

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between:

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**BOROUGH OF RUMSON**

Public Employer,

- and -

**PBA LOCAL 345**

Union.

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2008-064

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Borough:**

Matthew J. Giacobbe, Esq.

Adam S. Abramson, Esq., on the brief  
Scarinci & Hollenbeck

**For the PBA:**

David J. DeFillippo, Esq.

Klatsky Sciarabone & DeFillippo

PBA Local 345 [the "PBA" or "Association"] and the Borough of Rumson [the "Borough"] are parties to a collective negotiations agreement [the "Agreement"] that was in effect from January 1, 2003 until December 31, 2006. After direct negotiations between the parties for a successor agreement reached an impasse, the PBA filed a petition with the Public Employment Relations Commission [PERC] on February 15, 2008, requesting interest arbitration pursuant to N.J.S.A. 34:13A-14 and N.J.A.C. 19:16. Thereafter, in accordance with N.J.A.C. 19:16-5.6, I was appointed by PERC to serve as interest arbitrator.

I conducted pre-interest arbitration mediation sessions with the parties on October 2 and December 9, 2008 in an effort to assist them in arriving at a voluntary settlement. Although the issues were narrowed, several key items remained in dispute, necessitating the convening of a formal interest arbitration hearing. The hearing was conducted on September 1, 2009 in Rumson. A transcript of the hearing was taken. At the hearing, the Borough and the PBA argued orally and submitted a substantial amount of documentary evidence in support of their respective final offers. Testimony was offered by Borough Administrator Thomas Rogers and Police Officer Kevin Gaynor. At the conclusion of the hearing, the parties engaged in further settlement discussions without reaching a mutual agreement. Each party filed a post-hearing brief on or about December 24, 2009, at which time the record was closed.

The parties did not mutually agree on an alternate procedure. According, the terminal procedure in this matter is conventional arbitration. N.J.S.A. 34:13A-16d(2), 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.

N.J.S.A. 34:13A-16f(1) requires that each party submit a final offer. The final offers of the parties follow.

### **FINAL OFFERS OF THE PARTIES**

#### **PBA Local 345**

1. **Duration:** Five years commencing January 1, 2007 through December 31, 2011.
2. **Salary and Longevity:**  
  
2007 – 5.0%  
2008 – 5.0%  
2009 – 5.0%  
2010 – 5.0%  
2011 – 5.0%  
  
Each step on the longevity guide shall be increased by \$75.00 across the board in each year of the new agreement.
3. The annual \$700 clothing allowance and the annual \$700 clothing maintenance allowance shall be increased to \$1,000.00.
4. Any member scheduled for a fitness for duty examination by the Borough shall receive at least 30 days' advance notice. If said officer is not provided the requisite advance notice, he/she shall not be required to attend same. Moreover, in the event that the blood or urine samples are to be drawn from any officer as part of such exam, two samples shall be drawn, one for testing purposes and one for future testing, if

necessary, in the event of any "false positives" with respect to the first sample. The drawing and preservation of the second sample shall be at the Borough's expense.

All other provisions of the 2003-2006 collective negotiations agreement shall remain in full force and effect.

### **Borough of Rumson**

1. **Duration** – Five years commencing January 1, 2007 through December 31, 2011.

2. **Salary and Longevity:**

2007: 0%  
2008: 0%  
2009: 2%  
2010: 2%  
2011: 2%

The longevity payments shall be capped at the 2006 rates and will not be increased.

All new hires as of January 1, 2009 shall not be eligible for longevity.

3. **Article 5 (Retirement)**

**New Section 2:** All new hires as of January 1, 2009 shall not be afforded health benefits upon retirement.

4. **Article 8 (Work Week-Overtime)**

**Add the following to Section B (1)**

Sick leave shall not count as hours worked for overtime purposes in accordance with the Fair Labor Standards Act.

**Revise Section B (1) regarding hours of work per year:**

Each officer shall be required to work a total of 2,080 hours per year.

**Delete Section A (2) from the contract.**

**Removal of Section C from the contract.**

5. **Article 9 (Vacations):**

Vacation allowances shall be as follows:

Vacation is an accrued benefit based on the following schedule:

First year of service: One (1) day for each full month of service during the first calendar year, not to exceed ten (10) days that year;

Years 2 through 10: Twelve (12) days vacation per year

Years 11 through 15: Fifteen (15) days vacation per year

Years 16 through 20: Seventeen (17) days vacation per year

Years 21 through 25: Twenty (20) days vacation per year

Years 26 through 30: Twenty-two (22) days vacation per year

Year 30 and beyond: Twenty-five (25) days vacation per year

6. **Article 10 (Injury and Sick Leave):**

**Revise Section A regarding sick leave:**

Employees shall receive fourteen (14) sick days per year for use when an employee is absent from work for reasons of illness or non-work connected injuries.

**New Section I:**

Sick leave shall not count as hours worked for overtime purposes in accordance with the Fair Labor Standards Act.

7. **Article 11 (Insurance, Health & Welfare)**

**Additions to Section C:**

All employees shall pay 20% of the annual cost for health insurance. This contribution shall be deducted from the employee's regular pay and subject to the Employers' Section 125 Plan for tax purposes only. Employees may waive the right to health benefits in which case the Borough agrees to reimburse the employees 30% of the annual savings incurred for the Borough and will be paid in December of each year. Upon opting out of the Borough health insurance, employees may only re-enroll in health benefits upon being removed from [there] their current provider.

**Additions to Section D:**

All employees shall pay 20% of the annual cost for dental insurance. This contribution shall be deducted from the employee's regular pay and subject to the Employers' Section 125 Plan for tax purposes only. Employees may waive the right to dental benefits in which case the Borough agrees to reimburse the employees 30% of the annual savings incurred for the Borough and will be paid in December of each year. Upon opting out of the Borough dental insurance, employees may only re-enroll in dental benefits upon being removed from [there] their current provider.

**New Section F:**

All new hires as of January 1, 2009 shall not be afforded retirement benefits or Medicare "B" reimbursements.

8. **Article 12 (Educational Incentive):**

**Section D:**

The Borough considers increasing the \$500.00 stipend for EMT licenses if more employees become certified.

9. **Article 14 (Holidays and Compensatory Time and Personal Days):**

**Revise Section A (1) regarding holidays:**

Employees shall receive twelve (12) holidays per year as additional vacation days.

**Revise Section B (1) regarding personal days:**

Employees shall receive two (2) personal days per year.

10. **Article 15 (Clothing Allowance and Clothing Maintenance Allowance):**

**Revise Section A:**

Eliminate the clothing maintenance allowance and to to Borough managed service.

**Revise Section B:**

Revisions to the approved equipment list and only the clothing outlined in the list may be purchased.

11. **Article 21 (Police Equipment):**

**Revise Section B:**

Revisions to the approved equipment list.

12. **Article 23 (Qualifications of Employment):**

**New Section C:**

All new hires as of January 1, 2009 shall be EMT certified.

13. **Article 30 (Extension of Contract Agreement):**

**Revise as follows:**

In the event that the Borough and the Association have not, by December 31, 2011, agreed upon the terms and conditions of employment of the Police Officers for the contract period commencing January 1, 2007, then the terms and conditions of this contract of employment will remain in full force and effect, without prejudice, until the negotiation, consummation and execution of said later contract.

### **BACKGROUND**

This matter concerns the Borough of Rumson and PBA Local 345, an employee organization that represents the Borough's 16 police officers below the rank of chief. Among the 16 are two lieutenants, 3 sergeants and 11 rank-and-file police officers.

The Borough is one of 53 municipalities in Monmouth County and comprises 7.2 square miles. According to the 2000 Census, it had a population of 7,137 and a median family income of \$140,668. In 2008 the average sale

price for a home in Rumson was \$1,354,456. The Borough's effective tax rate for 2008 was 1.132 and its net valuation taxable was \$2.9 billion.

Most of the major issues in this proceeding are economic in nature. The PBA and the Borough each argue that when the nine statutory criteria are applied, the evidence would support each of their respective proposals on these and other issues. Both sides have submitted comprehensive briefs and numerous exhibits. The record includes, among other documents, the Borough's budgets over the past three years, annual financial statements, collective negotiations agreements for police officers in other Monmouth County municipalities, PERC published settlement and award data, and considerable comparative data, including crime statistics, federal and state data on the cost of living, private sector wage increases and economic trends.

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 of the proceeding has been reviewed and considered in my determination of the issues.

### **POSITION OF THE PBA**

The PBA supports its economic proposals mainly with evidence relating to the Borough's finances, police department operations and external comparability with municipal police departments elsewhere in Monmouth County.



Other financial indicators analyzed by the PBA include the financial profile of the Borough and other Monmouth County municipalities. Among other factors analyzed by the PBA are residential property values, average residential tax bills, fund balances, appropriations within the police department, average equalized tax rates, median and per capita income, residential property values, construction activity and bond ratings. After such review, the PBA concludes 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 its statutory obligations relating to the Cap Law. Specifically, the PBA contends that:

The Borough is one of the most affluent communities in all of New Jersey...[I]t was estimated that the median household income in Rumson for 2007 was \$147,148... To put that in perspective, the median household income for all of New Jersey in 2007 was just \$67,035...Moreover, the Borough also enjoyed the highest per capita income in Monmouth County as well!

The Borough has also enjoyed a 3.44% growth in population between 2000 and 2008. A growing trend within the Borough is for residents to demolish existing dwellings and construct new homes in their place. For example, in 2006 alone, the total residential building permits issued within the Borough were valued at over \$21 million – qualifying as the third highest in the entire county!

New construction within the Borough is not limited to residential homes. Indeed, the Borough recently completed construction of its new Borough Hall at a cost of nearly \$8 million.

The Borough has also enjoyed an enormous rise in the average sales price of its residences between 1996 and 2008...In 1996 the average sales price for a home in Rumson was \$379,884. To put this sales price in its proper context, it should be noted that the average home in Monmouth County that year sold for just \$180,874

– less than half the cost of a Rumson residence! By 2008, the average home in Rumson sold for a whopping \$1,354,456 – nearly tripling the Monmouth County average (\$481,819) for that year!

The bottom line is that Rumson is enjoying rising property values and remains a family-oriented community. In order to maintain its affluent status, it is imperative that the Borough continue to be able to attract and retain qualified police officers of the highest professionalism and competence. In order to do this, these officers must be fairly compensated at levels which are comparable to other municipal law enforcement officers in Monmouth County as well as the State of New Jersey.

The PBA also submitted evidence concerning the Borough's tax rates in relation to property values. According to the PBA:

Rumson is unique in that its residents have not only enjoyed skyrocketing property values but continue to have one of the lowest general tax rates in all of Monmouth County.

In 2008, the Borough's general tax rate was 1.418. This ranked as the 11<sup>th</sup> lowest in all of Monmouth County. In 2007, the general tax rate for Rumson residents was 1.389. Only nine other Monmouth County municipalities had a lower general tax rate!

The news is just as good when we consider the Borough's equalized tax rate. For example, in 2007, Rumson's equalized tax rate was 1.127. Again, this ranked among the lowest (12 out of 53 Monmouth County municipalities). In 2006, the Borough's equalized tax rate was just 1.225 - the 10<sup>th</sup> lowest in Monmouth County.

The stability of the Borough's tax rate is further illustrated by the fact that there was no increase whatsoever in the portion of the general tax rate which is utilized for municipal purposes for three straight years - 2005-2007! Indeed, from 2005 through 2007, the municipal portion of the general tax rate held steady at 2.81.

At the same time the Borough residents enjoyed low and stable tax rates, Rumson's assessed property values continued to skyrocket. In fact, assessed valuations within the Borough nearly tripled between 2002 and 2007[to \$2,870,060,583].

...It should be noted that the Borough was able to “cash in” on its skyrocketing assessed values by collecting an extremely high percentage of its taxes. In fact, the Borough collected more than 98% of its taxes each year between 2005 and 2007 — with a high of 99% in 2006!

The above data reinforces the PBA's position that Rumson is in excellent financial shape. Not only does the Borough enjoy ever-increasing property values but is also able to maintain a stable tax rate at the same time.

The PBA contends that its proposals can be awarded without violating the Borough's statutory spending limitations or the tax levy CAP. It submits that the Township produced no evidence that would support any such contention. The PBA also submits that its evidence allows for an award of its final offer without adverse financial impact. Specifically, the PBA quotes extensively from the report of its financial expert, Joseph Petrucelli, CPA, FCPA:

The 2009 budget is CAP compliant and did not require any waivers. Rumson did not maximize its potential spending within the cap. Indeed, the Borough “has an additional \$1,043,423...of spending available under the spending cap limitation.” 2009 was not an aberration as the Borough was also well under – to the tune of \$568,248 – the spending cap. Moreover, the Borough's 2008 spending for Police Salary and Wages resulted in a reserve of nearly \$190,000, which may be available to satisfy costs in future years.

The Borough has enjoyed added assessments – which serve to increase the tax levy cap of nearly \$350,000 in 2008 and 2009 combined.

In 2009, Rumson could have raised the total amount of tax revenues to \$9,383,989 and still have remained within the 4% tax levy cap. Instead, Rumson chose to limit the amount raised by taxation to just \$8,932,891 – or nearly half a million dollars below the cap limits.

Again, 2009 was not an aberration. In 2008, the Borough's budget was designed to raise \$8,774,944 through taxation, which was approximately \$318,000 below the cap maximum.

The PBA stressed that its expert also emphasized the Borough's ability to raise substantial revenues and apart from tax collection:

The Borough is anticipating \$92,980 in revenues from cable franchise fees in 2009;

Rumson realized \$520,883 in interest on investments in 2008;

In 2008, Rumson had a cash surplus balance of nearly \$7.5 million! Moreover, Rumson only utilized \$2 million in the 2009 budget - leaving a surplus balance of approximately \$5.5 million (or 40% of its total municipal budget)!

In sum, the PBA contends that its expert's report establishes that Rumson is in excellent financial condition, has more than sufficient financial reserves to fund the PBA's proposals and that the Arbitrator in this proceeding is not prohibited by the spending or tax levy CAPs from awarding its proposals.

The PBA also contends that Rumson police officers have one of the more dangerous, demanding and stressful jobs in the country. The PBA cites to statistics about the number of assaults on police officers nationwide, the number of police officers in New Jersey who were tragically killed in the line of duty in recent years. The PBA also cites statistics that police officers face other risks, including shift work and automobile accidents that add to the stress and risk to health and safety faced by police officers and contends that these job pressures and risk serve to significantly reduce the life expectancy of police officers.

Notwithstanding these risks, the PBA notes that Rumson police officers are regularly cited for their valor and dedication to serving the Borough's residents.

The PBA argues that in exchange for the willingness of Rumson police officers to accept the risks and other sacrifices, its members must be paid reasonable and fair wages. The PBA further argues that its proposals for wages and other benefits must be awarded so that the officers may continue to be successful and effective in combating crime while maintaining a peaceful and safe community for the residents of Rumson.

The PBA next contends that Rumson police officers must be afforded adequate pay raises in order to keep pace with the rising cost of living in New Jersey as well as the salary increases being afforded to public and private sector employees. In support of this contention, the PBA cites PERC statistics showing that the average interest arbitration award over the last decade is 3.86% and the average settlement is 3.97%. In addition, the PBA cites statistics showing that the average private sector wage increase was 4.3% in 2007 and 4.6% in 2006. Also cited were statistics showing that in 2007 federal government employees in New Jersey earned salary increases of 5.2% while state and local government employees in New Jersey earned salary increases of 5% and 3.5%, respectively. The PBA further contends that despite the gloomy economic picture painted by the Borough, personal income in New Jersey rose by 3.6% in 2008.

The PBA contends that the current annual \$700 clothing purchase and \$700 clothing maintenance allowances are not adequate to cover the actual costs for dry cleaning and that its proposed allowances of \$1,000 are more than justified. PBA Delegate Gaynor testified that officers must maintain four different sets of uniforms and that the current allowances have not changed since 2003. The PBA provided exhibits showing clothing maintenance allowances provided in other Monmouth County municipalities exceed the Rumson allowance:

Brielle	\$1,000	Interlaken	\$1,000
Monmouth Beach	\$800	Neptune Twp	\$725
Oceanport	\$825	Red Bank	\$1,000

In addition, the PBA points to the following Monmouth County municipalities where the municipalities pay for the cost of dry cleaning:

Atlantic Highlands	Colts Neck
Eatontown	Marlboro
Matawan	Shrewsbury

Regarding the clothing purchase allowance PBA Delegate Gaynor testified that the cost of police uniforms has continued to increase over the years. The PBA argues that an increase to \$1,000 will enhance the overall appearance of the officers, enable them to be comfortable while on duty and improve morale as officers will no longer have to use their own funds to purchase needed equipment. In addition, the PBA introduced an exhibit that shows other Monmouth County municipalities provide a clothing allowance that exceeds Rumson's \$700 allowance:

Asbury Park	\$1,000	Avon	\$925
Belmar	\$880	Bradley Beach	\$950
Brielle	\$1,000	Deal	\$1,400
Englishtown	\$750	Fairhaven	\$850
Keansburg	\$1,000	Little Silver	\$1,200
Manalapan	\$1,300	Middletown	\$1,000
Monmouth Beach	\$800	Neptune Twp	\$825
Oceanport	\$850	Sea Bright	\$1,025
Shrewsbury	\$1,200	Tinton Falls	\$900
Union Beach	\$1,100	Wall	\$800

The PBA also contends that the following Monmouth County municipalities provide for the full purchase price of uniforms:

Colts Neck	Eatontown
Howell	Interlaken
Lake Como	Long Branch
Marlboro	Matawan
Red Bank	

Responding to the Borough's proposal to eliminate the clothing maintenance allowance and replace it with a Borough-managed service, PBA Delegate Gaynor testified that the Borough had previously discussed this proposal with the PBA but that the Borough had never provided any details.

With regard to Borough's proposal to limit the clothing purchase allowance to the approved equipment list appended to the parties' contract, PBA Delegate Gaynor testified that the list was intended for new hires only and that experienced officers have never been limited to purchasing the items on the list. Delegate Gaynor further testified that officers have purchased items, such as flashlights, firearms and other necessary equipment, and have been reimbursed

under the contract provision. Additionally, the PBA contends that the Borough's suggestion that certain revisions be made to the approved list of items, but that no specifics have been offered. The PBA contends that the Borough's evidence in support of this proposal is lacking in clarity and specificity. In view of this, the PBA argues that the Borough's proposal should be rejected.

Currently, the Borough provides an annual fitness-for-duty medical examination. PBA Delegate Gaynor testified that over the years, the examination has become more formal and less personal. For example, according to Delegate Gaynor, Meridian Health Services now conducts the medical examinations that had previously been performed by a local doctor. According to Delegate Gaynor, over the last two years, officers received, on average, approximately two weeks' notice of the examination, which, according to Delegate Gaynor, was insufficient to allow the officers to juggle their work and vacation schedules and other obligations. The PBA proposes that officers receive at least 30 days' notice of the examination to permit officers more flexibility in the scheduling of the appointment. Delegate Gaynor also testified that the 30-day proposal would also benefit the Borough because it would better allow officers to schedule examinations while on duty rather than overtime. Delegate Gaynor testified that in the past officers have been compensated at the overtime rate when they were required to attend examinations while off duty.



The PBA also proposes that in the event blood and/or urine samples are drawn during the examination, that two samples be taken, one for testing and one for future testing, to guard against false positive results. PBA Delegate Gaynor testified that while the Borough did agree to such a protocol for the Fall 2008 examinations, the PBA proposal seeks to formalize this practice in the new agreement.

The PBA proposes a 5% across-the-board increase in each year of the proposed five-year agreement.

The PBA acknowledges that its members are presently reasonably compensated among other paid law enforcement officers in Monmouth County. However, it contends that this arrangement has benefitted the Borough and its residents since the Borough has been able to attract and retain some of the best police officers in the state. In support of this, the PBA asserts that there little turnover within the police department with officers tending to spend their entire careers in Rumson. This has resulted in a department that is highly experienced, well trained and extremely efficient.

The PBA contends that the Borough's 0/0/2/2/2 salary increase is wholly unsupported by comparability evidence, the Borough's financial ability or by any other credible evidence. It contends that the proposal would cause its police officers to fall dramatically in terms of comparative police salaries in Monmouth

County. According to the PBA, the decline in comparative salaries under the Borough's proposal would be even greater for sergeants and lieutenants. Officers would no longer have an incentive to remain in Rumson for their entire careers. Instead, they could opt to leave after a few years and seek a higher-paid job elsewhere. This could result in a higher turnover and higher training costs for new officers who would have to be hired to replace departing officers. The PBA submits that its salary proposal of 5% increases is more reasonable than the Borough's.

The PBA also proposes to increase each step on the longevity guide by \$75 for each year of the five-year agreement. It rejects the Borough's proposal to cap longevity payments for existing officers at the 2006 rates and to eliminate longevity for officers hired after January 1, 2009. The PBA contends its proposal is the more reasonable and should be awarded to ensure that the Borough can continue to attract and retain police officers. According to the PBA, ten-year Rumson police officers, sergeants and lieutenants earn less longevity pay than the Monmouth County averages. The PBA contends that the Borough's proposed cap/elimination of longevity pay is unwarranted in light of information from other Monmouth County municipalities showing that police officers in 41 of 43 municipalities earn longevity pay (Sea Girt and Long Branch being the exceptions) and that longevity payments to police officers in other Monmouth County municipalities increased in 2007-2010.

Currently, Borough officers work 2,057 hours per year. The Borough proposes that officers work 2,080 hours per year. PBA Delegate Gaynor testified that a change to 2,080 annual hours of work would require a wholesale change in the work schedule and that the Borough has not provided sufficient justification for the increase. For example, the Borough did not offer proof that the department was unable to cover work shifts nor did it present any other viable work schedule option. Moreover, the PBA contends that the Borough has not offered any financial consideration for officers to work the extra hours.

Borough officers currently are granted credit for hours worked for overtime purposes when they use sick leave. The Borough proposes that sick leave not be considered hours worked for overtime purposes, a proposal the PBA rejects. PBA Delegate Gaynor testified that the Borough has not shown that sick leave abuse is a problem in the Rumson Police Department. Thus, he believes that it is unfair to exclude sick leave from an officer's work week for overtime purposes or to treat sick leave any differently than any other paid leave, including vacation and personal leave.

The Borough also seeks to delete Article 8, Section A(2) and Schedule C from the contract.

Section A(2) reads:

The Boro shall implement a new work schedule on or after January 1, 2004 pursuant to the terms specified in Schedule C, annexed hereto, including sections one through six, provided that they new schedule will only be implemented when the Department has a 15

man patrol rotation, 4 full-time dispatchers and 1 part-time dispatcher.

Schedule C fleshes out a schedule that includes a 5 days on/2 days off; 5 on/2 off; 4 on/3 off, with 8 ½ hours per day, 39.5 hours per week, 2057 hours per year.

The PBA objects to the proposed changes since they would permit the Borough to change the work schedule at its discretion. According to the testimony of PBA Delegate Gaynor, such discretion, if exercised, would drastically increase the likelihood of disrupting the personal lives of officers and would have an adverse impact on the morale of the department. The PBA further contends that there has been no justification offered for these proposals.

The current vacation schedule follows:

<u>Years of Service</u>	<u>Annual Vacation Days</u>
Date of hire thru 5 <sup>th</sup> year	12
6-9	15
10-14	19
15-20	23
21-25	25
26 and beyond	26

The Borough proposes the following schedule:

First year	1 day per month not to exceed 10 days
2-10	12
11-15	15
16-20	17
21-25	20
26-30	22
30 and beyond	25

According to PBA Delegate Gaynor, the Borough is seeking to have the police officers' vacation leave entitlement mirror that of civilians in the Department of Public Works. Such a change would, according to Delegate Gaynor, result in less vacation and more work days. For example, a ten-year officer would earn seven fewer vacation days and work an extra seven days per year. Delegate Gaynor testified that only police officers have responsibility to perform duties 24 hours per day, seven days a week and 365 days per year. Such a change, according to Delegate Gaynor, is unwarranted and would have a dramatic and adverse impact of the morale of the officers and likely increase the turnover rate in the future.

Delegate Gaynor also testified that a comparison of Rumson vacation leave with that of other Monmouth County municipal police departments reveals that the vacation entitlement of a Rumson officer is typically less than the similar entitlement in many other municipalities. For example, a ten-year Rumson officer's entitlement is lower than that in 13 other municipalities. A 25-year Rumson officer enjoys less vacation leave than in 15 other municipalities.

The Borough's police officers currently earn 15 sick days per year. The Borough seeks to reduce annual sick days to 14. The PBA contends that the Borough has offered no justification for this change. Delegate Gaynor testified that no one, to the best of his recollection, has ever been accused of sick leave abuse. The PBA further noted that a reduction in sick leave will have the

additional impact of increasing each officer's work schedule by one day. Moreover, according to the PBA, 27 other Monmouth County municipalities provide 15 annual sick days to their police officers, two [Asbury Park (16) and Highlands (17)] provide more and that the average sick leave entitlement in the County is 14.5.

The Borough proposed to reduce the number of annual holidays from 14 to 12. According to the PBA, seven Monmouth County municipalities provide more than the 14 holidays provided in Rumson and that 14 is well within the range provided by many other municipalities.

The Borough proposes to reduce the annual personal leave entitlement from three to two. The PBA argues that the Monmouth County average for personal days is three, with 16 municipalities providing more than three, topped by Bradley Beach's six annual personal days. The PBA contends that the Borough offered no justification for these reductions, which would also increase the officers' work year and which would have a dramatic and adverse impact on morale.

The Borough proposes that all new hires as of January 1, 2009 be EMT qualified. The PBA contends that the Borough failed to clarify whether the officer would be required to have the certification before or after being hired. The PBA also argues that it is unclear as to whether the responsibility for the cost of the

certification and recertification is that of the Borough, the officer or the PBA. PBA Delegate Gaynor testified that four or five Rumson police officers are EMT certified and that such a certification requires approximately 104 hours of training and an additional 40 hours of retraining every two years. The PBA presumes that such training would be provided during the officer's regular work hours. If so, the relatively small size of the department would make it likely that the department would incur overtime costs in order to maintain adequate staffing levels, especially in light of a new requirement for a minimum of two officers per shift. The PBA acknowledges that while there are advantages to having officers who are EMT certified, the proposal is "impracticable, unrealistic and overly costly."

The Borough proposes that all officers contribute 20% of the annual cost of their health and dental insurance benefits and eliminates post-retirement health benefits and Medicare "B" reimbursements for new hires. The PBA contends that these proposals are unwise, unreasonable and should be rejected. While the PBA acknowledges that the Borough's civilian employees are subject to similar premium sharing, those employees are not unionized, not eligible for interest arbitration and are thus in a weakened bargaining position compared to the PBA. Also, due to the extremely dangerous nature of police work, the PBA contends that officers deserve to continue to receive health benefits at no cost. According to PBA Delegate Gaynor, the police department is the only department in the Borough that operates 24/7. Unlike other departments, the police

department does not close due to inclement weather, nor does it cease operations on weekends and holidays. The PBA contends that the type of commitment required of police officers deserves, and demands, that its members receive the best fringe benefits available.

The PBA asks that I take note of numerous interest arbitration awards that have rejected similar premium sharing proposals by other New Jersey municipalities. For example, the PBA quotes the following from Arbitrator Jeffrey Tener's award in Borough of Raritan and PBA Local 82, PERC Docket No. IA 2007-042:

I accept that in the private sector, cost-sharing by employees is widespread. This is not true among police officers in New Jersey and certainly not in Somerset County. An employer who was offering an outside salary increase would have a better chance of making some change in this area but Raritan is not in a position to do that. While I understand that Raritan has financial pressures, it also must be remembered that its officers are the lowest paid in the County. Absent truly compelling circumstances, I am not prepared to render an award which further erodes the already bottom ranking of these officers.

The PBA contends that police officers in the following Monmouth County municipalities do not pay any amount toward the cost of their health insurance:

Allenhurst	Asbury Park	Atlantic Highlands
Bradley Beach	Deal	Englishtown
Freehold Twp	Holmdel	Howell
Keansburg	Lake Como	Little Silver
Manasquan	Matawan	Middletown
Monmouth Beach	Neptune Twp	Ocean Twp
Ocean Port	Red Bank	Rumson
Sea Bright	Sea Girt	Union Beach
Wall		



The PBA acknowledges that there are municipalities in Monmouth County in which officers pay a small amount toward the cost of health insurance premiums. The PBA cites Aberdeen, where officers pay \$273 per year for single coverage and \$462 for family, and Shrewsbury, where officers pay \$50 per month. Officers in other municipalities pay a portion of their base salary. However, the PBA contends that the Borough's proposed 20% premium sharing is "grossly excessive and unreasonable and, therefore, must be rejected."

The PBA contends that the Borough's proposal to eliminate post-retirement medical benefits for new hires should also be rejected because the elimination of such benefits would have a harmful effect on morale and would eliminate a major incentive for officers to spend their entire careers with the Borough. It raises the possibility that officers would be encouraged to leave Rumson after a few years and continue their careers in other jurisdiction that continue to provide retiree health benefits. According to the PBA, 22 of 27 Monmouth County municipalities provide for post-retirement health benefits.

Based on all of the above, the PBA asserts that its last offer should be awarded in its entirety.

### **THE BOROUGH'S POSITION**

The Borough urges an award supporting its own offer, contending that the evidence in this proceeding demonstrates that each element of the statutory

criteria supports the Borough's final offer as more reasonable than that of the PBA.

The Borough maintains that the evidence shows that its police officers receive compensation and benefits that are far superior to those received by its civilian employees. The Borough submits to evidence showing comparative average annual salaries as of December 31, 2006 and argues that the PBA's proposed 25% increase over five years will compound the already substantial salary differential between the PBA salaries and the Borough's civilian employees.

The Borough argues that the PBA's wage proposals are unreasonable when compared with recent wage increases received by its civilian employees:

2007:	3.5%
2008:	3.0%
2009:	2.0%

Citing Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), the Borough contends that an "arbitrator can no longer assume that a police officer is per se entitled to a higher percentage increase than non-uniformed employees." The Borough further contends that in addition to having a lower average annual salary compared to its police officers, the Borough's civilian employees began contributing 10% towards the cost of health insurance benefits to further assist the Borough in controlling the escalating health care costs. In

the Borough's view, its proposed 20% health insurance contribution by higher-paid police officers, is comparable to the 10% contribution being made by the Borough's civilian employees due to the higher salaries of police officers. The Borough argues that it has a strong interest in maintaining a pattern of settlement in order to gain some control of the salary differential between the police and civilian employees.

The Borough contends that its police officers are very well compensated in wages and benefits in general. In comparison to other police officers, the evidence is said to support its contention that its offer is reasonable. More specifically, the Borough contends that the evidence shows that the overall compensation received by Borough police officers is equal to or better than the averages in other Monmouth County municipalities; that its officers earn 15 sick days per year compared to the County average of 14.26; 3 personal days compared to the County average of 3.67; comparable vacation leave and longevity pay that is only lower than the County average in two levels of service (6 & 11 years of completed service) and higher in three levels of service (16, 21 & 26 years of completed service); two hours of court time compared to the County average of 2.86 hours; a minimum of two hours of call-in pay versus the County average of 2.9 hours; a \$750 detective stipend versus the \$1,153 County average; and three bereavement leave days compared to the average of 3.85. Other benefits enjoyed by the Borough's police officers include a sick leave incentive, overtime after eight hours, and an education incentive.

The Borough asserts that its proposal is also more in line with the increase provided to public sector employees elsewhere in New Jersey under the current economic climate. Specifically, the Borough cites to the interest arbitration award, In the Matter of the Borough of Bergenfield and PBA Local 309, PERC Docket No. IA-2009-011, in which Arbitrator J.J. Pierson awarded 2.5% wage increases per year over four contract years.

In addition, the Borough maintains that its offer will achieve economic stability for the Borough at a time of economic decline, the fiscal crisis of the State of New Jersey, increases to medical benefits, and the Borough's obligation to fund increased pension contributions. The Borough further maintains that the PBA offer is unreasonable in comparison to what has been achieved in other Monmouth County municipalities.

The Borough also notes that the PBA contract requires each Borough police officer to work 2,060 hours per year, 20 hours less than the average for police officers in New Jersey and that such a reduced work year means that Borough police officers earn a greater than average salary while working fewer hours. Furthermore, the Borough cites evidence that the Borough has one of the lowest crime rates in Monmouth County. Thus, according to the Borough, its police officers work fewer hours than the average police officer in Monmouth

County, work in a low crime jurisdiction and yet get paid a salary equivalent to or better than the county average along with an extensive benefit package.

The Borough contends that the state of the economy impacts its ability to provide a fair economic offer while maintaining its fiscal stability into the future. The Borough emphasized that the evidence demonstrates that it is confronting a number of difficult fiscal issues, including increased health care and pension costs, tax appeals, and decreases in new construction.

Regarding health care cost increases, Thomas Rogers, the Borough Administrator, testified that the Borough's State Health Benefits Program premiums will increase by approximately 20% effective January 1, 2010. The cost of health insurance for police officers over the last three years as follows:

2008	\$205,839
2009	\$224,248
2010	\$269,097(projected)

According to Administrator Rogers, pension costs will increase approximately 20% in 2010. The pension contributions paid by the Borough over the past few years is as follows:

2007	\$201,414.40
2008	\$335,287.00
2009	\$323,211.00
2010	\$386,237.00

The Borough Administrator testified that at some point earlier in 2009 it had lost over \$180,000 in County tax appeals, which does not include state tax appeals. The Borough argues that it will not know the impact of such appeals until later in 2010 but the appeals will result in additional lost revenue to the Borough.

New construction, according to the Borough, has decreased due to a downturn in the economy. The Borough Administrator cites a 25% decrease in building permits and a decrease in the number of new house starts.

The Borough contends that the increase in costs and the decrease in revenues are the result of the economic climate in the state and the nation, which includes high unemployment rates. The Borough contends that its taxpayers are suffering along with others "while PBA members are blindly enjoying the stability and security of their employment with the Borough." The Borough submits that it is trying to stabilize its finances by seeking uniformity in labor costs controlling the gap in fringe benefits between its police and civilian employees. Administrator Rogers testified that the Borough "looked at every different aspect of the operation and tried to find ways to streamline and cut costs wherever we can, anticipating additional tax appeals and additional loss of revenue."

The Borough noted that the PBA's financial expert issued a report claiming that the Borough has:

- additional levy cap monies available;
- a general cash surplus;
- additional miscellaneous revenue not anticipated;
- strong tax collections; and
- excess funds due to an over-estimated budget appropriation.

The Borough responds that it is facing real economic issues regarding the ever-increasing costs of health insurance and pension contributions at the same time it is dealing with lost revenue. In response to these developments, the Borough is seeking an award of a 20% health insurance contribution. The Borough cites the level and structure of annual health insurance contributions that are currently being made in other Monmouth County municipalities including: Aberdeen, Belmar, Brielle, Colts Neck, Eatontown, Fair Haven, Freehold Boro, Hazlet, Highlands, Howell, Keyport, Marlboro, Neptune, Shrewsbury, Spring Lake Boro, Spring Lake Heights, and Tinton Falls. The Borough also cites numerous settlements and awards in interest arbitration proceedings from throughout New Jersey that include employee health insurance contributions.

In addition, the Borough notes that since June 2009 its civilian employees have been contributing 10% of the cost of their health insurance. The Borough contends that if the PBA unit members were exempt from such contributions, the morale of the civilian employees would suffer. Thus, the Borough is seeking common treatment and uniformity among its employees regarding health insurance benefits. Moreover, the Borough contends that many of the Borough's taxpayers contribute toward their health care.

The Borough further argues that it would be inappropriate to deny it a health insurance contribution by its police officers merely because it has a stable budget. In support of this, the Borough cites a portion of an interest arbitration award, Borough of Ramsey and PBA Local 155, Docket No. IA-2007-081:

The fact that the Borough can maintain a stable budget without achieving a particular cost saving proposal is insufficient reason to deny a proposal. The awarding of the Borough's health insurance proposal is not based solely on its financial abilities or inabilities. Although the Borough did receive savings in 2004 of approximately \$67,500 when it moved to a fully paid PPO, the record reflects steady increases since that time and a current cost of over \$22,000 for a family plan. The Borough, under N.J.S.A. 34:13A-16g(1), may properly offer proposals designed to offset cost increases in the absence of budgetary crises, especially when they are supported, as here, by other statutory criteria.

The Borough contends that evidence in the records shows that recent changes in the Consumer Price Index (CPI) demonstrates that there have been some decreases and some modest increases throughout the country. Specifically, the Borough cites United States Department of Labor Bureau of Labor Statistics that show the Consumer Price Index for all Urban Consumers (CPI-U) declined 2.1% over the 12-month period ending July 2009. If its final offer is awarded, the Borough concludes that its police officers will still enjoy a fair salary increases.

The Borough cites the New Jersey Appellate Division decision in Hillsdale PBA, 263 N.J. Super. 163, 188 (App. Div. 1993), in which the court ruled that the



interests and welfare of the public criterion “focuses in part on the priority to be given to wages and monetary benefits of public employees within a public employer’s budget and plans.” The Borough argues that its proposal should be considered reasonable and accepted since the proposal is:

clearly more supportive of the public’s interest and welfare than the PBA proposal. The final offer of the Borough will accomplish several important public policy goals. First, it will enable the Borough to maintain its fiscal strength, while managing the risk and volatility of the current economy. Additionally, it will provide uniformity between the civilian employees and its police officers. However, it will provide the opportunity for the Borough to continue to offer insurance coverage to its employees while confronting the ever-increasing costs for such insurance coverage.

The Borough argues that its proposal takes into account the best interests and welfare of the public, while the PBA:

blindly ignores the failing economy, increases of 25% towards health care costs, 20% pension contributions increases, decreases in municipal revenue, and unemployment over 10%.

The Borough contends that its offer is the more reasonable under the lawful authority of the employer criterion which, the Borough argues, requires an analysis of the impact of an award on other municipal budget items. The Borough contends that an arbitrator must address a municipality’s budget CAP situation, as well as the statutory requirement that the Borough prepare a balanced budget each year.



In this case, the Borough cites to evidence concerning increased costs, declining revenue and a failing economy. It claims its offer is both fair and equitable and that it is "clearly trying to sustain its fiscal stability whereas most municipalities are resorting to layoffs, furloughs and salary freezes." The Borough further contends that the PBA proposals would negatively impact on the fiscal stability of the budget by failing to address the cost increases and revenue loss. The Borough also asserts that because its police officers are better compensated more than the majority of the state's private sector employees and all of the Borough's civilian employees, only minimal increases are required to maintain the officers' overall compensation.

The Borough cites evidence that no Rumson police officer has ever been laid off or furloughed while municipal and state employees have been experiencing layoffs, job cuts, furloughs and salary freezes. The Borough points to its police force having an average of 11.6 years of seniority. Moreover, according to the Borough, police services are not subject to privatization like other public services. The Borough noted that its police officers:

[A]re secure in their employment without any concern of layoffs or downsizing even during such dire economic times. As such, the Rumson police officers remain and will continue to enjoy continuity and stability of employment. Thus, the Borough's offer is more reasonable.

### **DISCUSSION**

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(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

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

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

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

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

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).

My consideration of the parties' proposals is governed by N.J.S.A. 34:13A-16g. In arriving at this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. In addition, I note that N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying it.

Any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the awarding of any single change can reasonably impact upon the resolution of other issues. Put another way, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be required after assessing the merits of any individual issue within the context of an overall award.

Both parties have proposed a five-year agreement commencing January 1, 2007 through December 31, 2011. Accordingly, I award a contract commencing January 1, 2007 and expiring December 31, 2011.

I first address the proposals that each party has offered that I have decided to deny in their entirety based upon my determination that the proposals have not been supported by a sufficient level of credible evidence. These include each party's proposals concerning the clothing and clothing maintenance allowance, each party's proposals concerning longevity, the Borough's proposals concerning vacations, sick leave, holidays and personal days and revisions to the approved equipment list. I have assessed the merits of these proposals by applying the record evidence which has not been shown to justify a change in the status quo on any of these issues. None of the proposals concerning longevity, clothing and clothing maintenance allowance, sick leave, holidays, personal days or revisions to the approved equipment list have been shown to be in need of change during the term of the agreement based upon existing benefit levels. This is not to say that either the PBA or the Borough would desire a change that would either increase or decrease a particular benefit level, but the changes sought have not been justified by reason of having to remedy or correct any of the existing terms that are currently set on these issues.

The Borough has proposed changes to Article 8, Workweek – Overtime. These include adding language to Section B(1) prohibiting the calculation of sick leave towards hours worked for overtime, a change in annual work hours from 2060 to 2080 per year and the deletion of Section A(2) which sets forth the current work schedule which had been implemented on or after January 1, 2004.

The PBA urges rejection of all three proposals. As the parties are aware, they have engaged in discussions over the existing work schedule and the Borough's belief that the schedule should be changed. No specific new work schedule has been proposed, although the Borough seeks to delete the language that currently sets the terms of the existing work schedule. The PBA asserts that an increase in the annual hours of work will necessarily impact upon the ability to operate under the existing schedule. I am persuaded after reviewing the parties' positions on the work schedule issue that the Borough and the PBA would benefit by maintaining the existing terms regarding work schedule for the balance of this Agreement and to engage in continued bilateral discussion that could form the basis for necessary clarifications and/or changes to the work schedule going forward into the future agreement. I do not award an increase in hours worked in the absence of a specific proposed work schedule change. Without placing responsibility on either party, I am convinced that serious discussions did not occur on this issue and the information and evidence required to determine the merits of any revision to the existing work schedule simply does not exist in this record. Accordingly, I award the formation of a joint scheduling committee to meet no later than January 1, 2011 for the purposes set forth above. The committee shall meet at least on a quarterly basis thereafter. The issue as to what paid hours shall be considered as hours worked for overtime purposes shall also be within the purview of the joint committee.



The Borough has proposed a new Section C to Article 23, Qualifications of Employment, to require that all new hires be EMT certified. It has also proposed a willingness to increase the existing \$500 stipend for EMT licenses if more employees become certified. The PBA does not object to these proposals except to the extent that it argues that the proposal does not cover issues such as the additional costs and additional time that would be required to maintain such certifications if such are required. The Borough's proposal to require an EMT certification as a criterion or qualification of employment for new hires appears to fall within its prerogatives pursuant to established case law. Its proposal is awarded. The Borough's proposal to consider an increase in the EMT stipend "if more employees become certified" is not definitive. Because of this, the amount of increase should be deferred to future negotiations where this issue, as well as the issues of the cost of maintaining certifications and the time required to maintain certifications, can also be addressed.

The PBA has proposed language that would provide officers with 30 days' notice of a fitness for duty examination. It further proposes that if blood or urine is to be drawn as part of such an examination, that two samples of each be drawn at Borough expense and that one of the samples be stored, at Borough expense, for future testing. According to the PBA, this proposal relates to the mandatory annual fitness-for-duty medical examination. PBA testimony explains that officers are currently given approximately two weeks' advance notice which it contends is insufficient to permit officers to modify their personal and work

schedules. The PBA further contends that greater notice would permit officers greater flexibility to schedule examinations while they are on duty and thus save the Borough the overtime costs when officers have to take the examination while off duty. The PBA further contends that the Borough already draws two blood and urine samples and that its proposal merely codifies this practice. The Borough did not specifically support or object to the PBA's proposal. Except for the notice provision, the record shows that the proposal is a reflection of current practice. I award the PBA's proposal with a modification that the advance notice portion shall be a time period of twenty-one (21) days commencing January 1, 2011 along with language requiring an officer to be rescheduled if the notice period has not been met.

The major issues in dispute center on health insurance and compensation. These issues have financial implications to the Borough and economic implications to the PBA and are thus interrelated. An analysis that isolates the merits of one issue from the other deprives the parties of the proper application of all of the statutory criteria that are relevant in rendering a reasonable determination of the issues in dispute. In order to provide a full and clear summation of the reasoning that has led me to an award on both of these issues, I will set forth those terms at the outset followed by a reasoned explanation.

The disposition of the salary issue must take into consideration the fact that the 2007, 2008 and 2009 contract years must be decided on evidence that

existed during those years. The record does not reflect the existence of evidence relating to financial impact or statutory or taxing limitations that would interfere with the Borough's ability to provide increases within the general scope of increases that were provided in surrounding communities during those years. In years 2010 and 2011, the weight to be given to the record evidence on external comparability must be more appropriately balanced with the evidence that clearly shows a decline in the cost of living, sharp increases in unemployment within the State and Nation, and financial and economic considerations that have impacted on the Borough and on the private sector and public sector generally during these years. In this regard, the contract duration embraces years which must reflect the financial and economic changes that have trended downward. Given all of these observations, I find that a reasonable determination of the salary issue, within the context of the overall award, are increases of 3.5% on January 1 in contract year 2007, 3.5% in year 2008, 3.25% in 2009, 3.0% in 2010 and 2.75% in contract year 2011. I am also persuaded by the Borough's evidence on internal and external comparability that health insurance premium contributions are justified. However, the Borough's proposal to require a 20% contribution of the amount paid towards premiums falls well outside the amounts that it requires for all other Borough employees and that the contribution level be modified to require a uniform 10% contribution towards the annual cost of health and dental insurance, effective September 1, 2010. I decline to award the Borough's proposal to eliminate retiree health benefits or Medicare B payments for officers hired after January 1, 2009 but award its

proposal to allow employees to waive their rights to insurance and receive payment of 30% of the annual savings that result from the waiver.

I first address the health insurance issues. In this proceeding, the Borough submits evidence that premium contributions in the amount of 10% of premiums paid for coverage selected by the employee are required Borough-wide. It acknowledges that the internal application of this requirement does not involve any other labor organizations. For this reason, the PBA has urged the rejection of the Borough's proposal because it contends that its application to a non-unionized work force is not relevant. This argument is not persuasive in this instance. It is well established that internal patterns must be considered even where an alleged pattern includes non-public safety units. [See County of Union v. Union County Corrections Officers, PBA Local 999, PERC No. 2003-33]. Here, while it is true that the Borough's management, supervisory and blue and white collar employees are not unionized, the interests and welfare of the public are nevertheless implicated because the public, which provides the majority of the revenue that supports the Borough's budget, including the personnel costs of salary, benefits and pension contributions, has a direct interest in having the Borough-wide policy applied to all employees and not just to some.

I give substantial weight to N.J.S.A. 34:13A-16g(3) that requires consideration of evidence that concerns public employment in the same jurisdiction. The Borough has sustained its burden to prove that an extension of

its program concerning health insurance premium contributions to its police department is a reasonable determination of this issue. The PBA, despite its strong opposition, has not advanced sufficient justifications that would warrant a finding that its members should remain outside of the Borough's health insurance policy.

The Borough's proposal does not reduce the level of health insurance benefits but rather limits the Borough's obligation to 90% of premium cost. The Borough's proposal centers mainly on policy considerations and finances rather than on reducing the levels of benefits or coverage. I do not award the retroactive application for employee payouts despite the fact that the premium co-pays were implemented in prior years for non-law enforcement employees. The effective date for the commencement of payments shall be September 1, 2010. The premium costs shall be considered as within, and not above, any statutory obligations an employee may have towards health insurance premium contributions.

The Borough need not establish that financial inabilities are the justification for its proposal. The co-pays will, as is so for the Borough's other employees, offset some of the increases the Borough has and will most likely continue to experience in health insurance. The current medical insurance program is provided through the State Health Benefits Program, which includes NJ Direct coverage as well as HMOs and New Jersey Plus, a preferred provider

organization. Over half of the Borough's 61 employees have opted for Direct 10, which replaced the traditional plan (18 employees) or Direct 15 (18 employees). Documentary evidence supports the Borough's claim that its health insurance costs have increased. In 2007 the Borough spent \$220,655 on health and dental insurance for its 16 officers, or an average of \$13,791 per officer. In 2009 the total cost increased by approximately 16% to \$224,249, or \$14,016 per officer. Health benefits are a significant part of the Borough's total compensation costs and are a significant benefit for its employees and retirees. The fact that the Borough can maintain a stable budget without achieving any particular cost saving proposal is insufficient reason to deny a proposal.

I have also considered the PBA's argument that external comparability considerations require a denial of the Borough's health insurance proposal. The PBA correctly points to the absence of a provision identical to the Borough's in other jurisdictions, although the contracts in evidence reflect that there are other municipalities in the County and the State who require contributions linked to both premiums and salary. The PBA's argument is outweighed by the existence of the health insurance program within the Borough, a fact that is entitled to greater weight under N.J.S.A. 34:13A-16g(2)(c). The record reflects the existence of many arrangements for the co-payment of health insurance premiums within Monmouth County jurisdictions and elsewhere within the State of New Jersey. These are clearly set forth in the record and need not be enumerated here. I take official notice of legislation requiring the payment of

1.5% of salary towards health insurance for employees in the absence of any other contractual arrangement. That 1.5% shall be inclusive and not in addition to the co-payments that have been awarded. With regard to retiree health benefits, the evidence supplied by the Borough, indicates that 33 of 46 Monmouth County municipalities provide retiree health benefits. The record does not reflect any particular trend toward either eliminating or granting such benefits and I award no change in this existing program.

I award the Borough's proposal to reimburse 30% of annual health insurance savings to employees who waive health benefits. Such a provision could save the Borough on health insurance premiums and reward employees who do not need the coverage and opt out of such coverage. Similar provisions exist in contracts in other municipalities.

I next turn to the salary issue. The proposals are as follows:

<u>YEAR</u>	<u>BOROUGH</u>	<u>PBA</u>
2007	0%	5%
2008	0%	5%
2009	2%	5%
2010	2%	5%
2011	2%	5%

The total salary payroll for police in 2006 was \$1,293,243. Thus, 1% of that amount is \$12,932.

The costs of the PBA and the Borough's salary proposals in each year based upon total salary payable in those years are:

	2007	2008	2009	2010	2011
Cost of PBA Proposal	\$64,662	\$67,895	\$71,290	\$74,854	\$78,597
Cost of Boro Proposal	\$0	\$0	\$25,865	\$26,382	\$27,090
Difference	\$64,662	\$67,895	\$45,425	\$48,472	\$51,507
Cumulative Difference		\$132,557 (07+08)	\$177,982 (08+09)	\$226,454 (09+10)	\$277,961 (10+11)

The Borough contends that the PBA's salary proposals are unreasonable because its police officers are already highly compensated in wages and benefits, work fewer than 2,080 hours, and operate in a municipality with a low crime rate. At the same time, the Borough states that it faces increasing costs for employee benefits, such as health insurance, and declining revenues in a troubled economy, all of which threaten its fiscal well being. The Borough argues that its proposal is best suited to balance the interests of its police officers and the public. On the other hand, the PBA contends the Borough ranks very high on per capita and median income, has high property valuations and can easily afford its proposal and that its proposal is needed to allow its members to keep pace with wage and benefit changes in other municipalities in order to attract and retain a dedicated police force. It also points to virtually all County law enforcement unit contracts in evidence to support its claim that the Borough's wage proposal ignores all valid and reasonable comparisons.



Based upon the entire record of this proceeding, I am compelled to conclude that neither the Borough's nor the PBA's proposal is reasonable.

The Borough is a well run municipality and sound financially. The overwhelming financial evidence supports this conclusion. But, on the municipal level, tax appeals are increasing which could reasonably impact on its revenues. The Borough's costs continue to increase for pensions and health benefits. The Borough has shown a reduction in building permits and the loss of over \$180,000 in county tax appeals in 2009. An award at the level sought by the PBA would have adverse impact on its budget and on the Borough's ability to spend on all of its broad needs within its statutory budget and tax limitations.

The interests and welfare of the public also require a stable and experienced police force such as what currently exists in Rumson. However, the PBA's proposed annual 5% increases are not necessary to attract and retain such a police force. Increases must also be provided within a budget that is limited by revenue and tax caps. Given the tax caps, the higher median income of the Borough's residents becomes less relevant. The amount sought by the PBA could also encroach on other Borough's required and discretionary spending. However, the Borough's proposal including a two-year wage freeze, coupled with proposed annual increases of 2% in each of the last three years of the agreement could have a deleterious effect on the morale of the police officers, decrease the attractiveness of the Borough to the most dedicated police

officers and candidates for employment. Moreover, the Borough has not shown that its economic proposals are required in order to maintain financial stability in the Borough nor is its wage offer consistent in any respect with wage increases achieved in Monmouth County, especially during contract years 2007, 2008 and 2009.

Neither party submitted data comparing Borough police officers with private sector employees who perform similar services. This is so because of the difficulty in identifying private sector employees 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. As is clear from the years that span this contract duration, such data has changed dramatically. Private sector wage reports of the New Jersey Department of Labor and Workforce Development (NJLWD) includes data that total private sector wages statewide increased in 2006 by 4.6%, with a 3.4% increase in Monmouth County and a statewide increase in 2007 of 4.3% and a 3.8% increase in Monmouth. Another NJLWD report, *New Jersey Economic Indicators*, includes data that personal income in New Jersey rose by 5.4% in May 2008. At the same time, the wage and employment situation in the country and in New Jersey has deteriorated and is reflected in the record. An August 7, 2009 News Release from the Bureau of Labor Statistics (BLS) indicates continuing job losses in many major industry sectors with average hourly earnings on private nonfarm payrolls increasing by 2.5% over the prior 12

months while average weekly earnings rose only 1.0% due to a decline in the average workweek. A NJLWD Report for 2009, which is posted on PERC's website, shows that between 2007 and 2008, average private sector wages in New Jersey increased by 2.5% and in Monmouth County by 2.1%.

The more recent data supports a view that the national and state economies continued to deteriorate through 2009 and remain troubled. In November 2009 the NJLWD issued New Jersey Economic Indicators. It reports that while most experts believe that the economy has "bottomed out" and that the economy will grow in 2010, the outlook for the labor market is not as optimistic. High unemployment rates are expected to continue into 2011. On January 20, 2010 the NJLWD reported that the unemployment rate in New Jersey in December 2009 was 10.1%, a level not seen in 33 years. Job losses included both private (1,100 jobs lost) and public (1,200 jobs lost). Compared to December 2008, weekly earnings in December 2009 were reported to be lower by \$2.85.

According to BLS data, earnings adjusted for inflation declined 1.6% in 2009, the largest decline since 1990. This decline followed increases of 2.7% in 2008 and 3.4% in 2007. Other BLS data show that the wages and salaries component of compensation costs for private industry workers, not seasonally adjusted, increased as follows:

2007: 3.3%  
2008: 2.6%  
2009: 1.5%

The BLS wages and salaries component of compensation costs for state and local government employees reflects the same downward trend:

2007: 3.5%  
2008: 3.1%  
2009: 2.0%

The Borough's civilian employees, who are not unionized, received the following annual wage increases:

2007: 3.5%  
2008: 3.0%  
2009: 2.0%

I have also reviewed the internal comparisons that show increases of 3.5% in 2007, 3% in 2008 and 2.0% in 2009 for the Borough's non-unionized workforce. The increases I have awarded are somewhat higher but the record does not show a history of identical increases in the past and none are required here given the external comparability data.

Law enforcement comparability is a relevant factor to consider. The Borough's police officers are among the better paid officers in Monmouth County. The record indicates that in 2005, the Borough's top step patrol officers ranked 9<sup>th</sup> out of 43 Monmouth County municipalities. In 2006 the Borough ranked 8<sup>th</sup> out of 39 municipalities. The Borough's sergeants also have a relatively high

ranking: 17<sup>th</sup> out of 42 departments in 2005 and 14<sup>th</sup> out of 38 in 2006. The lieutenants rank 12<sup>th</sup> out of 26 departments in 2005 and 11<sup>th</sup> out of 25 in 2006.

The pertinent salary figures follow:

	Year	Top Patrol Officer After 10 Years	Sergeant	Lieutenant
Rumson	2005	\$81,163	\$85,264	\$88,537
	2006	\$84,410	\$88,675	\$92,078
County Average	2005	\$76,415	\$83,245	\$88,426
	2006	\$79,282	\$86,139	\$91,771

The chart below shows the percentage wage increases reflected in collective negotiations agreements containing salary guides from Monmouth County municipalities that were introduced into evidence:

	2007	2008	2009	2010	2011	2012
Allenhurst			3.5	3.5		
Atlantic Highlands	4	4	4			
Belmar	4					
Bradley Beach	3.95	4.30	4.50			
Brielle	4.1	3.92				
Colts Neck	4.25	4.25	4.25	4.25	4.25	
Eatontown			5.15	5.15	5.15	
Englishtown	4	4	4			
Fair Haven	3.85	3.8	3.75			
Freehold Borough	4	4	4	4		
Hazlet	4	4				
Holmdel	4.5	4.5	4.5			
Highlands			4.25	4.25	4.25	4.25
Howell	3.95	3.95	3.95			
Keansburg	4	4	4	4		
Keyport	4					
Lake Como	4	4.5	4.5			
Little Silver	4	4	4	4	4	
Long Branch		4.25	4.25	4.25	4.25	4.25
Manasquan	4	4.25	4.25			
Marlboro	4.25	4.25				
Middletown(SOA)	3.94	3.6				
Monmouth Beach		4	3.75	3.75		
Neptune City	4	4	4			

Neptune Twp.	4.5	4.5				
Ocean R& F	4					
Ocean SOA	4					
Oceanport	4.25					
Red Bank	3.5	3.5				
Sea Bright	3.5	3.5	3.5			
Sea Girt	3.9	3.9	3.9			
Shrewsbury	4	4	4			
Spring Lake	3.8	3.8				
Spring Lake Heights	3.85	3.85	3.85	3.85		
Tinton Falls	4.5	4.5	4.5			
Wall		3.8	3.8	3.8		
AVERAGE	4.01	4.03	4.09	4.07	4.38	4.25

The percentages reflect, where appropriate, the highest salary guide and, unless otherwise noted, reflect those of top step patrol officers. As is shown, the years in evidence show that many agreements were made prior to 2007 or shortly thereafter and carried forward and that few were negotiated in 2009 or later and then go forward. This supports my conclusion that this contract duration (2007-2011) embraces two very different periods of economic circumstance requiring different levels of wage increases.<sup>1</sup> This conclusion is also supported by the cost of living (CPI-U) data from the Bureau of Labor Statistics indicates the following percentage changes in the years noted:

2007: 4.1%  
2008: 0.1%  
2009: 2.7%

This data, in conjunction with other record evidence, is consistent with the terms of the award that provides declining increases in salary from 2007 to 2011.

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<sup>1</sup> The PERC data on wage increases also supports this conclusion.

While there are no agreements in evidence that show a municipality that is directly similar to Rumson in demographic, economic, or other characteristics, it would appear that the municipalities that are appropriate sources of comparison would be Fair Haven, Shrewsbury and Little Silver. For years 2007-2010, they show increases in the range of 3.75% to 4.0%. This data is relevant but not controlling because it must be balanced by the remaining criteria in order to render a reasonable determination.

PERC's Salary Increase Analysis for 2007, 2008, and 2009 through September 1<sup>st</sup>, reflect the following data concerning interest arbitration awards and settlements of interest arbitration proceedings:

Year	# of Awards	Avg. Sal. Increase of Award	# of Settlements (where arbitrators were assigned)	Avg. Sal. Increase of Settlements
2007	16	3.77%	46	3.97%
2008	15	3.73%	60	3.92%
2009	11	3.86%	27	3.68%
2010*	5	2.43%	23	2.80%

\*January 1, 2010 through June 30, 2010

While some of the comparability data, particularly PERC's Salary Increase Analysis and the Monmouth County average chart, reflect percentage wage increases during 2007, 2008 and 2009 that are closer to the PBA wage proposal than the Borough proposal, the data are reflected in awards that were issued, or in settlements that were agreed to, before the full impact of national and state

economic changes were realized. For awards and settlements achieved in 2010, as shown above, the Borough's positions in 2010 and 2011 are more consistent with the comparability data.

Three of the statutory criteria 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 Borough expresses concern that "granting an economic benefit in excess of its proposal will negatively impact on the Borough's ability to minimize future tax increases for the Borough's taxpayers." However, the Borough does not contend that an award in excess of its proposal would cause it to approach the limits of its financial authority or to breach the constraints imposed by the pertinent statutory limitations. 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 under its tax levy and expenditure cap limitations in 2007 and 2008 and there is no evidence in the record that the salary increases that I have awarded will cause the Borough to exceed its limits under any cap requirement.

I must also consider the financial impact of an award on the governing unit, its residents and taxpayers. The Borough does have the highest median family and household income in Monmouth County and a median household



income that is more than double the state average. In 2008, the average sales price for a home in the Borough was \$1,354,456, compared to the County average of \$481,819. The Borough also grew in the years affecting the early years of this contract. In 2006, 44 single unit building permits, valued at over \$21 million, were issued. In 2007, 36 building permits were issued, with a value of over \$16 million. The Borough's finances have been in good shape and have been properly managed. Its tax collection rate is over 98%. In 2008 the Borough's \$14 million adopted budget appropriations reflected an anticipated amount to be raised by taxes at \$8,774,944. It actually collected \$9,787,725. It realized a budget surplus of \$1,971,182. The Borough has an equalized tax rate of 1.127 in 2007, which ranks 12<sup>th</sup> lowest in Monmouth County. The 2006 figure was 1.225, the 10<sup>th</sup> lowest in the County. Assessed property values increased from \$1,019,201,192 in 2002 to \$2,870,060,583 in 2007. In 2008 it had a net valuation taxable of \$2,906,237,714. The Borough's budgetary surplus balance has been consistently around \$7 million each year from 2003-2008, with almost \$2 million in fund balances from the 2006 and 2007 budgets being utilized in the succeeding years' budgets. In 2003-2005, the surplus balances utilized in the succeeding years were approximately \$1.7 million. I conclude that the costs of the award, as set forth below, will not adversely affect the governing unit, its residents and its taxpayers, particularly in light of the cost offsets of the health insurance premium co-pays, which I have considered in conjunction with the overall costs of the salary increase awarded. I am required to determine the total

net economic change for each year of the agreement. The cost of the wage award in each year is as follows:<sup>2</sup>

2007	2008	2009	2010	2011
\$48,000	\$46,500	\$45,000	\$43,000	\$40,500

Accordingly and based upon all of the above, I respectfully enter the terms of the Award as follows:

### **AWARD**

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

2. **Duration**

There shall be a five-year agreement effective January 1, 2007 through December 31, 2011.

3. **Health and Dental Insurance**

Effective September 1, 2010, employees shall pay 10% of the annual cost for health and dental insurance. These contributions shall be within, and not in addition to, any statutory obligations an employee may have towards the payment of health insurance premiums. This contribution shall be deducted from the employee's regular pay and subject to the Employers' Section 125 Plan for tax purposes only. Employees may waive the right to health benefits in which case the Borough agrees to reimburse the employees 30% of the annual savings incurred for the Borough and will be paid in December of each year. Upon opting out of the Borough health insurance, employees may only re-enroll in health benefits upon being removed from their current provider.

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<sup>2</sup> The precise amounts required cannot be detailed in pinpoint fashion due to personnel changes that may occur over the contract duration.

4. **Salaries**

Each step of the salary schedules shall be adjusted as follows. The increases shall be effective and retroactive to the dates set forth.

January 1, 2007:	3.50%
January 1, 2008:	3.50%
January 1, 2009:	3.25%
January 1, 2010:	3.00%
January 1, 2011:	2.75%

5. **Fitness for Duty Examination**

Any member scheduled for a fitness for duty examination by the Borough shall receive at least 21 days' advance notice. If said officer is not provided the requisite advance notice, he/she shall not be required to attend same and shall be rescheduled. Moreover, in the event that the blood or urine samples are to be drawn from any officer as part of such exam, two samples shall be drawn, one for testing purposes and one for future testing, if necessary, in the event of any "false positives" with respect to the first sample. The drawing and preservation of the second sample shall be at the Borough's expense.

6. **Article 23 (Qualifications of Employment)**

Effective immediately, the Borough may require that all new hires be EMT certified.

7. **Article 30 (Extension of Contract Agreement)**

Revise as follows:

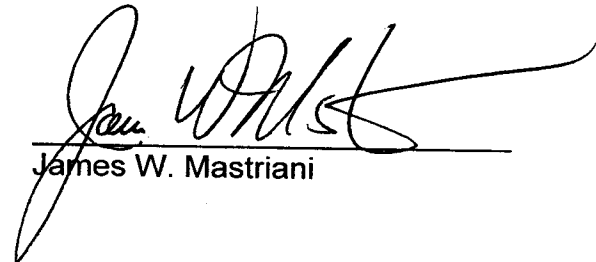
In the event that the Borough and the Association have not, by December 31, 2011, agreed upon the terms and conditions of employment of the Police Officers for the contract period commencing January 1, 2007, then the terms and conditions of this contract of employment will remain in full force and effect, without prejudice, until the negotiation, consummation and execution of said later contract.

8. **Joint Committee**

There shall be a joint scheduling committee who shall meet no later than January 1, 2011 and, at least, on a quarterly basis thereafter

to discuss issues including, but not limited to, the work schedule, hours of work and the calculation of hours worked to be credited toward overtime.

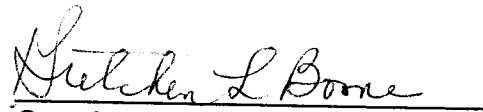
Dated: July 24, 2010  
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey       }  
County of Monmouth       } ss:

On this 24th day of July, 2010, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



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