

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

CITY OF ASBURY PARK

"Public Employer,"

- and -

PBA LOCAL 6

"PBA."

CITY OF ASBURY PARK

"Public Employer,"

- and -

**PBA LOCAL 6, SUPERIOR OFFICERS
ASSOCIATION**

"SOA."

Docket Nos. IA-2008-069 & IA-2008-047

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the City:

Steven S. Glickman, Esq.
Ruderman & Glickman, P.C.

For the PBA:

Richard D. Loccke, Esq.
Loccke, Correia, Schlager,
Limsky & Bukosky

I was appointed arbitrator by the New Jersey Public Employment Relations Commission on March 11 and 12, 2008 in accordance with P.L. 1995, c. 425, in matters involving the City of Asbury Park [the "City"] and Asbury Park PBA Local No. 6 and Superior Officers Association [the "PBA, the "SOA" or the "Unions"]. Several pre-arbitration mediations were held through November 19, 2008. These meetings reflected the parties' sincere desire to reach voluntary settlement. Nevertheless, despite the exchange of settlement offers, the impasse was not resolved and a formal interest arbitration hearing was held on February 17, 2009 at which time the parties examined and cross-examined witnesses and introduced documentary evidence into the record. At the formal hearing, the Unions filed a motion to exclude the City's health insurance proposal on the basis that it was not submitted to interest arbitration in timely fashion. The motion was denied on March 17, 2009.

The petitions before me were not formally consolidated. However, all parties recognized that the goals of economy and efficiency would be met by receiving evidence that was common to each negotiating unit during the course of the hearings without having to independently resubmit documentary or testimonial evidence in duplicate fashion. It was also agreed that a single decision would issue covering both units.

Mark Kinmon, Chief of Police and Terrence Reidy, City Manager. The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party. Post hearing briefs were submitted by both parties and transmitted by the arbitrator to each party on or about May 15, 2009.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

FINAL OFFERS OF THE PARTIES

The PBA/SOA

1. The Associations propose a four (4) year contract with a five (5%) percent across-the-board increase at each step, position and pay grade on the respective contracts for both PBA and SOA. Set increases will be effective January 1st of each successive year.
2. The Associations propose an increase in the clothing allowance of an additional five hundred dollars (\$500.00) per year.
3. Compensatory time off is sought to be compensated at the double time rate, same as the Asbury Park Fire Department.
4. The SOA only proposes a modification of Article 4, ¶D (page 9) so as to provide the employee working extra duty to have the option for being compensated in compensatory time off or in paid compensation, both at the time and one half (1 ½) rate.

5. The SOA proposes that the Inspector's rate be set forth in the contract with a rank differential calculated as an extension of a differential between Lieutenant/Captain, Sergeant/Lieutenant and Patrol Officer/Sergeant.

The City

1. Duration

The City proposes a two (2) year contract commencing January 1, 2008 and expiring on December 31, 2009.

2. 2008 Salary Offer

The City proposes a wage freeze for the calendar year 2008.

3. 2009 Salary Offer

The City proposes a wage freeze for the calendar year 2009.

4. Insurance

The City proposes to change health insurance carriers and plans to implement the State Health Benefits Direct 10 Plan as soon as possible.

The City and the Unions have submitted substantial documentary evidence, testimony and oral and written argument in support of their respective last offers. Each party has provided an analysis of why its own position is best supported by the statutory criteria. All of these submissions have been thoroughly reviewed and considered. In my evaluation of the parties' proposals set forth above, I am required to make a reasonable determination of the disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

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

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a

dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

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

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

BACKGROUND

The City of Asbury Park is located in southern Monmouth County. It has a population of approximately 17,000, ranking 14th out of 63 municipalities in the County. Because it is an oceanfront community, its population, and especially its

BACKGROUND

The City of Asbury Park is located in southern Monmouth County. It has a population of approximately 17,000, ranking 14th out of 63 municipalities in the County. Because it is an oceanfront community, its population, and especially its daytime population, increases significantly in the summer months. The police department, based upon a 2008 seniority list, consists of 92 sworn personnel including the Chief, an Inspector, 4 Captains, 5 Lieutenants, 18 Sergeants and 63 Police Officers. The department is the fourth largest in the County. The staffing level has substantially increased from 2003 when only 71 full-time officers were employed. It is obvious that an increase of 21 full-time officers over a five year period has increased departmental costs. The increases in manpower are linked to supporting redevelopment activity in both business and residential areas and the need to intensify crime fighting efforts. The existing collective negotiations agreements for both rank and file and superior officers expired on December 31, 2007.

The issues that are in dispute are all economic in nature. The parties also disagree on contract duration. The issue of duration is directly linked to the parties' differences on financial issues and whether the record evidence on finances is sufficiently stable and reliable upon which to confidently project future expenditures.

The record shows that the City has unique characteristics that represent a challenge to operating an effective law enforcement department. While housing a population of 17,000 within a 1.4 square mile land area, Asbury Park is burdened with providing services normally associated with urban cities while simultaneously operating as a seaside resort. In recent years, the City has begun to emerge from long-term struggles to redevelop its assets. The record shows that the City's administrators and elected officials have created a climate for rebirth by attracting substantial private investment. Beachfront revenues have increased. Boardwalk retailers have created business activity and visitors have returned to the City as well as new residents who occupy higher scale condominiums. Despite these successes, the City has been unable to eliminate its traditional battle with financial distress and its need to rely upon State aid. The City emphasizes this theme in its presentation of evidence wherein it seeks a two year contract with wage freezes for both contract years. This position is based solely upon its finances and not upon a negative evaluation of its police department nor its personnel.

The City acknowledges that a productive and effective law enforcement department is an essential element in helping create an environment in which its redevelopment efforts can flourish. Historically, the City has had a high crime rate. In fact, it has had the highest violent crime rate overall within the County. The City needs to maintain a safe and secure environment in order to encourage private investors for both business and residential development. The City is

aware of this need and, as the record shows, has invested in its police department. That investment has contributed to the City's rebirth. As noted above, staffing levels have substantially increased. The Street Crime Unit has been expanded and arrests have increased among those who deal in drugs and weapons. In the last few years, there has been a sharp decline in gunshot victims, a fact that has been attributed to a sharp increase in gun seizures. Violent crime has sharply declined. Increased staffing levels and stricter traffic enforcement have contributed to a decline in criminal activity. Evidence showing increases in beach activity, residential construction and business development understandably parallel the increase in law enforcement effectiveness.

Police Officer Eugene Dello, who is also President of PBA Local 6, testified that there has been an increase in police department morale due to increased resources and expert new leadership. More recently, the City appointed a new Chief of Police, Mark Kinmon. Chief Kinmon has managed the increase in the number of police officers and the increased effectiveness in crime-fighting efforts. Chief Kinmon also testified. In a January 29, 2009 memorandum to police department personnel he attributed the department's increased effectiveness in large measure to the efforts of the sworn personnel [P. Ex.16]:

I would like to thank each member of the department for your efforts throughout the year and for all that you do daily. You have all contributed in your own way towards making the city safer and adding to the success of the police department.

It is by no accident that in 2008 the city experienced a significant reduction in violent crime, that motor vehicle summonses dramatically increased from 10,116 in 2007 to 18,927 in 2008, that the departments clearance rate for Part I offenses has improved from years past, that 61 firearms were taken off city streets in 2007 and 60 in 2008 or that driving under the influence cases increased from 32 in 2007 to 65 in 2008.

These successes happen for a reason and that reason is all of you. Department success and improvement comes not from our Patrol Division or just because of the work that our Detective Bureau does or the number of arrests and significant narcotics cases that our Street Crime Unit generates or because of any single member of this department. It can be attributed to the collective efforts of every member of the Police Department working together as a team. Police Officers, Special Officers, Civilian Personnel, Dispatchers. Everyone doing his or her part to make it better.

You all have something to offer and a way to contribute. Each of us owe it to this community, residents, visitors, business owners, to do something positive to provide a feeling of a safer community or to help improve someone's quality of life, and to remain courteous and professional under the most difficult situations.

At a time when the economic condition of our country is so devastating to so many and the crime rate is expected to rise, it is even more important than ever that we stick together as a team and stay focused on making progress and accomplishing a safer community, lowering the crime rate and reducing violent crimes. We can accomplish this by working together as a team and not criticizing each other for assignment or position that we may have within the department or because of an employee's interests or ideas. We don't always know what "that officer" is doing but we tend to take for granted that they are fooling around on company time or useless when in fact that officer may be changing someone's life for the better.

Continue to do the great job that you all have been doing whether that be traffic enforcement, narcotics enforcement, writing thorough investigation reports that aids the detective bureau in clearing cases, communicating and exchanging information with each other, working in the schools, checking businesses for break-ins at three in the morning, or something as simple as knocking on a few doors just to introduce yourself and ask if everything is alright in the neighborhood or if there is anything that the police can do.

If we continue to do these things, help and not hurt each other, make good decisions, ask questions when we don't have the answers, then in 2010 we will be able to say that 2009 was an even better year.

As the record before me indicates, a perplexing dilemma is that law enforcement's critical role in creating an environment where redevelopment can flourish is costly and these costs represent a strain on the City's budget. The City must grapple with the need to expand the department's resources and reward law enforcement personnel within a budget that must meet spending and revenue caps with unpredictable state support and, as the record reflects, with taxpayers who live on low per capita and median family income, many of which receive public subsidy. The City must also meet the demands of maintaining of other important public services such as a paid Fire Department, a Department of Public Works and a clerical and administrative staff. All of the above provide a basis for the City and the PBA to each claim that the critical statutory criterion, the interest and welfare of the public, weighs in favor of the arbitrator adopting its own proposals.

The PBA contends that the interests and welfare of the public will be better served by the adoption of its proposals over the City's. The PBA points out that the increased use of the City's attractions and beach revenues during the day and night represent increased work load for police officers who should be rewarded for their efforts. The Unions argue that the City and the renewed civic pride arise in part from law enforcement efforts where new directions have been

set since the beginning of the last contract in 2004. Citing statistics in evidence, the PBA shows that there has been a sharp reduction in the crime rate between 2004 and 2008:

**CHANGES IN CRIMINAL ACTIVITY BASED ON
NEW JERSEY UNIFORM CRIME REPORT STATISTICS (P-7)**

	2004	2008
Uniform Crime Report Crime Index	1,438	1,267
UCR Crime Report	2,019	1,795
UCR Violent Crimes	360	319
UCR Non-Violent Crimes	1,072	946

At the same time, the PBA reports a decline in motor vehicle and pedestrian accidents and substantial increases in DWI arrests and summonses, non-parking and parking:

NON CRIMINAL STATISTICS 2003 COMPARED TO 2008 (P-7)

	2003	2008	% of Change
Motor Vehicle Accident	993	686	- 31%
Pedestrian Accidents	30	28	- 7%
DWI Arrests	30	65	+116%
Summons (Non Parking)	3,579	10,06	+355%
Parking	2,997	8,221	+365%

The PBA also notes expanded services and activities performed by the department including, but not limited to, the following:

- Split Shift Crime Unit (new)
- Traffic Unit (new) – Includes Crash Reconstruction team
- Mounted Unit – Two (2) Horses and Motorcycles to be added in the Immediate Future
- Expanded K-9 Unit – Two (2) More Dogs (Tracking Dogs and Drug Dogs)
- Grate Gang Unit with Three (3) Officers
- Citizens on Patrol (COPS) Given Two (2) Vehicles
- School Resource Officers – Now SRO Unit with Three (3) Police Officers and Lieutenant
- Homeland Security Liaison
- Sketch Artist (new)
- Honor Guard (new)
- New Alcohol Testing Equipment
- MDT in Vehicles
- New Computer Systems and Digital Radio System
- Four (4) Wheel Drive Vehicles
- New Weapons – Duty Weapons/Shotguns

The PBA also reports that there has been a sharp increase in calls for service between years 2003 and 2008. In 2003 there were 32,826 calls for service compared to 39,213 in 2008, an increase of 19.5%.

The City does not challenge the department's productivity and the role it plays in the City's success. But it emphasizes that wage and benefit levels and any increases must fit within the City's budgetary scheme. Here, it contends that

meeting the PBA's demands would require a reduction in essential government services and force the layoff of City employees. The City emphasizes that the demographics in Asbury Park must be examined in order to determine the impact of the Unions' proposals on the City. It argues that the City has a high percentage of persons living at the poverty level and that a substantial portion of households receive public aid or social security. This is said to show that the City is unable to shoulder the fiscal burdens that would be caused by awarding the PBA's proposals. According to the City, its own proposals would further the interests and welfare of the public because of the City's budgetary distress and the inability of its taxpayers to create the revenue necessary to fund the costs of the Unions' demands. In short, it must impose a multi-year freeze or suffer internal dislocations and negative impacts on the public.

The City urges rejection of the Unions' emphasis on comparability evidence. Citing documents in evidence, the City submits that its police officers ranked 2nd and \$8,500 above the average in starting salaries out of 37 Monmouth County municipalities the City has chosen for comparison purposes. At the maximum salary level, the City concludes that its police officers rank 22nd out of the 37 municipalities and are \$300 above the average. At the same time, the City concludes that the City ranks much lower than these municipalities in terms of per capita, median family and median household income. When the City compares salary schedules, it submits that only four of these Monmouth County municipalities have fewer steps from starting to maximum salary than does

Asbury Park. The City also argues that the comparability criterion does not support the Unions' proposals to increase the clothing and maintenance allowance. The City urges rejection of the Unions' demands to have compensatory time calculated at double time rates and the SOA's proposal to provide an employee who works extra duty with the option to be compensated in either compensatory time off or in paid compensation, both at the time and one half (1 ½) rate.

The City further contends that an adoption of its health insurance proposal would help ease the City's fiscal problems while still maintaining an attractive health insurance program for its police officers compared with many municipalities who require employee contributions to offset escalating health insurance premiums. The City submits that an employee under the State Health Benefits Direct Ten Plan would receive better benefits when utilizing an in-network physician compared to the current more expensive health insurance plan that the City seeks to change.

The Unions disagree with the City's use of comparability data. They contend that the comparability criteria favor the awarding of its proposals. The Unions emphasize that the City's police officers work 2,080 hours, a work year that generates more work hours than many other departments in Monmouth County. They submit that the complexity and danger associated with law enforcement work must be taken into account when making a comparison

analysis. The Unions conclude that unit employees are in an extremely poor relative position compared to the municipalities that it has selected for comparison purposes. For the purpose of comparison, the Unions submit a salary chart reflecting that the Asbury Park 2007 maximum of \$82,932 is \$9,097 below the 2008 average top base pay of \$92,029 within the municipalities it has selected for comparison purposes.

The Unions further argue that the City's longevity program compares unfavorably to other municipalities. According to the Unions:

[T]he Asbury Park Police Officer's Longevity Benefit ranks near the bottom of all listed Departments. It would take an increase of Two Thousand Two Hundred Eighty Dollars (\$2,280.00) in 2008 alone just to catch average. This represents an increase in the Asbury Park longevity program maximum of 42.5% for 2008 alone just to catch average. One most important note must be made with respect to the Asbury Park methodology of computing longevity. The longevity program in Asbury Park is calculated on a flat dollar value. It does not increase as the wage base increases. The majority of other Departments exhibited on Chart No. 5 on the preceding page have a percentage formula for calculation. Applying a percentage formula to wage increases as they occur over the years increases the value of the longevity itself in dollars. This is not so in Asbury Park. As the base rate increases over years, the flat dollar longevity stays the same and therefore is actually worth less with respect to the base wage in percentages.

The Unions further contend that the City's proposal for a two year wage freeze is unsupported when examining annual base wage rate changes in other municipalities over the 2008 and 2009 time period. The Unions make calculations from 26 labor agreements offered into evidence reflecting average increases of 4.1% in years 2008 and 2009, with increases of 4.05% and 4.0% for

contract years 2010 and 2011 respectively based upon a more limited sample size for those years. The Unions dispute the validity of the City's reference to being an urban center by citing an interest arbitration award in the City of Trenton which provided increases to police officers of 3.76% in 2006, 3.75% in 2007, 3.50% in 2008, 3.75% in 2009 and 3.75% in 2010. The Unions reject the City's evidence concerning private sector comparisons based upon its view that law enforcement is unique with respect to demands and requirements which do not exist in the private sector. These include the dangers of the work, the power of arrest, the carrying and use of weapons, the requirement to perform police powers while both on and off duty and the intense training requirements for police officers.

Both the City and the Unions have introduced substantial evidence concerning the statutory criteria that deal with financial considerations. These include the financial impact of their respective offers and the lawful authority of the employer concerning its statutory spending limitations and caps on increases in the tax levy. In the Unions' view, Asbury Park has a strong and growing ratable base and a tax rate which does not place an excessive tax load on its taxpayers. The Unions submit evidence showing the existence and growth of many restaurants and entertainment centers within the City as well as a flurry of sales in ABC licenses. The Unions note the location of a new bank in the City, the first new bank that has located within the City in 40 years. The Unions also refer to several new residential complexes, businesses and recreation areas, all

of which, in its opinion, will reflect in significant growth in the City's ratable going forward.

Upon review of the City's financial documents, the Unions do not agree that the City is in a perilous financial situation. The Unions note that the City's Annual Financial Statement reflects a tax collection rate of 99.68%. From this they conclude that there is a lack of tax pressure on City taxpayers. The Unions point to the City's ratables in terms of their "aggregate true value" at more than \$1.4 billion and the fact that the City's tax rate of only 30.43%, while appearing to be high, has been calculated on a ratio of assessed value to true value (municipal rate of 2.485 and total rate of 4.623 in 2007). Referring to the 2008 budget, the Unions point out that the City's own calculations from official records show that it was below both the budget cap and the tax levy cap, thus supporting the Unions conclusion that its proposals would not compel the City to exceed its statutory limitations. The Unions further point out that the City maintained a fund balance of more than \$12 million as of December 31, 2008 and had miscellaneous unanticipated revenues of \$442,000 at the end of 2008.

The City disagrees with the Unions' budget analysis. It emphasizes that its final offer is justified in light of the 2008 budget and revenue projections for 2009. Because of the uncertainties over the revenue portions of its budget, the City urges that no more than a two year agreement should be awarded because of fiscal uncertainties that extend beyond 2009.

The City takes strong note of its declining surplus balance. The City acknowledges that its surplus balance increased from 2006 to 2007 by \$400,000. This extended its surplus balance in January 1, 2007 to almost \$3 million. The City asserts that this snapshot is no longer valid. According to the City, its surplus dramatically declined one year thereafter to a level of \$625,000. The City claims that the surpluses used to subsidize each succeeding budget have all but vanished. Extending this analysis to 2009, the City represents that the amount of surplus available to be anticipated to support future budgetary expenditures had shrunk to zero. These circumstances are said to impact on the City by forcing the City to either create other revenue sources and/or by cutting expenditures in order to balance the budget. Turning to potential revenue increases, the City paints a bleak picture. At the time of hearing, the City offered testimony from Administrator Reidy that it expects a decrease in state aid of at least 10% to 15%. If such a decrease were to be realized, this source of City revenue would be reduced by \$2 million in 2009.

Further, the City anticipates realizing \$400,000 less in non-recurring revenues from 2008 to 2009. According to the City, the tax levy cap legislation limits the City to a \$404,000 increase in its tax levy in 2009. Based upon these circumstances, the City makes the following argument:

A review of the City's 2008 budget (Exhibit 2) in conjunction with the computer printout of revenue generated in budget year 2008 (Exhibit 3) and in conjunction with the restrictions on the municipal

tax levy underscores both the short-term and long-term budgetary issues the City must face.

In 2007, the City realized \$25,222,587.00 in General Revenue while anticipating \$25,636,133.00 in General Revenue. Without reducing 2007 appropriations, the City would have to find \$413,546.00 in revenue just to balance the budget. In 2007, the City realized \$11,151,851.00 in tax revenue while anticipating only \$10,511,616.00, a difference of \$640,235.00. Therefore, after covering the \$413,546.00 revenue shortfall, only \$225,689.00 was available to regenerate surplus.

In 2008, the City realized \$27,825,231.00 in General Revenue while anticipating \$28,303,001.00 in General Revenue. Without reducing 2008 appropriations, the City would have to find \$477,770.00 in revenue just to balance the budget. In 2008, the City hopes to realize \$11,731,400.00 in tax revenue while anticipating only \$11,160,401.00, a difference of \$570,999.00. Therefore, even if the projected tax revenue is accurate, after covering the \$477,770.00 revenue shortfall, only \$93,229.00 would be available to regenerate surplus, even less than in 2007. Unfortunately, more realistic projections for tax revenue fall short of this "wishful" projection, leaving no revenue available to regenerate surplus in 2009.

The revenue picture is now clear. The decrease in anticipated surplus from \$605,000.00 in 2008 to **zero** in 2009; the decrease of \$2,000,000.00 in 2008 to at best \$10,000,000.00 in 2009; the anticipated \$400,000.00 decrease in non-recurring revenues, and; the statutorily limited increase in revenue of \$440,000.00 leaves the City with a \$2,565,000.00 revenue shortfall in 2009. Unless the City can somehow find \$2,565,000.00 in revenue, 2009 budget appropriations will have to **decrease** by \$2,565,000.00 from 2008 appropriations.

According to the City, because it has a \$2,565,000 revenue shortfall in 2009, even if it were to use the \$1,639,611 that it reserved in 2008 for 2009, it would still have to cut \$925,389 from the 2008 budget in order to balance the 2009 budget. Pointing to its projected budgetary expenditures in 2009, the City totals required expenditures for items such as pension and insurance as costing

slightly over an additional \$1 million. When coupled with the amounts the City claims it must cut from the 2009 budget, the City concludes that it will have slightly under \$2 million less to appropriate in 2009 than it did in 2008, excluding any salary increases for employees in 2008 and 2009. Thus, according to the City, it will have little option but to implement layoffs even if its proposal for a wage freeze is awarded.

The City cites additional statutory criteria that it asserts supports its proposals. One such criterion is the cost of living. The City submits a chart reflecting comparisons of wages received and the CPI dating from 2007 back to 1995. From this it concludes that salaries have increased by 16.6% over the cost of living when comparing wage increases to increases in the consumer price index over this time period. It calculates an average salary increase of 1.28% above the cost of living over the 13 years. In response, the Unions reject the cost of living data submitted by the City as being a major consideration in the determination of wages. It asserts that the arbitrator is required to give weight to the various criteria other than the cost of living and it urges that less weight be given to the cost of living criterion than the other statutory criteria.

The City contends, and the Unions disagree, that the continuity and stability of employment criterion would be furthered best by awarding the City's wage freeze proposals. The basis for its view is that a status quo on compensation would best allow the City's police department to maintain itself and

continue employment at present levels. To do otherwise would increase the likelihood of a reduction in the present levels of employment which would disrupt, in the City's view, the continuity and stability of employment. The Unions contend otherwise arguing that the basis for a multi-year wage freeze has not been supported, would deprive employees of the rewards they deserve for increases in their effectiveness and productivity and cause transfers of City police officers to other departments who provide better pay and less dangerous environments.

The Unions also urge rejection of the Employer's healthcare proposal as not having been proven based upon the City's alleged failure to provide cost-outs that would reflect cost savings nor specifics of relative coverage under the plans. The Unions also urge rejection of the proposed two year contract duration. It submits that if the City's position were upheld there would be no contract term left after the issuance of the award. The Unions also offer argument in support of the compensatory time proposals. On these issues it offers the following argument:

The compensatory time proposal for CTO to be compensated at the double time rate, is the same as exists and has existed for many years in the Asbury Park Fire Department. Such a provision is of mutual benefit. Employees are encouraged to use compensatory time rather than seek cash overtime. Cash overtime is of course a budgetary issue and must be accounted for on an annual basis. Compensatory time is utilized when the employee requests same and the Employer in advance approves same. There is avoidance of compounding or pyramiding of overtime obligation. This is a cash saving to the Employer and a benefit due to the increased value of time over dollars to the employee. This is a "win-win" situation for both parties. Consistent with this issue and longstanding precedent with the PBA, the SOA only proposes a

modification of Article IV, Paragraph D (page 9/J-2) so as to provide that an employee in the SOA who works extra duty would have the option of being compensated in compensatory time off or in paid compensation. The same concept and argument applies. This is again a cost-saving measure to the City. Overtime would not be paid in the same frequency as exists. Rather, there would be a foreseeable increase in compensatory time off as compensation thereby relieving any cash pressure that the Employer may maintain exists.

DISCUSSION

I have thoroughly reviewed the parties' positions and have carefully considered the evidence in light of the statutory criteria and will next proceed to apply that criteria in order to render a reasonable determination of the issues. In interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. I have applied that principle to my analysis of the issues in dispute. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. Any decision to award or deny any individual issue in dispute will also include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award.

The City and the Unions disagree on the duration of the Agreement. The Unions propose a four-year Agreement to be effective January 1, 2008 through December 31, 2011 while the City proposes that a contract extend from January 1, 2008 through December 31, 2009. The issue of duration must be resolved by

balancing certain important considerations. Among them include the nature of the City's financial status to determine whether it can finance the costs of a new agreement within the required time periods, the need to provide harmony and stability in the labor-management relationship, including the need to maintain the department's increased effectiveness and productivity and the desirability of maintaining the continuity and stability of employment within the department. I am persuaded that an award of three years duration resulting in a new contract expiration of December 31, 2010 would be consistent with the above considerations and, by doing so, will best further the interests and welfare of the public. Accordingly, the terms of the Award shall be January 1, 2008 through December 31, 2010.

I next address the Unions' proposals that concern compensatory time. They seek that a compensatory time rate calculation be set at double time and seek support in the fact that the Asbury Park Fire Department enjoys this premium rate. An award of compensatory time at a double-time rate could reasonably impact the police department's staffing requirements by creating more paid time off. The costs of the proposal cannot be determined on the record before me. Time off could, as the Unions submit, cost less than cash, but the cash cost component could rise by assigning replacements at premium rates. In addition, if the City decides to engage in a reduction in force, the increase in paid time off could be an aggravating factor. The comparison to the fire department, standing alone, does not represent a sufficient basis to award this

proposal. After review of both collective negotiations agreements, it is apparent that the operations of the respective departments are dramatically different as well as their respective missions. The hours of duty and tours of duty differ as well as the relative manpower strengths of the departments. To impose the identical compensatory time arrangement that exists in the fire department on the police department merely because there currently is a difference does not represent a sufficient basis to award the proposal. I express no opinion on the merits of the rate that exists in the fire department. Presumably, there is a history and a foundation for how this rate has been calculated in the fire department but there is no evidence that the basis for that foundation is also present in the police department. Accordingly, I do not award this proposal.

I also decline to award the proposal of the SOA to have the option of receiving compensation for "extra duty work" in the form of compensatory time rather than in cash. As it is commonly understood, requests for extra duty work are made by outside vendors who are required to provide payment to the City at the rate required by an arrangement between the City and the PBA in addition to an administrative fee for the costs of administering the transaction. The SOA has not established a procedure for how the City could require cash payments from an outside vendor but then keep such monies without making such cash payments to the officers who are employed to perform the extra duty assignments. Even if the SOA's proposal was construed to apply only to court appearances or to other undefined forms of extra duty work, insufficient basis

has been shown for altering the existing procedure set forth in Article IV, Section 9. The analysis provided above concerning additional paid time off and its potential impacts on the department also apply here.

The SOA has also proposed that the Inspector's rate be set forth in the contract with a rank differential calculated as an extension of a differential between Lieutenant/Captain, Sergeant/Lieutenant and Patrol Officer/Sergeant. I do not award this proposal inasmuch as the SOA has not met its burden of proof to have this proposal awarded. Due to the City's financial constraints, any increases awarded should apply consistently to all top rates of pay.

The Unions have proposed an increase in the clothing allowance of an additional \$500 per year. The Agreement at, Article XIV, Section A, currently states that all employees shall receive a clothing/uniform allowance of one thousand (\$1,000.00) dollars annually in addition to a uniform maintenance allowance of five hundred (\$500.00) dollars per year and that this uniform maintenance allowance be paid on June 1 of each year. The record does not reflect that the existing clothing pay of \$1,500 compares poorly with that provided for in comparable municipalities within the County. The Unions' proposal for a \$500 increase has not been justified on this basis. However, the labor agreements in evidence also show that modest increases have been provided in a large majority of those Agreements during the contract term, presumably to cover additional costs that accrue for clothing maintenance over the periods of

the several prior years. I award a \$100 increase in the uniform maintenance allowance to be paid, as required by the Agreement, on June 1, 2010.

The City proposes that it provide health insurance benefits pursuant to the New Jersey State Health Benefits Plan, and specifically, to have such benefits be as enumerated in the Direct 10 Plan. It does not propose the inclusion of an employee contribution towards premium costs. According to the City, its health insurance proposal will allow for some relief from escalating health insurance premiums while maintaining and meeting the police officers' need for comprehensive health insurance coverage. The City provides documentary evidence comparing the benefits and costs for the respective plans. It concludes that with the exception of some minor co-pays, a police officer utilizing an in-network physician will actually receive improved benefits than under the City's present health insurance plan. Moreover, the City points out that its financial posture would be improved by extending the terms of the Direct 10 plan throughout the City's bargaining units. It would not be able to accomplish this without an awarding of this proposal in this proceeding.

The PBA urges rejection of the City's health insurance proposal. It points out that the City has not provided cost factors nor a plan document of coverage under Direct 10. Without providing the cost impact of the change, the PBA asserts that the arbitrator cannot determine the total net economic change nor provide adequate reasoning to award the City's proposal.

After due consideration of the respective positions of the parties, I am persuaded that the awarding to the City's proposal represents the more reasonable determination of this issue. The interests and welfare of the public will be served by allowing the City to assign its health insurance coverage to a carrier who could provide the benefits and coverages of the Direct 10 plan or to the New Jersey State Health Benefits Plan. Without an authorization to do so for the police units, this goal cannot be accomplished on a city-wide basis. The general public will benefit by the City's ability to maintain health insurance coverage at less comparative costs. This, however, cannot be the sole consideration. A critical factor is the impact on the police officer who can be directly and intimately affected by changes in health insurance carriers. The police officers have had comprehensive health insurance coverage and should have a reasonable expectation that such coverage will continue. The City's proposal balances these interests and also allows for budget flexibilities in the future.

As the PBA argues, the actual cost savings produced if, and when, the change is made have not been provided but they cannot be reasonably projected into the future due to premium increases that cannot be determined on a multi-year basis. However, I am satisfied on this record that the benefit levels of the Direct 10 Plan compared to the existing carrier and program will provide cost

savings to the City even in the absence of the availability of future premium costs.

The documents presented also satisfactorily establish that the scope and breadth of benefits provided under the Direct 10 Plan provide substantially similar coverage to that which presently exists and with reasonable co-pays especially when utilizing the broad scope of in-network physicians. The record also reflects that if, and when, the City assigns the health insurance coverage to the New Jersey State Health Benefits Plan, the coverage will parallel the coverage presently being received by police officers many Monmouth County municipalities. These include Belmar, Bradley Beach, Fair Haven, Freehold Borough, Marlboro, Middletown, Ocean Township and Rumson.

Based upon all of the above, I award the City the authority to provide health insurance coverage pursuant to the New Jersey State Health Benefits Direct 10 Plan or by any other carrier who can match the benefit and coverage levels whenever the City determines that it is feasible to do so. Any such change shall not be made without at least sixty (60) days notice to the Union.

The City and the Union sharply disagree on the issue of salary as is evidenced by their respective proposals. The PBA and the SOA propose annual increases of 5% over the life of a four year contract while the City proposes a two year wage freeze. I am not confined by the statute to select between these

adversarial offers. Instead, I am persuaded, after review of all of the evidence and applying the relevant statutory criteria to that evidence, that the parties' own emphasis on a single statutory factor cannot be dispositive of the wage increases that should be awarded to the Asbury Park Police Department.

In evaluating the merits of the parties' proposals and, in the fashioning of an award, I am required to render a reasonable determination of the issues in dispute. The arbitrator is required to judge which criteria are relevant and to accord weight to each such factor. In my view, all of the criteria are relevant but not entitled to equal weight.

The salary issue is, by far, the most significant issue in this proceeding. As the financial records demonstrate, public safety personnel, police and fire, make up a substantial part of the City's budget. Thus, an award in the police department, will, more than likely, reasonably impact on the fire department and possibly on municipal employees in the non-public safety departments. The City's predominant focus is on its finances, its revenue shortfalls and on its ability to fund an award. It seeks little or no weight to be given to comparability with other law enforcement departments. On the other hand, the Unions focus mainly on the comparability evidence, although they contend that the evidence does not support the City's position that it is experiencing a fiscal crisis. I first address the comparability data. Comparisons typically involve relative salary and benefit levels as well as negotiated changes that are made to those levels during the

relevant contractual time period. The statute, at N.J.S.A. 34:13A-16.2, provides guidelines for determining the comparability of municipalities for the purpose of evaluating the weight to be given to evidence urging the application of comparability evidence. The parties have submitted comparability evidence but the record does not show an argument on which municipality or municipalities are the most comparable. Asbury Park is a unique entity and defies immediate comparison. The municipal profiles for Neptune City and Bradley Beach appear to be the most akin to Asbury Park for this purpose.

The Unions have established that the law enforcement agreements in evidence show that average base salary increases for 2008 and 2009 rose at, or slightly above, 4%. While this is true in general, it is also an accurate reflection of 2008 and 2009 increases in the neighboring communities of Bradley Beach, Neptune City for those years and in Neptune Township for the last year of its contract year in 2008. When comparisons are made only to base salaries, rather than to changes that have been made to base salaries during those years, the record reflects maximum pay rates of \$87,554 in Bradley Beach, \$83,194 in Neptune City and \$91,356 in Neptune Township all in contract year 2008. The maximum base pay for an Asbury Park police officer is \$82,932 but at the 2007 salary level, the last year of its expired collective negotiations agreement.

The City's proposal for a wage freeze in 2008 and 2009 would alter the comparative relationships between the City of Asbury Park and Bradley Beach

during these years. But, the statutory criteria embraces other factors in addition to comparability. While law enforcement comparability is relevant, other criteria are in competition with comparability and must be considered for their relevance in rendering a determination on the wage issue. As previously stated, the comparison of salaries between the City of Asbury Park with other municipalities that employ police officers is not, and cannot under the terms of applicable law, be the only criterion that is relevant when evaluating the salary issue. Chief among the others include the financial impact of an award on the governing body, its residents and taxpayers and the interests and welfare of the public. As to this latter criterion, it necessarily implicates all of the remaining criteria either directly or indirectly, including the statutory budget and tax levy caps.

The record concerning the criteria that concerns the City's finances is mixed and contains uncertainties. The Unions point out that the City maintained fund balances of \$617,877 in 2007 and \$890,689 in 2008. It argues that these facts show that the City has had the ability to regenerate surplus funds. Moreover, the Unions submit that the official financial documents reflect that the City is beneath the budget cap and in 2008 was more than a million and half dollars under the maximum allowable amount it could raise through taxation.

The City does not dispute that its budgetary posture had gradually improved going into 2008. The Unions notes this fact by pointing out that the municipality had modest tax increases from 2004 through 2007, a spotless tax

collection rate in 2008, a net debt well below the statutory debt limit and a strong fund balance as of the end of 2008. The City responds, however, that budgetary facts and circumstances dramatically changed thereafter, during the time of direct negotiations and mediation with the Unions, which placed itself in a position in which it found itself compelled to make a final wage offer that only maintains the 2007 status quo. The City points to having a rapid deterioration of surplus balance because of declining revenues including State aid. This has caused the City to cancel \$1,639,611 that it had reserved as of January 28, 2009 from which it had intended to fund a salary increase. Based upon its budgetary analysis, the City claims a \$2,565,000 revenue shortfall in 2009 that would require a \$925,389 reduction in the 2009 budget simply to remain in balance.

The Unions seek denial of the City's position projecting substantial decreases in State aid and other revenue decreases in 2009 and thereafter because such projections were not grounded in certain fact at time of hearing. This is said to undercut the City's argument that it may be forced to resort to its statutorily limited ability to raise revenue by increasing the municipal tax rate, a tool that it eschews because of the socio-economic characteristics of its residents as well as evidence that shows a sharp decline in budget surplus during the City's development of its 2009 budget.

In evaluating the evidence, I find that the interests and welfare of the public are served by rewarding the department's increased productivity and

efficiencies with a salary increase but at levels well below that sought by the Unions and with deferred increases that will place less strain on the City's finances. The department has elevated the safety level of the residents by reductions in violent crimes, the removal of weapons on the streets through increases in arrests and summonses issued. A wage freeze over a two year period would likely impact on departmental morale and potentially impact upon its ability to achieve its mission going forward. This, in turn, would negatively impact on the public which requires a strong law enforcement presence to sustain the continuing redevelopment effort. A wage freeze would result in a substantial erosion of salaries in Asbury Park relative to those provided for in Neptune City. The salaries for City police officers that were slightly ahead of Neptune City in 2007 would fall dramatically behind in 2008 and 2009 by the freezing of their wages. A balance must be struck between the level of salary increases and the realities of the City's budgetary needs.

I conclude that a reasonable determination of the salary issue is to provide a 2.5% increase on October 1, 2008, a 2.5% increase on July 1, 2009, followed by a 2.5% increase on July 1, 2010. The City would not change the wage rate from January 1, 2008 through October 1, 2008. The October 1, 2008 increase will cause a payout of 0.625% in 2008 with the remaining 1.875% paid out in the ensuing year as a result of the October 1 base wage adjustment. The July 1, 2009 increase will cause a payout of 1.25% in 2009 with the remaining 1.25% paid out in the following year. The July 1, 2010 increase will cause a payout of

1.25% in 2010 with the remaining 1.25% paid out in the following year. The precise cost of the award cannot be determined due to fluctuating staffing levels within the department, retirements, promotions, and increases or decreases in staffing levels could affect the total salary payouts. However, based upon a 2008 census of 87 unit employees at aggregate salaries of \$7,517,284 employees, the cost to the City would approximate \$46,986 in 2008 with the carryover of \$140,949 into 2009. In 2009, the July 1 increase of 2.5% would cost \$96,315 with an equivalent amount rolling over into 2010. In 2010, the July 1 increase of 2.5% adjustment would cost \$98,723 with an equivalent amount rolled into calendar year 2011.

The increases awarded are well below comparable increases in surrounding municipalities and for those in general for contract years 2008 and 2009, although the arbitrator takes notice of settlements and awards for these years and years going forward that reflect, as here, decreasing levels of increases for contracts negotiated during the time frame of this proceeding.

The monies required to fund the award will require adjustments to the City's budget, and perhaps to staffing levels in the department. Based upon this record, the costs can be funded without compelling the City to exceed its budget and tax levy caps. The requirement to maintain and fund an effective law enforcement department in Asbury Park cannot be met without some assumption of costs that place a burden on the City's finances. Under all of the facts and

circumstances herein, the balancing of the City's finances with the comparability data are consistent with furthering the interests and welfare of the public in maintaining adequate police services.

These above criteria are relevant and are entitled to the most weight. The remaining criteria are relevant but do not dictate a contrary result. The continuity and stability of employment factor supports a contract of modest increases during this contract term. The City's claim that any increase will cause a reduction in force must be balanced by the testimony of PBA President Dello that the department routinely experiences loss of personnel to other departments whose wage levels are higher. I have also examined the many contracts in evidence to assess the overall compensation presently received in Asbury Park with other law enforcement departments. That assessment reflects that Asbury Park receives benefits at or above other departments in certain areas such as clothing allowance but benefits at or less other departments in certain areas such as longevity where it receives a dollar amount benefit. The many departments that receive a percentage longevity benefit will have an increased longevity benefit along with salary increases while this department's longevity benefit will remain level over the three year term. There is nothing in the overall levels of compensation currently being received that would dictate a different result than that awarded herein. I have also considered the cost of living data. The cost of living has decreased to a 1.7% core level in 2008 which is down from the higher levels of 2006 and 2007. This, in part, supports an award of wage levels that are

lower than those negotiated during the years where the data reflects higher levels of inflation.

Based upon all of the above, I respectfully enter the terms of the following award.

AWARD

1. All proposals by the City and the Unions not awarded herein are denied and dismissed. All provisions of the existing agreements shall be carried forward except for those modified by the terms of this Award.

2. **Duration**

There shall be a three-year agreement effective January 1, 2008 through December 31, 2010.

3. **Article XIV – Uniform Allowance**

The uniform maintenance allowance shall be increased by \$100 effective June 1, 2010.

4. **Health Insurance**

I award the City the authority to provide health insurance coverage pursuant to the New Jersey State Health Benefits Direct 10 Plan or by any other carrier who can match the benefit and coverage levels whenever the City determines that it is feasible to do so. Any such change shall not be made without at least sixty (60) days notice to the Union.

5. **Salaries**

The existing salary schedules for the PBA and the SOA shall be adjusted by the following percentages at each step effective and retroactive to the dates of such adjustments.

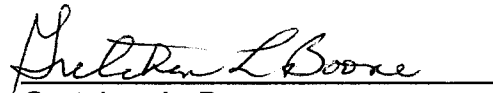
Effective October 1, 2008 – 2.5%
Effective July 1, 2009 – 2.5%
Effective July 1, 2010 – 2.5%

Dated: May 16, 2010
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 16th day of May, 2010, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2014