

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between:

Borough of Hasbrouck Heights,

Public Employer,

- and -

PBA Local 102 (Hasbrouck Heights Unit)

Union.

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2010-053

**Before
Lawrence Henderson
Arbitrator**

Appearances:

For the Borough of Hasbrouck Heights

Mark S. Ruderman, Esq.
Ruderman & Glickman, P.C.
Of Counsel

Ellen M. Horn, Esq.
On the Brief

For PBA Local 102

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

INTRODUCTION

PBA Local 102 (Hasbrouck Heights Unit) and the Borough of Hasbrouck Heights are parties to a collective negotiations agreement that was in effect from January 1, 2005 until December 31, 2009. (Exhibit J-1¹) Negotiations between the parties for a successor agreement reached an impasse and, on January 19, 2010, the dispute was submitted to the Public Employment Relations Commission requesting interest arbitration pursuant to N.J.S.A. 34:13A-14 and N.J.A.C. 19:16.² I was mutually selected by the parties. On March 25, 2010, PERC appointed me to serve as interest arbitrator.

On June 9 and July 15, 2010, I conducted mediation sessions with the parties in an effort to assist them in arriving at a voluntary settlement. Those efforts did not achieve a settlement. Accordingly, on December 1, 2010, I convened a formal interest arbitration hearing at the Borough Hall in Hasbrouck Heights. At the hearing, which was recorded by a stenographer, the Borough made a motion that the matter be held in abeyance pending enactment of pending legislation that would impact interest arbitration and municipal finance. (Tr. pp. 10-14) The PBA opposed the motion. (Tr. pp. 14-15) I denied the motion. (Tr. p. 17)

The hearing then proceeded and the Borough and the PBA argued orally and submitted a substantial amount of documentary evidence in support of their respective

¹ Exhibits submitted jointly are referred to by the letter "J." PBA exhibits are referred to by the letter "P." Borough exhibits are referred to by the letter "E."

² P.L. 2010, c. 105 revised certain procedures for interest arbitration petitions filed on or after January 1, 2011. Since the petition in this matter was filed before that date, the new procedures are not applicable in this proceeding. Accordingly, unless otherwise noted, references to statutes are to pre-2011 statutes.

final offers. Testimony on behalf of the PBA was offered by Thomas Tozzi, a Borough Police Lieutenant. There was no testimony on behalf of the Borough.

On January 5, 2011, the Borough requested that the record in this matter be reopened. The Borough's request was based on a new statute, P.L. 2010, c 105, which amends *N.J.S.A. 34:13A-16* and is effective January 1, 2011. The new statute establishes limits on awards in interest arbitration proceedings that address agreements that expire on January 1, 2011 or any date thereafter until April 1, 2014. On January 13, 2011, the PBA objected, arguing that the new law does not apply in this matter since the agreement expired on December 31, 2009.

On January 17, 2011, I denied the Borough's request on the ground that it had not identified any new factual information that was not already in the record. Instead, I indicated that the Borough was making a legal argument that would be more suitable in a post-hearing brief that was due shortly thereafter.

On January 19, 2011, the Borough renewed its request to reopen the record and identified as new information "incremental increases in overheard costs in 2011-2012, such as moving up a step on the guide, longevity increments, etc, which result from roll-up costs." Such information, according to the Borough, was absent from the record and directly relevant to the first, second, and sixth criteria under *N.J.S.A. 34:13A-16g*, as amended by P.L. 2010, c.105. In the event I denied its new request to reopen the record, the Borough requested an extension of time to file its post-hearing brief.

On January 22, 2011, the PBA objected to the Borough's request to reopen the record. The PBA's objection repeated its contention that the new law does not apply.

However, the PBA did not object to the Borough's request for an extension of time to file a post-hearing brief.

On January 22, 2011, I granted the Borough's request to reopen the record with regard to the projection of longevity increments through 2012. In so ruling, I relied upon the standards in *Georgia Power Co.*, 118 LA 1491, 1492 (Dennis R. Nolan, 2003).

On March 23, 2011, the Borough filed the projection of longevity increments. The PBA did not file a response.

Each party filed a post-hearing brief, the last of which was received by March 23, 2011, when the record was closed.

N.J.S.A. 34:13A-16f (5) requires an interest arbitrator to issue an award within 120 days of selection or appointment. However, the parties may agree to extend the time for the issuance of an award. The parties did so at the hearing. (Tr. p. 6)

The parties did not mutually agree on an alternate dispute resolution procedure. According, *N.J.S.A.* 34:13A-16d (2) mandates that the procedure in this matter is conventional arbitration, which allows an arbitrator broad authority to render an award without being limited to choosing any portion of a final offer submitted by either party. Such a process is different than that of final offer arbitration where an arbitrator must choose between the final offers of the parties on all economic issues as a package and then justify that selection.

Pursuant to *N.J.S.A.* 34:13A-16f (1) each party submitted a final offer.

FINAL OFFERS OF THE PARTIES

PBA Local 102

1. **Duration:** Four years commencing January 1, 2010 through December 31, 2013.
2. **Salary:**

2010 – 3.5%
2011 – 3.5%
2012 – 3.5%
2013 – 3.5%

Borough of Hasbrouck Heights

1. **Duration** – Three years commencing January 1, 2007 through December 31, 2012.
2. **Salary and Longevity:**
 - a. 2010: 1.5%
2011: 0%
2012: 0%
 - b. Freeze starting salary.
 - c. Add five steps to salary guide for new hires only.
2. **Healthcare**
 - a. Effective July 1, 2011, any employee who is in Direct 10 shall pay the difference between Direct 10 and Direct 15.
 - b. Effective July 1, 2011, 1.5% of base salary for health insurance shall go to 2.5%. Effective July 1, 2012, such percentage shall go to 3.5%.
3. **Terminal Leave**

Employees hired after January 1, 2011 shall not be eligible for terminal leave.

4. Longevity

Any employee hired after January 1, 2011 shall not be entitled to longevity.

5. Personal Days

Personal days must be used during the year in which they are earned or they are lost.

6. Sick Days

Employees hired after January 1, 2011 shall be entitled to ten sick days per year.

STATUTORY CRITERIA

I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g, which states:

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

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

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local units property tax levy pursuant to section 10 of P.L. 2007, c.62 (C40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the

award for the current local budget year; the impact of the award for each income sector of the property taxpayers 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).

I must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria. N.J.S.A. 34:13A-16d (2).

BACKGROUND

This matter concerns the Borough of Hasbrouck Heights, a municipality in Southwest Bergen County, and PBA Local 102, an employee organization that represents

the Borough's police officers below the rank of deputy chief. (Exhibit J-1 Article II) In addition to patrol officers there are two captains, four lieutenants, and six sergeants.³ (Id.)

The Borough is one of 70 municipalities in Bergen County and comprises 1.5 square miles and, according the 2008 Census, had a population of 11,662. (PBA Power Point Slide #5) As noted in the 2000 US Census, the Borough had a median family income of \$75,032. (Exhibit E-3, Tab 3-1, p. 207) In 2007 the average property value was \$436,873 with a total property value of \$1.9 billion. (Id.) In 2007 the average property tax in the Borough was \$8,249. (Id.) The total general appropriation line item in the Borough's 2010 Municipal Data Sheet was \$18,060,623. (Exhibit P-22, Sheet 3)

The PBA and the Borough each contended that the nine statutory criteria weigh in favor of their respective proposals. Both sides submitted comprehensive briefs and thousands of pages of exhibits. The record includes, among other documents, the Borough's 2009 and 2010 municipal budgets, financial statements, collective negotiations agreements for police officers in other Bergen County municipalities, PERC-compiled settlement data; recent interest arbitration awards, and considerable comparative data, including crime data, and federal, state, and other data on the cost of living, private sector wage increases and economic trends.

³ At one point, there was uncertainty regarding the census of officers. The PBA initially claimed there were 29 officers in the bargaining unit. (Exhibit P-1) However, the PBA's witness testified that there were 27 officers. (Tr. 29) He later testified that he had forgotten that another officer was hired and was in the academy at the time of the hearing. In its post-hearing brief, the PBA cited the number at 27. (PBA post-hearing brief, p. 12) There has been turnover in the past two years. Two officers left in 2009 and another two officers in 2010. (PBA post-hearing brief, Chart No. 2) One officer was hired in 2009 and two in 2010. (PBA Power Point, Slide 3, Borough post-hearing brief, Tab 2) The record reflects that in 2009 there were 26 officers. (Borough's post-hearing brief, Tab 2, PBA Power Point, Slide 3) For purposes of cost calculations, I will utilize the census of 26 officers on the payroll as of December 31, 2009 that includes 14 patrol officers and the superior officer cadre noted above.

The following is a summary of the parties' arguments. Because of the substantial record developed at the hearings, the overview will not be exhaustive, although the entire record has been reviewed and considered.

POSITION OF THE PBA

The PBA supported its economic proposals with a review of evidence relating to the Borough's finances, statutory limitations on the Borough, and an analysis of comparability between Borough police officers with municipal police officers in other municipalities, including municipalities in Bergen County.

Other financial indicators presented and analyzed by the PBA included the financial profile of the Borough and other Bergen County municipalities. After this review, the PBA concluded that the Borough could fund the PBA's proposals without any undue impact on the governing body or residents. Moreover, the PBA believed that the Borough could do so without interfering with statutory limitations on spending and property taxes under the Cap Laws. The PBA's specific arguments under each of the statutory criteria are summarized as follows:

Interests and Welfare of the Public

The PBA asserted that the Hasbrouck Height Police Department is a full-service law enforcement agency in a Borough with approximately 12,000 "nighttime" residents located approximately ten miles northwest of Manhattan, with major roadways, such as Routes 17 and 46 and Interstate 80, passing through or nearby. (Post-hearing brief, p. 6)

The PBA contended that the Borough's location is a significant factor on the workload of the Department. (Id.)

The PBA noted that the "daytime" population represents "people commuting through the Borough, heavy commercial traffic, a substantial commercial/industrial land use, its hotels and other accommodations, and multiple services and schools which bring people in from the various communities in northeast New Jersey." (Id.) The PBA presented exhibits that indicated that the Hilton Hotel and Holiday Inn are busy establishments with a total of approximately 200,000 guests in 2010, all of whom use automobiles, car services, buses, etc. (PBA Power Point, Slide, 7) The PBA stressed that the 200,000 guests are significant in number and demands that they place on the Department compared to the 12,000 "nighttime" residents. (Post-hearing brief, p. 7)

Other commercial establishments on Routes 17 and 46 in the Borough were identified by the PBA as contributing to the Borough being a busy place. They include two fitness centers with a combined membership of over 10,000, seven gasoline stations, two automobile dealers, 19 food establishments, many retail stores, and a fertility clinic that is under construction, which the PBA contended may be a focus of confrontation. (Post-hearing brief, p. 8)

According to the PBA, the Borough's central business district along "The Boulevard" has many fully-occupied professional buildings and retail establishments, including 18 food establishments, all of which generate a lot of pedestrian and vehicular traffic. During the year, the central business district is the location of a parade that draws approximately 5,000 people and a street fair that draws approximately 20,000, both of which are significant in a town of 12,000. (Post-hearing brief, pp. 8-9)

The PBA presented information that there are four banks in the Borough, one of which was recently the subject of an armed robbery. (Power Point, Slide 23, Tr. p. 63) The two “dry” municipalities in the immediate area were mentioned as a source of relevance regarding the numerous retail establishments in the Borough that have liquor licenses. (Tr. pp. 62-63)

The Borough’s location makes transportation a significant factor. Teterboro Airport is located nearby and has resulted in airplane crashes in the Borough. New Jersey Transit operates a train station and bus stops in the Borough. (Post-hearing brief, p. 9)

In addition to the “out-of-town” activity, the Borough presents its own challenges, which are met with exceptional service. Those challenges include approximately 4,500 households, 25 apartment buildings, three group-assisted living centers and a senior citizens’ housing complex. The public school system has 1,655 students. The Borough is home to numerous athletic facilities and religious and private institutions. These facilities and institutions generate a lot of traffic and other public safety considerations. (Post-hearing brief, pp. 9-10)

The Department, through technical expertise and training, has met the needs of its residents and the traveling public with exceptional service, particularly in its traffic safety efforts. The PBA contended that this level of service is even more exceptional when one considers that the Department is operating with fewer personnel than it had 25 years ago. (Exhibit P-2) The PBA presented information that seven officers have left Borough employment since late in 2007, including the former head of its negotiations committee, who was totally disabled as a result of job-related injuries. (Exhibit P-3, Tr. p.31) Of the seven, six retired and one was terminated. (Tr. p. 30) The Department currently has 27

officers represented by the PBA. (Post-hearing brief, p. 12) The 28th police officer is the Chief, who is not represented by the PBA. (Exhibit J-1 and PBA Power Point Slide 3)⁴

During the time the Borough has lost seven officers it has hired four replacements. (Tr. p. 32) Nevertheless, the reduction in staff, including the elimination of the title of Deputy Chief, has reduced promotional opportunities and forced more work to be done by fewer officers during “an era of extreme activity, increased traffic, and heavy work obligations.” (Post-hearing brief, p. 13)

The PBA contended that there is no doubt that:

the interests and welfare of the public are not served by this law enforcement agency. The highest quality of services are provided to an increasing daytime population and nighttime population while the sworn Officers available to provide the services are being permitted to be diminished significantly in number. The job is getting done and great credit should go to the sworn Officers of the Hasbrouck Heights Police Department. [Post-hearing brief, pp. 13-14]

Comparison of Compensation and Terms and Conditions of Employment

The PBA contended that law enforcement activities, ranging from traffic to criminal, are invariably regional. For this reason, the PBA’s focus of comparison was the municipalities near Hasbrouck Heights and the greater County of Bergen. The PBA supplied the maximum 2009 salaries for rank-and-file officers from 22 Bergen County municipalities, which includes Paramus at \$118,978 as the highest-paid officer and Edgewater the lowest at \$100,075. The average maximum salary is \$106,306. (Post-hearing brief, Chart No. 3)

⁴ See footnote 3.

The PBA also provided the first-year salaries in 2009 for police officers in 23 Bergen County municipalities and noted that Paramus is the highest at \$58,207 and Garfield the lowest at \$28,657. The \$36,808 average is 3.75% higher than the Hasbrouck Heights first year salary of \$35,480. (Post-hearing brief, Chart No. 4)

With regard to the number of steps required to reach maximum salary, a Hasbrouck Heights police officer would take seven years, compared to the average of 6.2 years in 23 Bergen County municipalities. (Post-hearing brief, Chart No. 5)

The PBA cited the following average percentage wage increase information:

AVERAGE % WAGE INCREASES

| | 2010 | 2011 | 2012 | 2013 |
|-----------------|-------------|-----------|---------|---------|
| Allendale | 4.1 | 4 | | |
| Closter | 4 | 4 | | |
| Cresskill | 3.95 | 3.95 | | |
| Demarest | 10.1 | 3.75 | 3.75 | |
| East Rutherford | 4 (2/2) | 4 (2/2) | 4 (2/2) | 5 (2/3) |
| Edgewater | 3.65 | 3.75 | 3.75 | 3.75 |
| Elmwood Park | 3.95 | 3.95 | | |
| Fort Lee | 8.5 (7.5/1) | 3 (2.5/1) | | |
| Garfield | 4 (2/2) | 4 | 4 | |
| Glen Rock | 4 | | | |
| Harrington Park | 4.2 | 3.5 | 3.5 | 3.5 |
| Haworth | 4.4 | 4.4 | 4.4 | |
| Lodi | 3.75 | 3.75 | | |

| | | | | |
|----------------|---------|-------------|-----------------|-----------------|
| Mahwah | 6 | | | |
| Midland Park | | 2.9 | 3.1 | |
| Moonachie | 4 (2/2) | 4 (2/2) | | |
| Oakland | 4.2 | | | |
| Paramus | 3 | 3 | 3 | 3 |
| Ridgefield | 3.65 | 3.75 | 3.75 | 3.75 |
| Rutherford | 2.75 | 3 (1.5/1.5) | 3 (1.5/1.5) | |
| Saddle Brook | 4 | 4 | | |
| Tenafly | 4.88 | 3.75 | 3.75 | |
| Wallington | 3.8 | 3.9 | 4 | |
| Woodcliff Lake | 3.2 | 2.75 | 2.75 | |
| Wood Ridge | 4 (2/2) | 4 (2/2) | 4.5 (2.25/2.25) | 4.5 (2.25/2.25) |
| | | | | |
| AVERAGE | 4.407% | 3.74% | 3.70% | 3.92% |
| | | | | |

(Post-hearing brief, Chart No. 6)

Private Sector Comparisons

The PBA argued that police officers are very unlike private sector employees and cited the various factors or characteristics that distinguish private sector employees from Hasbrouck Heights Police Officers. For example, police officers do not enjoy as much protection under State or federal wage and hour laws as private sector employees. In addition police departments and police officers are subject to specific statutory provisions, including a requirement that police officers be citizens of the United States

and meet criminal background, physical health, moral character, and other hiring, disciplinary, and promotional standards. There are no such statutory provisions for private sector employees. Police officers are subject to unique minimum and maximum age standards in order to be hired and must retire at age 65. Police officer pensions are not covered by federal law while private sector pensions are. (Post-hearing brief, pp. 25-27)

The PBA also cited the following comparison of private sector employment with that of police by Arbitrator William Weinberg:

Second of the comparison factors is comparable private sector 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 sector 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 the other employees generally in public employment in the same or similar comparable jurisdictions (Section 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 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 a 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, pages 29-31) [Cited at pp. 28-29 of Post-hearing brief.]

Stipulations of the Parties

The PBA contended that the only stipulations were those having to do with procedural matters and that, as such, this criterion will not significantly affect the outcome of this matter.

Lawful Authority of the Public Employer

The PBA contended that there is no legal prohibition to an award of its final offer in this matter. Specifically, the PBA claimed that its offer with “well within the Appropriation Cap and the Tax Levy Cap standards.” (PBA Brief, pg. 31)

The PBA cited the bargaining unit wage percentage point as \$30,142, which it claimed to reflect \$3,014,231 in total annual base wages of police officers represented by the PBA divided by 27 officers as is more specifically detailed in the following chart denoted at Chart No. 7 in its brief:

| (A) | (B) | (C) | (D) |
|------|--------------------|------------|---------------------|
| Rank | Census Per Exhibit | (See, J-1) | Col. (B) x Col. (C) |

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| | | | |
|--------------|-----------|-----------|----------------------|
| Deputy Chief | 0 | \$128,946 | -- |
| Captain | 2 | \$123,943 | \$247,886 |
| Lieutenant | 4 | \$118,509 | \$474,036 |
| Sergeant | 6 | \$113,059 | \$678,354 |
| Patrolman | 15 | \$107,597 | \$1,613,955 |
| | | | |
| TOTAL | 27 | | \$3,014,231 |
| | | | 1% = \$30,142 |

. In its calculations, the PBA stated that it assumed that all patrol officers as being at top step pay. However, in 2009 two new officers are actually still in lower pay steps. Thus, the cost of step movement of the two officers has already been included.

Utilizing the \$30,142 figure noted above, the PBA calculated the cost of its proposed 3.5% wage increase in each year of the proposed contract as follows:

| Contract Year | Net % Increase | Value of Increase |
|---------------|----------------|-------------------|
| 2010 | 3.5% | \$105,497 |
| 2011 | 2% | \$107,606 |
| 2012 | 2% | \$109,759 |
| 2013 | 2% | \$111,954 |

The PBA asserted that the net 2% increase of its proposed 3.5% increases in 2011, 2012, and 2013 reflects a 1.5% offset of base pay, which it claimed is permitted to the Borough effective January 1, 2011. According to the PBA, the “1.5% is purportedly to offset healthcare costs but is in fact permitted to be taken as a General Revenue by the governing bodies.” (Post-hearing brief, p. 32)

The PBA further contended that the stated annual costs of its proposed wage increase noted above are actually higher than will be realized because the total base wage for the unit was overstated by assuming that three new officers were at the highest salary level.

Turnover

The chart below was prepared by the PBA and denoted as Chart No. 9 in its brief. It illustrates the savings to the Borough from the reduction in salaries no longer paid to the listed officers who left the department.

| (A) | (B) | (C) | (D) |
|--------------------------|--------------------|--------------------|------------------------------|
| Separating Sworn Officer | Rank at Separation | Year of Separation | Annual Base Rate (2009 Rate) |
| Lange | Patrol Officer | 2010 | \$107,695 |
| Mullins | Lieutenant | 2010 | \$118,509 |
| Ruroede | Lieutenant | 2009 | \$118,509 |
| Krinski | Lieutenant | 2009 | \$118,509 |
| Smith | Patrol Officer | 2007 | \$107,597 |
| Castiglione | Detective Captain | 2008 | \$128,946 |
| Kroncke | Deputy Chief | 2009 | \$165,000 |
| TOTAL | | | \$864,667 |

The PBA contended that the entire \$105,497 cost of the its proposal for 2010 is less than the annual salary of either Lieutenant Mullins or Patrol Officer Lange, both of whom retired in 2010. (Post-hearing brief, p. 34) According to the PBA's calculations, the entire cost of its proposal is \$434,816, which it claimed is approximately half of the \$864,667 is annualized savings due to personnel separations in 2007-2010. (Id.)

The PBA, anticipating that the Borough will point out that three new officers were hired, noted that the total annual base salary figure for all of the new officers is less than \$100,000. In addition, they receive no longevity and less vacation leave and other benefits. And, the PBA reiterated that the three new officers were assumed for its pay calculation purposes to be at the top salary step. (Post-hearing brief, p. 35)

In addition to the seven officers who left Borough employment from 2007-10, the PBA contended that two superior officers, including the Chief, who is not represented by the PBA, have already reached the age where they can retire with full benefits. Four other superior officers will reach age eligibility during the term of the new agreement. The PBA presented this information in a chart denoted as Chart No. 10, but which has not been reproduced here. (Post-hearing brief, p. 35)

The PBA acknowledged that it is uncertain if any of the six superior officers will retire during the term of this agreement. However, according to the PBA, even if one superior officer retires during the term of its proposed agreement, that retirement would "effectively pay for more than one year's bargaining unit pay increase." (Post-hearing brief, p. 36)

The PBA concluded that an award of its proposal would be fully funded by the loss of senior personnel and their base salaries. In fact, when considering that the departed officers have higher salaries and benefits compared to the new officers, the PBA contended that “there is enough money on the Salary and Wage Line Item alone to pay for the entire PBA Proposal several times over.” (Post-hearing brief, p. 36)

Appropriation Cap

The PBA contends that its proposals can be awarded without violating the Borough’s statutory spending limitations, or appropriation cap. It submitted that the Borough produced no evidence that would support any such contention. The PBA also submitted that its evidence allows for an award of its final offer without adverse financial impact. With regard to the appropriation cap, the PBA noted that the “Maximum Total General Appropriation for Municipal Purposes Within CAP” is noted in Sheet 3B of the Borough’s 2010 Annual Budget Sheet as \$14,298,437.00. Below that figure is the “Total General Appropriation for Municipal Purposes Within CAP as Introduced” with a figure of \$13,585,536.00. The difference between the two figures is \$714,901. (Post-hearing brief, pp. 36-37)

The PBA summarized the Appropriation Cap issue as follows:

The Appropriation Cap Law clearly has no substantive impact in this proceeding. The statutory formula generated a permitted appropriation which was...\$714,901.00 more than the Budget utilized as adopted. While this is not cash, this is clearly an example of significant fiscal flexibility within this Municipality. To put it another way, and to give it some perspective, the amount of underutilization of the Cap formula,...\$714,901.00 represents the value of a single base wage percentage point (See Chart No. 7) establishes an underutilization by almost...24 Police Department percentage points. Again, this is for perspective purposes only. It does, however, establish that there is absolutely no Appropriation Cap pressure whatsoever in this town and that amount by which the Cap formula was underutilized far exceeds that

which would be available for such an expenditure as Police Salaries and Wages. [PBA Brief, p. 37]

Tax Levy Cap

The PBA also contended that its proposal can be awarded without violating the Tax Levy Cap and summarized its position as follows:

The Tax Levy Cap is on the succeeding page of the Municipal Budget and once again illustrates that the Municipal Budget for Hasbrouck Heights for 2010, as adopted, was well inside of the "Maximum Allowable Amount to Be Raised by Taxation." A further note must be made however with respect to years two, three and four of this contract term. The ...2% Cap in effect with respect to Levy in those years will not be conflicted by the ...2% net impact of the PBA Position in this case. Further, if either the annualized savings calculated in separations (Chart No. 9 *supra*) is allocated towards the term of the Agreement or, in the alternative, any of the eligibles who may leave separate over the four (4) year contract term (See Chart No. 10) there is no cost factor at all due to an increase in the Police Salary and Wage account. In short, there is no Tax Levy impact to the PBA Position in this case. The PBA has asked for 3.5% and has already paid for 1.5% of it each contract year by payroll deduction. The net impact of the PBA Position is ...2% and the Cap on Levy is ...2%. There can be no conflict. If the Borough attributes some past savings to future years or if anyone leaves there is actually a reduction in cost. [PBA Brief, pp. 37-38]

The PBA further argued that:

The public employer would have one believe that it is a sleepy little town with no activity. Such is far from the case. This municipality has an "aggregate true value" of taxable property at ...\$1,921,854,237.00 as is established on the most recently available Final Equalization Table for the County of Bergen for the year 2010 (P-16 in evidence, page 1). The effective tax rate in Hasbrouck Heights for 2010 as illustrated on Exhibit P-16 is ...\$2.01, a most laudable tax rate and one which most municipalities would love to see. The 2010 Budget, as adopted, reflects a "Surplus Anticipated" in the amount of \$1.2 Million Dollars (See 2010 Budget, Sheet 4, Line 1). The Taxpayers are therefore in a favored position of having an exceptionally high ratable base, a low tax rate, and significant budgetary surpluses as a cushion. This is far from a town in distress.

When one considering Police operations generally, one must note that there are significant offsets to cost which exist by virtue of law enforcement activity. For example, the gross amount “Realized in Cash” by the Hasbrouck Heights Municipal Court in a most recent year reported was ...\$229,216.00. This amount, almost all the result of Police action, is received as a General Revenue to the Municipality. This amount, for perspective purposes only, represents incoming Municipal Court which is close to eight... times the value of a PBA percentage point (See Chart No. 7). Further offsets include Shared Services Agreements with nearby towns for 9-1-1 coverage for Teterboro (...\$6,141.00) and Woodridge (...\$8,992.00), as well as various Grants such as the Drunk Driving Enforcement Grant (...\$7,055.00). Again, all of the calculations are based on hard actual numbers of bargaining unit base rate costs as are exhibited on Chart No. 7. It is acknowledge that the Salary Line Item in the Budget is for a higher amount however that includes non-bargaining unit personnel, from Chief of Police to Dispatchers to any other category that might be added such as Crossing Guards, Marshalls, Building Maintenance. This case is about the PBA bargaining unit and all focus and calculations are based on said finite population.

Surpluses in Hasbrouck Heights have been strong in recent years. At the top of Sheet 32 of the Budget, on the right hand side, are the surplus balances reported for the end of 2007 and 209[sic]. It is believed that 2007 is a typographical error as it should be 2008. In any event, the year before last found a surplus balance at the end of the year of ...\$1,389,833.00. The most recent year reported showed a surplus of ...\$1,603,932.00. This is an increase in surplus between these two (2) most recent years reported of over ...15%. At the bottom of the same page, notwithstanding the current surplus anticipated of \$1.2 Million Dollars, there is anticipated a “surplus balance remaining” of ...\$152,975.00. This is not a municipality in distress. Substantial flexibility appears in virtually every place one looks.

Even the largest single element of the Tax Levy, the school portion, was affirmatively voted by the public thereby increasing that two-thirds (2/3) approximate portion of the Tax Levy by 5.2% (See P-12). This is certainly a barometer of the lack of public tax pressure.

On separate category, the public employer opines the cost of Police and Fire Pension System contributions. While the PBA acknowledges the increase, it also points out the reason for the increase. The Borough of Hasbrouck Heights, along with other Municipal and County Governments received a pension contribution “holiday” as a result of policies undertaken by the Governor Whitman administration. For five (5) years the public employers paid zero (0) toward the Police and Fire pensions. It was a subsequent phase in of ...20% per year which ultimately brought

public employers back up to a ...100% number, that which they should have been paying all along. Two (2) points are made here. First, there was substantial savings by virtue of avoidance of cost under the several policies of pension payment holiday for employers and subsequently the phase-in. The PBA provided said data in a series of bulletins from the State of New Jersey, Department of Treasury, Division of Pension and Benefits (P-14). [The PBA points to various cost savings for the Borough cited in a series of NJ Department of Treasury, Division of Pension and Benefits Bulletins (Exhibit 14) over a number of years of \$57,573.00(p. 14), \$195,221.00 (Id.), \$98,254.00 (PL 2000 Ch. 115 p. 4/11), and \$15,215.00. (12/17/98 memo from Director of Pensions)] If Hasbrouck Heights is to be permitted to complain of the cost of Police pensions then one must factor in the amount of money not spent during the pension “holidays” that preceded.

The second point made with respect to Pension and Medical costs is that under the ...2% Levy Statute in effect for 2011 and thereafter, there is an exclusion from the ...2% Cap for the amount of increase that exceeds that number for pension and insurance. The public employer cannot complain that the cost of Police pensions or medical insurance is a negative fact to the ...2% Cap because as a provision of the same law that gave us the Cap, there is an exclusion for pension costs and medical insurance that exceed the ...2%....

This is a comfortable Borough with substantial resources and fiscal security. It has a high ratable base and a low tax rate. The public does not mind voting in a 5.2% on the largest piece of the Levy, the School Budget. The claims to the contrary with respect to Cap problems are simply non-existent here. [Post-hearing brief, pp. 39-42]

Continuity and Stability of Employment

The PBA contended that this criterion imports a consideration of the private sector concepts of “prevailing rate” and “area standards,” which it argued strongly support an award of its proposal. The PBA, taking credit for the 1.5% employee health insurance contribution, stressed that its proposal was made in light of the 4% Tax Levy Cap for 2010 and the 2% Tax Levy Cap for subsequent years. The PBA also argued that an award of its proposal would not increase the ranking of Hasbrouck Height police in

relation to police in other jurisdictions “and will do little more than keep pace with those other agencies.” (Post-hearing brief, p. 43, citing chart reflecting average base wage increases of 25 Bergen County municipalities)

The PBA further contended that it targeted its 3.5% last offer for 2010 to be less than the 4% per cent cap for 2010 and its effective 2% last offer⁵ in subsequent years to match the two percent cap in those years, even if no credit is given to the PBA’s breakage and subsequent separation arguments. It noted again that any increased cost in pension and medical insurance is outside the cap. The PBA further argued that an award of its position will not increase the position of the Borough’s police officers in relation to peers in other police agencies.

The PBA concluded that its last offer should be awarded in its entirety.

POSITION OF THE BOROUGH

COST OUT OF THE PBA’S DEMANDS

Compounding

The Borough noted that the PBA is seeking a 3.5% salary increase in each of four years (2010-2013). The Borough contended that because salary increases involve compounding costs an arbitrator cannot simply add the four sought-after 3.5% increases to determine the cost of the PBA’s salary demand. Instead, the cost of each year of the proposed four-year agreement must be computed after each sought-after wage increase is added to the prior year’s cost. For example, the salary proposal for 2011 must be computed on the 2009 base plus the 2010 increase.

⁵ PBA’s proposed 3.5% increase-1.5% (employee health insurance contribution) = 2.0%.

Using its compounding model, the Borough contended at page three of its post-hearing brief that the PBA's salary demand would increase the maximum police officer salary as follows:

| <u>2009</u> | <u>2010</u> | <u>2011</u> | <u>2012</u> | <u>2013</u> |
|-------------|-------------|-------------|-------------|-------------|
| \$107,597 | \$111,363 | \$115,261 | \$119,295 | \$123,470 |

Over the four years of the proposed PBA contract, the top-step police officer's salary would increase by \$15,873, or 14.75%. (Post-hearing brief, p. 3) Thus, the compounding cost equals .75%, of which the Borough attributed .19%, or ¼ of the compounding cost to each year of the proposed four-year contract. (Id.)

Salary Increments

The parties' collective agreement has a nine-step salary schedule for rank and file officers hired after July 21, 2003 with the following salaries paid in 2009⁶:

| | |
|---|-----------|
| Patrolman- Date of Hire to completion of academy | \$30,416 |
| Probationary Patrolman | \$40,543 |
| Patrolman-First Year Serve | \$50,121 |
| Patrolman-Second Year Service | \$59,700 |
| Patrolman-Third Year Service | \$69,242 |
| Patrolman-Fourth Year Service | \$78,857 |
| Patrolman-Fifth Year Service | \$88,436 |
| Patrolman-Sixth Year Service | \$98,016 |
| Patrolman-Seventh Year Service | \$107,597 |

⁶ The salary schedule for officers hired prior to July 21, 2003 has seven steps leading to the \$107,597 salary.

| | |
|--|-----------|
| Sergeant of Police | \$113,059 |
| Lieutenant of Police | \$118,509 |
| Captain of Police | \$123,943 |
| Captain of Detectives (Exhibit J-1, Appendix A-2) | \$128,946 |

With the exception of the first step, which, according to the Borough, is a six-month step, each step is a one-year step. Thus, a newly hired police officer will reach the top step in 7 ½ years.

The Borough calculated the total 2009 base salary for all officers represented by the PBA as \$2,765,708. (Post-hearing brief, p. 4) The Borough calculated the cost of increments as \$32,237, which, according to the Borough, reflects a 1.17% increase before any wage base wage increase. (Post-hearing brief, pp. 4-5) Using that same method of calculation, the Borough provided annual increments costs of \$39,103 in 2011, and \$38,333 in 2012 and again in 2013. (Post-hearing brief, pp. 5-6) According to the Borough the increment costs for four officers moving up the salary guide reflect increases to the overall base wage of the PBA-represented unit of 1.17% in 2010, 1.40% in 2011, 1.35% in 2012, and 1.33% in 2013, before any overall wage increase for the unit.⁷ (Post-hearing brief, p. 5) The Borough calculated the “true cost” of increments over the

⁷ See footnote 3 regarding the census. While four officers are currently in lower steps, including two officers hired in 2010, for purposes of cost calculation I am utilizing the census as of December 31, 2009, which reflects only two officers in lower steps.

proposed four-year agreement overall dollar increase as \$361,206 compared to 2009, representing a percentage increase of 13.06%.⁸(Post-hearing brief, p. 6)

Longevity Step Increases

The PBA contract provides for a two-tiered longevity pay. The first longevity schedule provides for payments of 2.5% of base annual salary after completion of five years of service plus .5% of base annual salary for each year subsequent year up to 10% after completion of 20 years of service. The second covers officers hired after July 21, 2003. However, it is not applicable in this matter since none of those officers will receive longevity pay during the next three or four years.

The Borough calculated at page 6 of its post-hearing brief that longevity costs, without an increase in salary, as follows:

| <u>2009</u> | <u>2010</u> | <u>2011</u> | <u>2012</u> | <u>2013</u> |
|-------------|-------------|-------------|-------------|-------------|
| \$187,654 | \$198,094 | \$207,942 | \$217,224 | \$226,507 |

The Borough contended that the “true cost” of the longevity pay increases over the four-year term proposed by the PBA would total \$99,150, or 3.58% of 2009 base salary. (Post-hearing brief, p. 8) (See footnote 2 for explanation.)

⁸ The Borough contended that the true cost of salary increments and longevity pay increases in each year of the contract must reflect the cost of the increase in the current year plus the increase from each successive year. Thus, year one would include only the increase for that year. The second year would include the increase from the first year and the increase from the second. The third year would include the increases from each of the three years. The fourth year would include the increases from each of the four years.

Other Benefits-Article XXII-Medical Coverage

The Borough noted that effective May 1, 2010 employees began contributing 1.5% of base salary toward health insurance premiums. (Post-hearing brief, p. 8) Depending on the increase awarded for 2010, the 1.5% contribution will save the Borough between \$43,293 and \$44,146. (*Id.*) Prior to May 1, 2010, employees paid nothing for health insurance. (*Id.*) However, because this contribution was mandated by law, it is not included as a savings to the Borough.⁹ (*Id.*)

Total Cost of the PBA's Demands

| | <u>2010</u> | <u>2011</u> | <u>2012</u> | <u>2013</u> |
|---------------------|-------------|-------------|-------------|-------------|
| Salary Increase | 3.50% | 3.50% | 3.50% | 3.50% |
| Compounding | 0.19% | 0.19% | 0.19% | 0.19% |
| Salary Increments | 1.17% | 1.40% | 1.35% | 1.33% |
| Longevity Increases | 0.38% | 0.35% | 0.33% | 0.33% |
| Medical Coverage | -- | -- | -- | -- |
| Total: | 5.24% | 5.44% | 5.37% | 5.35% |

Four-Year Total= 21.40% or 5.35% per year.
(Post-hearing brief, p. 8)

COST OUT OF THE BOROUGH'S PACKAGE

Salary

| <u>2010</u> | <u>2011</u> | <u>2012</u> |
|-------------|-------------|-------------|
| 1.50% | 0.00% | 0.00% |

(Post-hearing brief, p. 9)

⁹ In support of its contention, the Borough cited the Interest Arbitration Award of Arbitrator James Mastriani in Borough of Keyport and PBA Local 223, Docket No. IA-2008-092 (October 9, 2010) in which Arbitrator Mastriani did not charge the annual savings from statutory insurance contributions against the increase costs of the award.

Compounding

There are no compounding costs because of there are no wage increases in the second and third years of the proposed contract.

Salary Increments

As noted above in the discussion of the cost of the PBA proposal, even without a percentage increase, the total cost of police salaries will increase by \$109,673 and equal 1.17%, 1.40%, and 1.35% in 2010, 2011, and 2012, respectively. (Post-hearing brief, p. 10)

Longevity Step Increases

As also noted above in the discussion of the cost of the PBA proposal, even without a percentage increase, the total cost of longevity step increases will grow by \$38,852 and equal 0.38%, 0.35%, and 0.33% in 2010, 2011, and 2012, respectively. (Id.)

Starting Salary

The Borough proposed to freeze the starting salary in each year of the proposed three-year agreement. It will not affect current police officers. However, because it is unclear how many officers, if any, would be hired during the remainder of the proposed contract, any savings are speculative.

Salary Guide

The Borough's proposal includes the addition of five steps to the current seven-step salary guide for new hires only. Any savings from this proposal are speculative because it is uncertain if any officers will be hired during the remainder of the term of the proposed contract.

Article XXII Medical Coverage

The Borough's first proposal would require that any employee in the Direct 10 plan pay the difference between the Direct 10 plan and the less expensive Direct 15. The proposed effective date is July 1, 2011 and would result in savings to the Borough but it is not known how many officers would remain in Direct 10. Thus, any savings would be speculative.

The Borough also proposed an increase in employee contributions toward health insurance premiums. As of May 21, 2010, employees pay 1.5% of their base salary toward health insurance premiums. Depending on the wage increase awarded for 2010, the 1.5% contribution saved the Borough between \$43,293 and \$44,146. The Borough proposed that effective July 1, 2011, the 1.5% contribution increase to 2.5%. The Borough also proposed that effective July 1, 2012, the 2.5% contribution increase to 3.5%. Depending on the wage increase awarded the savings to the Borough would range from \$29,413 and \$31,042 in 2011 and from \$29,803 and \$34,133 in 2012. (Post-hearing brief, pp. 11-12)

Terminal Leave

The Borough's proposed elimination of terminal leave of four months' pay upon retirement with 25 years of service for employees hired after January 1, 2011 would result in savings, but not until many years after the expiration of the either proposed contract term.

Longevity

The Borough's proposed elimination of longevity pay for employees hired after January 1, 2011 would also result in long-term savings. However, since officers hired

after January 1, 2011 would not be eligible for longevity during the term of either proposed contract, no savings would be realized during the contract term.

Article XIX-Personal Leave

Under the Borough's proposal, which would be effective January 1, 2011, the allocation of four annual personal days must be used by the end of the year or be forfeited. Any savings are too speculative to calculate.

Article XVII-Sick Leave

Employees currently are entitled to up to one year of sick leave with full pay and benefits. The Borough proposed to substitute ten sick days per year for employees hired after January 1, 2011. The savings are too speculative to calculate.

Total Cost of the Borough's Package

| | <u>2010</u> | <u>2011</u> | <u>2012</u> |
|---------------------|--------------|--------------|--------------|
| Salary Increase | 1.50% | 0.00% | 0.00% |
| Compounding | 0.00% | 0.00% | 0.00% |
| Salary Increments | 1.17% | 1.40% | 1.33% |
| Longevity Increases | 0.38% | 0.35% | 0.33% |
| Starting Salary | - | - | - |
| Salary Guide | - | - | - |
| Medical Insurance | - | [1.00%] | [1.00%] |
| Terminal Leave | - | - | - |
| Longevity | - | - | - |
| Personal Leave | - | - | - |
| Sick Leave | - | - | - |
| TOTAL: | 3.05% | 0.75% | 0.66% |

THREE-YEAR TOTAL = 4.46% OR 1.49% PER YEAR
(Post-hearing brief, p. 13)

Comparison of the Two Packages

The Borough calculated that over the first three years of the contract, the PBA's wage demand alone will cost \$494,979 more than the Borough's proposed wage increase, which is a 17.9% increase over 2009 base salaries. (Post-hearing brief, pp. 14-15)

In 2010, the PBA's 3.5% proposed increase, including increments, will exceed the cost of the Borough's proposed 1.5% increase by \$56,870. (Id.) In 2011, the PBA's proposed 3.5% increase, including increments, will exceed the cost of the Borough's 0.0% proposal by \$162,934. (Id.) In 2012, the PBA's proposed 3.5% increase, including increments, will exceed the Borough's 0.0% proposal by \$275,175. (Id.) In 2013, the PBA proposed a 3.5% increase. (Id.) The Borough did not make a proposal for a fourth year.

The cost of the PBA's salary demands will place a significant burden on the Borough, both during the term of the proposed contract, and in the future because future wage increases will be based on any increase awarded in this proceeding.

STATUTORY FACTORS

The Borough contended that an arbitrator must make a reasonable determination of the issues in applying the statutory criteria set forth in N.J.S.A. 34:13A-16g, which it claimed have three underlying themes: financial ramifications of the award, the public interest, and comparability.

Lawful Authority of the Public Employer

The Borough contended that N.J.S.A. 34:13A-16g (5) requires an interest arbitrator to consider the “lawful authority of the employer” in determining an award. More specifically, the Borough contended that 1996 Police and Fire Public Interest Arbitration Reform Act requires an arbitrator to consider “the limitations imposed upon the employer by [The New Jersey Local Government Cap Law, N.J.S.A. 40A:4-45.1 *et seq.*]” According to the Borough:

The Cap Law restrains the lawful authority of the employer by limiting overall budget increases. It thereby restricts a municipality’s ability to grant wage increases to its employees.

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

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

On July 13, 2010, Governor Christie signed into law Chapter 44 of the Laws of 2010 (the “2010 Cap”). The 2010 Cap reduced the 2007 Cap of 4.0% to 2.0% and modified exclusions, further increasing the limitation on major revenue sources. The 2010 Cap added several general exclusions. These included increases in debt service and capital expenditures, extraordinary costs related to emergencies, such as inclement weather, pension contributions in excess of 2% and health benefit cost increases in

excess of 2% but limited by the State Health Benefit increase (16.7% in 2011). These limitations directly impact the Borough's ability to pay for the salary increases and accompanying increases in benefit costs for its PBA unit. [Post-hearing brief, pp. 22-24]

The Borough argued in earlier portion of its post-hearing brief regarding the 2010 amendments to the interest arbitration law. For purposes of clarity, I have taken the liberty of placing the Borough's argument here.

According to the Borough, "the 2010 Amendments to the interest arbitration law impose a two-percent cap on base salary increases. N.J.S.A. 34:13A-16.7. The two-percent cap on base salary increases reflects the permissible two percent 2010 Cap under the Local Government Cap Law." (Post-hearing brief, p. 20, citation omitted)

While the Borough noted that the 2% Base Salary Cap in the 2010 amendments to the interest arbitration law does not apply to this matter because the contract expired on December 31, 2009, which is prior to the January 1, 2011 effective date of the 2% Base Salary Cap, I should "embrace the Legislature's intent of controlling public sector salary increases under the parameters set forth in the new law." (*Id.*) The Borough goes on to argue that it:

is bound to comply with the two percent tax levy cap imposed by the 2010 Cap in its 2011 budget and thereafter, and is, therefore, already constrained by the two percent cap imposed by the...Cap Law.

To the extent that the PBA's package averages more than 2.0% per year, the Borough will need to fund the PBA salary increases by reducing expenditures elsewhere, a process that would have been precluded by law but for the date of the expiration of the current contract. [Borough's post-hearing brief, pp. 21-22]

The Borough further argued that its offer, unlike that of the PBA, reflects the restraints imposed by the Tax Levy Cap. (Borough's post-hearing brief, p. 22)¹⁰

The Borough contended that a municipality's "ability to pay" has traditionally focused on the Current Budget Expense Budget appropriations. If the municipality had budgeted up to its limit, there was no ability to appropriate additional money within the Current Expense Budget. In essence, there was no ability to pay. However, if the municipality had not budgeted up to its limit, it did not mean that the municipality had the ability to pay. According to the Borough, to "narrowly focus on this fact excluded the necessary considerations of long-term versus short-term budget strategies, necessary capital improvements, debt service and revenues." (Exhibit E-3, p. 1)

The Borough further contended that this traditional analysis became obsolete with the passage of the 4% Tax Levy Cap limiting municipalities to a 4% increase over the prior year's amount to be raised by taxation. (PL 2007, c. 62) The enactment of the cap limited a municipality's discretion and flexibility in dealing with the budget, including the ability to raise taxes to pay for expenditures. After the 4% cap was enacted, revenues played "a more significant role and expenditures became reactionary to the impact of revenues." (*Id.* at pg. 2) According to the Borough, this situation has been magnified in 2011 by passage of a law reducing the 4% Tax Levy Cap to 2%. (PL 2010, c. 44) As a result, the traditional analysis that looked at the expenditure portion of the budget no longer applies to the Borough's ability to pay in this proceeding. Rather, it is the revenue portion of the budget that is the focus.

¹⁰ The Borough contended that its proposed increase totals 6.46% over three years, or 2.15% per year, while the PBA proposed increase totals 21.40% over four years, or 5.35%.

Revenue

According to the Borough, there are six basic revenue sources:

1. surplus;
2. local revenues;
3. state aid;
4. “one-shot deals,” or non-recurring revenues;
5. receipts from delinquent taxes; and
6. taxes.

The Borough’s budget surpluses are noted in Borough Exhibit 1, 2010 Municipal Budget):

| | Actual Surplus | Anticipated Surplus |
|-----------------|----------------|---------------------|
| January 1, 2008 | \$1,389,834 | |
| January 1, 2009 | \$1,603,932 | \$1,300,000 |
| January 1, 2010 | \$1,352,976 | \$1,200,000 |

Because of the anticipated surplus was less than anticipated in the 2009 budget, the Borough argued that \$100,000 in additional revenues had to be generated from other revenue sources to maintain the same level of anticipated revenue as in 2009. (Exhibit E-3, p. 4) Since anticipated local revenues declined by approximately \$40,000, the Borough had to look to other revenue sources to generate the needed \$100,000. However, that reduction in anticipated local revenue not only impacted the 2010 budget it also had an impact in 2011. The Borough explained this and other revenue issues as follows:

If a municipality realizes less revenue on a revenue line item than anticipated, the shortage must be offset by anticipating additional surplus, negatively impacting the municipality’s ability to regenerate surplus to previous levels, reducing the ability of this revenue source to fund future budgets.

According to budget laws, a municipality can only anticipate local revenues to the level realized the previous year. Thus, if a municipality realizes less on a local

revenue line item than anticipated, it must reduce this revenue line item the following year, negatively impacting the municipality's revenue "bottom line."

Even though the revenue anticipated from Fees and Permits was reduced by \$13,300.00 to \$76,000.00 in 2010 from \$90,000.00 [in] 2009, the amount realized as of October 31, 2009 was \$61,970.00, projecting a further decrease in this local revenue line item.

Although the revenue anticipated from Interests and Costs on Taxes was increased by \$25,000.00 to \$75,000.00 in 2010 from \$25,000.00 in 2009, the amount realized as of October 31, 2009 was \$62,902.00, projecting a decrease in this local revenue line item.

Even though the revenue anticipated from Interest of Investments was reduced by \$39,250.00 to \$41,500.00 in 2010 from \$80,700.00 in 2009, the amount realized as of October 31, 2009 was \$31,580.00, projecting a further decrease in this local revenue line item.

Based on the above projections, the Borough will have to locate other revenue sources to offset the decrease in local revenues it can anticipate in 2011, further hampering the ability of the Borough to simply maintain the same level of revenue anticipated in 2011 as in 2010!

State Aid is the more problematic revenue source. State Aid decreased by approximately \$278,000.00 in 2010, further eroding the Borough's "ability to pay."

The \$278,000.00 decrease in State Aid, combined with the \$100,000.00 decrease in anticipated surplus balance and the \$40,000 decrease in anticipated local revenues required the Borough to generate \$418,000.00 additional revenue from its other revenue sources in order to maintain the same level of anticipated revenue as in 2009!

There were no "one-shot deals" in 2010 to stop the budget "revenue bleeding." Therefore, the Borough had to generate \$418,000.00 additional revenue from its other revenue sources in order to maintain the same level of anticipated revenue as in 2009.

Unfortunately, anticipated revenue from receipts from delinquent taxes remained flat from 2009, requiring the Borough to generate approximately \$418,000.00 additional revenue from its only other revenue source, municipal taxes, in order to maintain the same level of anticipated revenue as in 2009.

As identified in the 2010 municipal budget, the Borough increased its revenue from municipal taxes by its statutory limit from \$13,436,384.00 to

\$13,980,151.00, or approximately \$544,000.00. Therefore, the Borough's anticipated revenue increased by only \$126,000.00 from the anticipated revenue in 2009!

The above analysis has one significant flaw. With certain costs beyond the control of the Borough, i.e., pension contribution increases (\$102,839.00 in 2010) (See Exhibit 2) and health insurance premium increases (\$102,000.00 in 2010) (See Exhibit 3), it was impossible for the Borough to maintain current appropriation levels on other line items, further eroding the Borough's "ability to pay" without encountering service and staffing level decreases in the near future. This is all without even considering salary increases!!

The budget picture looks even worse in 2011. The two (2%) per cent tax levy cap limits increasing revenue from municipal taxes to \$169,385.00. Recognizing that based on the above that surplus and local revenues will decrease, taking "judicial notice" that State Aid will decrease, and hoping that all other revenue sources will maintain their current levels, the Borough will be able to increase appropriations by less than the \$169,385.00 raised through municipal taxes. The Borough estimates that line items over which it has no control will increase by \$204,000.00: health insurance premium increases (\$15,000.00); pension contribution increases \$14,000.00); garbage collection contract increases (\$50,000.00); sewer authority charge increases (\$75,000.00); DPW contract increases (\$20,000.00); and PBA step increases (\$30,000.00). Therefore, without any salary increases and/or increases on other line items and without any decreases in other revenue sources, the Borough is required to decrease appropriations on all other line items by at least \$35,000.00 in 2011!! [Borough's post-hearing brief, pp 27-29]

The Borough noted the following "dramatic cost increases" it faces:

Pension Appropriations

The Borough offered the following summary of its financial obligations to the Police and Firemen's Retirement System and the Public Employees' Retirement System:

| | PFRS CONTRIBUTION | % CHANGE | PERS CONTRIBUTION | % CHANGE |
|------|----------------------|-------------|----------------------|-------------|
| 2009 | \$913,709.00 | | \$247,355.00 | |
| 2010 | \$954,254.00 | 4.44% | \$309,649.00 | 25.18% |
| 2011 | \$1,097,290.00 | 14.99% | \$382,539.00 | 23.54% |

According to the Borough, its total PFRS/PERS pension costs will increase by \$215,936, or 17.08%, in 2011. (Post-hearing brief, p. 30, Exhibit E-3, Tab 1-3)

Health Insurance

According to the Borough, there are approximately 85 employees who receive health, prescription, and dental insurance. There are also 34 retirees who receive health insurance. (Post-hearing brief, p. 30)

The Borough asserted that in 2010 it budgeted \$1,896,355 for employee health insurance and that the 2011 costs will increase by 12.2%. The health insurance premiums for retirees not covered by Medicare will increase by 13.3%. For retirees covered by Medicare, the increase will be 4.5%. Dental premiums will increase by 9.7%. Prescription premiums will increase by 6%. (Id.)

Tax Levy

The Borough contended that the local tax levy has increased steadily from 2006 to 2010, with a 4.8% increase in 2010:

| | <u>Local Tax Rate</u> <u>Local Tax Levy</u> | <u>Total Tax Rate</u> <u>\$100 of A.V.</u> | <u>\$100 of A.V.</u> |
|------|--|---|----------------------|
| 2006 | \$11,065,348.41 | \$0.602 | \$1.780 |
| 2007 | \$11,904,720.52 | \$0.643 | \$1.890 |
| 2008 | \$12,839,209.75 | \$0.692 | \$1.997 |
| 2009 | \$13,436,383.74 | \$0.719 | \$2.070 |
| 2010 | \$13,989,150.89 | \$0.746 | \$2.169 |

[Exhibit E-3, Tab 1-6]

Municipal Budget

The Borough contended that while its “budget has grown steadily, Miscellaneous Revenue not Anticipated and the Surplus Balance have decreased significantly:”

| | <u>Total Budget</u> | <u>Misc. Revenue Not Anticipated</u> | <u>Surplus Balance at January 1st</u> | <u>Surplus Used as a Revenue</u> |
|------|---------------------|--|--|--------------------------------------|
| 2006 | \$15,802,527.62 | \$97,797.31 | \$1,670,261.38 | \$1,275,000.00 |
| 2007 | \$16,558,857.40 | \$92,459.00 | \$1,476,734.26 | \$1,275,000.00 |
| 2008 | \$17,365,758.42 | \$130,584.49 | \$1,389,833.65 | \$1,200,000.00 |
| 2009 | \$17,932,277.67 | \$215,485.78 | \$1,603,932.03 | \$1,300,000.00 |
| 2010 | \$18,060,623.61 | \$89,439.86 | \$1,352,975.51 | \$1,200,000.00 |

Surplus down \$119,171 or 7.5%

MRNA Down \$126,055 or 58% [Exhibit E-3 Tab 1-7]

Tax Appeals

The Borough contended that there are 60 pending State Tax Appeals pending covering years 2006 through 2011 with a total assessed value of approximately \$136,118,100.00. (Post-hearing brief, p. 31)

For all of these reasons, the Borough asserted that significant weight should be given to its ability to pay. It further contended that “the tax levy cap and the legislative restrictions emphasize the reasonableness of [its] offer in contrast to the PBA’s demands.” (Post-hearing brief, p. 31)

The Financial Impact on the Governing Unit

N.J.S.A. 34:13A-16g (6) was recently amended to require an arbitrator to consider:

The financial impact on the governing unit, its residents, the limitations imposed upon the local unit’s property tax levy pursuant to section 10 of P.L. 2007, c62 (C40A:4-45.45), and taxpayers.... [Underlined portion added as part of amendment.]

The Borough contended that:

The amendment emphasizes the importance of the restriction on raising revenue through taxes by the local government tax levy cap in rendering an award. The considerations under this factor “do not equate with a municipality’s ability to pay. Hillsdale, 137 N.J. at 85. The New Jersey Supreme Court emphasized that “[i]t is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award.” Id. at 86 (quoting 263 N.J. Super. at 188 n.16). Moreover, the municipality does not carry the burden of proving its financial inability to meet the union’s demands. [Post-hearing brief, p. 31]

According to the Borough, the economy is facing “its biggest challenge since the Great Depression in 1929...” (Post-hearing brief, p. 32) The recession has had a significant impact on New Jersey residents,” with increased unemployment, declining median household income, and high costs for housing and other items. The Borough cited a study that noted the economic recovery in New Jersey is anemic. This economic climate “directly impacts the Borough’s ability to raise revenue through taxes to pay for police salary increases and benefits.” (Id.) In particular, the Borough cited a series of layoffs throughout New Jersey and in Bergen County. (Id.)

The Interest and Welfare of the Public

An arbitrator must consider the interest and welfare of the public, including limitations imposed by the Cap Law. The Borough contended that this criterion, read in conjunction with the 2010 Amendments that amended other statutory criteria, establishes that the legislature “declared that it is in the ‘interest and welfare’ of the public that total economic increases not exceed 2%.”(Post-hearing brief, p. 36) Thus, while the 2010 Amendments do not technically govern collective agreements that expire prior to January

1, 2011, the “base salary cap imposed by the 2010 Amendments” should nevertheless be considered in the context of the interest and welfare of the public for not to do so “will unjustifiable skew statistical comparisons upwards in future interest arbitration cases.” (Id.)

The Borough contended that interest arbitrators “frequently do not give the factor its proper weight in deliberations,” and that I should give it proper weight in this case. (Id.)

Comparability and Overall Compensation

The Borough noted that the 1996 Reform Act altered the order of the sub-factors so that the private sector comparison stands alone as the first sub-factor rather than being the joint third sub-factor with private employment in the prior version of the Act. The prior first sub-factor, “public employment in the same or similar comparable jurisdictions” is now the third sub-factor.

The Borough contended that the change in the order of the sub-factors changed the weight that should be attributed to them and that this change:

evidences legislative intent to reduce Interest Arbitrators’ over-reliance on wage and benefit comparability to public employees in the same or similar jurisdictions—an over dependence criticized by the Court in Hillsdale and Washington—and increase Interest Arbitrators’ underemphasis of comparability to private employees in general. [Post-hearing brief, p. 39]

Wages and Benefits in the Private Sector

According to the Borough, wages and benefits in the private sector underscore the reasonableness of its proposals in comparison to the PBA’s demands. More specifically, private sector wage increases are significantly below the increases demanded by the PBA.

The Borough cites the August 27, 2010 New Jersey Report of Private Sector Wage Changes that show a 0.7% decrease in private sector wages from 2008 to 2009 and a 2.5% increase from 2007 to 2008, which the Borough claimed reflects a 3.2% decrease from 2008-2009 to 2007-2008. (Post-hearing brief, p. 40, Tab 7)

Hasbrouck Heights is located in Bergen County, which saw its private sector wages decrease by 0.7% from 2008-2009. (*Id.*) In 2007-2008, Bergen County's private sector wages increased by 1.8%. (Post-hearing brief, p. 40, Tab 8) Thus, "the percent change in wages from 2007-2008 to 2008-2009 dropped by 2.5%." (Post-hearing brief, p. 40) In comparison, the PBA's 3.5% wage demand exceeds the Bergen County private sector wage decrease of 0.7% by 4.2%. (*Id.*) In contrast, the Borough's 1.5% wage demand in 2010, along with no increases in 2011 and 2012 "substantially exceeds the Bergen County private sector wage decrease." (*Id.*)

The Borough asserted that private sector wage data does not completely reflect the impact the recession has had on private sector wages and benefits. The Borough cites wage freezes and cut backs in private sector employment in New Jersey and other parts of the country. (Post-hearing brief, Tab 6, Exhibit E-3, Tab 3-8, 3-9 & 5) In addition, the Borough contended that the PBA relied on outdated information from 2007 and 2008, before the economy declined or before the economic downturn affected the data. (Post-hearing brief, p. 41)

Wages and Benefits in the Public Sector

According to the Borough, the reasonableness of its proposals are highlighted by wage increase data for the public sector, which are only now beginning to reflect the

impact of the economic downturn. The Borough pointed to the wage freeze proposed for federal workers by President Obama. (Exhibit E-3, Tab 3-9)

The Borough cited the September 29, 2009 New Jersey Report of Private Sector Wage Changes that showed that local public sector wages increased by 2.2% from 2008-2009. (Post-hearing brief, p.40) The previous report showed a 3.4% increase from 2007-2008. (Id.) According to the Borough, the percent change in wages from 2007-2008 to 2008-2009 dropped by 1.2%. (Id.)

The Borough contended that the recession has “caused a call for the reconsideration of public sector compensation packages.” (Post-hearing brief, p. 42) The Borough cited newspaper articles calling for police wage freezes and a 2% wage cap, which became law, and other articles detailing high police salaries, comprehensive benefit packages, furloughs, and police layoffs. (Exhibit E-3, Tabs 2, 3 & 5)

Still other articles are critical of payments for unused sick days and an interest arbitration award. (Exhibit E-3, Tab 2)

Other articles cite instances where police officers in three New Jersey municipalities have reached agreements providing for reduced benefits. (Exhibit E-3, Tab 5)

The Borough cited two interest arbitration awards that it contended provide persuasive precedent in this matter. According to the Borough, Arbitrator James Mastriani’s award in Borough of Keyport and PBA Local 223, Docket No. IA-2008-092 (October 9, 2010) included the following:

| | |
|----------------|------------------------------|
| Wage Increases | 3.0% effective July 1, 2008 |
| | 2.5% effective July 1, 2009 |
| | 2.25% effective July 1, 2010 |
| | 2.0% effective July 1, 2011 |

| | |
|---------------------------|---|
| Health Ins. Contributions | 1.5% of salary/family coverage 1.25% of salary/employee/spouse coverage 0.85% of salary/employee/child coverage |
|---------------------------|---|

| | |
|-----------------------|--|
| Lower starting salary | \$43,151 to \$39,973 effective in 2010 |
|-----------------------|--|

| | |
|----------------------------|---------------------------------------|
| Increase # of salary steps | From 6 steps to 7 steps after academy |
|----------------------------|---------------------------------------|

In State of New Jersey (Corrections) and PBA Local 105, Docket No. IA-2008-14

(May 5, 2009), Arbitrator Mastriani awarded the following:

| | |
|----------------|--|
| Wage Increases | 3.5% effective July 1, 2007 3.5% effective July 1, 2008 2.0% effective July 1, 2009 2.0% effective July 1, 2011 |
|----------------|--|

| | |
|---------------------------|---|
| Health Ins. Contributions | \$20 per pay period/single coverage \$30 per pay period/parent/child coverage \$40 per pay period/family/emp/spouse |
|---------------------------|---|

| | |
|------------------------|---|
| Misc. Health Insurance | Increased co-pays for doctor visits/prescrip Eliminated viability of NJ Plus |
|------------------------|---|

The Borough noted that while the awards are instructive, they were based on records made in 2007-2009 and not under the criteria specified in the 2010 Amendments or under the current economic crisis.

Public Employment in Comparable Jurisdictions

The Borough contended that Hasbrouck Heights police officers earn wages and benefits that demonstrate the reasonableness of its proposals in this matter. It noted that the Borough is located in the southwestern portion of Bergen County and is bordered by Hackensack, Lodi, Wood-Ridge, Teterboro, and Moonachie. In making comparisons with regarding wage and benefits, the Borough selected all 61 Bergen County municipalities with police departments. (Post-hearing brief, pp. 46-47)

Base Salary and Salary Guide

The \$107,597 top-step, rank-and-file salary for Hasbrouck Heights police officers in 2009 significantly exceeds the 2009 Bergen County average of \$102,713 by \$4,884, or 4.75%.¹¹ Paramus had the highest salary at \$118,978. Cliffside Park had the lowest at \$77,184. (Exhibit E-3, Tab 3-1)

When compared to the top-step salaries in 2009 in Southwest Bergen County municipalities, only South Hackensack has a higher salary.

| | |
|-------------------|---|
| South Hackensack | \$108,180 |
| Hasbrouck Heights | \$107,597 |
| Little Ferry | \$104,868 |
| Rutherford | \$104,683 |
| Wood-Ridge | \$103,709 |
| East Rutherford | \$103,672 |
| Carlstadt | \$103,524 |
| North Arlington | \$101,986 |
| Moonachie | \$100,486 |
| Lyndhurst | \$98,698 |
| Wallington | \$97,940 |
| Average: | \$103,213(\$4,384 below Hasbrouck Heights or 4.25% |

[Post-hearing brief, pp. 47-48]

The Borough's rank-and-file salary guide has eight steps, plus an academy rate, which matches the Bergen County average. Thirteen Bergen County municipalities have

¹¹ The Borough's exhibit included information that identified 59 of the 61 municipalities' salary figures as including or not including holiday pay or longevity. Some include neither. Some include one but not the other. Some include both. Mahwah's figure includes both as well as differential and equipment allowances. Of the 61 listed municipalities, 29 include holiday pay but not longevity. Hasbrouck Heights is listed as one of those municipalities. Of the remaining 30 municipalities, 21 do not include holiday pay or longevity; 4, including Mahwah, include holiday pay and longevity; 3 list only holiday pay with no mention of longevity; 1 includes longevity but not holiday pay; and 1 lists only longevity with no mention of holiday pay.

salary guides with more steps than Hasbrouck Heights. Forty of 61 municipalities include academy step, including 15 at 8 plus academy. (Exhibit E-3, Tab 3-1)

Other Benefits

The Borough contended that its officers receive benefits at level that is above the average of other Bergen County municipalities and offered the following examples:

| | |
|---------------------|---|
| Holidays: | Hasbrouck Heights: 14 per year Bergen County Avg.: 13 per year |
| Clothing Allowance: | Hasbrouck Heights: \$1,550 per year Bergen County Avg.: \$873 per year (Only Saddle River, which pays \$2,000 per year, is higher.) |
| Vacation Leave: | 30 days per year. (Only Cresskill, which provides a maximum of 32 vacation days, has more vacation days than Hasbrouck Heights. Two provide 21 annual vacation days.) |
| Personal Leave: | Hasbrouck Heights: 4 per year Bergen County Avg.: 2.8 per year (Hasbrouck Heights is the 8 th most generous personal leave benefit among 58 Bergen County municipalities.) |
| Sick Leave: | Hasbrouck Heights: Up to one year of leave. Eight municipalities also have up to one year. One provides 30 days per year; one provides 20 days per year; one provides 16 days per year; 19 have 15 days per year; 6 have 12 days per year; 3 have 10 days per year. Others provide varying amounts, with 15 sick days per year the most common number. |
| Terminal Leave: | Hasbrouck Heights: four months' pay at retirement with 25 years of service. Some Bergen County municipalities provide more terminal leave; some provide less; some provide |

none. Legislation limiting terminal leave at \$15,000 for new hires supports the Borough's terminal leave proposal.

Longevity Pay: Hasbrouck Heights: 10% after 20 years of service. Three municipalities cap longevity at 15%; at least eight cap the benefit at 12%. At least 11 cap the benefit at 10%. 28, including Hasbrouck Heights have two-tiered longevity benefits. At least 8 have no longevity benefits or eliminated the benefit for new hires.
[Post-hearing brief, pp. 48-52]

PBA-Selected Comparables

While the Borough selected all Bergen County municipalities as its comparables, the PBA selected only 29 out of 69 municipalities as comparables and only six out of 12 Southwest Bergen County municipalities. Three of the PBA comparables are not municipalities: New Jersey Transit; the Port Authority of New York and New Jersey; and the New Jersey State Police. Thus, the reliability of the PBA data is reduced. (Post-hearing brief, pp. 52-54)

Bergen County Interest Arbitration Awards

While there are no recent interest arbitration awards involving Bergen County municipalities, the Borough cited the following older awards, which it contended, support its position in this matter.

Borough of Bergenfield and PBA Local 309, Docket No. IA-2009-011 (November 13, 2009) (Pierson)

| | |
|--------------|------|
| July 1, 2008 | 2.5% |
| July 1, 2009 | 2.5% |
| July 1, 2010 | 2.5% |
| July 1, 2011 | 2.5% |
| July 1, 2012 | 2.5% |

New Milford and PBA Local 83, Docket No. IA-2008-070 (March 15, 2010) (Tener)

| | |
|-----------------|------|
| January 1, 2008 | 2.0% |
| January 1, 2009 | 2.0% |
| January 1, 2010 | 3.5% |
| January 1, 2011 | 3.5% |

Borough of Ramsey and PBA Local 155, Docket No. IA-2007-081 (July 31, 2009) (Mastriani), aff'd, PERC Docket No. 2010-26 (2009)

| | |
|-----------------|-------|
| January 1, 2007 | 4.0% |
| January 1, 2008 | 4.0% |
| January 1, 2009 | 4.0% |
| January 1, 2010 | 3.75% |
| January 1, 2011 | 3.50% |

The award also granted substantial health and retiree health insurance proposals of the employer.

Health Insurance

Pursuant to State law Borough police officers have been contributing 1.5% of their base salary toward health insurance benefits since May 21, 2010. (Post-hearing brief, p. 58) However, this pales in comparison to the increasing health insurance costs and private sector employees generally do not receive benefits comparable to those enjoyed by public sector employees. (*Id.*)

Dramatically Rising Costs Continue

The Borough cited newspaper articles that report that nationwide, the costs of health insurance continue to increase, have exceeded salary increases, and more employees pay a greater portion toward health insurance premiums and deductibles. (*Id.*)

The Borough participates in the New Jersey State Health Benefits Program, which in recent years has had dramatic increases in costs. SHBP increased premiums by 20% in 2010 and by 12.2% in 2011. (Post-hearing brief, Tab 12). As a result, in 2010 the NJ

Direct 15 Plan with a prescription drug benefit cost \$6,774.26 for single coverage and \$16,935.84 for family coverage. (Id.) In 2011, the cost for that same plan is \$7,600.80 and \$19,002.00. (Id.) The current 1.5% of base salary contributed by Borough police officers does not come close to covering even the increased premiums, let alone the full premium. As an example, at 1.5% of base salary, an employee would have to earn \$133,000 to contribute an amount equal to the 2011 increase. (Post-hearing brief, p. 61)

The Borough contended that many New Jersey public employers are passing on the rising health insurance costs to their employees. It cites three interest arbitration awards in which arbitrators have awarded employee health insurance contributions.¹² In his 2008 Point Pleasant award, Arbitrator Glasson cited 29 settlements or awards that included health insurance contributions. In his 2009 North Plainfield award, Arbitrator Glasson cited 63 settlements or awards that included health insurance contributions. In his 2010 Lakewood award, Arbitrator Glasson cited 78 settlements or awards that included health insurance contributions. The Borough explained in detail the amount of contributions in many of the public employers identified in the three awards of Arbitrator Glasson.

Bergen County municipalities are also seeking to have their employees contribute more toward health insurance costs and the Borough cited a number of municipalities in Bergen County and elsewhere in the State where employees do contribute toward health cost through premium sharing, co-pays, increased deductibles, or other cost-saving

¹² Lakewood and PBA Local 71, Docket No. IA-2009-049 (January 7, 2010, Glasson); North Plainfield and PBA Local 85 & PBA SO Local 85, Docket No. IA-2008-36 & 37 (July 25, 2009, Glasson); and Point Pleasant Beach and PBA Local 106, Docket No. IA-2007-088 (May 30, 2008, Glasson)

measures. The Borough cited three interest arbitration awards involving Bergen County municipalities in which arbitrators have awarded health insurance contributions.¹³

Legislation Pending to Require Increased Insurance Co-Payments

There are currently two proposals that would increase employee contributions toward health insurance. The first proposal is that of the Governor, which would require all public employees to pay 30% of the health insurance premium, regardless of their salary. (Post-hearing brief, p. 77) The other proposal is a bill (S2718) introduced on February 22, 2011 by State Senate President Stephen Sweeney and State Senator Jennifer Beck that would require public employees to pay a percentage of their health insurance premium on a sliding scale tied to their salary. (*Id.*) The latter version would be phased in over a number of years after collective negotiations agreements expire. (Post-hearing brief, pp. 77-78)

The Borough contended that it is “all but inevitable” that some sort of legislation will be adopted to require public employees to pay a much greater share of health insurance costs than they currently do. The Borough also contended that in view of this, I should:

- (1) render an award requiring immediate conformance to any such pending legislation if it becomes law prior to the end of the contract; and/or
- (2) render an award that incorporates realistic increases in employee health-benefit contributions, which can be reasonably determined by reference to the ranges and methods of increase currently proposed by both the legislative and the executive branches of the state government. To do anything less in this case would result in an award that is not reasonably debatable. [Post-hearing brief, pp. 78-79]

¹³ New Milford, supra; North Arlington, supra; and Ramsey, supra.

The Consumer Price Index

N.J.S.A. 34:13A-16g (7) requires an interest arbitrator to consider the cost of living in determining the reasonableness of the issues. One measure of the cost of living is the consumer price index.

The CPI has been at its lowest level in years while the PBA has received increases that exceed the CPI.

HASBROUCK HEIGHTS PBA WAGE INCREASES VS. CPI

| Year | % Increase | CPI |
|------|------------|--------------|
| 2002 | 3.75 | 1.6 |
| 2003 | 4 | 2.3 |
| 2004 | 4.25 | 2.7 |
| 2005 | 4 | 3.4 |
| 2006 | 4 | 3.2 |
| 2007 | 4 | 2.8 |
| 2008 | 4 | 3.8 |
| 2009 | 4 | 1.5 |
| | Average 4% | Average 2.6% |

Wage increase is 54% per year more than CPI over last 8 years. [Exhibit E-3, Tab 5-1]

In its post-hearing brief, the Borough contended that the CPI increased by 1.6% in 2010 and that its proposal for a 1.5% increase that year virtually matches the CPI increase. The Borough also contended that the CPI decreased by 0.4% in 2009, giving

the PBA, which received a 4% increase that year, a 4.4% gain in purchasing power. (Post-hearing brief, p. 82)

The Borough further contended that Social Security recipients receive cost of living adjustments that correlate with the CPI and that in 2010 there was no increase in Social Security payments. (*Id.*) The Borough further contended that it is anticipated that there will be also be no increase in 2011. (*Id.*)

Continuity and Stability of Employment

N.J.S.A. 34:13A-16g (8) requires an interest arbitrator to consider the “continuity and stability of employment” in making a reasonable determination of the issues. The Borough contended that its proposal will best allow it to maintain and continue a stable work force.

Conclusion

The Borough concluded that because its proposals more reasonably reflect the statutory criteria than the proposals of the PBA, I should issue a decision supporting the Borough’s offer.

DISCUSSION

I am required to make a reasonable determination of the issues and must indicate which of the criteria are deemed relevant. I am also required to satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. In addition, pursuant to N.J.S.A. 34:13A-16d (2), I must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria.

In arriving at the award in this matter, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. My weighing and balancing of the nine criteria, particularly those pertaining to the public interest, financial impact, and comparisons with other employees, leads me to award a total economic package that is more than proposed by the Borough but less than that proposed by the PBA. I believe that the award will ensure a competitive compensation package for the PBA without jeopardizing the Borough's financial condition.

In addition, I note that N.J.S.A. 34:13A-16g (8) requires consideration of other factors not listed among the criteria that are ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One of those factors that has been applied in interest arbitration proceedings is that the party proposing a change in an employment condition bears the burden of justifying it. The record must contain sufficient evidentiary support. Merely making a proposal and appending an exhibit are insufficient. In addition, while there might be merit to awarding or denying a single issue if it were to stand alone, a different result may be required after assessing the merits of any individual issue within the context of an overall award. I have applied these principles to all the proposals in this proceeding.

Also, while I have offered a general summary of the parties' positions, those positions are far too comprehensive to allow for a more complete and detailed treatment of all of the evidence. Nevertheless, all submissions have been thoroughly reviewed and considered. The issues in dispute are economic in nature and include salaries, health insurance, longevity, sick and personal days, and terminal leave.

AWARD

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

2. **Duration**

There shall be a three-year agreement effective January 1, 2010 through December 31, 2012.

3. **Salaries**

Each step of the salary schedules shall be adjusted as follows:

| | |
|------------------|-------|
| January 1, 2010: | 2.25% |
| January 1, 2011: | 2.0% |
| January 1, 2012: | 2.0% |

Each annual increase is retroactive to its effective date.

COST OF AWARD/PROPOSALS

At the end of 2009 there were 26 officers in the bargaining unit, including 14 rank and file officers. Of those 14 officers, 12 were at the maximum 2009 salary of \$107,597 and two were in lower salary steps.¹⁴ In its calculations, the PBA assumed that all rank and file officers were at the top salary. (PBA post-hearing brief, Chart No. 7) The Borough's calculations reflect each of the lower-ranked officers at their actual salary steps. (Borough post-hearing brief, pp. 9-10) For purposes of my calculations, I will

¹⁴ See footnote 3. In 2009 one officer was at step 2 of 9 at \$40,543, the second at \$50,121(step 3/9). (PBA post-hearing brief, Tab 1)

adopt the PBA's model, which maximizes the cost of the parties' proposals and but allows for easier comparisons from year to year. I do not include longevity costs in my calculations.¹⁵

The total annual base salary (excluding longevity pay) of the 26 officers represented by the PBA at the end of 2009 was \$2,906,634. Thus, 1% of that amount is \$29,066.

Assuming no new hires, retirements, or resignations, the cost of the annual base salary increases under the proposals of the PBA and the Borough and the award in each year are:

| | Borough (Proposal) | PBA (Proposal) | Award |
|-------|--------------------|-----------------|-----------------|
| 2010 | \$43,600(1.5%) | \$101,732(3.5%) | \$65,399(2.25%) |
| 2011 | \$0(0%) | \$105,292(3.5%) | \$59,441(2.0%) |
| 2012 | \$0(0%) | \$108,978(3.5%) | \$60,629(2.0%) |
| TOTAL | \$45,231 | \$316,103 | \$185,469 |
| COST | | | |

The total cost of the award over four years is \$185,469, which is \$130,634 less than the total cost of the PBA proposal and \$140,238 more than the Borough's proposal.

I conclude that the total net economic changes for each year of the award are reasonable under the criteria listed in N.J.S.A. 34:13A-16g. In so concluding, I note that

¹⁵ The Borough included longevity in its cost out. According to the Borough, longevity increases will cost .38%, .35%, and .33% in 2010, 2011, and 2012 respectively. There is no proposal to increase/decrease longevity for existing employees and longevity is not part of base salary. Thus, I do not include longevity costs in determining the cost of changes in base salary.

effective May 1, 2010, employees began contributing 1.5% of their base salary toward health insurance premiums, which results in an offset of the awarded wage increase. This award of a 2.25% increase for 2010 results in a total annual base salary of \$2,972,033. The 1.5% health insurance contribution will result in employees being responsible in the aggregate for approximately \$22,290 in premiums for approximately the latter half of 2010 that previously would have been the obligation of the Borough.¹⁶ The cost of the award in 2010 is \$65,399. The awarded 2.0% increase for 2011 will result in a total annual base salary of \$3,031,474. By the end of 2011 the employees' 1.5% contribution will result in an aggregate of approximately \$45,472 in health insurance premiums. The cost of the award in 2011 is \$59,441. In 2012 the 2% increase will result in a total annual base salary of \$3,092,103. The aggregate employee contribution for 2012 will be approximately \$46,382. The cost of the award for 2012 is \$60,629.

The view that the net economic change in 2010 is reasonable is supported by the retirement on May 1, 2010 of a lieutenant and a patrolman, who earned annual base salaries of \$118,509 and \$107,597, respectively, or a total of \$226,106. (PBA post-hearing brief, p. 34, Exhibit P-3) In March 2009 the deputy police chief retired. (*Id.*) He was earning \$165,000. The Deputy Chief position remains vacant. (PBA post-hearing brief, p. 31) Two lieutenants left the department in 2009. Each earned \$118,509. (PBA post-hearing brief, p. 34) One police officer was hired in September 2009 at an entry-level salary of \$30,416. (PBA Power Point, Slide 3, Borough post-hearing brief, Tabs 2 & 3) A

¹⁶ There is no evidence in the record as to when the employees actually began contributing. I am assuming contributions commenced July 1, 2010. An earlier effective date would increase the employee contribution for the year and reduce the employer's financial obligation.

second was hired in January 2010 and a third was hired in July 2010, both at entry-level salaries. (*Id.*) The entry level salaries of the three officers hired in 2009 and 2010 totaled \$91,248.¹⁷ The total base salary of the five officers departing in 2009 and 2010 was \$628,124.¹⁸ The PBA argued that the turnover savings of the salaries of the departing officers is \$864,667. (PBA post-hearing brief, p. 34) However, that figure includes the salaries of one retirement in 2007 and a second in 2008. As noted in footnote 18, I find those retirements too remote to consider in determining the reasonableness of the net economic changes.

Further evidence regarding the reasonableness of the net economic changes award is addressed in other portions of this award, the rationale for which is set forth below.

REVIEW OF STATUTORY CRITERIA

Interests and Welfare of the Public

The interests and welfare of the public require a careful balancing of interests. The public has a strong interest in being served by a highly skilled and efficient police force and that adequate compensation levels are needed to attract and retain such a force. At the same time, one must take into account the cost to the public of providing such service, especially in difficult economic times such as have existed for a number of years

¹⁷ In 2010 the three newest officers were in the 1st, 2nd & 3rd steps. A fourth officer hired in 2008 was at the 4th step. (Borough post-hearing brief, Tab 2) The 2008 new hire is too remote to be considered in determining the reasonableness of the net economic changes. See footnote 18 regarding retirements in 2007 & 2008.

¹⁸ One additional officer retired in 2007 and another in 2008. (PBA post-hearing brief, p. 34) However, their retirements are too remote for purposes of establishing the reasonableness of the net economic changes.

both here in New Jersey and throughout the United States. A good analysis of the balancing of interests was enunciated by Arbitrator Jeffrey B. Tener:

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. [Borough of Cliffside Park and PBA Local 96, Docket No. IA-98-091 (6/25/99 Tener), p. 45]

The inherent danger faced by police officers was brought into stark reality on July 14, 2009 when a Borough police officer was seriously injured while directing traffic on Route 17. (PBA Power Point, slide 29) The officer had to retire. (Id.) The current economic climate in New Jersey and throughout the country was established in the record. (See, e.g., Exhibit E-3, Tabs 3 and 5-2)

My award reflects that while the Borough has recently hired new police officers, its department is protecting the public with fewer officers than had been on the force in recent years. The newer officers, while dedicated, lack the experience of the officers they replaced. In addition, while there is no evidence in the record regarding the Borough's plans to hire additional officers, the award reflects information in the record that five bargaining unit employees and the chief of police will be eligible to retire during the term of this contract. Thus, the public and the officers have an interest in being able to attract and retain the best qualified candidates in an era when approximately 1/3 of the department has retired or may retire.

This criterion mandates consideration of the Expenditure Cap Law limitations. In that regard it is similar to other statutory criteria that mandate consideration of other statutory limitations, such as the Tax Levy Cap. The two Cap laws are designed to control the cost of local government and limit increases in local property taxes. The New Jersey Supreme Court has determined that this criterion is of significant importance in determining interest arbitration disputes, *PBA Local 207 v. Bor. of Hillsdale*, 137 N.J. 71 (1994).

I have given this criterion substantial weight in this matter and have fully considered the parties' arguments and evidence in this regard. However, given the relationship of this criterion to other financially-based criterion, I will not fully address the Expenditure Cap here. Instead, I will address that aspect in the discussion of the Lawful Authority criterion. However, I do find that the award can be funded without exceeding the limitations of the Expenditure Cap.

I will discuss the issues of duration of the agreement and salary in light of the interests and welfare of the public.

Duration

The PBA argued for a contract of four years. The Borough argued for a three-year agreement. The PBA asserted that the award of a three-year agreement would result in the parties having to commence negotiations in a little over a year. The Borough did not offer a specific supporting rationale.

In a different economic climate the rationale by the PBA for a longer term contract might have prevailed. However, the record in this case establishes that the economic climate in New Jersey and across the country has deteriorated over the term of

the predecessor contract and, at the close of the record on March 23, 2011, remained troubled. The prospects for even a modest economic recovery are uncertain. Thus, projections about future economic conditions can amount to informed speculation at best and guesswork at worst. Accordingly, on balance and in view of all the statutory factors, a contract of three years provides some stability over the shorter term in the negotiations relationship and predictability in financial planning on the part of the Borough and employees represented by the PBA. With the passage of time over the remainder of three-year agreement, the parties may be better able to discern a clearer economic picture beyond 2012.

Salary

The parties devoted most of their presentations to this issue. Accordingly, I will do likewise in addressing the issue.

The Borough contended that the PBA's proposal is unreasonable because its police officers are already highly compensated in wages and benefits. At the same time, the Borough is facing increasing costs for employee benefits, such as health insurance and pensions, declining revenues in a troubled economy, and limits on its ability to raise taxes, all of which are threatening its fiscal well being. The Borough argued that its proposal is best suited to balance the interests of its police officers and the public.

The PBA contended the Borough is relatively wealthy, can easily afford its proposal and that such a proposal is needed to permit its members to keep pace with wage and benefit changes in order to attract and retain a dedicated police force.

The Borough's police officers are relatively well compensated in wages. As is detailed later, the \$107,597 top-step salary for Borough police officers is relatively high

compared to other Bergen County municipalities. In fact, that top-step salary is 4.75% higher than the average top-step salary in Bergen County. The Borough police officers are also paid relatively well compared other public employees and private sector employees. The Borough's police officers also enjoy a competitive array of benefits. The Police Department is very productive and its current reduced roster of officers has been doing the job previously handled by up to 31 officers. However, the PBA's reliance on average awards and settlements that were issued or negotiated before the current economic downturn is somewhat misplaced in the current economy.

The arbitrator is acutely aware of layoffs, furloughs, and wage and increment freezes affecting public and private employees and employers throughout New Jersey and across the country. The record reflects all of these conditions, including reports of unemployment rates here in New Jersey and across the country that are at levels not seen in decades and may remain high for some time to come, furloughs and wage freezes and cuts, and home foreclosures in New Jersey at record levels, including in Bergen County. (Borough's post-hearing brief, Tabs 4-6 and Exhibit E-3, Tabs 3-8, 3-9 and 5-2) The Borough has also experienced increased costs for employee health benefits and pensions. (Borough's post-hearing brief, Tabs 9-13 and Exhibit E-3, Tab 4) At the same time, inflation has remained very low for many years. (Borough's post-hearing brief, Tab 14 and Exhibit E-3, Tab 5-1)

In view of this information, I agree with the Borough that the PBA's proposal is not reasonable. However, as noted later in this decision, there are indications in the record that the Borough's finances are not as dire as portrayed. Thus, the record supports the PBA's claim that the Borough's proposal is not reasonable.

The interests and welfare of the public require a stable and experienced police force. The Borough's police officers are experienced and highly motivated, the Borough's police department will continue to be attractive to prospective police officers and that, except for retirements, the current members are likely to opt to stay employed by the Borough. And while some of the wage increases cited as comparisons by the PBA are higher than the award in this matter, the increases awarded here are reflective of a downward trend in awards and settlements that is discussed later in this decision. That trend will likely result in lower or moderate wage increases that, over time, will result in the Borough's relative salary ranking remaining in close proximity to its historical range. I find that PBA's proposed annual 3.5% increases are not necessary to attract and retain such a highly motivated police force. Such increases could, in the current economic climate and, in light of the increased costs associated with the other economic benefits received by police officers, contribute to a less fiscally sound municipal financial footing. However, the Borough's proposal, including a 1.5% wage increase in 2010 followed by two-year wage freeze, along with reduction or elimination of certain benefits, could have a deleterious effect on the morale of the police officers, lessen the attractiveness of the Borough to the most dedicated police officers and candidates for employment and yet not be needed to provide financial stability to the Borough.

In sum, I find that the interests and welfare of the public, a factor that is given substantial weight, would be best served by awarding neither party's salary proposal. Rather, I find such interests would be best served by my salary award.

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

I do not find to be significant a comparison of the Borough's police officers with private sector employees who perform similar services. Neither party submitted data on this issue. It is well established that there are no easily identified private sector police officers who perform services similar to those performed by Borough police officers.

A comparison between the Borough's police officers with other employees generally in private employment warrants greater weight.¹⁹ Private sector wage reports of the New Jersey Department of Labor and Workforce Development (NJLWD), which are posted on PERC's website and cited in this record, include data that total private sector wages statewide declined between 2008 and 2009 by 0.7% and declined by the same percentage in Bergen County. The corresponding numbers between 2007 and 2008 showed an increase of 2.5% in the state and an increase of 1.8% in Bergen County.

More recent data in the record show that the wage and employment situation in the country and in New Jersey continues to be less than ideal. A March 4, 2011 News Release from the Bureau of Labor Statistics (BLS) indicates continuing job losses in state and local governments across the country with 377,000 jobs lost since September 2008. Over the 12-month period ending in February 2011, average hourly private sector wages increased by 1.7%. (Borough's post-hearing brief, Tab 4)

¹⁹ The Borough argued that the 1996 Reform Act reordered the priorities of the three subfactors, moving "in private employment" from third to first, "public employment in the same or similar comparable jurisdictions from first to third," and eliminating "private employment in general" from the second subfactor, leaving it to reflect "[i]n public employment in general. The Borough further argued that the weight attributed to each factor should be changed to reflect the reordering. The Borough cited no authority for changing the weight attributed to each sub factor. Accordingly, I will give the each sub factor an appropriate weight as noted.

Data for New Jersey support the view that the New Jersey economy remains problematic. A March 10, 2011 NJLWD News Release reports that private sector employment grew in the state in 2010 while public sector employment declined. (Borough's post-hearing brief, Tab 5). The unemployment rate for 2010 was 9.5%. (Id.) The rate in 2009 was 9.1%. (Id.) Hourly earnings in manufacturing increased by 5.6% from January 2010 to January 2011, while weekly earnings in manufacturing increased by .3%. (Id.) That may be an indication that private sector employees in manufacturing may not be working full work weeks. The corresponding changes in information technology reflect a 6.0% decline in hourly earnings and a 3.9% decrease in weekly earnings. (Id.)

There is no evidence in the record that the Borough's police officer wage increases have been tied to private sector wage increases or wage increases in public sector in general. However, private sector increases and increases in public sector in general, are entitled to significant weight.

Also entitled to significant weight is the third subfactor of "public employment in the same or similar comparable jurisdictions..."

The Borough's police officers are among the better paid officers in Bergen County. Information submitted by the Borough indicates that in 2009, the Borough's top step patrol officers ranked 14th out of 61 Bergen County municipalities. (Exhibit E-3, Tab 3-1) Information supplied by the PBA indicates that the Borough's top step ranked 7th out of 23 Bergen County municipalities. (PBA post-hearing brief, Chart 3)

In its post-hearing brief, the PBA cited average base rate increases in 26 Bergen County municipalities. (Chart No. 6) The annual average of those cited increases are as follows:

| <u>2010</u> | <u>2011</u> | <u>2012</u> | <u>2013</u> |
|-------------|-------------|-------------|-------------|
| 4.407% | 3.74% | 3.70% | 3.92% |

While the Bergen County average chart prepared by the PBA reflects percentage wage increases that are closer to the PBA wage proposal than the Borough proposal, the data reflect settlements agreed to before the full impact of the economic recession was realized. Also, the PBA chart lists only six municipalities as having wage increase data for 2013. In addition, ten municipalities are listed with wage increase data for only one or two years. Thus, the data are not entitled to the weight that otherwise might be warranted.

PERC's Salary Increase Analysis for 2007-2010 reflects the following data for interest arbitration awards and settlements of interest arbitration proceedings:

| Year | # of Awards | Avg. Sal. Increase of Award | # of Settlements | Avg. Sal. Increase of Settlements |
|------|-------------|-----------------------------|------------------|-----------------------------------|
| 2007 | 16 | 3.77% | 46 | 3.97% |
| 2008 | 15 | 3.73% | 60 | 3.92% |
| 2009 | 16 | 3.75% | 45 | 3.60% |
| 2010 | 16 | 2.88% | 45 | 2.65% |

The data do not support the Borough's 1.5/0/0 proposal, or the PBA's proposed 3.5% increases in each of the four years of the proposed agreement. Instead, the data support my award.

Overall Compensation

A review of the overall compensation factor requires an arbitrator to consider all the economic benefits received by the employees involved in a case, including direct wages, vacations, holidays, excused leaves, insurance, pensions, and medical benefits. It thus directs a focus on all employee benefits, not just the items at issue in the case. I have given this factor significant weight. The record reveals that the Borough's police officers enjoy an array of benefits, including various types of paid leave, such as sick, vacation, personal, and bereavement. They also enjoy an education incentive and a minimum amount of pay for court appearances and when called back to duty. Other benefits enjoyed by the Borough's officers include those detailed elsewhere in this decision. Some of these benefits are greater than the Bergen County average. Others are lower than average. Regardless whether the benefits are above or below average, the benefits are comprehensive and generally typical of the kind of benefits enjoyed by other municipal police officers in Bergen County.

I have also given significant weight to the cost to the employer of providing pension and health benefits, which have increased significantly over the years. Evidence in the record indicates that the costs of health benefits will increase by 12.2% in 2011. Pension costs for 2011 will increase by 19%.²⁰ Since pension costs are tied to salary

²⁰ The PBA acknowledged the increase in the Borough's pension contributions but argued that the reason for the increase is a pension "holiday" under which the Borough was permitted to avoid making pension contributions for five years. (PBA post-hearing brief,

level, an increased salary will result in increased pension costs. However, as pointed out by the PBA, such costs are excluded from the Tax Levy Cap.

As noted above, the Borough's police officers are relatively well compensated in wages and benefits. Neither the PBA's nor the Borough's proposals are supported by a consideration of the overall compensation received by Borough police officers. My award is.

Stipulations of the Parties

There were no stipulations. Thus, this factor is not relevant and is given no weight.

Lawful Authority of the Employer

Three of the statutory criteria²¹ refer to the lawful authority of the employer and require an arbitrator to consider, among other things, the limitations imposed on an employer by Cap laws, which generally limit the amount by which appropriations and the tax levy can be increased. The appropriation limitation is on total appropriations and not on any single budget appropriation. The 4% Tax Levy Cap was modified in July 2010 to limit the annual increase in the local tax rate in future budgets to 2%, with exceptions for some increases in expenditures.²² The 2% Tax Levy Cap became effective on January 1, 2011. Thus, the 4% Tax Levy Cap is applicable in 2010, the first year of the contract in this matter.

p. 42) The PBA further argued that that lack of payment must be given weight in this proceeding when considering the Borough's assertion of budget pressure from pension contributions. (*Id.*) I decline to do so. Regardless of the reason for the increase in pension contributions, it is an increase that must be considered.

²¹ N.J.S.A. 34:13A-16g (1), (5), and (9)

²² Among the exceptions are certain increases in health insurance costs and pension contributions.

The Borough expressed concern that even without wage increases, it was impossible for it to maintain current appropriation levels in 2010 on line items other than pensions and health benefits, “further eroding its ‘ability to pay’ without encountering service and staffing level decreases in the near future.” (Post-hearing brief, p. 29) However, no specific evidence was presented to support that concern. In addition, the Borough did not contend that the granting of the PBA’s proposal will cause it to approach the limits of its overall financial authority or to breach the constraints imposed by the pertinent statutory criteria. Even if the Borough so contended, there is no evidence in the record to support such a contention. In fact, evidence in the record indicates that the Borough has been below its tax levy and expenditure cap limitations in 2008 and 2009 and there is no evidence in the record that the salary award will cause the Borough to exceed its limits under any cap requirement. Indeed, while this factor is important and is given substantial weight, the Borough’s concern about the welfare of its taxpayers is a general statement without any detail to allow me to give the Borough’s contention the consideration it claimed is warranted.

According to the Borough’s 2010 Summary Levy Cap Calculation, the Borough’s local tax levy for municipal purposes was \$35,092 below the maximum allowable amount to be raised by taxation. (Exhibit P-22) My awarded increase of 2.25% in 2010 will cost \$21,799 more than the Borough’s proposed 1.5% increase. While the \$35,092 cushion in the Borough’s Tax Levy Cap calculation is not that large, it is evidence that the Borough can accommodate the additional \$21,799 within its adopted budget. Further ability to accommodate the additional increase is addressed in the discussion of the financial impact criterion, such as new revenue from the employees’ 1.5% contribution

toward their health insurance and the reduction overall police department payroll following the departure of four relatively highly paid police officers in 2009 and 2010 and the hiring of three entry-level officers in those same years.

Thus, the 2.25% increase will not force the Borough to exceed its 2010 Tax Levy Cap. Looking forward to 2011 and 2012, there is no evidence in the record that the 2% increases awarded in each year will cause the Borough to exceed the 2% Tax Levy Cap applicable in each of those years, especially when consideration is given to the 1.5% employee contribution toward health benefits, which will be fully realized in each of those two years.

According to the Borough's 2010 Budget Appropriation Cap calculations, the maximum limit on appropriations was \$14,298,437. However, the Borough's actual appropriation was \$13,583,536, or \$714,901 under the expenditure Cap. While the \$714,901 does not represent cash, it does represent some flexibility in the Borough's finances. As noted above, the awarded 2.25% in 2010 results in a cost of \$21,799 more than the cost of the Borough's 1.5% offer.

The Borough contended that the 2% cap on base salary increases that was adopted in 2010 applies in this matter, at least in spirit. (Borough post-hearing brief, p. 21) The Borough conceded that the plain language of the statute makes it clear that the limitation does not apply because the agreement expired on December 31, 2009, which is prior to the January 1, 2011 effective date of the cap. (Id.) However, the Borough argued that I should:

Embrace the Legislature's intent of controlling public sector salary increases under the parameters of the new law. The Borough is bound to comply with the two percent tax levy cap imposed by the 2010 Cap in its

2011 budget and thereafter, and is, therefore, already constrained by the two percent cap imposed the New Jersey Local Government Cap Law.

To the extent that the PBA's package averages more than 2% per year, the Borough will need to fund the PBA salary increases by reducing expenditures elsewhere, a process that would have been precluded by law but for the expiration of the current contract. [Id.]

I decline to embrace the 2% base salary limitation. If the Legislature intended the 2% base salary limitation to apply to collective agreements that expired prior to January 1, 2011, that intent would have been incorporated as part of the statute. It was not. Accordingly, I have applied the statutory criteria that are applicable to this proceeding.

In sum, there is no evidence in the record that the award will cause the Borough to approach the limits of its financial authority or breach the limits imposed by *N.J.S.A.* 34:13A-16g (1), (5), and (9).

Financial Impact on the Governing Unit, Its Residents and Taxpayers

This criterion requires an arbitrator to consider the financial impact on the governing unit, its residents and taxpayers. This factor is always an important factor for consideration in interest arbitration proceedings. I give it substantial weight.

The Borough contended that it is facing a number of difficult fiscal problems, such as increases in the cost of employee health care and pension as well as limitations imposed by the Expenditure and Tax Levy Caps. However, the record is also unclear how the cited problems will specifically impact the Borough's budget and its residents and taxpayers. In addition, at page 15 of its post-hearing brief the Borough claimed that the PBA's salary proposal would "impose a significant burden on the Borough" now and in the future. The Borough also claimed that "[t]o the extent the PBA's proposal averages more than 2% per year the Borough would need to fund PBA salary increases by

reducing expenditures elsewhere.” (Borough post-hearing brief, pp. 21-22) However, the record is lacking as to how the PBA’s proposed wage increase would specifically and directly impact the Borough, its residents, and taxpayers. There is also no evidence that the awarded increases would have an adverse impact on the Borough, its residents and taxpayers.

As is detailed elsewhere in this decision, the federal and state economies have been in recession, remain troubled, and have been considered in this award to the extent that supporting evidence has been introduced. However, the record is unclear as to how the national or state economic decline has specifically affected the Borough. For example, there is evidence in the record of reports of layoffs, furloughs, and wage freezes involving private and public employers throughout the country and New Jersey. However, there is no evidence that such events took place or were or are contemplated by the Borough or that the Borough’s residents or taxpayers have been personally affected by layoffs, furloughs, wage freezes. There is evidence in the record regarding widespread home foreclosures in the country, New Jersey and Bergen County. However, again there is no evidence that the Borough or its residents or taxpayers have been directly impacted by foreclosures.

Instead, the evidence in the record indicates that the Borough has some positive economic indicators. It has had surpluses every year since at least 2006, with an anticipated 2010 surplus of \$1,200,000 (Borough post-hearing brief, Tab 1-7) The Borough also anticipated total revenue in 2010 of \$18,060,624. Based on the record in this matter, the Borough underestimates its revenue. In 2008 the Borough realized over \$1 million more in total general revenue than it anticipated. (Exhibit P-21, Sheet 11) In

2009 it realized \$680,976 more than it anticipated. (Exhibit P-22, Sheet 11) In 2009 it anticipated raising \$13,436,383 in tax revenue. (Exhibit P-22, Sheet 11) It realized \$14,017,894, a difference of \$581,511. (Id.) In 2008, it realized \$666,108 more in tax revenue than it anticipated. (Exhibit P-21, Sheet 11) Thus, while prior experience is not a guaranteed predictor of future performance, it is possible that actual total general revenue in 2010 will exceed the anticipated revenue figure. However, one problematic revenue source was cited by the Borough: anticipated aid from the State of New Jersey. It declined by approximately \$278,000 in 2010. (Exhibit P-22, Sheet 5) It is uncertain what level of State aid will be received in 2011.

The Borough's budgets also indicate that it spends less than it appropriates. For example, in 2009, the Borough appropriated a total of \$17,932,278. It spent \$17,314,014, a difference of \$618,264, virtually all of which was reserved for 2010. (Exhibit P-22, Sheet 30) In 2008, the Borough spent \$445,914 less than appropriated. (Exhibit P-21, Sheet 30)

The Borough also spends less than it appropriates for police salaries and wages. For example, in 2009, the Borough appropriated \$16,604 more than it spent. (Exhibit P-22, Sheet 14) That amount was placed in reserve.

According to Bergen County tax records, the value of taxable property in the Borough is \$1,921,854,237. (Exhibit P-16, p. 1) That figure ranks 16th highest out of 26 listed Bergen County municipalities. (Id.) The 2010 total tax rate was \$2.169 per \$100 of assessed value. (Exhibit E-3, Tab 1-6) In 2009 it was \$2.070. (Exhibit P-16) That tax rate ranked 9th lowest out of the 26 listed municipalities. (Id.) The 2010 estimated tax collection rate was 97.62%. (Exhibit P-22, Sheet 3) The 2009 figure was 97.50%.

(Exhibit P-21, Sheet 3) The median household income in the Borough in 1999 was \$75,032, which was higher than in surrounding municipalities. (Exhibit E-3, Tab 3-1) The Borough generally has relatively fewer households receiving public assistance than surrounding municipalities. (Id.)

While the Borough has some positive economic indicators, the Borough contended that its budget in 2011 and subsequent years will be much more difficult to manage. The Tax Levy Cap is reduced to 2% in 2011 and beyond, thus limiting the Borough's ability to raise taxes. According to the Borough, assuming no wage increase for police officers, no increase to other budget line items, and no decreases in revenue, it will be required to decrease appropriations on all other budget line items by at least \$35,000 in 2011. (Borough post-hearing brief, p. 29) The Borough's statement has a number of premises: no decreases in revenue, including State aid and estimated increases to line items over which it contended it has no control: health insurance; pensions; garbage collection; sewer authority; DPW contract; and PBA step increases. (Id.)

The Borough also pointed out that its ability to generate surplus is somewhat reduced, with the January 1, 2009 surplus balance of \$1,603,932 being reduced by approximately \$251,000 by January 1, 2010. (Borough post-hearing brief, p. 26, Exhibit E-3, Tab 1-7) The Borough also noted that various cited anticipated revenue line items were reduced in 2010 from 2009, such as interest on investments and deposits. (Borough post-hearing brief, p. 27 and Exhibit P-22, Sheet 4)

For its part, the PBA contended that Hasbrouck Heights is not a municipality in distress. It pointed to budget surpluses and other indicators of financial health and flexibility to fund its proposed wage increase. The PBA also cited as a barometer of the

lack of public pressure on municipal taxes a 2010 vote by Borough residents to increase the school tax levy, which is a significant part of the Borough's tax levy.

The Borough is correct that its ability to generate surplus has been reduced, that there are real pressures in the budget, and that the 2% Tax Levy Cap is more than a little problematic. And while there is no specific evidence in the record that the Borough's residents have been directly affected by the deepest economic recession in most people's memory, the recession has been sufficiently long and deep that it is inconceivable that at least some residents have not been impacted. However, as noted by the PBA, the economic picture is not as dire as painted by the Borough. While some anticipated revenue line items were not fully realized, other line anticipated revenue line items were exceeded. For example, interest and costs on taxes were anticipated to bring in \$50,000 in 2009. (Exhibit P-22, Sheet 4) The realized amount was \$100,173. (Id.) Car dealership fees generated \$47,000, which was more than the \$40,000 that was anticipated. (Id.) Uniform construction code fees generated \$251,890 in 2009, which was more than the \$175,000 figure that was anticipated. (Exhibit P-22, Sheet 6) As noted above, the Borough anticipated \$17,932,278 in revenue in 2009. (Exhibit P-22, Sheet 11) It realized \$18,613,254, a difference of \$680,976. (Id.) In 2008 the Borough anticipated \$1,124,861 less in revenue than it realized. (Exhibit P-21, Sheet 11) The Borough anticipated \$18,060,624 in revenue in 2010. (Exhibit P-22, Sheet 11) If past is prologue, the anticipated 2010 figure will be exceeded in 2011.

In 2010, the difference between the award and the Borough's final offer is \$21,799, which must be viewed in the context of an overall 2010 municipal budget of over \$18 million. As noted above, despite budget pressures, such as a decline in some

revenue items such as State aid, and statutory caps, there is some flexibility within the budget to accommodate the award. One item that was not anticipated in the 2010 budget that will enhance that flexibility is the revenue from the 1.5% of base salary contribution by employees toward their health insurance that the Borough would have otherwise been responsible for. There is also the turnover savings when the higher salaries of departing officers are compared to the entry level salaries of new officers.

N.J.S.A. 34:13A-34-16g (6) requires an arbitrator to “take into account, to the extent that evidence is introduced...the impact on the ability of the governing body to” maintain or expand existing local programs and services or initiate new programs and services. The record reflects that the economy and Borough’s budget warrant caution in awarding salary increases. However, there is no specific evidence in the record that the award would jeopardize any planned or existing programs or services.

In sum, the Borough is a comparatively prosperous, well-managed municipality and its officials are relatively conservative regarding fiscal matters. The Borough over estimates its expenditures and under estimates its revenue. Through apparent fiscal prudence in the deepest recession in decades, it has avoided the necessity of layoffs, furloughs, and wage freezes that have affected public and private employers throughout the nation and New Jersey.

I conclude that my award will not adversely affect the governing unit, its residents and its taxpayers.

The Cost of Living

Cost of living (CPI-U) data from the United States Department of Labor Bureau of Labor Statistics indicates the following percentage changes in the years noted:

2010 1.5%
2009: 2.7%
2008: 0.1%
2007: 4.1%
2006: 2.5%

[Borough post-hearing brief, Tab 14]

In October 2009 the United States Social Security Administration announced that for the second year in a row there would be no cost of living adjustment. (Exhibit E-3, Tab 307) (Exhibit E-3, Tab 3-7) The social security COLA is an automatic adjustment tied to the inflation rate that was adopted in 1975. (*Id.*) Until the 0% increase in the 2009 COLA, there had never been a year in which there had not been an automatic increase. (*Id.*) The cost of living is an important criterion in collective negotiations and interest arbitration. I give it moderate weight.

Neither party has cited any evidence that wage increases in the Borough have been tied to changes in the cost of living. In fact, the Borough correctly asserted that over the past number of years the Borough's police officers have experienced wage increases that exceeded the inflation rate. (Borough's post-hearing brief, p. 81)

I find that the PBA's salary proposal exceeds by far the CPI data and is not supported by this criterion. And while the Borough is correct that over the past few years Borough police officers have received wage increases that have been greater than the inflation rate, this criterion, does not warrant its 1.5/0/0 wage package. My award is reflective of the relatively modest recent increases in the cost of living over the last few years

Continuity and Stability of Employment

With one recent exception, the Borough's police force has been characterized by officers retiring after long service. Since 2007 the Borough's police force has lost seven

officers, including a deputy chief, a detective captain, three lieutenants, and one patrol officer. (PBA post-hearing brief, p. 34, Chart 9) In addition, five bargaining unit employees and the chief of police are eligible to retire during the term of this agreement. (PBA post-hearing brief, p. 35 Chart 10) While there is no evidence in the record that the Borough is contemplating layoffs and while there is no guarantee that eligible officers will retire or that some or all retiring officers will be replaced, continuity and stability of employment may be a factor during the term of this agreement. More specifically, the ability of the Borough to attract top-quality candidates may become important during or after the contract at issue in this matter. Thus, I have given this criterion significant weight, which is more than might otherwise have been accorded.

The record does reflect that police officers in other New Jersey municipalities have been subject to layoff. (Exhibit E-3, Tab 5-2) Thus, a pool of trained and experienced candidates is arguably available from which the Borough could choose to fill any vacancy. However, the PBA has not produced evidence that its proposals are needed to attract and retain the highest caliber police officers. At the same time, the Borough's proposals, including elimination of longevity and terminal leave for new hires, which are addressed below, could, if awarded, make it harder for the Borough to attract the best qualified candidates. My award takes a more moderate approach based on the statutory criteria addressed above with regard to salary.

Other Economic Proposals

Borough's Proposals for New Hires

The Borough proposed to eliminate or modify a host of wage and benefits for officers hired after January 1, 2011, including terminal leave, longevity, and sick days. The Borough also proposed to add five steps to the salary guide and freeze the starting salary.

While the Borough contended that Borough police officers receive benefits, including terminal leave, which it argued are generous compared to police officers in other Bergen County municipalities, it did not fully or specifically address its proposals in light of the statutory criteria. The PBA did not offer specific opposition to this or other Borough proposals except to note that the benefits are longstanding ones that were the product of negotiations or interest arbitration. It chose to focus solely on the wage increase component and generally oppose all other changes.

The Borough did not meet its burden of establishing that its proposals are warranted under the statutory criteria. A comparison of the overall compensation and comparability criteria indicate that Borough police officers enjoy benefits that are within the range enjoyed by police officers in other Bergen County municipalities. For example, new police officers in Hasbrouck Heights are subject to a salary guide of eight steps plus an academy step. According to information provided by the Borough, only 13 of 61 Bergen County municipalities have as many salary steps. (Exhibit E-3, Tab 3-1)

As noted above regarding continuity and stability of employment, the proposals, if awarded, could adversely impact the Borough's ability to attract and retain the best qualified candidates. Similarly, the public interest criterion does not support such

proposals. I particularly note that the Borough's police officers are covered by an agreement that includes two salary schedules: one for officers hired before July 21, 2003; and the second, less generous schedule for officers hired after July 21, 2003. The Borough proposed a third schedule for officers hired after January 1, 2011.

The Borough's officers are also subject to two longevity scales, one for officers hired before July 21, 2003 and a second, less generous schedule for those hired after that date. The Borough proposed to eliminate longevity for officers hired after January 1, 2011. Thus, police officers would be governed by three different longevity programs.

The proposals for three different types of salary schedules and three different longevity programs could be somewhat unwieldy in such a small, close-knit department, and could also undermine unit cohesion and morale.

My award covers a period ending December 31, 2012. As noted earlier, there is no evidence in the record that the Borough intends to hire new police officers during that period. Thus, there is no evidence that the Borough's proposals, if awarded, would result in any economic benefit to the Borough during the term of the awarded contract. In fact, the Borough conceded with regard to its longevity and terminal leave proposals that no savings would be achieved during the term of the agreement because any officers hired on or after January 1, 2011 would not be eligible for the benefit. (Borough post-hearing brief, p. 12) Thus, the savings would be achieved well beyond the term of the agreement. With regard to its sick leave proposal, the Borough contended that the savings, while significant, would be speculative. (Borough's post-hearing brief, p. 13) Thus, there is no immediate financial basis for awarding the proposals.

Borough's Health Insurance Proposals

The Borough proposed that effective July 1, 2011 any employee in Direct 10 shall pay the difference between Director 10 and the less generous Director 15. It also proposes that effective July 1, 2011 the current 1.5% of base salary contribution for health insurance shall go to 2.5% and that effective July 1, 2012, the contribution shall go to 3.5%.

Again, the Borough contended that its police officers enjoy generous benefits compared to other public and private employees, that its costs continue to increase in this regard, and that the 1.5% employee health insurance contribution falls far short of the total cost of the benefits, which are funded by Borough taxpayers. (Borough's post-hearing brief, pp. 10-12) The Borough also contended that the contribution of Borough police officers must be viewed in the context of negotiated or awarded contributions in other jurisdictions. (Borough's post-hearing brief, pp. 58-81)

The Borough estimated that depending upon the wage increase awarded, it could expect to save approximately \$30,000 per year with an additional 1% employee contribution. (Post-hearing brief, pp. 11-12) The Borough stated that savings attributable to the Direct 10/15 proposal is too speculative because it does not know the number of employees who would remain in Direct 10 if its proposal is awarded. (Post-hearing brief, p. 11)

The Borough argued that that in light of proposed legislation that includes increased employee health insurance contributions, it is incumbent upon me to render an award:

1. requiring immediate conformance to any such pending legislation if it becomes law prior to the end of the contract; and/or
2. that incorporates realistic increases in employee health-benefit contributions, which can be reasonably determined by reference to the ranges and methods of increase currently proposed by both the legislative and the executive branches of the state government. [Borough's post-hearing brief, pp. 78-79]

While the Borough's assertions about its ever-increasing health insurance costs were not disputed by the PBA and are credible, as is more fully explained in the discussion of the Borough's proposals to eliminate or modify certain benefits for new hires, I do not find that the Borough met its burden of establishing that its health insurance proposals are warranted under the statutory criteria. In addition, the contracts and interest arbitration awards cited by the Borough in support of this proposal were effective prior to the May 21, 2010 effective date of the statutorily-imposed 1.5% employee contribution toward health benefits. In addition many of the cited employee contributions are lower than the current 1.5% statutory contribution.

The award in this matter focuses on base salary increases and, in light of application of the cited statutory criteria, reflects a moderate increase that is offset in part by the statutory 1.5% employee health insurance contribution that only became effective approximately a year ago. Also in light of those same statutory criteria, and cost pressures, such as increases in health insurance premiums and pensions, the award reflects a contract duration that is shorter than might otherwise been applied. Thus, the parties will be able to address various issues, including health insurance, relatively soon with more information about costs and any legislation that may be adopted.

Finally, I decline to follow the Borough's suggestion that I award language adopting any proposed statutory health insurance premium contribution. The suggestion was not part of its final offer. (See *N.J.A.C.* 19:16-5.7(f))

Borough's Personal Day Proposal

The Borough proposed that personal days not used in the year in which they were earned are lost. Borough police officers currently receive four personal days per year. Officers who do not use the four personal days are paid for the days at their regular rate of pay. The Borough contended that its proposal, if awarded, would result in savings to the Borough but that those savings are too speculative to calculate. (Borough's post-hearing brief, pp. 12-13)

As is more fully explained in the discussion of the Borough's proposals to eliminate or modify certain benefits for new hires, I do not find that the Borough met its burden of establishing that its proposals are warranted under the statutory criteria.

Based on the foregoing, I respectfully enter the terms of the following award as a reasonable determination of the issues in dispute.

AWARD

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

2. **Duration**

There shall be a three-year agreement effective January 1, 2010 through December 31, 2012.


3. **Salaries**

Each step of the salary schedules shall be increased as follows:

| | |
|------------------|-------|
| January 1, 2010: | 2.25% |
| January 1, 2011: | 2.0% |
| January 1, 2012: | 2.0% |

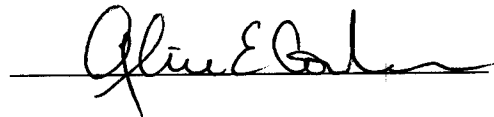
Each annual increase is retroactive to its effective date.

Dated: May 3, 2011
Mountainside, New Jersey


Lawrence Henderson, Esq.
Arbitrator

State of New Jersey }
County of Union }

On this 13th day of May 2011, before me personally came and appeared Lawrence Henderson known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



ALICE E. CONDREN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 10/4/2015

