committed 25-year statutorily oriented specialist who is given by law the highest authority and most important public franchise. The PBA asserts that a police officer should be considered on a higher wage plane than private employment generally.

Stipulations of the Parties

The PBA notes that the only stipulation is the parties' agreement to a four-year successor agreement from January 1, 2007 to December 31, 2010.

Lawful Authority of the Employer

The PBA asserts that an award of its salary proposals will not have an adverse financial impact on the Borough. This factor generally references the "Cap Law" which is a limitation on spending consistent with certain statutory formula based upon certain classifications of municipal expenditures. The application and calculation of the Cap Law is set forth in each Municipal Budget.

The PBA notes that Sheet 3b-1 of the 2007 Municipal Budget (P-16), is the Cap calculation for the year 2007 and is the final allowable appropriation under the Cap formula. On the line titled "Total Allowable Appropriations" there is an amount showing \$43,357,357 which is the amount under the formula applied pursuant to the statute. The actual amount utilized under Cap calculation in 2007 is set forth in the same Budget at Sheet 3 line 1. Therein the "Appropriations Within Cap" shows \$42,803,317. The Cap calculations in the 2007 Budget clearly state that the Borough is \$554,040 under Cap. The PBA submits that there is absolutely no Cap problem in 2007 in Fort Lee and the underutilized Cap Fund from 2007 of \$554,040 may be utilized in a subsequent year, 2008.

The PBA notes that the Borough made mention of a revised Cap Law for 2008 however specifics are not in evidence. The new Cap Law will apply in the future from the date of its passage. The Budget for 2008 was not even introduced as of the time of the hearing and therefore any comments made thereon are speculative. The same is true with respect to any comments or assertions about the amount of State aid to be received or any other fiscal relationship under State Budget which is not due until June 30, 2008. The PBA

maintains that there is sufficient flexibility within the current Budget structure to more than amply fund an award of the PBA's package.

The PBA submitted the following chart listing the census and cost of base salary in the bargaining unit:

Chart 8
Bargaining Unit Base Pay

Rank	Current Census	Current Pay	Total Cost
Captain	5	\$121,002	\$605,010
Lieutenant	10	\$110,003	\$1,100,030
Sergeant	10	\$100,001	\$1,000,010
Patrol Officer	82	\$90,910	\$7,454,620
TOTAL	107		\$10,159,670
			1%=\$101,596

The PBA notes that the Borough budgeted 4% annually for salary increases. The gap between the Borough and the PBA on salary is 1% annually. The PBA contends that the \$101,596 annual difference is an extremely small item in the Borough's total budget. Any issue as to derivative costs, such as longevity or overtime are also extremely small. In the first instance, longevity is a fractional percentage of wage.

The PBA contends that the Borough has overstated the impact of overtime. Overtime is a function of one of two factors; either it is a management decision based on staffing required to meet a need or, in the alternative, it is service performed for an outside contractor and therefore reimbursed. In addition, there is an offset since the Borough receives an administrative fee for administering contractor overtime.

The PBA submits that there is no Cap problem in the Borough.

**The Financial Impact on the Governing
Unit, its Residents and Taxpayers**

According to the PBA, Fort Lee is a wealthy community with an exceptionally high ratable base and low taxes. The Borough taxpayers receive an extremely high level of police service, professionalism and productivity at a very low cost.

The ratable base, net valuation taxable in 2007, is set forth on the Annual Financial Statement (P-17) on the first page as \$6,013,138,358. This \$6 Billion+ ratable base is also set forth in the 2007 Abstract of Ratables for Bergen County (P-14) at page 2. Fort Lee has the third highest taxable value of land and improvements out of 70 municipalities in the County of Bergen. Only Borough of Paramus (with its multiple shopping malls) and the County Seat of Hackensack with its many office buildings has a higher ratable base than Fort Lee. The PBA notes that Hackensack's ratable base is only a few percentage points higher than Fort Lee's. Further, Paramus has a \$6.7 Billion ratable base which is approximately 10% higher than Fort Lee's \$6 Billion plus ratable base. The PBA notes that the ratable base in Fort Lee continues to grow pointing to Sheet 3b-1 of P-17 which shows an additional \$29,666,000 added to the ratable base in 2007.

The PBA submits that the debt picture in Fort Lee is exceptional. The Annual Debt Statement (P-18) reflects a total percentage of net debt of equalized valuation of 1.47%. This is well within the debt limit of 3.5% and drew the note of the Moodys' Investors Service Report (P-19) which discusses "rapid amortization of bond principal and limited future borrowing plans" and further that "the local school district currently has no long term debt outstanding." and further on this same page it states that "the borough does not defer the payment of school taxes which Moodys considers a positive credit factor." The general tax rate within the Borough is one of the lowest in all of south Bergen.

The following chart shows the relative total tax rate of the various municipalities in southern Bergen County:

Chart 9
Tax Rate Consequences (2007 Rate) Based on Exhibit P-14

Municipality	Tax Rate
North Arlington	4.29
Maywood	4.13
Ridgefield Park	4.09
Fairview	3.80
Garfield	3.70
Wallington	3.60
Saddle Brook	3.30
South Hackensack	3.12
Palisades Park	3.02
Bergenfield	2.92
Lodi	2.74
East Rutherford	2.58
River Edge	2.22
Elmwood Park	2.15
Cliffside Park	2.04
Fair Lawn	2.03
Hackensack	1.99
Rutherford	1.96
Oakland	1.91
Hasbrouck Heights	1.89
Fort Lee	1.72
Lyndhurst	1.60
Moonachie	1.52
Ridgefield	1.37
Englewood Cliffs	1.16

The PBA submits that the facts reflect and support the premise that the Borough tax rate is among the lowest in the county. The Borough argues that the costs of services are expensive. While there is no doubt that there has been some reduction in total cost, there has also been a more than disparate impact on the Police Department based upon total cost of operations due to the decision of the Borough not to replace police officers who have retired.

During the term of the last contract, ten police officers left the Department. Each of these was senior and left with twenty-five or more years of service. The total cost savings to the Borough from these retirements is reflected in the following chart:

Chart 10
Retirees During the Term of the Last Contract

Captain Orar	\$121,002
Lieutenant Casimento	\$110,003
Lieutenant Moletta	\$110,003
Sergeant Conway	\$100,001
Sergeant Chormansir	\$100,001
5 Police Officers	\$454,550
Total Base Salary	\$995,553

The total base reduction due to retirements is just under \$1,000,000 annually. The PBA notes that the value of a 1% salary increase for the total bargaining unit was calculated on Chart 8 as \$101,596. Therefore, the savings from the above retirements is equal to 9.81% of the bargaining unit salary. The PBA submits that this recurring savings of 9.81% is more than enough to fund the entire package presented by the PBA. To be consistent however one must note the offset of new police officers who came on board at the entry rate of pay \$32,141. Nineteen new police officers were hired at a cost of \$610,679. Subtracting the cost of the

new police officers compared with the amount of savings through the loss of the senior officers nets \$384,879. Dividing this amount by the value of a base wage percentage point of the entire bargaining unit results in a 3.8% savings through breakage. Combining the 3.8% savings through breakage with the 4% salary increase the Borough has acknowledged it budgeted is more than enough to pay the entire PBA package. The PBA points out that the cost of the two categories of police officers (senior and junior) is even less since the senior officers receive maximum longevity, higher vacation benefits, and other compensation due to their seniority. Further, Chart 8, assumed that all police officers are at the maximum rate of pay. This is an overstatement of \$58,000 for each new junior officer hired. Thus, the total savings in breakage is much more than 3.8%.

The PBA contends that the Employer has consistently miscalculated costs. An example is the cost miscalculation on B-11 where it is stated in the first full line that the "Average Top Cop salary of \$104,000" is used as a basis for calculation. The top step maximum police officer's base pay is \$90,910. The Borough has added approximately \$14,000 to that number, adding more than 15% per police officer to the cost. Such miscalculation can only lead to compounded error as one progresses.

The PBA also disputes the Borough's calculation of the cost of pensions. While pensions have gone up in 2008 *versus* 2007, there is an important set of factors to note. The Borough did not pay its full share of pensions in 2007 nor has it paid its full share of payments for seven years. Under legislation passed by former Governor Christine Whitman there was a holiday from payments for public employers, including Fort Lee, for four full years. During those years there was no contribution made to the Police and Fire Pension System whatsoever. Subsequent to that holiday from payment, there was a five-year phase-in

of 20% funding per year to get back to the 100% funding that had preceded the Whitman Administration's change. In the first year of the progression there was a 20% payment toward the Borough's total obligation, followed by a 40% payment, and so on, until the Borough reached 100%. The PBA submits that the Borough's complaint that it now has to pay the full load is not entitled to great weight.

The PBA contends that the Borough of Fort Lee received the enormous benefit of zero pension contributions for four consecutive years and then a partial contribution obligation in subsequent years. Where is the money? Why didn't the PBA get some credit for this enormous savings? How can an Employer complain of pension costs when the Employer has utilized PBA pension money and diverted it for other purposes for many years? In short, there is no equitable basis for the Borough's complaint. The PBA argues that the Borough got a "free ride" on Police pension payments and now wants some sort of sympathy because it has to pay what it should have been paying all along.

In consideration of the key budget documents such as the Annual Report of Audit (P-15), the 2007 Municipal Budget (P-16) and the Annual Financial Statement (P-17) the PBA offered the following general observations:

Results of Operations (AFS Sheet 19)

YEAR	AMOUNT
2007	\$2,008,183

The Results of Operations is an extremely important chart as it clearly indicates the ability to regenerate surplus. The Borough without a doubt has this ability. This is the equivalent of the "bottom line" in the private sector history.

Budget Revenues (AFS Sheet 17)

YEAR	ANTICIPATED	REALIZED	EXCESS/(DEFICIT)
2007	\$59,948,938	\$60,401,438	\$452,499

The Budget Revenues are a component of the Results of Operations and a significant part of the Re-Generation of Surplus as indicated above in the Results of Operations. It is evident by the Excess that Fort Lee is doing well.

Unexpended Balance of Appropriation Reserves (AFS Sheet 19)

YEAR CANCELLED	FROM/YEAR	AMOUNT
2007	2006	\$377,336

The Borough continues to generate excess budget appropriations. This affords them budget flexibility. Any agency would have negative numbers if they had serious financial problems. They have substantial excess budgeted funds.

Fund Balance (2006 Report of Audit)

YEAR	BALANCE 12/31	UTILIZED
2007	\$2,122,163	N/A
2006	\$2,083,980	\$1,800,000
2005	\$2,611,367	\$2,225,000

The Fund Balance has remained at above \$2 Million for the past three years which indicates financial stability.

Tax Rates (2006 Report of Audit)

YEAR	MUNICIPAL	COUNTY	SCHOOL	TOTAL
2007	0.825*	0.189	0.706	1.72
2006	0.789	0.183	0.688	1.66
2005	0.741	0.185	0.664	1.59
2004	0.692	0.164	0.644	1.50

The Municipal Tax Rate has not had any significant increases for the four (4) years.

Tax Collection Rates (2006 Report of Audit)

YEAR	ACTUAL RATE
2007	98.61%
2006	98.52%
2005	98.57%
2004	97.41%

The Tax Collection Rate is excellent.

Tax Levy (2006 Report of Audit)

YEAR	TOTAL TAX LEVY
2007	\$103,636,926
2006	\$98,752,947
2005	\$92,453,977
2004	\$87,958,807

Debt Service (2007 Annual Debt Statement)

EQUALIZED VALUATION BASIS	DECEMBER 31	\$5,998,051,208
EQUALIZED VALUE	3.5%	\$209,931,792
NET DEBT	1.47%	88,126,647
REMAINING BORROWING POWER		\$121,805,145

The Borough is well below the statutory debt limit and has more than sufficient borrowing power remaining. This is a clear indication of a sound financial condition.

According to the PBA, the Borough has a significant ratable base and significant areas of flexibility within the Budget. One must keep in mind that with these significant figures, only \$101,000 separates the parties. The PBA notes that the Borough's 4% salary increases appear in the Certification of Fort Lee Auditor Stephen Wielkottz, who in his Affidavit, specifically states that "the proposed municipal budget anticipates a four percent increase in police base wages." (B-17 at paragraph 10).

The PBA asserts that its noneconomic proposals will have a minimal impact on costs. For example, the "Medical Opt Out" proposal is a joint savings matter. Both the employee and the employer receive a part of the savings. The avoidance of duplicate insurance is a benefit to all. The Borough could only stand to gain from this package proposal.

The PBA has proposed the implementation of an IRS Plan Code Section 125(b) Cafeteria Plan. This would enable members to pre-tax qualifying costs and save money. This is an integral part of a tax savings program for employees and could only have a beneficial impact on the Borough since monies not utilized under set asides will revert to the Borough. The Borough's payroll is handled by an outside payroll service and therefore there is no additional obligation on Borough's staff. As to legal representation, the payment of \$150 will enable the provision of a level of legal services to be provided directly by the PBA at a minimal cost to the Borough.

The PBA has proposed that the thirteen holidays be folded in for all calculation purposes. The PBA contends that the Borough has misread the cost of its proposal. All holiday value would be paid and there would be no opportunity whatsoever for police officers to take a holiday off. The Borough can only gain by receiving straight time police services in lieu of exposure to overtime. Employees receiving holiday payments today would continue to receive those payments except that they would be folded-in along with regular base pay and subject to regular recurring compensation. As such, police officers would have

earlier access to money and periodic payments which are available today. As to the overtime impact, the Borough is largely in control of the cost of overtime which cannot be self-authorized by a police officer. The PBA submits that the Borough's cost is minimal.

Cost of Living

The PBA contends that a review of this case consistent with criteria g7 supports an award in favor of the PBA. The Public Employment Relations Commission in its Annual Report provides data on the cost of living. The most recent Annual Report dated September 21, 2007 states that the "Total Private Sector" net percentage change is 4.6%. (P-21). This is a significant figure based on New Jersey experience. On the third page the total change is broken down by County. Bergen County shows a 4% increase. Clearly, the PBA is trying to do better and make up for its very low relative positioning.

The PBA also cites the United States Department of Labor, BLS calculation of the CPI through November of 2007 showing that the "US City Average" increased by 4.6%. The PBA submits that these figures support its position.

Continuity and Stability of Employment

The PBA submits that an analysis of this criterion suggests reliance on the private sector concepts of "prevailing rate" and "area standards". The PBA submits that both concepts strongly support an award of its last offer. The PBA contends that the Borough has the ability to fund its salary proposals and is one of the wealthiest employers in the northeast part of the State. The Borough's enormous \$6 Billion plus ratable base coupled with strong financials and a Moodys Bond Rating of an admirable Aa3 supports its ability to pay. (P-19). The Borough's own Auditor in his Affidavit, acknowledged that a 4% increase had been budgeted however, the Borough only proposed a 4% "split" annual salary increase. The Borough states that it wants to treat all employees the same. However, in its blue collar contract it provides additional benefits not offered to the PBA, such as improved disability

coverage at Paragraph IV. (B-14). There are also, in addition to the guaranteed across-the-board increases in B-14, a provision for "merit increases" in Article V. Thus, the Borough's own exhibits show a higher package provided to other employees of the Borough. The PBA also cites the Borough's graph set forth in B-1, captioned "Police Department Survey." B-1 shows that all police officers in municipalities listed by the Borough have higher salaries than the Borough's own police officers. The majority of the towns cited in B-1 have their holiday pay folded-in to base salary. The PBA notes that none of the police departments in B-1 contribute to the cost of medical insurance.

The PBA contends that the Borough's medical insurance proposal is not paralleled in other law enforcement agencies and in fact the Borough failed to provide any empirical data to support its own proposal. The PBA contends that the Borough's proofs are confusing. There is an Affidavit of an Insurance Broker (Bozza) who acts as a consultant to the Borough. The PBA contends that the *Bozza* Affidavit is confusing and offers little probative evidence. The PBA notes that the Borough's proposal includes a reduction in benefits such as higher prescription co-payment rates, changes in categorization and co-insurance and increases deductibles from \$1,000 to \$2,000 in the out-of-pocket maximum. There are also other limitations on mental health benefits and increased general deductibles. The PBA submits that the Borough's savings from these changes are unclear. If the savings are small then it should not even be considered. If the savings are significant, then the PBA should get significant credit for such a proposal. The PBA submits that this cannot be evaluated since the Borough neglected to put in any proofs. Absent these types of proofs it is difficult for the Arbitrator to complete the review under the statutorily required analysis. One cannot compare cost of packages and cost into the future without such costs being placed in the record by the party obligated to do so.

BOROUGH POSITION

Background

Initially, the Borough points out that the parties have traditionally been able to agree on the terms of a successor CBA. For many years, the Borough and the PBA were parties to a series of CBAs in which the parties settled voluntarily without requiring mediation or interest arbitration. The Borough notes that the parties' last CBA was a four-year agreement that ended on December 31, 2006. The terms of that agreement contained reasonable provisions including, wage increases of 4% for 2003, 3.75% for 2004, 3.50% for 2005 and 3.50% for 2006. Additionally, the Borough has always paid police officers for holiday pay (thirteen holidays) in a separate check at the end of the year. Furthermore, the Borough has always provided health insurance to its police officers. The Borough's police officers have never had to pay a portion of the health insurance premium and the Borough's current offer does not require such payment. Also, the Borough has traditionally paid for a police officer's legal representation. The Borough's current offer does not change this fact, but the offer does include indemnification insurance, pursuant to a PBA sponsored insurance program, as an alternative to existing contractual language which requires officers to choose between M.E.L. insurance coverage (and an M.E.L. attorney) or their own attorney and no insurance coverage.

The Borough submits that the PBA's last offer includes unreasonable increases in benefit levels, far above and beyond what the Borough and the PBA have traditionally agreed upon. For instance, the PBA's last offer includes a 5% annual salary increase as well as a demand for holiday pay to be included in base salary for all compensation purposes, including overtime and pension calculations. The Borough calculates the cost of the holiday fold-in as at least 1.5% a year, raising the PBA salary proposal to a 6.5% annual increase.

The Borough maintains that it has offered a fair, equitable and reasonable compensation and benefits plan that is consistent with the Borough's prior agreements with the PBA, including a generous health care package and a reasonable salary increase, especially in light of salary increases in other police departments as well as other public and private sectors. Given that the overall financial health of the Borough is being challenged by a constricting economy and extremely high health and pension costs, the Borough submits that its offer is very reasonable. In complete contrast, the Borough contends that the PBA last offer which include a 5% annual salary increase and the roll-in of holiday pay into base salary at an additional cost of 1.5% has no basis in prior agreements, or in the reality of today's labor market for police officers or public or private employees.

The Borough asserts that its last offer is in the best interests and welfare of the citizens and taxpayers of Fort Lee and is fair, equitable and reasonable. The Borough characterizes the PBA's proposal for higher salaries and holiday pay roll-in for all compensation purposes as unrealistic and not in the best interests and welfare of the taxpaying public in the face of economic downturns, a restricted budget and the employment conditions for other employees both public and private.

Private and Public Section Comparisons

The Borough contends that its last offer is reasonable when compared to other employees in the private section and the public sector. The Employer-Employee Relations Act requires that an arbitrator in an interest arbitration compare police officer compensation in comparable jurisdictions with compensation in public and private employment. N.J.S.A. 34:13A-16(g)(2). See also N.J.A.C. 19:16-5.14 (c) and (d). In comparison with 1) similarly situated police employees in comparable police departments; with 2) other public employees

in the Borough; and 3) employees in the private sector, as analyzed below, the Borough's offer is fair and reasonable.

Comparison to Other Police Officers

The Borough contends that in comparison with similarly situated police employees in comparable police departments, the Borough's police officers are currently receiving and will continue to receive under the Borough's final offer, fair and equitable compensation. For example, the Borough estimates that the top patrol salary in Fort Lee in 2008, (with a 4% increase in 2007 and 2008) will be \$116,423 inclusive of maximum longevity. Comparable salaries in surrounding communities for 2008 include Edgewater (\$96,689), Ridgefield (\$104,275); Englewood Cliffs (\$110,909); Palisades Park (\$95,919); Hackensack (\$101,013). The top Borough patrol officers' salary in 2005 of \$104,000 is more than several of the surrounding communities top patrolman salary in the years since then: Edgewater (\$96,689 in 2008); Palisades Park (\$95,919 in 2008); Teaneck (\$90,308 in 2007); Englewood (\$96,054 in 2006); Hackensack (\$101,013 in 2008); County Sheriff (\$98,076 in 2008). Furthermore, in Cherry Hill, similarly situated to Fort Lee as a suburb of a major city (Philadelphia), bordering on a river bridge, with a similarly sized police department, the top patrolman's salary is \$75,173 in 2008. (B-1).

The Borough submits that the salary increases agreed upon or awarded in interest arbitrations in recent years are in line with the Borough's last offer of annual wage increases of 3% in January and 1% in June of each contract year. Relying on B-1, the Borough provided the following data on salary increases:

Municipal Police Department	2003	2004	2005	2006	2007	2008	2009
Leonia		4.00%	4.00%	4.00%	4.00%		
Edgewater				4.00%	4.00%	4.00%	
Ridgefield			3.95%	3.95%	3.95%	3.95%	
Englewood Cliffs			4.00%	4.00%	4.00%	4.00%	
Palisades Park			4.50%	3.50%	3.75%	4.00%	
Teaneck		4.00%	4.00%	4.00%	3.50%		
Englewood	4.00%	4.00%	4.00%	4.00%			
Hackensack			4.00%	4.00%	4.00%	4.00%	4.00%
County Police			3.25%	3.20%	2.40%	2.40%	
County Sheriff		4.00%	4.00%	3.90%	4.00%		
Cherry Hill			4.00%	4.00%	4.00%	4.00%	
Average	4.00%	4.00%	3.97%	3.87%	3.76%	3.76%	4.00%
Median	4.00%	4.00%	4.00%	4.00%	4.00	4.00%	4.00%

In addition, the decisions issued by PERC Interest Arbitrators in 2006 and 2007, as reported on PERC's website, indicate that the Borough's last offer on salary increases is reasonable and consistent with those interest arbitration awards. By example, relying on B-7, the Borough provided the following salary data on contractual increases in police salaries awarded by PERC interest arbitrators in the following municipalities in either 2006 or 2007:

Municipal Police Department	2003	2004	2005	2006	2007	2008	2009	2010
Atlantic City	4.00%	4.00%	4.00%	4.00%	4.00%			
Midland Park Borough			3.50%	4.00%	4.00%	3.75%		
Lower Township		3.75%	4.00%	4.00%	3.75%			
Montgomery Township (Lieutenants)		4.00%	4.00%	4.00%	4.00%			
Paterson		3.75%	3.75%	3.75%	3.75%	3.75%		
Cinnaminson Township		3.75%	4.00%	4.25%	4.25%			
Keyport Borough		4.00%	4.00%	4.00%	4.00%			
Park Ridge		3.75%	3.75%	3.90%	4.00%	4.20%		

Borough								
Pompton Lakes					4.00%	4.25%	4.25%	4.25%
Lakewood Township					4.00%	4.00%	4.00%	4.00%
Union Township		3.25%	3.25%	3.25%	3.35%	3.50%		
Essex Cty Sheriff's Office				4.00%	4.00%			
Middlesex Cty Sheriff's Office			3.00%	3.50%	4.00%	4.00%		
Denville Township				3.95%	4.00%	4.00%	4.00%	
Stanhope Borough			3.75%	3.75%	3.75%			
Burlington County			4.00%	4.00%	4.00%	4.00%		
Average	4.00%	3.78	3.75	3.88	3.93	3.94	4.08	4.13
Median	4.00%	3.75	3.86	4.00	4.00	4.00	4.00	4.13

The Borough submits that its last offer of 4% annual salary increases (3% on January 1 and 1% on July 1) is clearly in line with the salary increases awarded, as well as with the negotiated agreements in surrounding and comparable municipalities which average and between 3.75% and 4.13%. Furthermore, none of the interest arbitration decisions or the police employment contracts in place in comparable municipalities even come close to the base wage increase of 5% the PBA is proposing, irrespective of the additional 1.5% it is seeking in roll-in costs for overtime and pension purposes.

Therefore, the Borough maintains that its last offer is fair, equitable and reasonable and the PBA's last offer is unreasonable.

Comparison to Other Borough Employees:

The Borough asserts that its salary proposal is reasonable when compared to the Borough's other represented employees. The Borough executed a CBA with the United Service Worker's Union (USW), the union representing the Blue Collar, White Collar, and

Department Heads on July 7, 2006. The USW contract includes provisions that are the same or similar to the terms included in the Borough's last offer to the PBA. For example, the USW agreed to a four-year contract from January 1, 2006 to December 31, 2009 with annual wage increases of 3% in January and 1% in June. The USW also agreed to a change in health insurance from the (then) State Health Benefit Plan (SHBP) to a health insurance plan through Horizon Blue Cross Blue Shield of New Jersey (HBCBSNJ). The HBCBSNJ plan included two options, a Traditional Plan and a Direct Access Plan which mirrored the then SHBP Traditional Plan and NJ PLUS plan, with some modifications. (B-14).

The Borough is offering the same or better terms to the PBA. For example, it is offering an annual wage increase of 3% in January and 1% in June of each contract year. It is also offering the PBA, as a unit, health benefits coverage identical to the terms of the agreement with the USW, which maintains a Traditional Plan for current employees. In the alternative, the Borough is offering to create a plan for the PBA, as a unit, that is substantially equivalent to the SHBP, as it may be amended, from time to time. It is important to note that under either of these options, PBA officers will not have to pay a portion of the premium. Coincidentally, the SHBP is changing on April 1, 2008 and will cease offering its Traditional Plan, instead offering the NJ Direct 10 Plan which substantially mirrors the HBCBSNJ Direct Access Plan that the USW bargaining unit members currently have. (B-16, Vozza Cert. ¶ 9).

The Borough asserts that the "Current Civilian Direct Access Plan" is better in certain respects. For example, the In-network out-of-pocket maximum for a family in the NJ Direct 10 Plan is \$1,000. The In-network out-of-pocket maximum for a family in the Borough's Current Civilian Direct Access Plan is \$800. Additionally, the lifetime out-of-network

benefit under the Current Civilian Direct Access Plan is \$5,000,000 whereas the NJ Direct 10 Plan's out-of-network lifetime benefit is \$1,000,000. Furthermore, in-network co-pays for outpatient services are \$5.00 in the Borough's Current Civilian Direct Access Plan and \$10.00 in the NJ Direct 10 Plan. (B-16, Vozza Cert. ¶ 9). The Borough submits that by any and all comparisons, the Borough's private health plan provides more coverage than the SHBP and the option of a Traditional Plan for current employees.

Thus, in comparing the compensation of other bargaining unit employees in the Borough to the compensation offered by the Borough to the PBA, the Borough's final offer is in line with what other Borough employees are receiving and is fair, equitable and reasonable.

Private Sector Comparisons:

The Borough contends that a comparison of the employment conditions of all workers in United States private industry indicate that the Borough's offer is more reasonable than the PBA's. For example, the country's median salary in 2007 was \$36,140. Additionally, the average 2007 pay increase was less than 4%. In contrast, a "top cop" salary in Fort Lee is \$116,423 in 2008 (including longevity). (B-1). Furthermore, the Borough is offering a 4% overall yearly salary increase, higher than the national average.

Additionally, all employees are increasingly contributing to the cost of health care insurance. In this case, unlike many private sector jobs, the Borough does not require PBA unit members to any pay portion of the insurance premiums. Borough police officers also enjoy a high level of job security. The Borough cites the testimony of Detective Kosuda that Borough police officers have not had to face any job cutbacks since at least 1994.

The Borough submits that its last offer includes benefits that are more generous than those in the private sector.

Cost of Living

All employees, including private employees, are subject to the same increases or decreases in the Consumer Price Index ("CPI"). The Borough submits that the average annual increases in the CPI have been below the wage increases offered by the Borough. The Borough has offered the PBA a 4% wage increase over the course of each year (3% on January 1 and 1% on July 1). The percentage of change in the CPI for the New York – New Jersey – Long Island – Pennsylvania area has increased by 3.9% in 2005, by 3.8% in 2006, and 2.7% in 2007. (B-8, Cost of Living Data from the U.S. Bureau of Labor Statistics, at 2).

The Borough maintains that its last offer on salary is reasonable when compared to the increases in the CPI in recent years.

Financial Considerations

The Borough asserts that its last offer is reasonable given its current financial condition. The Employer-Employee Relations Act requires that an arbitrator in an interest arbitration consider the financial impact on the governing unit, its residents and taxpayers. N.J.S.A. 34:13A-16g(6). In this matter, the overall financial health of the Borough is being challenged by various forces. Costs to the Borough have gone up but monies coming into the Borough have declined in recent years. This reflects the financial constraints similarly experienced by the State of New Jersey. (B-19, Text of Governor Corzine's February 26, 2008 Budget Address).

Increased Costs to the Borough

Some of these increased costs include health care costs, pension costs, sewer costs and Court overtime. For example, healthcare costs have increased from \$3,716,800 in 2003

to \$6,089,000 in 2008. Even the momentary savings gained by the Borough when it changed from the SHBP to plans through HBCBSNJ in 2006 amounts to little more than cost containment, not cost savings. (B-12, Healthcare Cost Increase Table). For example, the plan rates for the Civilian Traditional Plan and the Civilian Direct Access Plan will increase approximately 17% in 2008 from 2007. (B-16, Vozza Cert, ¶ 18).

Also, pension costs for police officers have likewise increased. For instance, Borough contributions to the Police & Fire Retirement System ("PFRS") have increased from \$0 in 2003, to \$198,910 in 2004, to \$507,878 in 2005, to \$954,421 in 2006, to \$1,592,451 in 2007 to \$2,458,680 in 2008. (B-2, Pension Cost (Increase) Table). That equates in percentage terms to the following: a 155.3% increase from 2004 to 2005; an 87.9% increase from 2005 to 2006; a 66.8% increase from 2006 to 2007 and a 54.4% increase from 2007 to 2008. If the Borough is directed to include holiday pay in base pay, this will also cause exorbitant increases to pension costs. For instance, the estimated total cost of holiday roll-in for pension purposes only over a four-year period is \$610,099. (B-11). Additionally, the estimated total cost of holiday roll-in for overtime purposes is \$219,466.

Additional costs include the Borough's sewer costs with respect to the Bergen County Utility Authority which will increase from 2007 to 2008 in the amount of \$829,813. (B-17, Revised Certification of Steven D. Wielkotz, ¶ 17). Furthermore, Court overtime paid to police officers increased from \$273,185 in 2006 to \$291,730 in 2007. (B-5, Court Overtime Data Sheet).

Diminishing Revenue Sources

The Borough submits that revenue resources have not kept up with increased Borough costs. For example, the average assessment for residential real estate did not increase from 2007 to 2008: it remains the same at \$465,000. (B-17, Wielkotz Revised

Cert., ¶¶ 5,7). The Borough notes that the average assessment for residential real estate from 2007 to 2008 remained the same despite the anecdotal evidence presented by the PBA in its power point presentation delivered at the arbitration on February 14, 2008. (P-23). In addition, State Aid to the Borough will go down in 2008: State Aid from the Consolidated municipal Property Tax Relief Act will decrease in 2008 by \$113,882; State Aid from the Homeland State Aid Program will decrease in 2008 by \$140,000; State Aid from the Municipal Property Tax Assistance Program will decrease in 2008 by \$44,796; and State Aid from the Legislative Initiative Block Grant will decrease in 2008 by \$140,009. (B-17, Wielkottz Revised Cert., ¶¶ 18,19,20,21). Also, interest earned on investments will decrease from \$508,163 in 2007 to an estimated \$350,000 in 2008. This lowered estimate is due to the recent cuts in the discount rate by the Federal Reserve which has a direct impact on interest earning rates. (B-17, Wielkottz Revised Cert., ¶ 13). Furthermore, the Borough is experiencing significant decreases in Municipal Court ticket revenues with a decrease from \$636,118 in 2006 to \$534,392 in 2007. (B-4, Ticket Revenue Data Sheet).

Borough Cost Reduction and Containment Measures

According to the Borough, the proposed 2008 Municipal Budget has attempted to compensate for the rise in costs and decrease in revenues. For instance, the Mayor, Council members and the Borough's professional staff (e.g., Borough Attorney, Borough Engineer, Borough Auditor, etc.) have all taken a pay reduction of 10% of their salaries. (B-17, Wielkottz Revised Cert., ¶¶ 14,15). Additionally, the Borough recently enacted a Hiring Freeze which was necessary due to its severe fiscal restraints. Furthermore, the Borough raised the tax rate in 2007 from \$1.66 in 2006 to \$1.72, an increase of six tax points. (B-17, Wielkottz Revised Cert., ¶ 4). The tax increase in 2007 for the average residential real estate

property was \$279; the tax increase for the average residential real estate property in 2008 will be \$331, even though the average assessment of residential real estate property stayed the same at \$465,000. (B-17, Wielkottz Revised Cert., ¶¶ 5,6,7,8). Overall, the 2008 Municipal Budget requires a tax levy increase of \$4,664,422 which is a 9.52 % increase. (B-17, Wielkottz Revised Cert., ¶ 9). Municipal budgets now have two CAP calculations. One for the allowable appropriations increase and another for the allowable tax levy increase; the tax levy CAP restriction is new for 2008. B-17, Wielkottz Revised Cert., ¶ 10). The Municipal Budget anticipates a 4% increase in Police base wages. B-17, Wielkottz Revised Cert., ¶ 11). Therefore, any increase to the Police base wages would threaten the Borough's ability to meet the CAP restrictions.

Thus, in light of the mandate that the arbitrator must consider the financial impact of the offer by the Borough and by the PBA, clearly the PBA's final offer is really a 6.5% increase in salary when including its demand that holiday pay is rolled-in for pension purposes (as noted, pension increases are already grotesquely large) and overtime purposes, is unreasonable. It is not only unreasonable, it threatens the financial security of the Borough and is not in the interests and welfare of the public. The Borough maintains that its last offer is more than fair, equitable and reasonable, given the monetary crunch the Borough is experiencing in 2008 and, arguably, in the upcoming years.

Overall Compensation

The Borough submits that its last offer is reasonable given the overall compensation currently received by Borough police officers. The Employer-Employee Relations Act requires that an arbitrator in an interest arbitration consider "the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other

economic benefits received.” N.J.S.A. 34:13A-16g(6). In this case, the Borough’s offer does not substantially change the level of compensation and benefits currently being received by the PBA officers; it certainly does not decrease the level of compensation and benefits currently being received by the PBA officers.

Salary

The 2003-2006 CBA between the Borough and the PBA provided salary increases of 4% in 2003, 3.75% in 2004, 3.50% in 2005 and 3.50% in 2006. (J-6, Appendix A-1 and A-2.) These salary increases are in line with the salary increases outlined above as well as the salary increases negotiated in other comparable municipalities and recent Interest Arbitration decisions, and exceed both the private sector and the CPI. Thus, the Borough contends that the PBA’s demand for a 5% (really 6.5% with the roll-in) wage increase for each year for four years is not reasonable and the Borough’s offer of an overall 4% wage increase for each year is consistent with past practices.

Health Benefits

The Borough submits that its proposal regarding health and medical benefits is consistent with what it has offered the PBA in the past. Importantly, police officers have not paid for any portion of their insurance premium. This practice will continue with the new health insurance plans under consideration. Additionally, in the past the Borough provided health and medical benefits that were substantially the same as those offered through the SHBP. Importantly, on April 1, 2008, the SHBP substantially changing its plans, eliminating its Traditional Plan and heavily increasing co-pays. Thus, in this matter, the Borough is offering the PBA, as a unit, the same medical and health benefits it is currently offering to its civilian employees, maintaining the Traditional Plan for current employees and with much

lower co-pays compared to the new SHBP plan. In the alternative, the Borough is offering the PBA, as a unit, a health plan that substantially mirrors the SHBP, with the changes the SHBP incorporated into its plans on April 1, 2008.

By way of background, the Borough was a member of the State Health Benefits Plan (SHBP) for more than 20 years until July 2006. Because the SHBP “Traditional Plan” became extremely costly, the Borough decided to leave the SHBP and to enter into a direct contract with Horizon Blue Cross Blue Shield of New Jersey, thus creating significant savings for the Borough. (B-16, Vozza Cert. ¶ 4). Beginning in July 2006, the Borough created separate plans for the “civilian” employees and for the PBA employees. (B-16, Vozza Cert. ¶ 5 & B-10, Insurance Coverage Companion Table). Starting on July 1, 2006, the civilian employees were able to choose from either the “Current Civilian Traditional Plan” (see Column A of B-10) or the “Current Civilian Direct Access Plan” (see Column E of B-10). New Civilian hires were also ineligible for the Civilian Traditional Plan, being automatically enrolled in the Civilian Direct Access Plan. Also starting on July 1, 2006, police officers were able to choose from either the “Current PBA Traditional Plan” (see Column B of B-10) or the “Current PBA Direct Access Plan” (see Column F of B-10). (B-16, Vozza Cert. ¶ 6). These plans substantially mirrored the SHBP Traditional and NJ PLUS Plans, as required by agreement with the PBA.

Changes to the SHBP plans in 2007 have been reflected in the Borough’s PBA Traditional Plan and the PBA Direct Access Plan. (B-16, Vozza Cert. ¶ 7). For example, in 2007 the SHBP increased the prescription co-pays from \$1 for generic drugs/ \$5 for brand name drugs to \$3 for generic drugs and \$10 for brand name drugs. The PBA Traditional Plan and PBA Direct Access Plan changed correspondingly in accord with established practices.

(B-16, Vozza Cert. ¶ 7) and (B16.A, letter from Borough Administrator to Police personnel dated October 11, 2006).

Effective April 1, 2008, for the first time in more than 25 years, the SHBP will be implementing a major revamping of its plans. (B-16, Vozza Cert. ¶ 8). Importantly, the Traditional Plan (upon which the PBA Traditional Plan is based) will be eliminated altogether for both active and retiree members of the SHBP. (See column C of B-10). Effective April 1, 2008, the SHBP's Traditional Plan will be replaced by the "NJ Direct 10 Plan." (See column D of B-10) and (B-16, Vozza Cert). The changes to that plan are mandatory for SHBP employee and retiree participants. The SHBP's "NJ Direct 10 Plan" closely resembles the Borough's "Current Civilian Direct Access Plan." (See column E of B-10) However, the Borough's "Current Civilian Direct Access Plan" is better in certain respects. For example, the In-network out-of-pocket maximum for a family in the NJ Direct 10 Plan is \$1,000. The In-network out-of-pocket maximum for a family in the Borough's Current Civilian Direct Access Plan is \$800. Additionally, the lifetime out-of-network benefit under the Current Civilian Direct Access Plan is \$5,000,000 whereas the NJ Direct 10 Plan's out-of-network lifetime benefit is \$1,000,000. Furthermore, in-network co-pays for outpatient services are \$5.00 in the Borough's Current Civilian Direct Access Plan and \$10.00 in the NJ Direct 10 Plan. Effective April 1, 2008 the SHBP will also offer a NJ Direct 15 Plan in addition to the NJ Direct 10 Plan. However, the NJ Direct 15 Plan provides less coverage (\$15 in-network co-pays and 70% out-of-network coinsurance, for example) than the NJ Direct 10 Plan. Thus, for comparison purposes, it can be assumed that all participants would choose the NJ Direct 10 Plan. (B-16, Vozza Cert. ¶ 10).

Thus, there are several health coverage options available for PBA members, as a unit, in 2008. (B-16, Vozza Cert. ¶ 11). For example, if the PBA, as a unit, were to continue to get health care coverage that substantially mirrors the SHBP, (as it has until the present pursuant to its agreement with the Borough), starting April 1, 2008 the PBA Traditional Plan would be eliminated and all active and retired PBA members who are in the Traditional Plan, as well as those in the PBA Direct Access Plan, would have to be moved. The PBA employees could be moved to the Civilian Direct Access Plan (see column E of B-10) as this plan is substantially similar to the NJ Direct 10 Plan that will be offered through the SHBP. The only difference being that the PBA members would keep its current prescription plan of \$3 co-pays for generic drugs and \$10 co-pays for name brands in order to mirror the SHBP's NJ Direct 10 Plan. Alternatively, the current PBA Traditional Plan participants could be moved to the Current Civilian Traditional Plan and Current Civilian Direct Access Plan, thus allowing PBA employees to have a Traditional Plan option. (B-16, Vozza Cert. ¶ 12). However, both of these plans would include the increased prescription plan currently in effect, \$5 co-pays for generic drugs and \$10 co-pays for name brands, as well as \$10 for generic drugs and \$30 for name brands for a ninety (90) day supply. If PBA members shift from the Traditional Plan to the Current Civilian Direct Access Plan, they will change from only having coverage of 80% after the deductible for major medical coverage to having 100% of those services covered after a \$5 co-pay for in-network providers. (See lines 27 to 48 of columns A, B and E of B-10) (B-16, Vozza Cert. ¶ 15). Out-of-Network coverage under the Current Civilian Direct Access Plan would be 80% after the deductible, just like the Traditional plans.

The out-of-pocket maximums for the Traditional Plans versus the Current Civilian Direct Access Plan are as follows. (See line 10 of columns A, B and E of). (B-16, Vozza Cert. ¶ 16). For the Current PBA Traditional Plan, the out-of-pocket maximum for an individual is \$400 and for a family it is \$800 (column B). For the Current Civilian Traditional Plan, the out-of-pocket maximum is \$1,000 per individual and \$2,000 per family (column A). For the Current Civilian Direct Access Plan, the out-of-pocket maximum per individual is \$400 and per family is \$800 if the participant stays in-network (column E). If the participant goes out-of-network, that out-of-pocket maximum increases to \$2,000 per individual and \$5,000 per family. Thus, if the PBA bargaining unit shifts from the PBA Traditional Plan to the Civilian Traditional Plan, their out-of-pocket maximums will increase. However, if the PBA members shift from the PBA Traditional Plan to the Current Civilian Direct Access Plan, their out-of-pocket maximums will remain the same, if they stay in-network. The PBA members most affected by the change from the PBA Traditional Plan to the Current Civilian Direct Access Plan will be those limited number of participants who have claims incurred while using out-of-network providers in the amounts of \$2,000 to \$10,000 in a calendar year.

Thus, the changes in health benefit plans offered by the Borough are driven by the changes implemented by the SHBP. Because the health benefits of the PBA have traditionally mirrored the SHBP Plans and the new SHBP Plan provides a more limited benefit than it previously did, the PBA, as a unit, has the option of continuing to mirror the new SHBP plan, or join the HBCBSNJ Plans already in place for the Borough's civilian employees.

Thus, the Borough maintains that the health benefit plan options are in line with prior coverage offered by the Borough to the PBA.

Prescription Costs

It should also be noted that Article VI, Medical Benefits, Section 3 states in part:

The Borough shall provide a five (\$5.00) co-payment prescription plan for each covered employee and his/her dependents, but not to exceed a premium cost of more than five hundred (\$541.00) dollars per annum per family. If the premium cost exceeds five hundred (\$541.00) dollars per annum the parties shall meet to discuss changes in the program in order to keep the premium costs no more than two hundred (\$200.00) dollars per annum per family. (Arbitrator's Note: Section 3 in the CBA includes the inconsistent reference to "five hundred dollars" and "\$541.")

The Borough notes that its prescription costs are significantly more than the \$200-\$541 contractually required amount per annum per family. (B-16, Vozza Cert. ¶ 19 and B-16.B). Thus, the Borough asserts that it has the right to reopen the issue of prescription costs given the financial constraints discussed above. The reopener, having a clear cost mitigation intent, should be given effect by an award mirroring the Borough's last offer.

Holiday Pay:

The Borough is opposed to the PBA proposal to modify Article VIII, Holidays, by providing that the holiday benefit of thirteen (13) days be folded-in as compensated time and paid along with regular payroll. As such the holiday value would be utilized for all computational purposes. The Borough understands that the PBA means to include holiday pay for such computational purposes as overtime and pension purposes, both of which will increase the salary of PBA officers beyond that of the wage increase demanded. (B-2.A, Cost Out Worksheet Letter).

Accordingly, the Borough filed a Petition for Scope of Negotiations with the Public Employment Relations Commission on February 8, 2008, pursuant to N.J.A.C. 19:16 et seq., for a determination as to whether holiday pay may be included in base pay for pension purposes and that this issue cannot be considered by an interest arbitrator. It has been held in previous cases that although the arbitrator may find that holiday pay may be folded into base pay for purposes such as overtime compensation, the arbitrator does not have jurisdiction to decide whether holiday pay may be included in base pay for pension purposes. See Delran, P.E.R.C. No. 99-86; see also City of Orange, P.E.R.C. No. 2002-4; see also Town of Kearny, P.E.R.C. No. 2001-58; see also N.J.S.A. 34:13A-18 (prohibiting an arbitrator from issuing findings related to pension plans). Raising the salaries of police officers for the purposes of pension calculations can "jeopardize the actuarial integrity of the system because they result in retirees receiving benefits which were not adequately funded" See City of Orange, supra. Thus, this issue is not for the arbitrator but for the Division of Pension.

Furthermore, the Borough submits that the interest arbitrator should not consider including the holiday pay in the base pay for pension purposes because this will effectively increase the police officer's pay substantially by approximately, 1% to say nothing of the concomitant increase of an additional approximate 0.5% when this roll-in cost is added to overtime costs. See Ex. B 2.A, Cost Out Worksheet Letter; see also Groft cert., ¶ 6 (holiday pay roll-in causes a 1% increase in pension calculations); see also Additional Groft cert, ¶ 8 (holiday pay roll-in causes 0.5% increase in overtime calculations). In the past five years the pension contributions by the Borough have grown substantially. For example, Borough contributions to the Police pension have increased from \$0 in 2003, to \$198,910 in 2004, to

\$507,878 in 2005, to \$954,421 in 2006, to \$1,592,451 in 2007 to \$2,458,680 in 2008. See Ex. B2, Pension Cost (Increase) Table. That equates in percentage terms to the following: a 155.3% increase from 2004 to 2005; an 87.9% increase from 2005 to 2006; a 66.8% increase from 2006 to 2007 and a 54.4% increase from 2007 to 2008. See id. Furthermore, the employer pension contribution rate in 2007 was 24.75%. See Ex. B 2.A, Cost Out Worksheet Letter.

According to the Borough, if it is required to include holiday pay in base salary this will also cause exorbitant increases to pension costs. For instance, the estimated total cost of holiday roll-in for pension purposes over a four-year period is \$610,099. (B-11, Holiday Roll-in Costs Worksheet). Similarly, the estimated total cost of holiday roll-in for overtime purposes over a four-year period is \$219,466. Thus, the cost of awarding holiday roll-in for pension purposes and overtime would be extremely costly, effectively increasing the budget of the Borough and threatening its financial stability. Such an award would clearly not be in the public's best interest and, therefore, this demand by the PBA should not be granted.

Legal Representation

Article XLII of the 2003-2006 CBA between the Borough and the PBA provides for legal representation for police officers by the Borough pursuant to law. Under this article a police officer has the ability to select an attorney to represent him/her and the Borough is responsible for paying an hourly rate of \$80 for that attorney. Under this Article there is no indemnification insurance provided for the PBA officers. Both the Borough and the PBA agree that some type of indemnification should be provided to the PBA officers. In the alternative, a PBA member may avail him/herself of Borough indemnification in a lawsuit, but must accept the insurance company-assigned attorney, just like the arrangement we are all subject to with our car insurance.

The Borough proposes to replace the current provisions of the contract and instead offer to pay no more than \$150 per officer, per year, toward legal defense insurance to be purchased by the individual police officers through the PBA. Thus, an officer in a damages lawsuit would be provided an attorney through the insurance carrier (assuming it's a covered issue), as well as indemnification insurance. In addition, the PBA insurance would provide individual counsel to the officer to the limits of its coverage. No longer would the Borough pay any attorney chosen by the officer. The Borough's offer with respect to Legal Representation provides additional benefits not provided previously and, therefore, the offer is fair, equitable and reasonable. It is a sensible and fair solution to the issue of providing individualized legal counseling as well as legal representation and indemnification insurance for PBA officers.

In contrast, the PBA demands that the Borough continue to pay an hourly rate of \$80 for an attorney of a PBA officer's choosing and, in addition, pay the PBA \$150 per officer per year toward legal defense insurance. The Borough submits that since an attorney would be provided to police officers by the insurer there is no need for the Borough to provide additional attorney representation at \$80 an hour. This would be duplicative and costly for the Borough and, therefore, not in the best interest of the public and, thus, should not be awarded.

Continuity and Stability of Employment

The Employer-Employee Relations Act requires that an arbitrator in an interest arbitration consider "the continuity and stability of employment . . ." in determining an outcome. N.J.S.A. 34:13A-16g(8). In this case, the PBA officers have enjoyed a long period of high morale and job satisfaction with respect to the conditions and continuity of

employment. For example, no Fort Lee police officer has been laid off for many, many years. See PBA President's testimony that no police officers have been laid off since at least 1994 when he joined the force. In point of fact, it's been much longer than that. Similarly, the PBA President testified at the interest arbitration that the Borough of Fort Lee Police Department is a great place to work and that the competition among applicants is highly competitive. Thus, the current and past compensation practices and job conditions have not hindered the hiring and retaining of satisfied employees. This is especially impressive considering the recent reports that the overall job market in the United States is contracting.

As discussed above, the Borough's final offer is contiguous with its current and past compensation and labor practices. In addition to offering continuous compensation and benefits coverage from the last contract to the currently arbitrated contract, the Borough also plans to continuously employ its police officers. Therefore, the Borough asserts that its final offer is fair, equitable and reasonable.

Working Conditions

The Borough submits that the interest arbitrator may look at the employees' work schedules, work hours, and other conditions of employment when making a decision. See N.J.A.C. 19:16-5.14(d)4. The Borough maintains that Borough police officers enjoy many advantages with respect to their conditions of employment.

The Borough lies within Bergen County. Its population is approximately 37,000 and it has an area of 2.53 square miles. (B-9). The George Washington Bridge and its approach roads take up around .5 miles of this area. (B-18). The Borough has approximately 108 police officers. (B-2A). Violent crime in the area is low: there were either one or no murders in the Borough in each of the years 1999 to 2006. (B-9). Other municipalities, such as

Teaneck and Hackensack have similar number of officers on their forces but with far many more citizens. (B-1, Police Department Survey Data). In addition to the patrols of the Fort Lee Police Department, the Borough is regularly patrolled and served by units of five other police agencies, including the New Jersey State Police, the Bergen County Police, the Bergen County Sheriff's Department, the Palisades Interstate Park Police, and the New York and New Jersey Port Authority Police, which also maintains a headquarters in the Borough. (B-18).

Thus, the Borough's police officers receive substantial assistance from other law enforcement entities that most municipalities do not. So substantial is this assistance that 36% of all police activity in the Fort Lee Police Department ("FLPD") is officer initiated and not the result of command direction or citizen calls for assistance. Calls for service take up 20% of a patrol officer's work hours, a percentage much lower than adopted national standards. Phrased another way, PBA officers get to do what they want to do, about 44% of their working time. (B-20).

Furthermore, Detective Kosuda testified that working conditions for the Borough officers are quite positive and that morale is high among police officers. Additionally, extra duties sometimes undertaken by police officers also include additional perks: police officers get paid for EMT Training; police dog handlers earn extra pay for K9 assignments; and the position of School Resource Officer allows the assigned officer to work school hours instead of around the clock. Thus, in light of the consistent and positive working conditions experienced by the Borough's officers, the Borough maintains that its last offer is fair, equitable and reasonable.

The Borough contends that the PBA's position is unreasonable given the arguments above, and therefore the interest arbitration should be granted in favor of the Borough. Specifically, the PBA's demand that the wages be increased by 5% is unreasonable when no other surrounding or similarly situated municipality has had such an increase, nor have the PERC interest arbitration decisions in the past two years granted such a high increase, especially in light of the Borough's financial constraints and the generally weakening economy. Additionally, the PBA's demand for holiday pay roll-in is unlawful because this issue cannot be arbitrated with respect to pension purposes. Furthermore, such a demand for holiday pay roll-in is unreasonable when it increases the overall compensation by at least another 1.5% if not more. (B-2.A, Cost Out Worksheet Letter; see also Groft cert., ¶ 6; see also Additional Groft cert, ¶ 8.) Finally, ticket revenue has significantly decreased from 2006 to 2007 for no demonstrable reason. (B-4 Ticket Revenue Data Sheet). There has been a decrease in ticket revenues from \$636,118 in 2006 to \$534,392 in 2007.

For all the above reasons, the Borough asks that its last offer be awarded and the PBA's last offer be denied.

Discussion

The parties presented testimony and more than 70 documentary exhibits totaling thousands of pages in support of their last offers. I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the criteria.

I will set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and arguments regarding the statutory criteria primarily to its own last offer and to the last offer of the other party. I will not do so because, in this conventional proceeding, the terms of the award will be the reference point rather than the parties' last offers. Conventional arbitration is a more flexible process which grants the arbitrator broad authority to fashion the terms of an award based on the evidence without the constraint of selecting any aspect of a final offer submitted by the parties. The prior statute required the selection of the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of showing a need for such change. I shall apply this principle to all new proposals. The following are the terms of my award:

1. I shall award a four-year agreement as proposed by the Borough and the PBA. The duration of the new four-year agreement shall be January 1, 2007 to December 31, 2010.
2. I shall award the following changes and increases to the salary schedule:
 - (a) Effective January 1, 2007, all steps and ranks on Appendices A-1 and A-2 shall be increased by 3%.
 - (b) Effective July 1, 2007, all steps and ranks on Appendices A-1 and A-2 shall be increased by 1%.
 - (c) Effective January 1, 2008, all steps and ranks on Appendices A-1 and A-2 shall be increased by 3%.
 - (d) Effective July 1, 2008, all steps and ranks on Appendices A-1 and A-2 shall be increased by 1%.
 - (e) Effective January 1, 2009, holiday pay shall be included in base salary. The holiday pay shall be included by increasing all steps and ranks on Appendices A-1 and A-2 by 5%. Following the inclusion of holiday pay in base salary, all steps and ranks on Appendices A-1 and A-2 shall be increased by 2.5%.
 - (f) Effective July 1, 2009, all steps and ranks on Appendices A-1, A-2 and A-3 shall be increased by 1%.
 - (g) Effective January 1, 2010, all steps and ranks on Appendices A-1, A-2 and A-3 shall be increased by 2.5%.
 - (h) Effective July 1, 2010, all steps and ranks on Appendices A-1, A-2 and A-3 shall be increased by 1%.

- (i) Effective January 1, 2009, all new hires will be hired pursuant to a new salary schedule (Appendix A-3) which will include two (2) additional steps. All steps will be equalized. The maximum salary on Appendix A-3 on January 1, 2009 shall be \$105,886 and the starting salary shall be \$32,000. Appendix A-3 shall be increased by 1% effective July 1, 2009; to be followed by an additional 2.5% increase effective January 1, 2010; to be followed by an additional 1% increase effective July 1, 2010.
 - (j) All salary increases are fully retroactive to the above effective dates.
- 3. I shall award the Borough's Health Benefits and Prescription proposal. This shall be effective January 1, 2009.
 - 4. I shall award the PBA's proposal that holiday pay be included in base salary to be utilized for all computation purposes. This shall be effective January 1, 2009.
 - 5. I shall award the Borough and PBA proposal to establish a "Legal Representation Plan" to be effective January 1, 2009.
 - 6. I shall award the establishment of an "IRS 125 (b) Cafeteria Plan" which is effectively a stipulation as both the Borough and the PBA have similar, if not identical, proposals. This shall be effective January 1, 2009.
 - 7. I shall award a "Medical Opt-Out" plan with a 50% payment to employees opting out. This shall be effective January 1, 2009 or as soon as practicable.
 - 8. All other proposals of the Borough and the PBA are denied.

Cost of Salary Proposals

The current bargaining unit (at the close of the record) includes 82 Patrol Officers, 10 Sergeants, 10 Lieutenants and five Captains. The total base pay salary in 2006 is \$10,160,000. The \$10,160,000 salary base in 2006 would be reduced by the lower salaries for less senior Patrol Officers moving to maximum and increased by adding in the cost of longevity. Neither party submitted salary data on step movement and longevity. The calculations of the parties' last offers do not include incremental step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. Neither party included the incremental costs in their last offers. Historically, incremental

costs have not been factored in by the parties. These incremental costs fluctuate depending on the amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer's average salary costs down because senior officers are replaced by entry level officers making less than 30% of the maximum step officer's salary.

Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. Calculations for 2007, 2008, 2009 and 2010 do not include the cost of increments.

2007

The PBA proposed a 5% across-the-board increase to be effective January 1, 2007. The cost of the PBA proposal (excluding increments) in 2007 is \$508,000. The total cost of the PBA's proposed salary increase in 2007 is \$10,668,000.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2007 followed by a 1% increase effective June 1, 2007. The cost of the 3% increase in 2007 (excluding increments) is \$304,800. The cost of the Borough's 1% proposed salary increase in 2007 is \$104,648. The actual cost to the Borough in 2007 (paid out from 6/1/07 to 12/31/07) is \$61,045. The delay of the 1% to June 1 saves the Borough \$43,603. Thus, the total cost of the Borough's proposed salary increase in 2007 is \$365,845. The new base salary in 2007 is \$10,569,448.

I awarded a 3% across-the-board salary increase effective January 1, 2007. The cost of the 3% salary increase (excluding increments) is \$304,800. The cost of the awarded 1% salary increase effective July 1, 2007 is \$104,648. The actual cost in 2007 (paid out from 7/1/07 to 12/31/07) is \$52,324. The delay of the 1% to July 1 saves \$52,324. Thus, the total cost of the awarded salary increase in 2007 is \$357,124. The new base salary in 2007 is \$10,569,448.

The total cost of the awarded salary increase in 2007 is \$357,124. The cost of the awarded salary increase in 2007 is \$8,721 less than the Borough's proposed salary increase in 2007 and \$150,876 less than the PBA's proposed salary increase in 2007.

2008

The PBA proposed a 5% across-the-board increase to be effective January 1, 2008. The cost of the PBA proposal (excluding increments) in 2008 is \$533,400. The total cost of the PBA's proposed salary increase in 2008 is \$11,201,400.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2008 followed by a 1% increase effective June 1, 2008. The cost of the 3% increase in 2008 (excluding increments) is \$317,083. The cost of the Borough's 1% proposed salary increase in 2008 is \$108,865. The actual cost to the Borough in 2008 (paid out from 6/1/08 to 12/31/08) is \$63,505. The delay of the 1% to June 1 saves the Borough \$45,360. Thus, the total cost of the Borough's proposed salary increase in 2008 is \$380,588. The new base salary in 2008 is \$10,995,396.

I awarded a 3% across-the-board salary increase effective January 1, 2008. The cost of the 3% salary increase (excluding increments) is \$317,083. The cost of the awarded 1% salary increase effective July 1, 2008 is \$108,865. The actual cost in 2008 (paid out from 7/1/08 to 12/31/08) is \$54,432. The delay of the 1% to July 1 saves \$54,432. Thus, the total cost of the awarded salary increase in 2008 is \$371,515. The new base salary in 2008 is \$10,995,396.

The total cost of the awarded salary increase in 2008 is \$371,515. The cost of the awarded salary increase in 2008 is \$9,073 less than the Borough's proposed salary increase in 2008 and \$161,885 less than the PBA's proposed salary increase in 2008.

2009

The PBA proposed the inclusion a 5% across-the-board increase to be effective January 1, 2009. The cost of the PBA proposal (excluding increments) in 2009 is \$560,070. The total cost of the PBA's proposed salary increase in 2009 is \$11,761,470. The PBA proposed the inclusion of holiday pay in base salary in 2007. I have not factored that into the cost out of the PBA's proposal. The impact, if costed out, would be .25% in 2009 and approximately .265% in 2010 which represents the compounding of the 5% proposed salary increases in 2009 and 2010 on the value of the 5% roll-in. I have not included the true value of the 5% holiday pay roll-in since the Borough is obligated to pay the 5% holiday pay pursuant to the terms of the 2003-2006 CBA and such cost is therefore not an additional cost to the Borough.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2009 followed by a 1% increase effective June 1, 2009. The cost of the 3% increase in 2009 (excluding increments) is \$329,861. The cost of the Borough's 1% proposed salary increase in 2009 is \$113,253. The actual cost to the Borough in 2008 (paid out from 6/1/09 to 12/31/09) is \$66,064. The delay of the 1% to June 1 saves the Borough \$47,189. Thus, the total cost of the Borough's proposed salary increase in 2009 is \$395,925. The new base salary in 2009 is \$11,438,509.

I awarded a 2.5% across-the-board salary increase effective January 1, 2009. The cost of the 2% salary increase (excluding increments) is \$274,885. The cost of the awarded 1% salary increase effective July 1, 2009 is \$112,703. The actual cost in 2009 of the 1% increase (paid out from 7/1/09 to 12/31/09) is \$56,351. The delay of the 1% to July 1 saves \$56,351. Thus, the total cost of the awarded salary increase in 2009 is \$331,236. The new base salary in 2009 is \$11,382,982.

The total cost of the awarded salary increase in 2009 is \$331,236. The cost of the awarded salary increase in 2009 is \$64,689 less than the Borough's proposed salary increase in 2009 and \$228,834 less than the PBA's proposed salary increase in 2009. I have not factored in the cost out of the award of the inclusion of holiday pay in base salary. The impact, if costed out, would be .175% in 2009 and approximately .181% in 2010 which represents the compounding of the awarded 3.5% salary increases in 2009 and 2010 on the value of the 5% roll-in. I have not included the true value of the 5% holiday pay roll-in since the Borough is obligated to pay the 5% holiday pay pursuant to the terms of the 2003-2006 CBA and such cost is therefore not an additional cost to the Borough. The actual total salary base will be increased by 5% in 2009 but that 5% represents a transfer of the Borough's obligation to pay the 5% in holiday pay under the terms of the 2003-2006 CBA.

2010

The PBA proposed a 5% across-the-board increase to be effective January 1, 2010. The cost of the PBA proposal (excluding increments) in 2010 is \$588,073. The total cost of the PBA's proposed salary increase in 2010 is \$12,349,543.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2010 followed by a 1% increase effective June 1, 2010. The cost of the 3% increase in 2010 (excluding increments) is \$343,155. The cost of the Borough's 1% proposed salary increase in 2010 is \$117,817. The actual cost to the Borough in 2010 (paid out from 6/1/10 to 12/31/10) is \$68,726. The delay of the 1% to June 1 saves the Borough \$49,090. Thus, the total cost of the Borough's proposed salary increase in 2010 is \$411,881. The new base salary in 2010 is \$11,899,480.

I awarded a 2.5% across-the-board salary increase effective January 1, 2010. The cost of the 2.5% salary increase (excluding increments) is \$284,575. The cost of the awarded 1%

salary increase effective July 1, 2010 is \$116,676. The actual cost in 2010 of the 1% increase (paid out from 7/1/09 to 12/31/09) is \$58,338. The delay of the 1% to July 1 saves \$58,338. Thus, the total cost of the awarded salary increase in 2010 is \$342,913. The new base salary in 2010 is \$11,784,231.

The total cost of the awarded salary increase in 2010 is \$342,913. The cost of the awarded salary increase in 2010 is \$68,968 less than the Borough's proposed salary increase in 2010 and \$245,160 less than the PBA's proposed salary increase in 2009.

The cost of the PBA's clothing allowance proposal is \$10,700 annually for a total cost of \$42,800.

Interests and Welfare of the Public

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the Borough to exceed its authority under the CAP law. The award can be funded without the Borough exceeding its spending authority.

The interests and welfare of the public require the arbitrator to balance many considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain

the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Police Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Police Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony." (In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

I shall now discuss the issues with respect to the interests and welfare of the public factor.

Term of Agreement

I shall award a four-year agreement effective January 1, 2007 to December 31, 2010.

This is effectively a stipulation as both parties proposed a four-year CBA.

Salary, Health Insurance and Holiday Pay

As stated above, the three major issues in this matter are salary, the inclusion of holiday pay in base salary and health insurance. While I am required to evaluate the merits of the disputed issues individually, I am guided by criterion N.J.S.A. 34:13A-16(8) that

directs the consideration of factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. An element that must be considered is the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under all of the criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award and the requirement to balance all of the major components included in the award.

Health Benefits

Health benefits for Borough employees were provided by the New Jersey State Health Benefits Program ("SHBP") for approximately 20 years until July 2006 when the Borough moved from the SHBP to Horizon Blue Shield of New Jersey ("HBS"). In July 2006, police bargaining unit members elected to enroll in either a Traditional Plan or a Direct Access Plan as provided by HBS. These plans were substantially similar to the Traditional and NJ PLUS plans provided by the SHBP. Currently, the Borough's civilian employees are enrolled in a Traditional Plan and a Direct Access Plan which are similar to the PBA plans.

The Borough proposal seeks to move the police bargaining unit members from their current "PBA" Traditional and Direct Access Plans to the "Civilian" Traditional and Direct Access Plans. The Borough calculated its annual savings at the 2008 rates as \$124,558. B-16B shows that the 2008 rates for the Civilian Traditional Plan are approximately 10% below the rates for the PBA Traditional Plan. B-16B shows that the 2008 rates for the Civilian Direct Access Plan are approximately 5% below the rates for the PBA Direct Access Plan. The Borough correctly notes that the current "Civilian" Direct Access Plan is better in certain

respects than the SHBP NJ Direct 10 Plan, i.e., In-Network out-of-pocket maximum for a family in the NJ Direct 10 Plan is \$1,000 whereas the In-Network out-of-pocket maximum for a family in the Borough's "Civilian" Direct Access Plan is \$800. Additionally, the lifetime out-of-network benefit under the current "Civilian" Direct Access Plan is \$5,000,000 whereas the NJ Direct 10 Plan's out-of-network lifetime benefit is \$1,000,000. Furthermore, in-network copays for outpatient services are \$5 in the Borough's current "Civilian" Direct Access Plan as compared to a \$10 copay in the NJ Direct 10 Plan.

Comparing the current PBA Direct Access Plan to the "Civilian" Direct Access Plan shows nearly identical plans. The "Civilian" Plan covers 80% of Out-of-Network expenses whereas the PBA Plan covers 70% of Out-of-Network expenses. The prescription copays are higher in the "Civilian" Plan. The "Civilian" Plan prescription drug copays are similar to copays in other CBAs for generic, brand name and mail order.

The PBA Traditional Plan is nearly identical to the "Civilian" Traditional Plan. Differences include the following: The out-of-pocket maximum for an individual is \$400 and \$800 for a family whereas the current "Civilian" Traditional Plan is \$1,000 per individual and \$2,000 per family. The current PBA and Civilian Direct Access Plans continue the \$400/\$800 out-of-pocket maxims. The deductibles are \$100/\$200 under the PBA Traditional Plan versus \$300/\$600 under the "Civilian" Traditional Plan. Again, the deductibles are \$100 per individual and \$250 per family under both the PBA Direct Access Plan and the "Civilian" Direct Access Plan. Thus, as the Borough properly notes, if the PBA bargaining unit shifts from the PBA Traditional Plan to the "Civilian" Traditional Plan, their out-of-pocket maximums will increase. However, if the PBA bargaining unit members shift from the PBA Traditional Plan to the current "Civilian" Direct Access Plan, their out-of-pocket

maximums will remain the same, if they stay in-network. Under the Borough's "Civilian" plans, new hires are ineligible for the Traditional Plan and are automatically enrolled in the Civilian Direct Access Plan. The Borough's proposal also seeks to make new hires in the police bargaining unit ineligible for the Traditional Plan.

The higher out-of-pocket and deductible costs for a Traditional Plan when compared to a "Direct Access" type plan is not unique to Fort Lee. This is a common element in recent negotiations designed to maintain a high level of benefits while at the same time offering employees options that are less attractive. The less attractive higher out-of-pocket and deductible costs to employees that enroll in a Traditional Plan have seen a migration of employees to the "Direct Access" type health plans. For a number of years, there has been a decided trend away from the full funding of Traditional Plans with employees assuming a large portion of the difference in the cost of a Traditional Plan and the cost of lower-priced "Direct Access" type plans. In many cases, Traditional Plans have been eliminated including the elimination of the Traditional Plan by the SHBP in April 2008. It is worth noting that the Traditional Plan was replaced by the Direct Access 10 Plan which is substantially similar to the Borough's current "Civilian" Direct Access Plan.

The Borough has linked its health care proposal to the elimination of the following language in Article VI, Medical Benefits, Section 3, in the current CBA:

The Borough shall provide a five (\$5.00) co-payment prescription plan for each covered employee and his/her dependents, but not to exceed a premium cost of more than five hundred (\$541.00) dollars per annum per family. If the premium cost exceeds five hundred (\$541.00) dollars per annum the parties shall meet to discuss changes in the program in order to keep the premium costs no more than two hundred (\$200.00) dollars per annum per family. (The Borough notes that Section 3 includes the inconsistent reference to "five hundred dollars" and "\$541.")

The Borough correctly notes that its prescription costs are significantly more than the \$200 to \$541 costs cited in Section 3. B-16 confirms that the Borough's costs for prescription drugs for the PBA bargaining unit in 2008 is \$413,516. The Borough calculates the cost of funding the prescription program above the \$200 annual limit at \$390,516 and at \$351,301 above the \$541 annual payment limit. The Borough seeks to increase the current prescription copays to \$5/Generic/\$15 Brand Name per 30-day supply (or \$10/Generic/\$30 Brand Name for a 90-day supply mail order) and to eliminate Article VI, Medical Benefits, Section 3, above.

The Borough's health care proposal also includes acceptance of the PBA's proposal to establish a voluntary Medical Savings Account. The Borough will agree to pay the administrative fees associated with the implementation of the Medical Savings Account.

The PBA is opposed to any changes in the current health benefits. The PBA contends that the Borough's medical insurance proposal is not paralleled in other law enforcement agencies. The PBA notes that the Borough's proposal includes higher prescription co-payment rates; changes in categorization and co-insurance and increases in deductibles from \$1,000 to \$2,000 in the out-of-pocket maximum; and limitations on mental health benefits and increased general deductibles.

Salary and health care are often linked in bargaining. Modifications on health care influence the level of salary increases. These concessions are often made to insure the continuation of the level of benefits and the continuation of the existing network of doctors and hospitals. The total cost of a settlement for an employer includes the increased cost of a negotiated salary increase and the increased cost of employee fringe benefits. It is undisputed that the cost of health insurance coverage is the most significant component of employee benefits. The costs of these health insurance benefits are rising at a much higher

rate than inflation and salary increases. Health insurance is a costly fringe benefit that must be considered as part of the cost of employment and part of the overall wage and fringe benefit package of an employee.

Negotiations regarding health insurance are now primarily directed to cost containment issues. Negotiations that included improved health benefits, particularly full retiree health benefits, almost always include some commensurate major concession by a labor organization. In the past, unions have been resistant to both a reduction in plan options (elimination of Traditional Plan) and to premium cost sharing provisions (in any form) for medical insurance. However, this is no longer the case. Tens of thousands of State employees have seen the elimination of the Traditional Plan as well as premium cost sharing provisions. Employees in many counties are now sharing in the cost of health insurance premiums and a significant number of municipalities have negotiated both reduced plan options and health insurance premium cost sharing.

The premium cost sharing agreements include fixed dollar biweekly payments (with cap & without cap); obligation to pay the difference between a POS Plan and a Traditional Plan; single only coverage in Traditional Plan with full payment for dependent coverage; elimination of Traditional and limitation to POS Plan only for new hires; cash incentive to switch to lower priced health plan; 50/50 sharing between employer and employee for the increased cost of health insurance premiums (often with cap); bi-weekly contributions based on a salary range; percentage contribution of full cost of health insurance; full payment of dependent coverage in Traditional Plan; employee payment of 50% of annual increases in dependent coverage; declining percentage contribution ranging from 20% upon initial employment declining to no cost beginning with 13th year of employment; payroll deduction with or without a 125 Plan (allowing pre-tax payments for health care contributions);

financial incentives to migrate to lower cost health plans; and employee financial incentives for “opting out” of employer provided health insurance.

In addition to the above, I take arbitral notice of the recent settlements and awards that include health care prescription drug modifications: (1) Mahwah Township & PBA Local 143: Bi-weekly health care contributions of \$20 effective January 1, 2008; \$25 effective January 1, 2009; and \$40 effective January 1, 2010; (2) Holland Township & PBA Local 188: Effective January 1, 2007, all employees shall contribute \$1,000 annually toward the cost of health insurance; (3) S. Bound Brook & PBA Local 148 & SOA: Effective August 1, 2007, all new employees shall contribute \$25 per month for health insurance; (4) Tinton Falls & PBA Local 251: Effective August 1, 2007, employees will contribute 1% of their annual base wage for medical benefits; (5) Somerset County Sheriff's Office & PBA Local 177: Effective July 1, 2007, employees with salaries above \$50,000, 1% of salary between 50K and 80K; employees with salaries above \$80,000, 1.5% of salary above 50K; employees with salaries above \$100,000, 2% of salary above 50K; (6) River Edge Borough & PBA Local 201 & SOA: Effective January 1, 2008, all officers shall contribute \$20 biweekly for health benefits; (7) Haddon Heights Borough & PBA Local 328: Effective January 1, 2008, all employees shall contribute 1% of their base wages to the employer for Health Care Benefits; (8) East Orange & FOP Lodge 111: Effective January 1, 2009, monthly co-payments for health insurance shall be \$40 for single, \$45 for H/W & P/C and \$50 for family; (9) East Orange & FMBA Local 23 & SOA: Effective January 1, 2009, monthly co-payments for health insurance shall be \$40 for single, \$45 for H/W & P/C and \$50 for family; (10) Borough of Palmyra & FOP Lodge 2: Effective January 1, 2010, \$30 monthly copay for health insurance; (11) Colts Neck Township & PBA Local 333: Effective January 1, 2008, all employees shall contribute 1% of the base wage for health insurance; (12)

Rutgers University & FOP Lodge 164: Effective January 1, 2007, employees shall contribute 1.5% of wages for health insurance; (13) County of Warren & FOP Lodge 171: Bi-weekly contributions effective March 1, 2008:

	\$19 - \$35K	\$35 - \$60K	\$60 - \$85K	\$85 +
Single	\$6.00	\$14.00	\$20.00	\$28.00
Parent/Child	\$9.00	\$18.00	\$28.00	\$39.00
H/W	\$12.00	\$23.00	\$34.00	\$44.00
Family	\$15.00	\$30.00	\$42.00	\$57.00
Parent/Children	\$15.00	\$30.00	\$42.00	\$57.00

(14) Hillside Township & FOP Lodge 160: Effective July 1, 2010, employees will contribute \$50 per month toward the cost of their health benefits; (15) Edison Township & IAFF Local 1197: effective January 1, 2009, employees in Traditional Plan shall make monthly contributions of \$30/single, \$33/H&W, \$36/P&C and \$40/Family; (16) Borough of Mountainside & PBA Local 126: Effective January 1, 2008, all officers shall contribute \$40 monthly for health insurance; (17) Township of Moorestown & Fop Lodge 109 & SOA: Effective January 1, 2007, employees who elect to remain in the Traditional Plan shall pay 33% of the difference in premiums for the next costly health plan option; (18) Borough of Ringwood & PBA 247: Employees who elect to remain in the Traditional Plan or Select 20 Plan shall pay a premium equal to the difference between the cost of the plan chosen and the cost of the Aetna Plan; (19) City of Long Branch & IAFF Local 1197: Employees who elect to remain in the Traditional Plan shall contribute \$300 per month for such coverage; (20) Upper Freehold Township & IAFF Local 4306: Effective January1, 2006, all new employees shall pay 15% of the cost of dependent coverage; (21) Mercer County & PBA Local 167: Effective January 1, 2007, employees with single coverage shall contribute \$19 per pay period for medical insurance and employees with dual coverage shall contribute \$24 per pay period for medical insurance; (22) Haddonfield Borough & PBA Local 128: Effective January 1, 2007, employees shall contribute \$50 monthly to the cost of prescription drug

benefits for dependents; (23) Mercer County & PBA Local 167 (SOA): Effective January 1, 2007, employees with single coverage shall contribute \$19 per pay period for medical insurance and employees with dual coverage shall contribute \$24 per pay period for medical insurance; (24) Borough of Spring Lake & PBA Local 50: Effective January 1, 2007, the annual health insurance contribution shall be increased to \$750; (25) Egg Harbor Township & PBA Local 77: effective January 1, 2007, employees shall contribute 15% of dependent health care premiums; (26) Morristown & PBA Local 43: Effective January 1, 2007, new employees shall contribute 10% of the dependent health care premiums; (27) Hammonton & PBA Local 77: Effective January 1, 2007, all employees shall contribute 5% of the dependent health care premiums; (28) Mercer County Sheriff's Office & FOP Lodge 140 (SOA): Effective January 1, 2007, employees with single coverage shall contribute \$19 per pay period for medical insurance and employees with dual coverage shall contribute \$24 per pay period for medical insurance; (29) Borough of Keyport & PBA Local 223: Effective January 1, 2004, employees shall contribute \$20 biweekly for health insurance; (30) Morris County Sheriff's Office and Sheriff's Officers SOA: Effective January 1, 2008, employees shall contribute 1.2% of the employee's annual salary or 6% of the selected benefit cost not to be reduced below the minimum contribution level of either \$300 annually for employees with dependent coverage and \$200 annually for single coverage; (31) Camden County & FOP Lodge 76: Effective 1/1/08, premium contribution of 2.5% under 30k, 5% for 30-70k, 7.5% for over 30k; new hires pay from 25% to 10% depending on date of hire; (32) Hoboken & PBA Local 2: All officers hired after 12/1/07 shall be enrolled in the City's POS Plan; (33) East Orange & FOP Lodge 111 & FMBA Local 23: Effective 1/1/09, monthly copayments for health insurance premiums shall be \$40 for single, \$45 for H/W & P/C and \$50 for family; prescription copay of \$10 generic and \$15 brand; effective 7/1/08 office visit copay of \$15;

new hires must enroll in POS 1 or POS 2 Plan; Existing employees in Traditional Plan must move to POS 1 or POS 2 during next enrollment period; (34) Palmyra & FOP Lodge 2: Effective 1/1/10, \$30 monthly premium copay; (35) Colts Neck & PBA Local 333: Effective 1/1/08, all employees shall contribute 1% of base wages as health care contribution subject to IRS 125 Plan for tax purposes only; (36) Piscataway Township & PBA Local 93 & PBA Local 93 (SQA): Effective 7/1/08, eliminate Traditional Plan, increase prescription copay to \$10 generic & to \$15 for brand; effective 7/1/10, increase brand to \$20; (37) Winslow Township & Police Association: Traditional and HMO insurance eliminated 1/1/09; (38) Little Ferry & PBA Local 102: Health Insurance shall be moved to NJ SHBP; (39) County of Warren & FOP Lodge 171: Effective 3-1-08:

Bi-Weekly Employee Contributions

	<u>\$19 - \$35K</u>	<u>\$35 - \$60K</u>	<u>\$60 - \$85K</u>	<u>\$85 +</u>
Single	\$6.00	\$14.00	\$20.00	\$28.00
Parent/Child	\$9.00	\$18.00	\$28.00	\$39.00
H/W	\$12.00	\$23.00	\$34.00	\$44.00
Family	\$15.00	\$30.00	\$42.00	\$57.00
Parent/Children	\$15.00	\$30.00	\$42.00	\$57.00

Prescription to increase to \$10 for generic, \$20 for name brand and \$30 for formulary; (40) Clifton & FMBA Local 21: Doctor copays increased to \$15 effective 1-1-09; (41) Summit & FMBA Local 54: Health Insurance shall be moved to NJ State Health Benefits Program with standard of substantially similar to the NJ SHBP; employees hired after 1/108 must enroll in NJ Direct 15 for three years; (42) Hillside Township & FOP Lodge 82 & FOP Lodge 160: Effective 1/110, employees shall contribute \$50 monthly to health insurance; (43) Township of Robbinsville & IAFF Local 3786: Health care contribution of 1% of salary effective 1/1/10; officers hired after 7/1/08 are ineligible for health benefits; (44) Tinton Falls

Borough & PBA Local 251: Effective 1/109, all employees shall contribute 1% of salary as health care contribution; prescription copays increased to \$10/\$20/\$25; mail order required for maintenance drugs; (45) Township of Gloucester & FOP Lodge 9 & Lodge 9 (SOA): Effective 7-1/08, \$520 annual health care contribution for single coverage and \$780 for family coverage; prescription drug co-pays for retail purchases shall increase to \$10 for generic; \$20 for brand; \$35 for formulary; and to \$50 for lifestyle; Mail Order prescriptions shall be 2X of the retail co-pay; HMO Blue and Aetna HMO will no longer be an option for current and future employees; (46) West Milford & PBA Local 162 & 162 (SOA): Base plan for all bargaining unit members shall be the Choice 20 Plan. All current bargaining unit members shall have the option to remain enrolled in the Choice 100 and Choice 15 if the employee pays the difference in the premium between Choice 15 Plan and either the Choice 100 Plan or the Choice 20 Plan. Township & PBA shared savings from elimination of Choice 100 and Choice 15 plans; (47) West Caldwell & PBA Local 181: Effective 1-1-09, all participating employees shall contribute \$20 per pay period for health insurance; (48) Berkeley Township & Police SOA: All employees hired after 1/106 shall pay 15% of the premium cost of dependent coverage for the first six years of employment; effective 12/31/08, stand-alone prescription plan is eliminated for all future retirees who shall be covered by prescriptions under NJSHBP; (49) North Wildwood & PBA Local 59: Effective 9/1/08, employees pay the difference in premium if they do not elect Plan A; effective 1/1/10, prescriptions copays increased to \$10/mail order, \$15/generic and \$20/brand; (50) Springfield Township & PBA Local 76 & PBA Local 76A (SOA): PPO at not cost to employee, employee pays difference in cost of PPO and Traditional Plan; (51) Freehold Borough & PBA Local 159: Employee to contribute 5% of the cost including prescription

to be capped at \$1,500 in 2008; \$1,600 in 2009; and \$1,700 in 2010; (52) Hunterdon County Sheriff's Office & FOP Lodge 94 (SOA): Effective 1/1/08, shall contribute 1.25% of annual salary toward the medical premium; (53) Ocean City & PBA Local 61: State Health Benefits Program with Direct 10 as base plan; current contributions to increase by \$20 per month; (54) Stone Harbor & PBA Local 59: Effective 1/1/09, Prescription copays to increase to \$15/mail order, \$20/generic and \$25/brand; (55) Union County & PBA Local 73 & PBA Local 73 (SOA): Effective 9/1/06, Direct Access shall replace the Horizon PPO; the Horizon PPO will be maintained for employees with employees paying the difference between the PPO premium and the Direct Access; (56) North Wildwood & FMBA Local 56: Employees hired after January 1, 2006 will have the option of electing the Premier, patriot X or Patriot V Plan. The Patriot V Plan shall be the primary plan. If an employee selects any of the other Plans, the employee shall pay the premium cost differential between the primary plan and the plan they selected; (57) Borough of Mountainside & PBA Local 126: Effective 1/1/08 all members of the negotiating unit will pay \$40 per month as a contribution for health insurance; (58) Township of Edison & IAFF Local 1197: Effective 4-1-08, Traditional Plan eliminated for new hires, new hires limited to either the PPO or POS plans; effective 1/1/09, retail prescription copays increased to \$7.50 for generic and \$15 for brand, mail order increased to 1.5 times retail; employee contribution to Traditional Plan increased to \$28 bimonthly effective 1/1/08 and to \$35 bimonthly effective 1/1/09; effective 1/1/08, active firefighters who retire and remain in the Traditional Plan shall make monthly contributions of \$30/single, \$33/H & W, \$36/P&C, and \$40/Family; (59) Borough of Point Pleasant Beach & PBA Local 106: Effective 7/1/08, employees shall contribute \$20 monthly for single coverage and \$40 monthly for dual or family coverage; (60) Borough of North Arlington &

PBA Local 95: Effective 1/1/09, employees shall contribute \$20 monthly for single coverage and \$40 monthly for dual and family coverage; effective 1/1/08, new employees shall be limited to the selection of an HMO Plan at benefit levels that are substantially similar to the existing plan; effective 1/1/09, prescription copays shall increase to \$10 for generic and \$20 for name brand; (61) Morris County Sheriff & PBA Local 151: Effective 1/1/2010, the bi-weekly premium contributions shall be increased to:

	<u>Medallion</u>	<u>Wraparound</u>	<u>HMO</u>
Family	\$50.82	\$28.36	\$22.53
P/C	\$36.08	\$20.03	\$8.21
Single	\$19.20	\$10.73	\$8.21

(62) New Jersey Transit & PBA Local 304: Effective 1/1/09, employees shall contribute \$40 per month toward the cost of health insurance premiums.

Under the interest arbitration statute, health insurance must be treated as an economic item just like salary and longevity. The increased cost of providing this benefit cannot be considered only as an employer obligation but also must be viewed as a continuing fringe benefit to an employee that is more costly to provide. As previously stated, consideration must be given to the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under the statutory criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the entire award.

Accordingly, based on the above data showing extensive health care modifications in CBAs and in consideration of the need to balance all of the components in the award, I shall award the Borough's proposal to move police officers from the current PBA Traditional

and Direct Access Plans to the current "Civilian" Traditional and Direct Access Plans. This shall be effective January 1, 2009, or as soon as practicable, to allow police officers the opportunity to elect coverage under the terms of either the Traditional Plan or the Direct Access Plan.

As discussed below, I have awarded the PBA's proposal to include holiday pay in base salary effective January 1, 2009. The inclusion of holiday pay in base salary has significant costs associated with higher overtime rates and increased pension costs. These additional costs, will be offset by the savings achieved in my award on salary and the establishment of a new salary schedule for new hires, discussed in detail below. These additional costs will also be offset by the movement of the Borough's police officers from the current PBA Traditional and Direct Access Plans to the current "Civilian" Traditional and Direct Access Plans. This will generate in 2009 and 2010, the equivalent of the \$124,558 in annual savings that the Borough estimated it would have saved in 2008.

Holiday Pay

The PBA proposes that holiday pay be included in base salary as compensated time, paid with regular payroll and that the holiday value be utilized for all computation purposes. The Borough is opposed to the PBA's proposal on holiday pay. As I stated above, I have linked this issue and the Borough's health insurance proposal. Obviously, I have also linked these two issues to salary in combining the essential components of the award.

The inclusion of holiday pay in base salary is supported by the exhibits in the record showing that a large number of municipalities in Bergen County include holiday pay in base salary. A review of the PBA and Borough exhibits shows that 75% of the jurisdictions cited in the exhibits include holiday pay in base salary: 21 CBAs include holiday pay in base salary and seven CBAs do not include holiday pay in base salary. While comparability

favors the inclusion of holiday pay in base salary, consideration must be given to the increased cost to the Borough of such inclusion.

In consideration of the award of the Borough's health insurance proposal; the award of delayed salary increases in 2007 and 2008; the award of below average and delayed salary increases in 2008 and 2009; and the implementation of an extended salary schedule for new hires in 2009, I shall award the PBA's proposal that holiday pay be included in base salary and be credited for all computation purposes. This shall be effective January 1, 2009.

Police Officers in the Borough of Fort Lee currently receive thirteen paid holidays pursuant to Article VIII and Appendix B of the 2003-2006 CBA. Under the CBA, "the holidays shall be compensated as thirteen (13) working days off or as thirteen (13) days of pay at the straight time rate." The current practice is that officers are paid for their unused holidays in December. While the language of the CBA gives officers' an option to receive time off or pay, it is understood that the vast majority of all officers elect to receive "thirteen (13) days of pay at the straight time rate." This means that these officers are working an additional thirteen days annually. This does not mean that they actually work on all thirteen holidays — they do not get the time off unless they happen to be scheduled off on the date the holiday is celebrated.

All other Borough employees work a traditional Monday to Friday schedule and do not work on the day the holiday is celebrated. This is the traditional work schedule for the vast majority of all public sector employees except for public safety employees who are required to provide police (and fire) services on a 24/7 basis. The traditional schedule employees enjoy these holidays as days off with pay. The traditional schedule employees work one less day than public safety employees (for each of thirteen holidays) when a declared holiday occurs since all such holidays are celebrated Monday through Friday.

Police officers do not work a traditional Monday to Friday schedule. Police Officers are required to provide police services on a 24/7 basis. Therefore, police officers must work on holidays. Police officers work more days (actually 104 more hours because of police work schedule) than traditional schedule employees. The additional work days are equal to the number of declared holidays in a municipality. It has long been recognized that this additional work requires compensation. This compensation is provided in base salary or in an annual "lump sum" payment. This is the common method of providing compensation for holidays to employees who work in 24/7 operations such as police officers and firefighters. This is how employees who work in 24/7 operations receive the same benefits as other employees who work the traditional Monday to Friday schedule.

It is undisputed that police officers in Fort Lee currently receive compensation for thirteen holidays annually. This compensation is in the form of a check in December for the value of thirteen holidays. The value of the holiday compensation is calculated by dividing an officer's annual salary by the required annual hours to determine the hourly rate. Another method is to determine the percentage value of the holiday hours in relation to the annual hours worked. The thirteen holidays equal 104 hours. This is equal to 5% of the annual work year of 2080 hours. The salary for a Top Step (First Grade) Patrol Officer in 2006 is \$90,910. The value of holiday pay for a Top Step Patrol Officer in 2006 is \$4,545. This is the value that would be rolled into base salary for a Top Step Patrol Officer. This is the same \$4,545 that is required to be paid in annually in December under the terms of the 2003-2006 CBA. The dollar figure declines as you move down the steps to the rookie officer. The dollar figure increases for the higher-ranking officers, i.e., Sergeant, Lieutenant and Captain.

On February 8, 2008, the Borough filed a scope of negotiations petition with PERC seeking a determination that the PBA proposal to include holiday pay in base salary is an

illegal subject and may not be considered by an interest arbitrator for inclusion in a successor contract. On June 26, 2008, PERC issued its Scope of Negotiations Determination dismissing the Borough's petition as untimely. The Commission further stated that "it is clear from their submissions that both parties recognize that the placement of holiday pay into base salary is mandatorily negotiable and that only the Division of Pensions may determine whether that form of holiday pay is creditable for pension purposes."

Again, as previously discussed, the inclusion of holiday pay in base salary was opposed by the Borough because of the economic impact relating to overtime and pension contributions. While I make no finding as to whether holiday pay in base salary is creditable for pensions purposes, I am obligated to cost out the economic impact of the inclusion of holiday pay in base salary.

It is well established that holiday pay that is included in an employee's annual base salary and is paid as part of an employee's regular paycheck, that such compensation is creditable for pension purposes. Under the language of the 2003-2006 CBA, holiday pay would not be creditable since a police officer had the option of receiving holiday pay or time off. The new language of the CBA does not provide for an option. Officers are now required to work an additional 104 hours annually.

Let me be perfectly clear on this: I make no finding that holiday pay is now creditable for pension purposes but given the long history of holiday pay being considered creditable in the form that I have awarded, I am obliged to cost out the impact. As the Borough set forth in its brief, this includes the increased cost of overtime and the increased cost to the Borough for pension contributions.

In B-11, the Borough calculated the additional cost of overtime as \$219,466 over the four-year period of the 2007-2010 CBA. B-11 calculates the additional cost as \$55,839 in

2009 and \$57,933 in 2010. This calculation assumes an average salary of \$116,144 without the holiday fold-in and \$121,951 with the holiday fold-in. B-11 also factors in 3.75% annual salary increases. The inclusion of the 3.75% increase is cost neutral since the Borough's overtime rate will increase by the hypothetical 3.75% salary increase regardless of the inclusion of holiday pay in base salary. The Borough calculates the hourly rate as \$55.84 in 2009 without the holiday fold-in and \$58.51 with the holiday fold-in. The Borough's own calculation in B-11 confirms that the increase in the hourly rate is exactly 5%, the value of the 108 hours of holiday pay. There is nothing in the record to suggest that the Borough did not include longevity payments in the calculation of an officer's overtime rate. In fact, the examples used by the Borough in B-11, when read in context with B-2A, indicate that the Borough included longevity in its calculations: "For purposes of our cost-out, we assumed an average 2005 salary of \$90,000, plus longevity = \$94,500." (B-2A at 2).

Neither the Borough nor the PBA submitted any supporting data or documentation on overtime costs in prior years although the Borough based its calculations on 20,000 overtime hours annually. There are no documents in the record to confirm the actual overtime hours worked in 2006 or 2007. It is undisputed that the inclusion of holiday pay in base salary will increase overtime costs. This increase is initially 5% which is the value of the increase in base salary. The actual increase will be above 5% because of the compounding of the holiday pay on an officer's longevity pay. This ranges from 3% to a maximum of 15%. (J-6 at 28). The Borough's total cost of overtime calculations, based on 20,000 annual overtime hours, cannot be confirmed. The Borough's own calculation in B-11 confirms that the increase in the hourly rate in 2009 (\$55.84 to \$58.63) is exactly 5%, the value of the 108 hours of holiday pay. In any event, I have balanced the impact of the inclusion of holiday pay in base salary on overtime by awarding below-average salary

increases; by reducing the annual cost of such annual salary increases by “split” raises; by awarding a significantly less costly salary schedule for new hires; and by awarding the Borough’s health care proposal

In B-11, the Borough estimated the additional cost of increased pension costs as \$1,437 in 2009 and \$1,491 in 2010. The Borough’s calculation assumes that the average salary in 2009 is \$121,951 with \$5,807 in holiday compensation. The Borough’s calculation assumes that the average salary in 2010 is \$126,525 with \$6,025 in holiday compensation.

I awarded a 3% across-the-board salary increase effective January 1, 2008. The cost of the 3% salary increase (excluding increments) is \$317,083. The cost of the awarded 1% salary increase effective July 1, 2008 is \$108,865. The actual cost in 2008 (paid out from 7/1/08 to 12/31/08) is \$54,432. The new base salary in 2008 is \$10,995,396. This is exactly the same base salary that the Borough’s proposed salary increases would generate. My award costs somewhat less because I delayed the implementation of the 1% increase in 2007 and 2008 to July 1 rather than June 1 as proposed by the Borough. Again, I reiterate that neither party submitted salary data on step movement and longevity. The calculation of the parties’ last offers do not include incremental step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires.

Thus, the \$10,995,396 2008 base salary will increase by 5%, the value of the inclusion of holiday pay in base salary, to \$11,545,165. This is an increase of \$549,769. In 2009, I awarded a 3.5% salary increase which brings the holiday pay portion of base salary to \$569,011. This is the same \$569,011 holiday pay that the Borough would be obligated to pay under the terms of the 2003-2006 CBA. However, now the Borough will be obliged to make higher pension contributions. A review of data on the Division of Pensions and

Benefits website shows that Fort Lee's annual pension contribution rate for the period April 1, 2008 to March 31, 2009 is 24.73%. The Borough's pension contribution rate increases to 25.39% effective April 1, 2009. This means that the additional cost in pension contributions to the Borough for the \$569,011 holiday pay will be 24.73% for the first three months of 2009 and 25.39% for the last nine months of 2009. The total cost to the Borough in 2009 for increased pension contributions is \$143,708. This compares to the Borough's estimate in B-11 of \$155,227. This is equivalent to 1.25% of the 2008 base salary of \$11,545,165. The Borough, in its brief, calculated the cost of the inclusion of holiday pay in base salary as 1.5%. Again, these figures are approximate since the calculations do not take into account resignations, retirements, promotions or additional new hires.

As stated above, I have balanced the financial impact of the inclusion of holiday pay in base salary by awarding below-average salary increases; by reducing the annual costs of such salary increases by "split" raises; by awarding a significantly less costly salary schedule for new hires and by awarding the Borough's health care proposal. All of these components of the award will offset the increased cost of higher pension contributions and a higher overtime rate.

Accordingly, effective January 1, 2009, holiday pay shall be included in base salary as compensated time, paid with regular payroll and utilized for all computation purposes. The holiday pay shall be included by increasing all steps and ranks on Appendices A-1 and A-2 by 5%. The parties are directed to modify the current language of Article VIII and Appendix B to comport with the inclusion of holiday pay in base salary.

Salary

I have structured the salary increases to offset the cost of the inclusion of holiday pay in base salary. The salary data in the record is supportive of an annual salary increase of approximately 4%. Both the PBA and the Borough submitted salary data showing that annual salary increases in 2007, 2008, 2009 and 2010 are in the 4% range. The PBA's comparables were 4.2% in 2007, 4.3% in 2008, 4.14% in 2009 and 4.04% in 2010. The Borough's comparables show an average salary increase of 3.76% in 2007 and 4% in 2008 with a median salary increase of 4% in 2007 and 2008. In addition, the Borough submitted salary data gleaned from PERC showing average salary increases of 3.93% in 2007, 3.94% in 2008, 4.08% in 2009 and 4.13% in 2010. All of the data on annual salary increases in 2007, 2008, 2009 and 2010 is supportive of the Borough's salary proposal and the awarded salary increases. This salary data is not supportive of the PBA's salary proposal.

The 2007 PERC data shows that the average salary increase in 2007 for awards issued in 2007 was 3.97% and the average salary increase in 2007 for voluntary settlements reached in 2007 was 3.77%. The 2008 PERC data (1/1/08 to 11/19/08) shows that the average salary increase in 2008 for awards issued in 2008 was 3.84% and the average salary increase in 2008 for voluntary settlements reached in 2008 was 3.95%. Again, the PERC salary data is supportive of the Borough's last offer and is not supportive of the PBA's last offer. The PERC salary data is consistent with the terms of my award.

I have awarded salary increases that are consistent with County and state-wide averages in 2007 and 2008. The actual salary rate increases are average while the actual salary payouts in 2007 and 2008 are approximately 1% below the average payout cited by both the PBA and the Borough and reported by PERC. I have awarded salary increases in 2009 and 2010 that are in total, approximately 1% below the average salary increases that

are in the record, 1% below the reported PERC state-wide salary data, and 1% below the Borough's own salary proposal in 2008 and 2009. Obviously, the Borough proposed "split" 4% salary increases in 2009 and 2010 were proposed with the expectation that holiday pay would not be included in base salary. The delayed salary increases in 2007 and 2008 and the reduced "split" 3.5% salary increases in 2009 and 2010 will significantly offset the Borough's additional costs associated with the inclusion of holiday pay in base salary.

Internal comparability is a sub-factor to be considered. The terms of my award are consistent with the Borough's settlement with other organized employees. The record reflects that the Borough achieved a settlement with a bargaining unit representing blue collar, white collar and department heads that provided for 3% salary increases on January 1, 2007 followed by a 1% increase on July 1, 2007. These exact raises were duplicated in 2008 and 2009. The terms of my award mirror the Borough's settlement in 2007 and 2008. In 2009, my salary award of 2.5% effective January 1, 2009 and 1% effective July 1, 2009 is $\frac{1}{2}$ of 1% less than the Borough's internal settlement.

I have awarded a new salary schedule, Appendix C, for new hires to be effective January 1, 2009. This new salary guide will result in a savings to the Borough of nearly \$80,000 in cumulative earnings as each new officer progresses through the steps of the salary schedule to maximum. P-6 indicates that 12 officers were hired in the two-year period between January 2005 and January 2007. This means that if the Borough hired 12 new officers during the two-year period between January 1, 2009 and January 1, 2011, the Borough would save nearly \$1,000,000 dollars in cumulative earnings as the officers move through the steps to maximum. The newly-hired officers will achieve the same maximum salary as other officers hired before January 1, 2009 but the Borough would not be exposed to high incremental costs as the officers take two additional years to reach maximum.

The cumulative salary savings generated by Appendix A-3 to the Borough also benefits the bargaining unit as a whole. Police officer salaries in Bergen County are very competitive. It is undisputed that the salaries of Bergen County police officers are the highest in the State. Salary schedules that allow movement to the maximum step in four to five years will eventually undermine the ability of the parties to negotiate salaries for maximum step police officers since a significant expenditure of available funds will be needed to pay less experienced officers high salaries. As maximum salaries have increased significantly in the last 15-20 years, it follows that additional steps must be added to ensure that experienced officers continue to receive competitive salary increases. Ignoring this issue will create serious problems for the parties in future negotiations.

The modifications to the salary schedule will give the Borough considerable savings which will offset the cost of senior police officer salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department. These changes will not impact on the Borough's ability to recruit and retain police officers since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for all Borough police officers.

Moreover, I awarded salary 4% salary increases in 2007 and 2008 on a "split" basis that reduced the Borough's payout in 2007 and 2008. While the Borough's own proposal in 2007 and 2008 provided for "split" 4% salary increases, there is no evidence in the record that would support delayed salary increases except for the costs associated with including holiday pay in base salary. The savings to the Borough generated by the "split" raises in 2007 and 2008 is \$106,756. This is the amount of retroactive salary that bargaining unit members will not receive in 2007 and 2008. In addition, I awarded 3.5% salary increases in 2008 and 2009 which is a full 1% below the Borough's own proposal. This will provide annual

savings in 2010 and subsequent years of more than \$130,000 annually. These are recurring savings to the Borough. In addition, the delay of the salary increases in 2009 and 2010 reduces the payout in 2009 and 2010 to 3%. The payout in 2009 and 2010 is 1% below the average salary increases in the record as submitted by both the PBA and the Borough and as reported by PERC. While these are no recurring savings, they will provide a considerable offset to the increase costs associated with the inclusion of holiday pay in base salary.

These savings, when combined with the \$124,558 projected annual savings beginning in 2009 from the movement to the "Civilian" Traditional and Direct Access Plans and the savings from lower than average salary increases in 2009 and 2010, will offset the costs associated with the inclusion of holiday pay in base salary.

In summary, I find that the terms of my award satisfy the requirements of the interests and welfare of the public criterion to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. Reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. I find that the interests and welfare of the public require a stable and experienced police force and that the terms of my award on salary will maintain the Borough's ability to recruit and retain qualified and experienced police officers consistent with the requirements of this factor.

Other Issues

I shall now address the other issues. A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. I shall apply that principle in my analysis of each issue in dispute. While I am required to evaluate the merits of the disputed issues

individually, I am guided by criterion N.J.S.A. 34:13A-16(8) that directs the consideration of factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. An element that must be considered is the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under all of the criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award.

Health Insurance Opt-Out

The PBA proposes a Health Insurance Opt-Out provision of fifty percent (50%) of the amount of premium saved by the Borough. Under the PBA proposal, an employee would agree to waive coverage of health insurance and receive payment of 50% of the Borough's premium cost. The PBA proposes that the payment would be made to the Officer not later than November in each calendar year. The Borough has not proposed an Opt-Out provision nor has it taken a position regarding the PBA's proposal.

I have had considerable experience with this issue in the hundreds of cases that I have served as interest arbitrator and as a mediator/fact-finder in non-police cases. Under the PBA proposal, both the Borough and the individual employee would both benefit with the employee receiving 50% of the premium cost and the Borough reducing its premium cost for the individual employee by 50% of the premium cost. Borough Exhibit 16-B shows that this could be a significant savings to the Borough.

Accordingly, effective January 1, 2009, an Opt-Out provision at 50% of the premium cost shall be implemented. It shall be applicable to both medical insurance plans and the

prescription drug plans. I shall remand to the parties, the development of the procedures for the implementation of the Opt-Out provision. I shall retain jurisdiction to issue a final and binding decision in the event the parties fail to agree on the final language within thirty days of the receipt of the award.

Legal Representation Plan

The PBA proposes a modification of Article XLII to provide that the Borough contribute \$150 annually on behalf of each bargaining unit member directly to the PBA for the purchase of legal defense insurance. The Borough proposes to modify Article XLII, by eliminating paragraphs two and three and adding contract language to provide a Borough payment of \$150 per contract year, per officer, who so designates, toward legal defense insurance to be purchased by individual police officers through the PBA.

The PBA and the Borough appear to be in agreement on the major component of providing a \$150 payment for each bargaining unit member annually for the purchase of legal defense insurance.

Accordingly, effective January 1, 2009, the Borough shall make a \$150 annual contribution for each officer in the bargaining unit for the purchase of legal defense insurance. I am aware that this issue has been the subject of grievances and arbitrations in the past and that the parties desire to avoid disputes on this issue in the future. While there appears to be a stipulation on the \$150 payment for each bargaining unit member, it is unclear how this will be implemented. Thus, I shall remand to the parties the development of the procedures for implementation of the legal defense insurance. I shall retain jurisdiction to issue a final and binding decision in the event the parties fail to agree on the final language within thirty days of the receipt of the award.

Clothing Allowance

The PBA proposes that the current clothing allowance of \$700 be increased by \$100 annually to \$800 in 2007, \$900 in 2008, \$1,000 in 2009 and \$1,100 in 2010. The Borough is opposed to any increase. While the data in the record shows that the current clothing allowance is \$175 below the average of the departments surveyed, I conclude that given the scope of the overall award, no increase is warranted. As stated above, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award and the requirement to balance all of the major components included in the award.

Therefore, the PBA's proposal to increase the clothing allowance by \$100 in 2007, 2008, 2009 and 2010 is hereby denied.

Demand and Return System

The Borough proposes to amend Article XXIII of the CBA to provide that the PBA will provide the Borough with a copy of a lawful and applicable Demand and Return System. A review of Article XXIII finds no reference to a Demand and Return System. In any event, the Borough is entitled to receive a copy of a Demand and Return System from the PBA and I strongly *recommend* that the PBA comply with the Borough's request. However, any disputes on this issue should be directed to PERC.

Lawful Authority of the Employer

Three of the statutory criteria, N.J.S.A. 34:12A-16g(1), (5) and (9), refer to the lawful authority of the employer. These factors, among other things, require the arbitrator to consider the limitations imposed on the Borough by the CAP law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one

year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

More specifically, g(1) refers to the original 1976 Cap law; g(5) refers to the lawful authority of employer and cites the 1976 Cap law; and g(9) refers to the recently enacted 2007 Cap law which limits tax levy increases. It is well established that arbitrators must recognize and respect the statutory limits which have been placed on public employers. The Borough of Fort Lee and all other municipalities in the State face constraints in their ability to increase appropriations and, beginning in 2008, on their ability to raise taxes. The expenditure or appropriations cap applies to the total current expense portion of the budget and not to any particular line item within the budget. Under the expenditure cap, the current expense portion of the budget can be increased by a maximum of 3.5% without a referendum. It is well established that the Reform Act does not require an arbitrator to award the amount the employer has budgeted. The Borough is free to budget an amount which it considers sufficient for negotiations of CBAs and that amount is not determined by the CAP Law.

The record reflects that the Borough budgeted 4% for salary increases in its most recent budget. It is also undisputed that the Borough proposed 4% annual salary rate increases in 2007, 2008, 2009 and 2010. The Borough structured these 4% annual raises to pay out approximately 3.6% annually by deferring the 1% increase (following a 3% increase on January 1) to June 1 in 2007, 2008, 2009 and 2010.

The terms of my award on salary cost less than the Borough's proposed salary increases in all four years of the 2007-2011 CBA. In addition, the Borough proposed a 16%

increase over four years whereas my award provides for a 15% increase over four years. Also, I awarded a new salary schedule, Appendix C, for new hires to be effective January 1, 2009. This new salary guide will result in a savings to the Borough of nearly \$80,000 in cumulative earnings as each new officer progresses through the steps of the salary schedule to maximum. P-6 indicates that 12 officers were hired in the two-year period between January 2005 and January 2007. This means that if the Borough hired 12 new officers during the two-year period between January 1, 2009 and January 1, 2011, the Borough would save nearly \$1,000,000 dollars in cumulative earnings as the officers move through the steps to maximum.

Finally, I awarded the Borough's health care proposal which will save the Borough more than \$125,000 annually in 2009 and 2010. The combination of reduced salary increases and reduced salary payouts (accomplished by "split" raises), and the award of a new salary schedule, Appendix C, for new hires, will offset the impact of the inclusion of holiday pay in base salary.

There is absolutely no evidence in the record to show that the terms of the awarded salary increases or any other aspect of this award will cause the Borough to approach the limits of its financial authority or to breach the constraints imposed by the three statutory criteria, N.J.S.A. 34:12A-16g(1), (5) and (9), in funding the salary increases I have awarded.

**Financial Impact on the Governing Unit,
its Residents and Taxpayers**

The above discussion under the *lawful authority* is applicable to the *financial impact* factor and need not be repeated. For all of the reasons cited above, I conclude that there is no evidence that the terms of my award will require the Borough to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not

directly impacted by this proceeding nor is there any evidence that the terms of this award will impact on the Borough's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

Based on the evidence in the record, I conclude that the financial impact of the award will not adversely affect the governing unit, its residents and its taxpayers.

Cost of Living

Arbitrators must consider changes in the cost of living. The cost of living data shows that the increase in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), for New York-Northern New Jersey increased by 3.7% in 2007 and was up 2.2% (annualized) through November 2008 following dramatic decreases in October and November after crossing 5% earlier in the year. These wild fluctuations are attributed to the volatile pricing of energy.

I conclude that the awarded salary increases and the total cost of the award, after factoring in all components including the savings from the change to the "Civilian" health insurance plans, are consistent with the CPI in 2007 and above the current increase in the CPI in 2008. The Borough's final offer is also above the CPI in 2008. I find that the PBA's final offer is considerably above the CPI data in 2007 and 2008.

I conclude that the awarded base salary increases, while moderately higher than the increases in the cost of living in 2007 and 2008, provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Borough's police officers. The award provides for base salary increases that over the full term of the CBA will allow for a modest increase in real earnings consistent with historical trends.

Continuity and Stability of Employment

The terms of my Award will maintain the continuity and stability of employment for the Borough's police officers. The salary award in this matter will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Borough to continue to recruit and retain qualified police officers. This factor was given considerable weight in my analysis of the Borough's health care proposal and the PBA's holiday pay proposal. I concluded that holiday pay is an integral part of compensation.

This factor was given considerable weight in the awarding of a new salary schedule for new hires. The cumulative salary savings generated by Appendix A-3 to the Borough also benefits the bargaining unit as a whole. Police officer salaries in Bergen County are very competitive. It is undisputed that the salaries of Bergen County police officers are the highest in the State. Salary schedules that allow movement to the maximum step in four to five years will eventually undermine the ability of the parties to negotiate salaries for maximum step police officers since a significant expenditure of available funds will be needed to pay less experienced officers high salaries. As maximum salaries have increased significantly in the last 15-20 years, it follows that additional steps must be added to ensure that experienced officers continue to receive competitive salary increases. Ignoring this issue will create serious problems for the parties in future negotiations.

The modifications to the salary schedule will give the Borough considerable savings which will offset the cost of senior police officer salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department. These changes will not impact on the Borough's ability to recruit and retain police officers since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for all Borough police officers.

I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

Overall Compensation

A review of this factor requires consideration of the “overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.” I have considered the overall compensation received by the Borough police officers and find that the terms of my Award will maintain existing levels.

This factor was given considerable weight in my analysis of the Borough’s health care proposal and the PBA’s holiday pay proposal. The terms of my award are consistent with other external settlements in Bergen County and throughout the State, thus maintaining a consistent level of benefits.

Accordingly, after carefully considering each of the statutory criteria in relation to the evidence in the record, I respectfully issue the following award:

AWARD

1. **Term of Agreement:**

There shall be a four-year agreement effective January 1, 2007 through December 31, 2010.

2. **Salary:**

- (a) Effective January 1, 2007, all steps and ranks on Appendices A-1 and A-2 shall be increased by 3%.
- (b) Effective July 1, 2007, all steps and ranks on Appendices A-1 and A-2 shall be increased by 1%.
- (c) Effective January 1, 2008, all steps and ranks on Appendices A-1 and A-2 shall be increased by 3%.
- (d) Effective July 1, 2008, all steps and ranks on Appendices A-1 and A-2 shall be increased by 1%.
- (e) Effective January 1, 2009, holiday pay shall be included in base salary as compensated time, paid with regular payroll and utilized for all computation purposes. The holiday pay shall be included by increasing all steps and ranks on Appendices A-1 and A-2 by 5%. Following the inclusion of holiday pay in base salary, all steps and ranks on Appendices A-1 and A-2 shall be increased by 2.5%.
- (f) Effective July 1, 2009, all steps and ranks on Appendices A-1, A-2 and A-3 shall be increased by 1%.
- (g) Effective January 1, 2010, all steps and ranks on Appendices A-1, A-2 and A-3 shall be increased by 2.5%.
- (h) Effective July 1, 2010, all steps and ranks on Appendices A-1, A-2 and A-3 shall be increased by 1%.
- (i) Effective January 1, 2009, all new hires will be hired pursuant to a new salary schedule (Appendix A-3) which will include two (2) additional steps. All steps will be equalized. The maximum salary on Appendix A-3 on January 1, 2009 shall be \$105,886 and the starting salary shall be \$32,000. Appendix A-3 shall be increased by 1% effective July 1, 2009; to be followed by an additional 2.5% increase effective January 1, 2010; to be followed by an additional 1% increase effective July 1, 2010.
- (j) All salary increases are fully retroactive to the above effective dates.
- (k) Appendices 'A', 'B' and 'C' are attached.

3. **Health Benefits:**

- (a) I shall award the Borough's proposal to move police bargaining unit members from the current PBA Traditional and Direct Access Plans to the current "Civilian" Traditional and Direct Access Plans as outlined in Borough Exhibit 16. This shall be effective January 1, 2009, or as soon as practicable thereafter, to allow bargaining unit members the opportunity to elect coverage under the terms of either the Traditional Plan or the Direct Access Plan.
- (b) Effective January 1, 2009, or as soon as practicable thereafter, the current prescription copays shall be increased to \$5 for Generic, \$15 for Brand Name per 30-day supply and to \$10 for Generic and \$30 Brand Name for a 90-day supply by mail order.
- (c) Effective January 1, 2009, Article VI, Medical Benefits, Section 3, shall be deleted from the CBA.
- (d) Effective January 1, 2009, the Borough shall establish and pay the administrative fees for a voluntary Medical Savings Account for covered employees.
- (e) All employees hired on or after January 1, 2009, will be ineligible for enrollment in the Traditional Plan.
- (f) I shall retain jurisdiction to resolve any disputes over the specific terms of the health insurance and prescription drug coverages including the language to be included in the 2007-2010 CBA in the event the parties fail to agree within thirty days of the receipt of the award.

4. **Holiday Pay:**

Effective January 1, 2009, holiday pay shall be included in base salary as compensated time, paid with regular payroll and utilized for all computation purposes. The holiday pay shall be included by increasing all steps and ranks on Appendices A-1 and A-2 by 5% effective January 1, 2009. The parties are directed to modify the current language of Article VIII and Appendix B to comport with the inclusion of holiday pay in base salary. I shall retain jurisdiction in the event the parties fail to agree on the final language within thirty days of the receipt of the award.

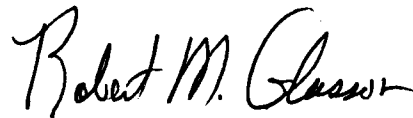
5. **Health Insurance Opt-Out:**

Effective January 1, 2009, an Opt-Out provision at 50% of the premium cost shall be implemented. The Opt-Out provision shall be applicable to both medical insurance plans and prescription drug plans. I shall remand to the parties, the development of the procedures for the implementation of the Opt-Out provision. I shall retain jurisdiction in the event the parties fail to agree on the final language within thirty days of the receipt of the award.

6. **Legal Representation Plan:**

Effective January 1, 2009, the Borough shall make a \$150 annual contribution for each officer in the bargaining unit for the purchase of legal defense insurance. While there appears to be a stipulation on the \$150 payment for each bargaining unit member, it is unclear how this will be implemented. Thus, I shall remand to the parties the development of the procedures for implementation of the legal defense insurance program. I shall retain jurisdiction in the event the parties fail to agree on the final language within thirty days of the receipt of the award.

7. All proposals of the Borough and the PBA not awarded herein are denied. All provisions of the 2003-2006 CBA shall be carried forward except for those provisions modified by the terms of this Award.

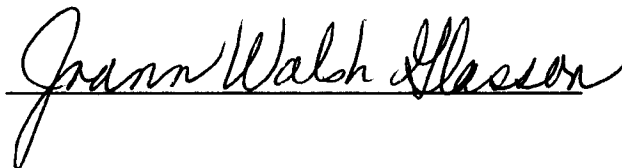


ROBERT M. GLASSON
ARBITRATOR

Dated: December 18, 2008
Pennington, NJ

STATE OF NEW JERSEY) ss.:
COUNTY OF MERCER)

On this 18th day of December 2008, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

A handwritten signature in cursive script, reading "Joann Walsh Glasson", written over a horizontal line.

JOANN WALSH GLASSON
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 12/11/2011

APPENDIX "A-1"

WAGE SCHEDULE

<u>Rank</u>	<u>Eff.</u> <u>1/1/07</u> <u>(3%)</u>	<u>Eff.</u> <u>7/1/07</u> <u>(1%)</u>	<u>Eff.</u> <u>1/1/08</u> <u>(3%)</u>	<u>Eff.</u> <u>7/1/08</u> <u>(1%)</u>	<u>Eff.</u> <u>1/1/09</u> <u>(5%; 2.5%)</u>	<u>Eff.</u> <u>7/1/09</u> <u>(1%)</u>	<u>Eff.</u> <u>1/1/10</u> <u>(2.5%)</u>	<u>Eff.</u> <u>7/1/10</u> <u>(1%)</u>
Patrolman:								
Academy	\$33,105	\$33,436	\$34,439	\$34,784	\$37,436	\$37,810	\$38,756	\$39,143
4 th Grade	70,161	70,862	72,988	73,718	79,339	80,132	83,136	82,957
3 rd Grade	76,743	77,511	79,836	80,634	86,783	87,651	89,842	90,740
2 nd Grade	83,047	83,878	86,395	87,259	93,912	94,851	97,223	98,195
1 st Grade	93,637	94,574	97,411	98,385	105,887	106,946	109,619	110,716
Sergeant	103,001	104,031	107,152	108,223	116,476	117,640	120,581	121,787
Lieutenant	113,303	114,436	117,869	119,048	128,125	129,407	132,642	133,968
Captain	124,632	125,878	129,655	130,951	140,936	142,346	145,904	147,363

APPENDIX A-2

WAGE SCHEDULE

(EMPLOYEES HIRED ON OR AFTER 1/1/02)

<u>Rank</u>	<u>Eff.</u> <u>1/1/07</u> <u>(3%)</u>	<u>Eff.</u> <u>7/1/07</u> <u>(1%)</u>	<u>Eff.</u> <u>1/1/08</u> <u>(3%)</u>	<u>Eff.</u> <u>7/1/08</u> <u>(1%)</u>	<u>Eff.</u> <u>1/1/09</u> <u>(5%; 2.5%)</u>	<u>Eff.</u> <u>7/1/09</u> <u>(1%)</u>	<u>Eff.</u> <u>1/1/10</u> <u>(2.5%)</u>	<u>Eff.</u> <u>7/1/10</u> <u>(1%)</u>
Patrolman:								
Academy	\$33,105	\$33,436	\$34,439	\$34,784	\$37,436	\$37,810	\$38,756	\$39,143
5 th Grade	46,900	47,369	48,790	49,278	53,035	53,566	54,905	55,454
4 th Grade	53,795	54,333	55,963	56,522	60,832	61,441	62,977	63,606
3 rd Grade	62,074	62,695	64,576	65,221	70,194	70,896	72,669	73,395
2 nd Grade	75,868	76,626	78,925	79,714	85,793	86,651	88,817	89,705
1 st Grade	93,637	94,574	97,411	98,385	105,887	106,946	109,619	110,716
Sergeant	103,001	104,031	107,152	108,223	116,476	117,640	120,581	121,787
Lieutenant	113,303	114,436	117,869	119,048	128,125	129,407	132,642	133,968
Captain	124,632	125,878	129,655	130,951	140,936	142,346	145,904	147,363

APPENDIX A-3

WAGE SCHEDULE

(EMPLOYEES HIRED ON OR AFTER 1/1/09)

<u>Rank</u>	<u>Eff.</u> <u>1/1/09</u>	<u>Eff.</u> <u>7/1/09</u> (1%)	<u>Eff.</u> <u>1/1/10</u> (2.5%)	<u>Eff.</u> <u>7/1/10</u> (1%)
Patrolman:				
Academy	\$32,000	\$32,320	\$33,128	\$33,459
7 th Grade	42,500	42,925	43,998	44,438
6 th Grade	53,000	53,530	54,868	55,417
5 th Grade	63,500	64,135	65,738	66,396
4 th Grade	74,000	74,740	76,609	77,375
3 rd Grade	84,500	85,345	87,479	88,353
2 nd Grade	95,000	95,950	98,349	99,332
1 st Grade	105,887	106,946	109,620	110,716
Sergeant	116,476	117,640	120,581	121,787
Lieutenant	128,125	129,407	132,642	133,968
Captain	140,936	142,346	145,904	147,363