

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between

BOROUGH OF SEASIDE PARK

-and-

DOCKET NO. IA-2012-022

PBA LOCAL 182

Before Susan W. Osborn, Interest Arbitrator

Appearances:

For the Employer:

Citta Holzapfel, & Zabarsky, attorneys
(James Holzapfel, of counsel)
(Robert A. Grietz, of counsel)

For the Union:

Loccke, Correia, Linsky & Bukosky, attorneys
(Richard Loccke, of Counsel)

INTEREST ARBITRATION AWARD

On February 16, 2012 the Seaside Park Policemen's Benevolent Association Local 182 filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over a successor collective negotiations agreement with the Borough of Seaside Park. The previous agreement expired on December 31, 2011.

On February 23, 2012, I was appointed to serve as interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This statutory provision requires that an award be issued within 45 days of my appointment with no

provision for a mutually agreed upon extension of any length. By letter of February 25, I scheduled an interest arbitration hearing for March 19 and directed each party to submit a final offer no later than March 9 in accordance with N.J.S.A. 34:13A-16(f)(1).

With the agreement of both parties, I conducted a pre-arbitration mediation session with the objective of settling the parties' dispute. These efforts were unsuccessful and formal proceedings began on March 19, 2012. The Borough of Seaside Park and the PBA each submitted substantial documentary evidence and examined witnesses. Sergeant Matthew Brady testified for the PBA and Borough Administrator Robert Martucci testified for the Borough. Both parties submitted Final Offers and calculations of the financial impact of their respective economic proposals. Post-hearing summations were filed by March 27, 2012.

FINAL OFFERS OF THE PBA

The PBA submitted the following final offer:

Economic proposals:

1. Wages: 3.0% across the board wage increase in each year of a three year contract.
2. Clothing Allowance: increase by \$100 annually
3. Holiday Pay: convert the paid holidays benefit to compensation and fold it into base pay

Non-Economic Proposals:¹

1. Grievance Procedure: add a definition section to the grievance procedure.
2. Preservation of Rights: add a new article which guarantees the maintenance of existing rights and benefits.

FINAL OFFERS OF THE BOROUGH**Economic proposals:**

1. Salaries:
 - 2% increase, each year of a three-year contract, inclusive of step movement and longevity.
 - add six additional steps to the salary guide.
2. Overtime:
 - Change minimum compensation for court time from three hours to one hour.
 - modify court language to require officers to schedule court appearances, when practical, for on-duty times.
3. Vacation Leave: change vacation leave allotment for officers with 21 or more years of service to a flat 25 days.
4. Vacation Carryover: cap at 10 days per year.
5. Holidays:
 - eliminate employee's option to receive payment for holiday or add time to employee's vacation leave
 - eliminate existing Section 2 and 3 providing employees with 4 hours comp time for any holiday worked.
 - pay employees working on a holiday with time and one half pay.
6. Disability:

¹An additional proposal in the PBA's written Final Offer was a modification of the recognition clause to read, "All sworn law enforcement personnel except the Chief of Police." This proposal had been previously agreed to by the parties on November 29.

- provide short-term and long term disability insurance to unit employees.
 - eliminate Section 3 in Sick leave clause.
7. Life Insurance:
- cover employees with a life insurance policy equal to their annual salaries, at Borough expense.
 - eliminate contract provision for spousal payment upon employee death.
8. Personal Days: reduce the number of personal days from five to three.
9. Health and Dental Insurance:
- discontinue medical benefits for retirees once retiree becomes eligible for Medicare.
 - limit retiree plan to that in effect for then current employees.
 - discontinue retiree health benefits for employees hired after 1/1/12.
10. Uniform Allowance: increase uniform allowance from \$550 to \$600 effective 1/1/12.

Non-Economic Issues:

1. Health and Dental Insurance: change contract language to conform to Chapter 78.
2. Grievance Procedure: language changes, including the Borough's own definition of grievance.

SUBMISSIONS OF THE PARTIES

I will focus mainly upon a general summary of their submissions on the points that touch upon their main contentions although all of the record has been reviewed in its entirety even if not specifically mentioned in the summary.

The PBA and Borough submitted the following exhibits:

Exhibit No.	Description of Document
JOINT EXHIBITS	
J-1	Agreement Between Borough of Seaside Park and Policeman's Benevolent Association Local 182 (Jan 1, 2008 - Dec 31, 2011)
J-2	2011 Municipal Data Sheet - Borough of Seaside Park
J-3	Annual Financial Statement for the Year 2011
J-4	2012 Municipal Data Sheet - Borough of Seaside Park
PBA EXHIBITS	
P-1	Seaside Park PBA Local 182 - 2012 Contract Proposals
P-2	2010 Census Interactive Population Search
P-3	Monthly Totals Turned Over to The Municipal Treasurer 2011
P-4	Seaside Park Police Department December 2011 Operations/Overtime Reports
P-5	2011 Beach Badge Report
P-6	Island Beach Attendance (2009-2011)
P-7	N.J. DOT Daily Volume from 10/05/2009 through 10/07/2009
P-8	Seaside Park Police Department Operations (2008 - 2011)
P-9	Seaside Park Police Department Roster
P-10	Master Plan Borough of Seaside Park (Circulation Plan)
P-11	2011 Annual Debt Statement - Borough of Seaside Park
P-12	2011 Equalization Table, County of Ocean
P-13	2011 School Election County of Ocean Official Results
P-14	PERS and PFRS Revised FY 2012 Local Employee Pension Bills
P-15	BLS News Release - Dec 16, 2011 (CPI - Nov 2011)
P-16	Collective Bargaining Agreements
P-17	Collective Bargaining Agreements
P-18	PERC Interest Arbitration Opinion and Award (Belmar)
P-19	CBA - Mantoloking Police Department
P-20	CBA - Lavallette Police Department
P-21	CBA - Bay Head Police Department
P-22	Agreement Between Chief of Police, Ed Dickson and the Borough of Seaside Park - Apr 15, 2011
BOROUGH EXHIBITS	
E-1-A	Agreement Between Borough of Seaside Park and Policeman's Benevolent Association Local 182 (Jan 1, 2008 - Dec 31, 2011)
E-1-B	Feb 22, 2012 PERC Letter to Steven Zabarsky, Esq. with PBA's Petition to Initiate IA
E-1-C	Feb 24, 2012 Response of Borough of Seaside Park
E-1-D	Final Position of Borough, in accordance with <u>N.J.S.A. 34:13a-16f(1)</u>
E-1-E	Estimate of Financial Impact of Borough's Final Position, as per <u>N.J.S.A. 34:13a-16f(3)</u>

E-1-F	Sep 8, 2011 Resolution of Borough of Seaside Park Promoting Larkin from Lt to Cpt and Dec 8, 2011 Resolution of Borough of Seaside Park Promoting Larkin from Cpt to Chief of Police
E-1-G	Cost of Increment Analysis with Larkin Included
E-1-H	Cost of Increment Analysis with Larkin Not Included
E-1-I	Summary Levy Cap Calculation (Municipal Budget Levy Cap Calculation Workbook Sheet)
E-1-J	Levy Cap Calculation Workbook
E-1-K	Borough of Seaside Park Taxes Comparison 2004-2011
E-1-L	Analysis of PBA Proposal of 3.5% Across-the-Board Increase
E-1-M	Analysis of a 2% Across-the-Board Increase
E-1-N	Schedule of PBA Post-Employment Benefits Cost - Health & Prescription (Fallon & Larsen LLP, Feb 21, 2011)
E-1-O	Overall Compensation and Cost Bargaining Unit for the Year 2011, as per N.J.S.A. 34:13a-16(g) 3
E-1-P	Reserve for Uncollected Taxes
E-1-Q	Value Estimate of Reducing Personal Days by Two
E-1-R*	Cost of Living Adjustments (1975-2011) U.S. Social Security Administration
E-1-R*	Consumer Price Index (U.S. & Applicable N.J. Regions) N.J. Labor & Workforce Development
E-1-S	Reflections on the Current Economic Environment, N.J. School Boards Association (Statewide, March 2012)
E-1-T	Current Employment Statistics, N.J. Labor & Workforce Development
E-1-U	Reflections on the Current Economic Environment, N.J. School Boards Association (Ocean County, March 2012)
E-1-V	Labor & Force Unemployment Rate (Ocean County only, 2011) N.J. Labor & Workforce Development
E-1-W	Labor & Force Unemployment Rate (Ocean & Monmouth Counties & Select Areas) N.J. Labor & Workforce Development
E-1-X	Summary of Maximum Step Salaries for Ocean County Police Officers (Below Rank of Sergeant)
E-1-Y	Occupational Wages (Police and Sheriff's Patrol Officers - N.J. Statewide), N.J. Labor & Workforce Development
E-1-Z	How Much Do Cops Make In Your Town? (Newark Star Ledger Compilation)
E-1-AA	Public Works Employees Salaries for the Borough (2012 & 2013)
E-1-BB	Occupational Wages (All Industries - N.J. Statewide) N.J. Labor & Workforce Development
E-1-CC	N.J. PERC (Aug 27, 2010) Document Setting Forth the N.J. Dept. of Labor & Workforce Development Private Sector Wage Report
E-1-DD	Central Regional Community Fact Book, Ocean County Edition, April 2011 (N.J. Dept of Labor & Workforce Development)
E-1-EE	Profile of General Population & Housing Characteristics (Seaside Park), U.S. States Census Bureau (2010)

E-1-FF	Selected Economic Characteristics (Seaside Park, 5-Year Estimates) U.S. Census Bureau (2010)
E-1-GG	Financial Characteristics (Seaside Park, 5-Year Estimates) U.S. Census Bureau (2010)
E-1-HH	Accumulated Holiday Time (Accumulated "Extra Vacation")
E-1-II	Arbitration Reporter, March 2012 (N.J. League of Municipalities)
E-1-JJ	Arbitration Reporter, March 2012 (N.J. League of Municipalities)

FINDINGS OF FACT

Demographics

The Borough of Seaside Park, just over one square mile, is located on the Barnegat Barrier Island in Ocean County, New Jersey and was incorporated in 1898. With almost two miles of shoreline on the Atlantic Ocean, the Borough's main industry is summer tourism. Seaside Park is bordered on the north by the Borough of Seaside Heights and its amusement arcades, rides and boardwalk. To the south is South Seaside Park, which is an unincorporated section of Berkeley Township, and Island Beach State Park. Seaside Park provides the only road access to New Jersey's Island Beach State Park. This is a relatively small municipality without a large number of permanent residents. The municipality is located across the Barnegat Bay from Toms River, the county seat of Ocean County. It is reached by Route 37 from the west (Garden State Parkway exit 82 or Route 70 to Route 37 east) or Route 35 from the north (Garden State Parkway exit 98, Route 34 east to Route 35 south).

The Seaside Park Police Department is located at 1 Police Plaza in Seaside Park, NJ (P-9). The Police Department shares a

facility with the Municipal Court, Borough Council of Chambers, and the Fire Station (P-10). The Police Department has a single jail.

As testified by Sergeant Brady, the Borough of Seaside Park has around two thousand (2,000) full time residents. Many of the homeowners rent their homes year round, whereas about nine years ago, when Brady first started working for the Police Department, there was minimal use of homes in the off-season. Over the years he described a change in the off-season use of the Borough's residences and motels. The Borough has transitioned to full time Section 8 housing, a Housing Choice Voucher Program, funded on the federal level by the Department of Housing and Urban Development (HUD) and administered by the states through public housing authorities. Brady testified that sometimes people that qualified for Section 8's remained in the motels or they were relocated to private residences.

Brady stated that the winter season for the Police Department is all of the calendar months excluding May through September of each year. Whereas it was relatively quiet in the Borough during the winter months, it now is the busiest season for the Police Department. Brady also commented that the yearly fishing season commences in September at Island Beach State Park. Island Beach State Park vehicle/bus attendance for the year of 2009 was 158,455/169; 2010 was 266,304/164; and 2011 was 214,898/166 (P-6).

The northeastern area of Seaside Park has seen a continuing deterioration in the quality of life expected by Borough residents and visitors. Especially during the summer season's late evening and early morning hours, the area has been the scene of numerous violations ranging from loud and foul language, to public urination and public consumption of alcohol, to more serious disorderly conduct incidents and property vandalism (P-10).

The influx of late night, disruptive visitors, particularly from neighboring Seaside Heights, who are attracted by the free parking and boardwalk businesses, is so common that the residents of that area do not report disturbances and ruefully accept it as a way of life.

The Borough of Seaside Park's Master Plan reflects that Route 35 (Central Avenue) serves as the main street of Seaside Park (P-10). Route 35 at J Street has a seasonal peak daily traffic volume of 23,687 vehicles and peak hour volumes of 1,295 vehicles southbound and 1,065 vehicles northbound. These seasonal traffic volumes are comparable to the average annual daily traffic on Route 37 in Toms River, clearly indicating a high level of traffic congestion. During the peak season at certain hours, Seaside Park Police help direct traffic and assist at pedestrian crossings because of the significant local and regional traffic flow (P-10).

The police have identified Lafayette Avenue as the most frequently used northerly beach access road. Police are stationed during the summer months at Lafayette Avenue, M Street, Fifth Avenue and Ninth Avenue to help direct traffic, provide traffic calming and improve pedestrian access to the beach (P-10).

There are 6,000 parking spaces on the streets and in municipal parking lots in the Borough of Seaside Park, 81 percent of which are free of cost (P-10). The seasonal influx of visitors, renters and summer residents plus the attraction of free parking to visitors of Seaside Heights impose a significant burden on the Borough and its residents (P-10).

Organizational Structure

In 2011, the police department consisted of one police chief and fourteen sworn personnel. Former Police Chief Ed Dickson retired on May 11. In August Lt. Larkin, a bargaining unit employee, was promoted to captain and in September he was appointed acting chief of police. Also, during 2011, another bargaining unit employee, Officer Circ, a twenty-five year veteran, retired from the force. With the loss of the former police chief, the retirement of Officer Circ, and the promotion of Lt. Larkin, the force now consists of one Police Chief and twelve sworn employees.

Brady testified that Larkin runs the department with a very proactive approach. Larkin made many changes to include a new

direction for the police force to combat quality of life issues. At that time a new Neighborhood Watch Program was also started in the Borough. Brady stated that the morale of the force was high and that officers were glad to come to work. The esprit de corps is "through the roof". The community's regard for the police force is at an all-time high.

Police communications since 2010, such as local dispatch, are now performed by Ocean County. Brady testified that there has been a dramatic increase for calls for service. Calls for service, as well as officer initiated requests are documented.

The following chart reflects the Seaside Park Police Department's Operations Report for the years 2008 through 2011 (P-8):

2008-2011 Operations Report

	<u>2008</u>	<u>2009</u>	<u>2010*</u>	<u>2011*</u>	<u>Change*</u>
Calls for Service	8,564	13,173	14,643	14,439	-1%
Criminal Arrests	111	96	127	192	34%
Motor Vehicle Moving Violations	1,081	833	952	2,551	164%
Motor Vehicle Parking	7,776	5,479	6,317	11,651	84%
Ordinance Violations	134	125	140	967	591%
Motor Vehicle Accidents	122	119	119	87	-27%

Robert Martucci has been the Borough Administrator since February 2010 and is responsible for the town's municipal workforce and formulating the Borough's budget. At the end of

2009, the municipal workforce, civilians and police force, included 50 employees. Currently this workforce is 36 full-time employees. With these 36 employees, Martucci is benchmarking the winter staffing levels to determine the best case staffing scenario.

In the summer months the Borough expands the Borough police force with "special police". On a peak summer weekend, there are over 100,000 people in the town. Specials have limited police powers and the Seaside Park Police Officers are obligated to supervise them. This oversight creates an additional workload on the department.

The total compensation for members of the Borough of Seaside Park's Police Department's bargaining unit for 2011 was as follows² (E1-0):

- \$1,230,681 for Salaries
- \$11,964 for Longevity Increases
- \$61,746 for Holiday Pay
- \$83,416 for Vacation Pay
- \$15,486 for Training
- \$7,510 for Uniforms
- \$107,325 for Payroll Taxes
- \$117,193 for Workers Compensation
- \$6,883 for S/T Disability
- \$14,731 for Unemployment Insurance (UI)

² These totals are based on all fourteen employees being full time members of the bargaining unit during the 2011 calendar year. However, since one of the employees ceased being a member of the bargaining unit as of August 18, 2011, the information was recalculated to reflect only 65.38% of a calendar year for that employee.

- \$243,922 for Health Insurance
 - \$276,487 for Pension
- \$2,177,343**

The December 2011 Police Department Overtime Report (P-4) reflects a 2010 pay total of \$10,720 and a 2011 pay total of \$13,607. The majority of overtime in 2010 was 142 hours dedicated to coverage and six hours dedicated to training (P-4). In 2011, 116.5 hours were used for coverage; 42.5 hours used for training³; 3 hours used for transports; and 39 hours used for "Other" (P-4). Training topics covered included Search and Seizure update, Domestic Violence, C.P.R., Blood Borne Pathogen, R.E.R.P. training and Internal Affairs Policy and Procedures (P-4).

Martucci stated that employee holidays can be time off or with pay. He testified that the table in exhibit (E1-0) assumes cash out in that an employee normally takes time off when no overtime would be incurred. He stated that vacation time must be approved and there is no cash consequence.

Budgeting

Martucci created a user-friendly budget by using past approved municipal budgets as a management tool for the Borough. He testified that the final hearing for the Borough's 2012 budget adoption was scheduled for March 22, 2012.

³ Exhibit (P-4) reflects that Officers of the Seaside Park Police Department participated and completed 120 hours of training for the month of December 2011.

The Borough of Seaside Park raised revenue from several sources in 2011. A few of the significant revenues are listed as follows (J-4; P-5):

- Beach Badges⁴ - \$1,600,447
- Municipal Court Fines and Costs - \$585,202
- Parking Meters - \$457,642

In summary, General Revenues Realized in 2011 in the amount of \$4,125,465 are as follows (J-4, Sheet 11):

- Surplus - \$343,350
- Local - \$3,043,564
- State Aid Without Offsetting Appropriations - \$206,517
- Dedicated Uniform Construction Code Fees Offset with Appropriations - \$11,329
- Local Government Services - Public and Private Revenues - \$143,896
- Miscellaneous Revenues - \$3,405,306
- Receipts from Delinquent Taxes - \$376,810

The summary of the total anticipated amount to be raised by taxes for support of the 2011 municipal budget was \$4,992,153 (J-4, Sheet 11). The Total 2011 realized amount raised by taxes was \$5,152,032 (J-4, Sheet 11). Total 2011 generated revenues realized was \$9,277,497.

In the 2012 municipal budget, the summary of the total amount anticipated to be raised from taxes is \$4,993,000 (J-4, sheet 11). Total 2012 general revenues anticipated are \$9,432,765 (J-4, Sheet 11).

⁴A total of 86,799 badges were sold for daily, weekly, pre-seasonal, seasonal, and senior citizen use of the beaches in 2011 for the period of May through September (P-5).

Martucci stated that the anticipated revenues other than current property tax is \$4,439,765 and the total general appropriations is \$9,432,765. The difference is the local tax for municipal purposes, including reserve for uncollected taxes or \$4,993,000. Martucci testified that 52% of appropriations come from the tax levy. He also stated that the Borough has a strong tax collection rate. The current tax collection rate was 96.95% and that the previous year it was a 97.78% collection rate which yielded a .0083 difference. He testified that there was a significant increase of 213% in surplus in 2010, and again by 37% in 2011. A surplus of \$928,885 was anticipated for 2012 with a surplus balance remaining of \$714,373. Martucci testified that there were also significant increases in municipal court fines and costs.

According to Martucci, the Borough is in excellent fiscal health. The 2012 property levy cap for the Borough of Seaside Park is \$5,062,723. He stated that the Borough was around \$462,000 under the levy cap and \$87,881 under the appropriations cap. The surpluses go into "cap banking", which can be used in later years.

Martucci testified that there are several capital improvement projects underway, including a new bulk head at 14th Avenue piers; a new roof for the department of public works; and a new boardwalk section. The Borough applied for federal funding for phase two of the water and sewer projects. He

stated that the residents' quarterly water bills went from \$191 to \$310 to pay for the water projects. The office of emergency Management (OEM) is also purchasing new equipment such as trucks and plows. Martucci indicated that there were many other miscellaneous projects planned for 2013 through 2014.

Appropriations Cap

Administrator Martucci acknowledged that there was no appropriations cap problem in the Borough. He also asserted that the flexibility not utilized in a given year carries forward in the form of cap banking for future use. Martucci acknowledged that the Borough's budget was a conservative one and that they had intentionally underestimated the tax collections. He further acknowledged that the reserve for uncollected taxes could anticipate a collection rate of 97.78% in 2012.

The PBA contends that the conservative nature of the budgeting in the municipality has resulted in substantial cash reserves. The difference in anticipation of surplus in 2012 over 2011 is \$585,534. The PBA asserts that even the anticipated municipal court fines and costs for 2011 were anticipated at \$285,000 in 2011; however, \$585,202 was realized.

On the subject of burden on the taxpayers, the PBA contends that high ratables and low taxes are a perfect combination. One additional measure is School Board Balloting. As Martucci

described, the largest single area of the property tax is that portion which goes to education.

2% Tax Levy Cap

The Borough of Seaside Park's Municipal Purpose tax rate for 2011 was 0.43 (E1-K). The tax rate has remained unchanged since 2009 (E1-K). A re-evaluation of taxes was conducted in 2009 and remains status quo through 2011 (E1-K). The ratable base for Seaside Park is \$1,285,845,574 (P-12).

The levy cap calculation for a New Jersey municipality is determined by performing a series of calculations as follows:

Levy Cap Calculation to include: Prior Year Amount to be Raised by Taxation for Municipal Purposes, Cap Base Adjustment (+/-), Less - Prior Year Deferred Charges to Future Taxation Unfunded, Less - Prior Year Deferred Charges: Emergencies, Less - Prior Year Recycling Tax, Less - Prior Year Changes in Service Provider: Transfer of Service/function, Net Prior Year Tax Levy for Municipal Purpose Tax for Cap Calculation, Plus - 2% Cap Increase; Adjusted Tax Levy to include: Plus - Assumption of Service/Function; Adjusted Tax Levy Prior to Exclusions to include: Allowable Shared Service Agreements Increase, Allowable Health Insurance Cost Increase, Allowable Pension Obligations Increase, Allowable LOSAP Increase, Allowable Capital Improvements Increase, Allowable Debt Service, Capital Leases and Debt Service Share of Cost Increases, Recycling Tax Appropriation, Deferred Charges to Future Taxation Unfunded,

Current Year (CY) Deferred Charges: Emergencies, Add Total Exclusions, Less - Cancelled or Unexpended Exclusions; Adjusted Tax Levy After Exclusions to include: Additions - New Ratables, Prior Year's Local Municipal Purpose Tax Rate (per \$100), New Ratable Adjustment to Levy, Cycle Year (CY)2011 Cap Bank Utilized in CY2012, and Amounts Approved by Referendum; Maximum Allowable Amount to be Raised by Taxation; and Amount to be Raised by Taxation for Municipal Purposes (E1-J).

The prior year amount to be raised by taxation for municipal purposes for Seaside Park Borough is \$4,992,153 and \$4,993,000 for calendar year 2012 (E1-H). The 2011 taxation amount of \$4,992,153, minus the prior year deferred charges for emergencies of \$28,669 left a net of \$4,963,454 to be used for municipal tax for the 2% mandated cap calculation (E1-J). The adjusted tax levy for 2012 is \$5,062,723 prior to exclusions (E1-J). Total exclusions represented \$346,909 while \$2,157 was factored for unexpended exclusions resulting in an adjusted tax levy of \$5,407,475 (E1-J). Allowing for new ratable increase in valuations (new construction and additions) at the \$0.430 local municipal tax rate per \$100, the revised figure for the maximum allowable amount to be raised for taxation is \$5,423,732 (E1-J). The amount to be raised by taxation for 2012 municipal purposes is \$4,993,000 (E1-J).

The Health Insurance Exclusion Calculation Sheet (E1-J) reflects a net prior year group health insurance (paid or

charged plus reserved) in the amount of \$635,597 with a current year group health insurance appropriation of \$637,003 (E1-J). A net increase of \$1,206 was realized. This net increase of 0.19% was greater than zero and subject to the 2010 Health Benefit Cap (E1-J).

The Pension Contribution Calculation Sheet (E1-J) reflects a net prior year base amount of \$302,281 and a net current year base amount of \$313,596 (E1-J). The difference between the prior year and current year is \$11,315 (E1-J). 2% of the prior year base amount is \$6,046 leaving a net of \$5,269 for PFRS exclusion (E1-J).

The LOSAP Calculation Sheet reflects the prior year and current year appropriations of \$30,000 each (E1-J). Applying the 2% allowable for prior year LOSAP equals \$600. LOSAP exclusion is \$0 (E1-J).

The Capital Improvements Exclusion Calculation Sheet reflects prior year capital improvement, down payment and capital improvement fund expended of \$89,000 (E1-J). The current year amount is \$108,025 leaving capital improvements exclusion of \$19,025 (E1-J).

The Debt Service Calculation Sheet reflects prior year debt service and county improvement authority capital lease obligation expended of \$414,909 (E1-J). The current year is \$720,825 (E1-J). The debt service exclusion is \$305,916 (E1-J).

The Cap Bank Calculation reflects current year 2012 as the difference between the maximum allowable amount to be raised by taxation as \$5,423,732 and the amount to be raised by taxation for municipal purposes as \$4,993,000 (E1-J). Available for cap banking (CY2013 - CY2015) is \$430,732 (E1-J). Therefore, the Borough is well under the tax levy cap.

2% Arbitration Cap

The Borough proposes an annual salary increase of 2%, inclusive of step movement and longevity for a four-year contract (E1-E). The Borough's estimated cost for this proposal is as follows:

- Year One = \$1,225,794 (increase of \$24,028 or 2% over previous year)
- Year Two = \$1,250,315 (increase of \$24,522 or 2% over previous year)
- Year 3 = \$1,275,326 (increase of \$25,011 or 2% over previous year)
- Year 4 = \$1,300,831 (increase of \$25,505 or 2% over previous year)

The PBA proposes a 3% across-the-board wage increase effective January 1 of each year of a three-year contract⁵. The PBA contends that the aggregate base for 2011 is \$1,175,851. It avers that the resulting cost of the base rate change in each contract year is as follows:

2012 - \$35,274

⁵The PBA did not provide a wage salary guide for its proposed 3.0% across the board increase.

2013 - \$36,332

2014 - \$37,422

The PBA contends that the Borough's "breakage" provides ample support for an award of 3% across the board. The breakage consists of the money saved through the retirement of Dickson, the promotion of Lt. Larkin and the retirement of Officer Circ.

The PBA argues that awarding the 3% increases will still put the Borough well within its appropriation and levy caps, and the cap banking for future use. The PBA realizes that the Borough, as with other towns, has other sources of revenue. The other revenue for the Borough comes from grants, state funding, fees for services, municipal court, etc. In addition, as a result of passage of Chapter 78, P.L. 2011, the municipality's payment for the Police and Fire Retirement System was reduced by \$64,802 (P-14).

Terms and Working Conditions

Former Police Chief Ed Dickson's salary was increased retroactive for the period of January 1, 2010 through December 31, 2010, to \$117,930.50 as Chief of Police and \$2,301 for Emergency Management, for a total of \$120,231.50. Chief Dickson was given a raise in salary, retroactive for the period beginning January 1, 2011, equal to \$120,000 as Chief of Police and \$2500 for Emergency Management, for a total of \$122,500 (P-22).

The salary guide below from the 2008-2011 collective negotiations agreement shows the employees' current base salary at each rank and step:

Base Annual Salary

	Effective 01/01/2008	Effective 01/01/2009	Effective 01/01/2010	Effective 01/01/2011
LIEUTENANT	\$95,368	\$99,164	\$103,130	\$107,255
SERGEANT	\$90,867	\$94,484	\$98,263	\$102,194
POLICE OFFICERS:				
SEVENTH YEAR	\$83,813	\$87,149	\$90,635	\$94,260
SIXTH YEAR	\$76,008	\$79,033	\$82,194	\$85,482
FIFTH YEAR	\$68,202	\$70,917	\$73,753	\$76,704
FOURTH YEAR	\$60,397	\$62,801	\$65,313	\$67,926
THIRD YEAR	\$52,592	\$54,685	\$56,873	\$59,148
SECOND YEAR	\$44,787	\$46,570	\$48,432	\$50,370
FIRST YEAR	\$36,982	\$38,454	\$39,992	\$41,591
ACADEMY	\$31,865	\$33,133	\$34,458	\$35,836

The dollar value of each increment, as shown in the chart above, is \$8,778 the step movement between the Academy rate and the first year. Pursuant to the expired contract, the Borough has already paid the increment in January 2012 to the three employees who are still on steps in the guide. In addition to the "base pay" listed above, unit members also receive longevity payments as part of their total base salary. Employees who reach the next benchmark of years of service advance in the longevity plan to the next percentage. However, uniform allowance is paid in a separate annual check and is not part of base pay.

The longevity benefit for all qualifying bargaining units' members is as follows (J-1):

- One and one-half percent (1.5%) upon completion of ten years of service (calculated on the individual Officer's base salary)
- Two percent (2%) upon completion of fifteen (15) years of service (calculated on the individual Officer's base salary)
- Two and one-half percent (2.5%) upon completion of twenty (20) years of service (calculated on the individual Officer's base salary)
- Three percent (3%) upon completion of twenty-four (24) years of service (calculated on the individual Officer's base salary)

Comparables - External

The following chart reflects the minimum/maximum step salary for a Patrolman for years 2009 through 2013 for numerous neighboring municipalities (E-1-X; P-16-21). Consideration must be given to the socioeconomic status of each of the municipalities, which was not provided in any exhibits, for comparative purposes. This chart is provided as a snapshot of other county police salaries for informative purposes.

Minimum/Maximum Step Salary Guide

	<u>2,009</u>	<u>2,010</u>	<u>2,011</u>	<u>2,012</u>	<u>2,013</u>	<u>#Steps to Max</u>
Avon By The Sea	41,978 88,176	41,978 89,939	41,978 92,188	41,978 94,493		12
Barnegat	42,760 83,836	44,470 87,189				6
Bay Head				40,000 91,121	41,000 93,339	10
Beach Haven	38,520 77,717	40,109 80,923	41,763 84,261			6

Beachwood		40,219 77,504	41,224 79,442	42,255 81,428		7
Berkeley Twp	38,049 92,142	38,810 95,367	38,810 97,274	38,810 99,219	38,810 101,204	8
Bradley Beach		47,424 94,690	48,372 96,584	49,339 98,515		7
Harvey Cedars		46,003 92,347	46,923 94,194			10
Jackson Twp		46,771 105,852				8
Keansburg	43,264 81,245	44,995 84,495	46,794 87,875			4
Lacey	45,447 92,063	47,048 95,286				8
Lakewood Twp		44,000 95,412	45,320 98,274	46,680 101,223		7
Lavellette			38,261 85,025	39,027 86,726	39,807 88,461	12
Little Egg Harbor	47,877 91,782					6
Manasquan		46,161 91,808	47,084 93,644	48,261 95,985		7
Manchester Twp			41,099 118,767	41,921 121,142	42,759 123,565	15
Mantoloking	\$50,091 \$82,734	\$52,094 \$86,043	\$54,178 \$89,485	\$56,345 \$93,065		7
Ocean Twp	54,091 80,385	57,815 85,161				7
Plumsted Twp	36,720 64,261					8
Pt. Pleasant Boro	35,629 94,321					9
Seaside Heights		39,000 91,105	40,500 95,846	45,000 99,201	40,500 102,673	9
Seaside Park	38,454 87,149	39,992 90,635	41,591 94,260			7
Sea Girt	33,000 96,796	33,693 98,829	34,367 100,805	34,929 102,438	35,622 104,487	15
Stafford Township			35,000 100,184	35,000 102,440		8
Surf City	49,334 79,352	49,334 81,733				6
Toms River	44,377 98,932	46,152 102,890				7
AVERAGE			2011	2012		
AVERAGE MINIMUM SALARY			48,591	46,629		
AVERAGE MAXIMUM SALARY			94,257	105,583		
AVERAGE NUMBER OF STEPS			9	10		

The chart below illustrates the annual base salary increases in other municipalities (E1-X; P-16-21).

Average Annual Base Salary Increases

Municipality	2012	2013	2014
Avon By The	2.5		

Sea			
Bay Head		2.4	2.4
Beachwood	2.5		
Belmar	2.3		
Berkeley	2	2	
Bradley Beach	2		
Harvey Cedars	2		
Lakewood	3		
Lakewood SOA	2.4	2.8	2.8
Lavallette	2	2	
Manasquan	2.4		
Manchester	1.2	1.2	1.2
Mantoloking	3.8		
Sea Girt	1.6	2	
Seaside Heights	3.4	3.4	
Stafford Twp	2.3		
Average	2.2	2.3	2.1

The chart below reflects other municipal police department longevity rates (E-1-X; P-16-21):

Longevity Benefits per Agreements

Municipality	Yrs of Service	Maximum %	\$ Amt	CBA Expiration (mo/day/yr)
Avon By The Sea	20	8%	\$6,000	12/31/2012
Barneгат	20	10%		12/31/2010
Bay Head	25	12%		12/31/2015
Beach Haven	20	10%		12/31/2011
Berkeley Twp	24	na	\$5,000	12/31/2013
Bradley Beach	21	12%		12/31/2012
Brick Twp	17	11.5%		12/31/2008
Harvey Cedars	na	na		12/31/2012
Keansburg	21	10.0%		6/30/2011
Lacey	23	10%		12/31/2010
Lakewood	20	8%		12/31/2012
Lavallette	20	5%*		12/31/2013
	24	10%		12/31/2013
Little Egg Harbor	23	10%		12/31/2009

Manasquan	24	9%		12/31/2012
Manchester	23	10%		6/30/2012
Mantoloking	16	10%		12/31/2012
Ocean Twp	24	11%		12/31/2010
Plumsted Twp	12	na	\$1,000*	12/31/2009
Pt. Pleasant	25	12%		12/31/2010
Sea Girt	na	na		12/31/2013
Seaside Heights	25	9%		12/31/2013
Seaside Park	24	3%		12/31/2011
Stafford Twp	23	12%*		12/31/2012
	23	na	\$8500*	12/31/2012
Surf City	21	10%		12/31/2010
Toms River	15	10%		6/30/2011

*Some communities have a two-tier longevity plan.

The next chart illustrates the Uniform/Clothing Allowance for other municipalities (E1-X; P-16-21):

Uniform/Clothing Allowances

MUNICIPALITY	AMT	NOTES
Avon By The Sea	\$925	
Beachwood*	\$1,700	Some employees received \$1,550 & some received \$1,700
Berkeley	\$1,100	
Bradley Beach	\$950	
Brick	\$0	
Harvey Cedars*	\$900	up to max \$900
Keansburg	\$1,500	
Lakewood	\$1,200	
Bay Head*	\$1,400	up to \$1400
Manasquan	\$725	
Manchester	\$0	
Sea Girt	\$725	
Seaside Park	\$550	
Total	\$11,675	
Average payment	\$898	

Cost of Living

For 2012, the Social Security Administration announced that recipients would receive a 3.6% increase in their monthly payments. The automatic COLA is, by law, tied to the Consumer Price Index (CPI). This was the first increase since 2008 (E1-U).

The Consumer Price Index (CPI) for the New York-Northern New Jersey-Long area for All Urban Consumers (CPI-U) increased 2.6% from February 2011 to February 2012 (E1-S).

In January 2008, Ocean County's unemployment rate was 6.0% (E1-S; E1-U). In December of 2011, Ocean County had a labor force of 264,450, of which 238,250 were employed and 26,200 were unemployed, yielding a 9.9% unemployment rate (E1-V). As of March 16, 2012 figures, Ocean County had a total of 2,726 foreclosure homes for sale (E1-S).

Public sector employment (E1-U) for local government had declined nationally by 498,000 since the year 2008. State government employment had declined nationally by 149,000 since the year 2008. Government employment fell nationally by 280,000 during 2011. The New York-Northern New Jersey-Long Island Metropolitan Statistical Area saw a decrease of government employment by 25,500 (2.0%), which was higher than the 1.2% national decline. According to the Bureau of Labor Statistics, "New Jersey portions of the area experienced the brunt of the loss."

DISCUSSION

N.J.S.A. 34:13A-16.7(b) provides:

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

The statute also provides a definition as to what subjects are included in "base salary" at 16.7(a):

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

In addition, I am required to make a reasonable determination of the disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to

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

- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

In arriving at the terms of 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 the proposed change. Another consideration is that 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. I am also required by statute to determine the total net annual economic cost of the terms required by the Award.

In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. Among those factors that interrelate and require the greatest scrutiny in this proceeding are the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)] and the Borough's statutory budgetary limitations [N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)] and, most importantly, the 2% limitation on the total increase of base pay on an arbitration award [N.J.S.A. 34:13A-16.7(b)].

ECONOMIC ISSUES

The evidence that I rely mainly upon in fashioning this award include the positioning of employees on the current salary guide, the aggregate of the increments and longevity

payments to be paid, the aggregate compensation package for these police officers as compared with other jurisdictions and, most importantly, the 2% cap limitation on an arbitration award.

The Employer's Lawful Authority
and Statutory Restrictions, and
Financial Impact on Taxpayers:
g(5), g(6) and g(9).

Chapter 62, N.J.S.A. 40A:4-45 et seq., provides that a municipality shall limit any increase in its annual budget to 2.5% over the previous year's final appropriations unless authorized by ordinance to increase it to 3.5%, with certain exceptions. This is commonly referred to as the "Appropriations Cap." Chapter 68, N.J.S.A. 40A:4-45.45 prevents a municipality from increasing the tax levy by more than 2% absent a public referendum. This is commonly called the "tax levy cap."

The PBA argues that consideration of these criteria present no prohibition to an award of the PBA's position as presented. With regard to the tax levy cap, the PBA points out that the 2012 Municipal Budget calculates that the "maximum amount to be raised by taxation" is \$5,453,732, while the budget provides that the actual amount to be raised by tax levy is 4,993,000. That is, the 2012 Budget is under the Levy Cap by \$460,732. The PBA notes that the municipal tax has remained flat for the last three years, and the Borough's position is that it does not wish to raise municipal taxes at

all. Thus, the PBA asserts that the tax levy cap is no impediment to the raises the PBA seeks.

The PBA also highlights that Seaside Park's budgeted appropriations for 2010 are also significantly below the statutory Appropriations Cap limit. The Borough administrator testified that the amount under the cap not utilized in a given year carries forward in the form of "Cap Banking for Future Use". Therefore, it is acknowledged that that a cap bank exists not only for 2012, but now carries forward into the 2013 budget and perhaps beyond. Not only is there no cap problem presently but there will also likely be no cap problems in the foreseeable future.

The PBA also asserts that the Borough has other sources of revenue in addition to taxes. In fact, of the 2012 Total Appropriations of \$9,432,765, only \$4,993,000, or 52%, is raised by taxes. Other sources of revenue include grants, municipal court fines and fees, parking revenues, and Beach badges. The PBA particularly notes that the amount of municipal court fines and costs in 2011 was \$585,202 - 200% more than the anticipated amount of \$285,000. PBA credits this revenue increase to the excellent work of the Police Department.

In addition, the Borough uses a conservative method of budget structure and it intentionally underestimates the tax collections rate by .0083. With total ratables of \$14,554,319, this creates a reserve bank of \$120,800.

The PBA also emphasizes that the Borough's conservative budgeting has resulted in substantial cash reserves over the last two years. In 2010, the Borough had a surplus balance of \$563,172.00. The surplus balance grew by January 1, 2011 to \$1,201,442. The 2012 budget anticipates a surplus of \$928,884.

PBA also notes that another barometer of the Borough's strong fiscal picture is its annual debt. As of 12/31/11, the Borough had a debt incurred of .5%, just 1/7 of the statutory limit of 3.5%.

The PBA further asserts that the Borough has also realized significant savings in the Police Department by a reduction in payments to the Police and Fire Pension system, as well as the money saved by two employees who left the department in 2011 and were not replaced.

PBA contends that the town's contributions to the PFRS pension were reduced by \$64,802. In addition,

Seaside Park will pay less to police its town with respect to compensation paid to sworn Police Officers in 2012 than it did in 2011. Larkin, the highest paid officer in the department other than the Chief, left the bargaining unit and was promoted to chief. His former position was left unfilled. Additionally, a 25-year officer retired at the end of 2011, at top pay on the guide, and his position was left unfilled.

The PBA argues that with its exceptionally high ratable base, low and stable tax rate of \$1.07, low debt rate, high surplus, and cap bank, an award as proposed by the PBA would have no impact at all on taxpayers, would be well under the appropriations cap and tax levy cap. Therefore, the PBA asks that it be given a 3.0% across the board increase in each year of a three-year contract.

The Borough makes no substantive argument that either its proposal or, for that matter, the PBA's proposal will exceed the lawful authority of the Borough or its statutory restrictions. It argues,

The Borough has continued to make the tough decisions necessary to ensure that the [municipal] tax rate remains stable, particularly in light of the ever increasing property taxes generated by other government entities to which the residents are subject. . . . [T]here have been increases in the

County tax rate, Local school tax rate, regional school tax rate, County Library tax rate, County health services tax rate, and County open space rate. This has resulted in an increased overall rate [to taxpayers] from \$1.194 (in 2010) to \$1.251 in (2011).

With regard to the 2% tax levy cap, the Borough maintains that while it may presently be below its permitted tax levy amount, simply because there is additional tax levy which can be imposed does not mean it should be. The Borough contends that such an argument - that because the Borough "can" increase the tax levy, it should - ignores the reality and potential consequences of that decision. While it might not cause any immediate problem, it builds up over time and there can be a long term impact which cannot be forgotten.

Simply put, just because the Borough is below the tax levy cap does not mean it should be required to increase taxes. Therefore, the Borough asserts, the factor of the financial impact of the award weighs in the Borough's favor.

As required by statute, I have considered the potential financial impact of both parties' proposals. As expressed by the PBA, this Borough is in excellent financial position. With its surplus, flat tax rate, significant revenues from sources other than taxes, and no cash flow problems, the increases sought would not impact on statutory restrictions or the lawful authority of the employer. In fact, the increases sought would

not cause the Borough to raise taxes at all, as there is sufficient funds being saved as a result of the decrease in pension contributions and the savings from not filling the positions vacated by the two retirements from the force in 2011.

Stipulations of the Parties:

The parties stipulated their agreement to amend the contract's recognition clause to read, "all sworn police officers below the rank of Chief." Accordingly, I will include this amendment in my award.

Presumably, this amendment would include the rank of captain in the PBA's negotiations unit, if the Borough were to decide to fill the captain position. However, since the position is not filled at this time, and the Borough has not expressed an intention to fill it, there is no basis to pin a salary to the captain rank at this time. And, in fact, neither party has made such a proposal.

Terms and Conditions of Employment/Comparables

The Borough contends that the Borough's police existing salaries compare favorably to those paid to other similarly situated municipalities in Ocean County. It notes that the 2011 maximum patrolman salary paid in the Borough was \$94,260 while the mean salary for police and sheriff's patrol officers in New Jersey was \$78,050 and the median was \$80,510 (See Exhibit Y). Moreover, according to the New Jersey Labor and Workforce Development, the wage at the 75th

percentile Police and Sheriff's Patrol Officers in New Jersey was \$94,110, which was lower than the Borough's 2011 top step patrol officer salary (See Exhibit Y). The Borough argues that a review of similar salary guides of various Ocean County police departments show that Seaside Park's officers are not "underpaid" based upon their current salary guide.

It further claims that a comparison of the PBA's salaries to salaries paid to its public works employees justified the Borough's position (See Exhibit AA). Further, the Borough asked that I take note that local government employment has declined nationally by 498,000 and Seaside Park has reduced its overall workforce in recent years.

Additionally, the Borough asks that I recognize the comparison of the wages, salaries, hours and conditions of employment for the Borough's PBA members to those in the private sector. It contends that, according to the New Jersey Labor and Workforce Development, the mean wage for all occupations is \$50,000, and the mean wage at the 75th percentile was \$63,070 -- significantly lower than the maximum step wage paid to patrolmen in Seaside.

The PBA asserts that the compensation program for the Seaside Park police officer is, at best, mid-range. In many key areas the compensation is lacking. It avers that one key consideration is that Seaside Park police work 2,080

hours while officers in many other towns work a schedule which totals less than that annually.

The PBA notes that historically, negotiations in this town have resulted in putting all available money into base pay. There are no special compensation programs such as "senior officer differential" or night differential. PBA observes that the town's longevity program is the poorest among all comparables. Clothing allowance is also far below average among surrounding communities.

The PBA goes to great lengths to argue that any comparison to private sector employees is meaningless, as police officers are unique in a variety of ways, including the ability to carry a weapon even off duty, the unique recruitment process, the stress and dangers of the job, and the lack of portability of police officer skills beyond a certain age and beyond a geographic region. The PBA notes that police, unlike any private sector occupation do not compete in a global economy, which tends to depress wages.

I give almost no weight to the component of comparability with the private sector or to other classes of public employment. Additionally, I do not believe that a comparison of raw wages in the Department of Public Works to police officers is a valid one. While I consider the

total economic package of police in Seaside Park with other Ocean County communities, there is little I can do to reconcile the gap, because of the 2% cap on an arbitrator's award, as will be discussed below.

Cost of Living

Both parties recognize that the cost of living is beginning to climb. While the parties disagree factually about which measure to use, it is clear that the cost of living is now exceeding the 2% arbitration cap, and therefore, it becomes a factor that cannot realistically be considered.

Continuity and Stability of Employment Including Seniority Rights and Such Other Factors Traditionally Considered in Determining Wages and Employment Conditions: g(8):

The PBA asserts that the language in criteria g(8) imports the private sector concepts of "area standards" and "prevailing rate". However, the focus of the PBA's argument here concerns the two non-economic issues in dispute. I will address these issues below.

The Borough argues that "continuity of employment" is the "penultimate factor" to be considered. It contends that the Borough's position would not adversely affect officer's seniority rights or continuity of employment for any current or

future PBA member. Indeed, an award of the Borough's position will ensure that the Borough can move forward in a responsible economic fashion and have the necessary resources and financial capabilities available.

Nothing in this award will impact upon the employee's continuity of employment or the officers' seniority rights. To the extent that "area standards" and "prevailing rate" are akin to comparability to other jurisdictions, I have considered these factors above.

The Interest and Welfare
of the Public: g(1):

The PBA points out that Seaside Park has undergone significant demographic changes in the past several years. It is no longer a summer town, but many more houses and hotels are in year-round use. Many properties have been converted to "Section 8" housing, which presents a law enforcement challenge to the police department. The PBA notes that service calls as well as municipal court activity is significant year round. However, on busy summer weekends and holidays, visitors swell the town's population to 150,000 people. In addition, Seaside Park roads provide the only access to Island Beach State Park. Traffic counts indicate that the three busiest roads see more than 10,000 vehicles daily. The PBA avers that all of this traffic and population results in a demand for police services. It notes that since 2008, calls for service have risen by 69%,

criminal arrests have increased by 73%, motor vehicle violations have increased by 236%, and parking violations increased by 66%. Borough Ordinance violations increased by 721%. In 2011, there were 14,439 calls for police service. This amounts to more than 1000 calls per officer. At the time, the police force was reduced from 14 sworn officers to 12.

By all accounts, this department is trademarked by its productivity and professionalism. Sgt. Brady testified that the esprit de corps is very high and morale is "through the roof." There is mutual respect between the officers and the citizens.

The Borough points out, correctly, that the statute requires the arbitrator to consider the interest and welfare of the public, including the limitations imposed upon the employer by P.L. 1976, C. 68 (C. 40A:4-45.1 et seq.), the 2% levy cap. The Borough contends that,

The interest of the public will be served by awarding the Borough's position as it ensures that taxes remain low, while services are maintained. As demonstrated by the testimony and exhibits, the residents of Seaside Park have seen their property taxes rise in the recent years as the population has decreased. While the Borough itself has been able to maintain its tax rate due to excellent stewardship, there have been increases in [county and school taxes, which]... has resulted in an increased overall tax rate from \$1.194 (in 2010) to \$1.21 in 2011. Accordingly, the first factor mandated by N.J.S.A. 34:13A-16g weighs in the Borough's favor.

* * *

In my view, the interest and welfare of the public is not only a favor to be considered, it is the factor to which the most weight must be given. The public interest, of course includes the amount of property taxes which homeowners and businesses will be required to pay. It is for this reason that Section g(1) specifically references the tax levy cap. In the bigger picture, it is in the interest of the public that it receives the highest quality of police protection and services for the most reasonable price. No doubt the legislature had this very point in mind when it enacted the 2011 amendments to the interest arbitration law. There can be no quarrel that the amendments - specifically the 2% limit on the total increase in base pay that an arbitrator can award - places a severe restriction on salary increases, primarily because it includes the built-in costs of salary guide movements, as well as longevity increases. It is this factor then that overshadows all others under considerations.

The Borough proposes a 2% increase, inclusive of increments and longevity payments, for each year of a three year agreement. The Borough also proposes to restructure the salary guide from eight steps, "the Academy step plus seven" to fourteen steps.

The PBA proposes a 3% across-the-board increase and offers that there is sufficient funding for such an award owing to recent retirements and promotion out of the bargaining unit.

"Base Salary" is defined in Section 16.7(a) as,

The salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service.

Here the parties agree that the total base salary includes the employees' actual base, increments and the longevity payments. The following chart shows the total base salaries paid by the Borough for unit employees in the base year, 2011:

2011 Base Salaries

Empl Name	2011 Step	Length of Service	2011 Base Pay	Longvty %	Longvty % of Yr	2011 Longvty Amt	2011 Total Base Salary
Larkin ⁶	Lt.	23	\$70,123	2.50%	100.00%	\$1,753	\$71,876
Boag	Lt.	15	\$107,255	2.00%	96.80%	\$2,076	\$109,331
Fitzgerald	Sgt	11	\$102,194	1.50%	100.00%	\$1,533	\$103,727
McKay	Sgt	8	\$102,194				\$102,194
Konfederak	Sgt	15	\$102,194	2.00%	96.80%	\$1,978	\$104,172
Brady	Sgt	5	\$102,194				\$102,194
Shadiack	7th Step	23	\$94,260	2.50%	100.00%	\$2,357	\$96,617
Jackowski	7th Step	10	\$94,260	1.50%	25.15%	\$356	\$94,616
Stack	7th Step	9	\$94,260				\$94,260
Condos	7th Step	8	\$94,260				\$94,260
Cirz ⁷	7th Step	22	\$94,260	2.50%	100.00%	\$2,357	\$96,617

⁶ Larkin was promoted to Captain on August 18, 2011, which effectively removed him from the bargaining unit. The amounts above show his total salary and longevity actually paid for the period of 2011 (65.38% of the year) when he was included in the unit.

⁷ Circ retired from the Borough on January 1, 2012. The amounts above show the totals of his base pay and longevity paid for all of 2011.

King	5th Step	5	\$76,704				\$76,704
Casole	4th Step	4	\$67,926				\$67,926
Bonner	3rd Step	3	\$59,148				\$59,148
Totals			\$1,261,232			\$12,410	\$1,273,642 ⁸
					2011 TOTAL UNIT BASE SALARY		\$1,273,642
					MULTIPLIED BY		2%
		MAXIMUM AMOUNT OF ANNUAL SALARY AWARD					\$25,473

N.J.S.A. 34:13A-16.7(b) provides:

An Arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement. . . .(emphasis added)

The above language effectively limits annual base pay increases to 2% of the total amount the employer spent "in the twelve months immediately preceding the expiration" of the contract; here, calendar year 2011. The term "increases in base pay" includes increases in pay because of increment payments as well as increases in longevity. However, nothing in this statutory provision permits the adding in of breakage amounts, reductions in pension contributions or offsets for employee healthcare contributions. Rather, my award is limited to a total of 2% of the aggregate spent in the base year for base salary items. Here, as calculated in the chart above, this 2% of the

⁸ This total does not agree with the Borough's total base pay for 2011 because the Borough incorrectly calculated Lt. Boag's base salary at \$102,194.

2011 total base salary is \$25,473 and is a constant cap to be used through the length of the contract.

For 2012, there are three employees still moving through the step guide; Officer King will move from step five to six, Officer Casole will move from step four to five, and Officer Bonner will move from step three to four. Each of these step increases costs \$8,778. These increment amounts have already been paid in January 2012 pursuant to the terms of the expired contract. In addition, the Borough has already increased Officer Shadiack's longevity amount on his anniversary date of March 25, from 2.5% to 3.0%, an increase of \$362 more for 2012. Further, Officer Stack will reach his tenth anniversary on November 7, 2012 and will then be eligible for a 1.5% longevity payment. For 2012, this will cost the Borough \$82.

The following table represents the Borough's fixed increased costs for 2012 based upon the salary guide in the expired contract:

2012 Fixed Costs Adjustments

Officer King	Step Increment	\$8,778
Officer Casole	Step Increment	\$8,778
Officer Bonner	Step Increment	\$8,778
Officer Shadiack	Longevity Increase	\$362
Officer Stack	Longevity Increase	\$82
Total		\$26,778

Thus, it is apparent that the cost of just funding the built-in increases, almost all of which have been paid already by the Borough, exceeds the 2% limitation on increases (\$25,473) by \$1,305.

In situations where the cost of maintaining the existing salary structure exceeds the allotted potential increase, there are three alternatives. First, I could award a freeze of the salary guide, thus freeing up all of the potential increase money for across-the-board cost of living adjustments. Second, I could restructure the salary guide to provide a greater number of salary steps, each for a smaller increment amount. Third, because the statute permits me to award increases year to year in unequal percentages, I could in essence, borrow money from 2013's 2% allotment to fund the 2012 existing guide.

Here, however, because the Borough has already paid the increments and longevity increases, option number one - freezing the salary guide -- is no longer an alternative for 2012. Additionally, because employees still in-guide have already advanced to the next step, the guide cannot be restructured for 2012. The only alternative available to cover the 2012 built-in salary increases (\$26,778) is to use the entire 2012 allotment of \$25,473 and \$1,305 of the 2013 money. The below chart shows each employee's guide placement and salary amount effective January 1, 2012:

Name	STEP	Yrs of Serv	2012 Step Incr.	2012 Base Salary	Long. %	2012 Long Incr	Long Paid in 2012	2012 Total Base Salary
Boag	Lt.	16		\$107,255	2.0%		\$2,145	\$109,400
Fitzgerald	Sgt	12		\$102,194	1.5%		\$1,533	\$103,727
McKay	Sgt	9		\$102,194				\$102,194
Konfederak	Sgt	16		\$102,194	2.0%		\$2,044	\$104,238
Brady	Sgt	6		\$102,194				\$102,194
Shadiack	7th	24		\$94,260	2.5/3%	\$362	\$2,719	\$96,979
Jackowski	7th	11		\$94,260	1.5%		\$1,414	\$95,674
Stack	7th	10		\$94,260	0%/ 1.5%**	\$82	\$82	\$94,342
Condos	7th	9		\$94,260				\$94,260
King	6th	6	\$8,778	\$85,482				\$85,482
Casole	5th	5	\$8,778	\$76,704				\$76,704
Bonner	4th	4	\$8,778	\$67,926				\$67,926
Totals			\$26,334	\$1,123,183		\$444	\$9,937	\$1,133,120

* On March 25, 2012, Shadiack's longevity allowance increased to 3% when he reached his 24th anniversary.

** On November 7, 2012, Stack's longevity allowance increased to 1.5% when he reached his 10th anniversary.

The Borough proposes to restructure the salary guide by adding six additional steps to the guide, both at the entry steps and the mid-range of the guide. The chart below reflects the Borough's proposed Salary Guide (2%) for the years 2012 through 2015 (E-1-D):

Borough's Proposed Salary Guide (2%)

<u>Old Step</u>	<u>Dollar Value</u>	<u>2012</u>		<u>2013</u>		<u>2014</u>		<u>2015</u>	
		<u>Step</u>	<u>Rate</u>	<u>Step</u>	<u>Rate</u>	<u>Step</u>	<u>Rate</u>	<u>Step</u>	<u>Rate</u>
-	-	Acad	40,150	Acad	40,150	Acad	40,899	Acad	41,798
Acad	35,836	1	46,020	1	46,020	1	46,769	1	47,668
1	41,591	2	50,379	2	50,379	2	51,128	2	52,027
2	50,370	3	54,738	3	54,738	3	55,487	3	56,386
		4	59,097	4	59,097	4	59,846	4	60,745
3	59,148	5	63,456	5	63,456	5	64,205	5	65,104
		6	67,815	6	67,815	6	68,564	6	69,463
4	67,926	7	72,174	7	72,174	7	72,923	7	73,822
		8	76,533	8	76,533	8	77,282	8	78,181

5	76,704	9	80,892	9	80,892	9	81,641	9	82,540
		10	85,251	10	85,251	10	86,000	10	86,899
		11	89,610	11	90,062	11	90,811	11	91,790
6	85,482	12	93,969	12	93,969	12	94,718	12	95,697
7	94,260	13	95,203	13	95,924	13	96,684	13	97,663
Sgt	102,194	Sgt	103,216	Sgt	103,998	Sgt	104,758	Sgt	105,737
Lt	107,255	Lt	108,328	Lt	109,149	Lt	109,909	Lt	110,888

However, because increments and longevity increases pursuant to the expired contract have already been paid, it is not possible to restructure the guide for 2012 as explained above.

2013

If the current salary guide structure is maintained for 2013, the same problem exists as for 2012: there are still three patrolmen moving through the step guide, with increment costs of \$8,778 each, which would more than eat up the possible increase of \$25,473.

I am not inclined to freeze the salary guide for 2013 as a method to provide across-the-board increases. A salary guide freeze affects employee morale and fails to meet employees' long-held expectations of guide movement. Further, I am not willing to maintain the existing salary guide because the result will be the same for 2013 as was the case for 2012; that is, only the three employees who are still in guide will benefit from increases and employees at the top will again be frozen at the top step and receive no increase. Therefore, I believe that restructuring of the salary guide for 2013 is the only practical alternative to give all employees some benefit

from the 2% pot of money available for increases.

The guide proposed by the Borough has some positives and some negatives. It applies the maximum of 2% increase, and it provides immediate salary increases ranging from 1% to 7.3% for all employees, but slows the rate of progression through the guide. It also maintains the top step of the guide at or above the 2008-2010 guide maximums. However, it lengthens the guide from seven steps above academy rate to 13 steps, nearly doubling the time for an officer to reach maximum pay.

The purpose behind a salary step system is to give recognition to the fact that a fresh-out-of-the academy rookie police officer does not have the experience and skills gained from years of police work and therefore, does not bring as much value to the force as does an officer with years of experience on the job. However, there becomes a point where the experienced police officer reaches maximum value, and it does not take 13 years to get to that point. By 13 years of service to the department, an officer is often half-way through his career and, in fact, is eligible to longevity payments at the end of his tenth year. Therefore, I find that a ten-step guide is more appropriate.

For 2013, I award the following:

First, all employees in the bargaining unit will receive a 1.0% across-the-board salary increase. The new salary guide, before restructuring, would be as follows:

Step	2012	2013
Lt	107,255	108,328
Sgt	102,194	103,216
7 th Step	94,260	95,203
6 th Step	85,482	86,345
5 th Step	76,704	77,478
4 th Step	67,926	68,612
3 rd Step	59,148	59,745
2 nd Step	50,370	50,878
1 st Step	41,591	42,011
Acad Step	35,836	36,198

In addition, the guide would then be restructured as follows:

Old Step	Old Dollar Value	New Dollar Value (+1%)	New Step #	New Step Rate	Restructuring Adjustment
Lt.	\$107,255	108,328	Lt.	108,328	
Sgt	\$102,194	103,216	Sgt.	103,216	
7 th	94,260	95,202	10	95,202	
6 th	85,482	86,345	9	90,702	\$4,357
			8	86,202	
5th	\$76,704	77,479	7	81,702	\$4,223
			6	77,202	
4th	\$67,926	68,612	5	72,702	\$4,090
			4	66,702	
3th	\$59,148	59,745	3	59,702	
2nd	\$50,370	50,879	2	53,202	
1st	\$41,591	42,011	1	46,702	
Acad	35,836	36,198	Academy	40,150*	

*This is the salary proposed by the Borough for the Academy step.

Note that the first 5 steps of the new guide have increment steps of \$6500 between steps; steps 6 through 10 jump \$4500.⁹

⁹It would have been preferable for the step increases to be a

Note also that officers not yet at the top of the guide receive their 1% across-the-board increase and a one-time adjustment for restructuring the guide, but not increment step movement in 2013.

This restructured guide will provide step movement for employees still on the step guide, and yet preserve increases for employees at the top of the guide, as well as the sergeants and lieutenant. It trims the dollar amount of the increments from \$8,778 to a more modest \$6,500 in the early years, when presumably, officers are rapidly gaining experience, and a smaller increment amount of \$4500, in the later years when they are reaching maximum. Officers will be at the top of the guide by their tenth year of employment with the Borough; therefore, going forward, employees still on-guide will achieve step movement every year and, upon reaching maximum, will begin to receive longevity payments in their tenth year. It provides a minimum, after the academy step, of \$46,000 and a maximum of \$95,200, which is closer to the average salary in the Ocean County area. Further, it is consistent with the average of 10 steps on a salary guide found in Ocean County towns.

The cost of the 2013 increases and adjustments is: \$11,232 to increase all employees by 1% (\$4088 for 4 sergeants, \$1072 for the lieutenant, \$3,772 for the 4 officers at step 7, and

uniform amount down the guide, but such restructuring proved impossible for officers in-guide to be converted to their new steps without significant disproportion to one another.

\$2300 for the 3 officers in steps.) In addition, the total cost of adjusting the 3 officers in steps from their old step on the guide to their new step is \$12,671. In addition, the additional longevity payments, both as a result of employees reaching a benchmark year, and as a result of 1% higher base salaries, totaled \$3,342. Further, recall that I shifted \$1305 of 2013 money to 2012 to cover the deficiency in that year. This is a total increase in aggregate base pay of \$27,245, leaving a deficit of \$1,772, which must come from the 2014 pot.

2013 Salary for Each Employee:

Name	Yrs Service	2013 Guide Step	2013 Base Salary	Long %	2013 Long Amt.	Longevity Incr in 2013	2013 Total Salary Paid
Boag	17	Lt	\$108,328	2.0%	\$2,167	\$22	\$110,495
Fitzgerald	13	Sgt	103,216	1.5%	\$1,548	\$15	\$104,764
McKay	10	Sgt	103,216	0%/1.5%*	\$744	\$744	\$103,960
Konfederak	17	Sgt	103,216	2.0%	\$2,064	\$20	\$105,280
Brady	7	Sgt	103,216	--	---		\$103,216
Shadiack	25	10	95,202	3.0%	\$2,856	\$137	\$98,058
Jackowski	12	10	95,202	1.5%	\$1,428	\$14	\$96,630
Stack	11	10	95,202	1.5%	\$1,428	\$1,346	\$96,630
Condos	10	10	95,202	0%/1.5%**	\$1,044	\$1,044	\$96,246
King	7	9	90,702	--	---		\$90,702
Casole	6	7	81,702	--	---		\$81,702
Bonner	5	5	72,702	--	---		\$72,702
Totals			\$1,147,106		\$13,279	\$3,342	\$1,160,385

*On July 3, 2013, McKay will begin receiving 1.5% longevity upon reaching his 10th anniversary. He will be paid 48.1% of the full amount in 2013.

**On April 3, 2013, Condos will begin receiving his 1.5% longevity upon reaching his 10th anniversary. He will be paid 73.1% of the full amount in 2013.

2014:

For 2014, the cost of moving three employees up one step each on the salary guide is \$4500 x 3 = \$13,500. The cost of increasing longevity payments to their full share is \$1,328. In addition, I have to cover the \$1,772 deficit left from 2013. These three items total \$16,600. This leaves a mere \$8,873 available for increases. I propose to use this money to award an across-the-board increase of 1.5%, effective July 1, 2014. This of course nets to .75% increase in base pay costs in 2014, which is \$8705. The total amount needed to fund the 2014 increases therefore is \$25,305.

2014 Salary for Each Employee:

Name	Yrs Service	2014 Guide Step	1/1/14 Increment	1/1/14 Base Salary	1.5% Increase**	7/1/14 Base Salary	Long %	2014 Long Amt.	Longevity Incr in 2014*	2014 Total Salary Paid
Boag	18	Lt		\$108,328	\$1,625	\$109,953	2.0%	\$2,199	\$32	\$110,495
Fitzgerald	14	Sgt		\$103,216	\$1,548	\$104,764	1.5%	\$1,571	\$23	\$104,764
McKay	11	Sgt		\$103,216	\$1,548	\$104,764	1.5%	\$1,571	\$827	\$103,960
Konfederak	18	Sgt		\$103,216	\$1,548	\$104,764	2.0%	\$2,064		\$105,280
Brady	8	Sgt		\$103,216	\$1,548	\$104,764	--	---		\$103,216
Shadiack	26	10		\$95,202	\$1,428	\$96,630	3.0%	\$2,856		\$98,058
Jackowski	13	10		\$95,202	\$1,428	\$96,630	1.5%	\$1,449	\$21	\$96,630
Stack	12	10		\$95,202	\$1,428	\$96,630	1.5%	\$1,449	\$21	\$96,630
Condos	11	10		\$95,202	\$1,428	\$96,630	1.5%	\$1,428	\$404	\$96,246
King	8	9	\$4,500	\$95,202	\$1,428	\$96,630	--	---		\$90,702
Casole	7	7	\$4,500	\$86,202	\$1,293	\$87,495	--	---		\$81,702
Bonner	6	5	\$4,500	\$77,202	\$1,158	\$78,360	--	---		\$72,702
Totals			\$13,500	\$1,147,106	\$17,409	\$1,178,015		\$14,589	\$1,328	\$1,170,400

*The amount of longevity increase payable in 2014 depends upon the employee's anniversary date.

**The total amount shown in this column must be divided in half because the Borough only pays the increase for half the year.

*On July 3, 2013, McKay will begin receiving 1.5% longevity upon reaching his 10th anniversary. He will be paid 48.1% of the full amount in 2013.

**On April 3, 2013, Condos will begin receiving his 1.5% longevity upon reaching his 10th anniversary. He will be paid 73.1% of the full amount in 2013.

Contract Duration:

The Borough proposes a four-year contract for 2012 through 2015. The PBA Proposes a three-year contract, 2012 through 2014. There is some attractiveness to locking in terms and conditions for a longer contract period. A longer contract would provide stability and predictability to terms and conditions of employment, and would mean that the parties would not have to go through the negotiations process again so soon.

However, the current economic climate is full of uncertainty. No one can accurately predict whether the economic health of the State will significantly improve or whether it will deteriorate further by 2014. However, under the 2011 amendments to the interest arbitration statute, the 2% arbitration cap on salary increases, as well as the prohibition on including new economic items, applies to the negotiation of one contract period. N.J.S.A. 34:13A-16.9. There are many proposals here -- on both sides -- that cannot be considered under the limitations of the current statutory language. I therefore award a three-year contract for 2012-2014.

Article XVI - Uniform Allowance

The expired contract provides,

Section 2: All employees shall receive in each year of the Agreement a cleaning allowance in the amount of five hundred and fifty dollars (550.00) per year, payable directly to the employee on the first payday in January. The payment for cleaning allowance shall be pro-rated for any employee appointed during the year.

The PBA proposes to increase the annual clothing allowance to \$650; the Borough offers a \$50 increase. The cost of the PBA's proposal would be \$1200 annually; the cost of the Borough's proposal would be \$600. The evidence shows that Seaside Park has the lowest clothing allowance of any town in Ocean County listed. I agree that the clothing allowance needs to be increased. This increase is not part of the 2% cap on base salary items. The additional cost to the Borough is only \$1200 annually, and is well within its budget and caps. I award the clothing allowance increase of \$100 effective January 1, 2012.

The PBA further asks to have the clothing allowance rolled into base pay and eliminate it as a separate item. The Borough has not addressed this issue except to disagree. The PBA has not provided any financial statements concerning the net effect on base pay such a move would have going forward. In any event, the addition of clothing money to base salary would increase base salary and would then have to come out of the pot of money available under the "2% of base" pursuant to 16.7(b).

Article VII - Overtime and Compensatory Time:

The existing contract language provides:

Section 2. For all court appearances required of a

employee when he or she is off duty, overtime compensation shall be paid as follows:

- a. Whenever an employee is required to prepare for or attend court proceedings on off-duty time, said employee shall be paid at the overtime rate for all time so spent. The minimum compensation for such court preparation or duty shall be three (3) hours at the overtime rate. This provision is meant to cover all types of court-related issues, phone calls, picking up ticket books, grand jury and any other court-related or administrative related issue which is the result of law enforcement duty.
- b. During those months when court is in session once a week, each employee shall schedule his or her court appearances, when practical, for those days when he or she is on duty.

The Borough seeks to reduce the minimum court time from three hours to one hour at the overtime rate. It also seeks to require employees to schedule court appearances for on-duty time all year, whenever practical. The Borough has provided no rationale or analysis of the financial impact for this demand. Therefore, this proposal cannot be considered.

Article VIII- Vacations

Section 1. Each employee shall be granted annual paid vacation based on years of continuous service with the Borough in accordance with the following schedule:

Length of Service	Vacation Time
Up to 1 year	1 day for each month employed
1 to 4 years	12 days
4 to 9 years	15 days
10 to 14 years	18 days
15 to 20 years	20 days
21 and over service	1 day for each year of service

The Borough proposal is the change the final tier of "21 and

over" to a flat 25 days annually. The Borough has provided no rationale or analysis of the financial impact for this demand. Therefore, this proposal cannot be considered.

Section 2(c) provides,

No employee may accumulate and carry over vacation time from one year to the next without the approval of the Chief of Police.

The Borough also requests to add the following language to the vacation clause:

Section 3: No more than ten (10) days of unused vacation leave can be carried forward into the next year. The ten (10) days carried forward shall be used in that carried forward year. If the ten days carried forward is not used in the carried forward year, the days are lost.

The Borough has provided no rationale or analysis of the financial impact for this demand. Further, the Borough already has adequate control over the carrying of vacation time since no vacation time can be carried without approval of the Chief. No additional language is needed.

Article IX: Holidays:

Section 1: The following days are recognized as holidays: An employee may elect to receive payment at his regular rate of pay or may elect vacation time off in lieu of said paid holidays:

{14 holidays are listed}

Section 2: If an employee is scheduled to work any holiday granted to municipal employees, said employee in addition to his/her other regular pay, will be entitled to four (4) hours compensatory time off.

Section 3: In the event that the Borough of Seaside

Park declares or grants any additional holiday time to other municipal employee then such additional time shall be made available to police personnel covered by this agreement.

The Borough proposes to eliminate the employee option in section 1 above for vacation time in lieu of holiday pay. The Borough proposes to modify the language in section 1 to read:

Each employee covered by this agreement shall receive holiday pay equal to one days' pay without regard for working the following days:
{14 holdays listed}

The Borough seeks to replace the existing language in Section 2 with:

An employee covered by this agreement who is required to work on a holiday shall be compensated at the rate of time and one-half the employee's base pay in addition to holiday pay.

The Borough seeks to eliminate Section 3 entirely. However, the Borough has provided no rationale or analysis of the financial impact for this demand. Therefore, this proposal cannot be considered.

The PBA seeks to roll holiday pay into base salary and eliminate it as a separate benefit. The Borough objects to this proposal. As noted above with regard to the proposal to add clothing allowance to base pay, the addition of holiday pay to base salary would increase base salary and would then have to come out of the pot of money available under the "2% of base" pursuant to 16.7(b).

Article X - Sick Leave:

Section 3: If an employee dies while in the employ of the Borough of Seaside Park, the wife/husband or the designated beneficiary of said employee shall be entitled to be compensated for one-hundred percent (100%) of any unused sick leave accumulated by said employee at his or her current rate of base pay, without limitation.

The Borough proposes to delete this section in its entirety and replace it with a life insurance policy, paid for by the Borough. There are two problems with this proposal. First, the Borough has not provided any rationale or financial cost analysis of this proposal. Second, the statute prohibits me from awarding any new monetary benefit. Therefore, this proposal cannot be considered in this contract.

Short and Long-Term Disability Insurance:

The Borough proposes to enroll each officer in a short term disability insurance program to provide each employee with income in the event that they are absent from work due to non-occupational illness or injury, beginning upon the exhaustion of sick leave. The short-term policy would cover up to 180 days, and the long term policy would cover absence after the 180 days. The Borough proposes to pick up the cost of all such coverage.

Whether this proposal is worthwhile or not, I cannot consider new economic benefits pursuant to the statute. Therefore, this proposal cannot be considered.

Article XII: Personal Days:

Section 1: Each employee shall be entitled to annual paid personal leave of five (5) days per annum. Personal leave use shall be granted with a minimum of four (4) hours notice.

The Borough seeks to reduce the entitlement from five days to three days annually. The Borough has not provided any rationale to justify this reduction in benefit.

Article XIV: Medical/Dental Insurance:

Section 5: The Borough shall provide fully paid health benefits not including dental or vision to the employee and spouse upon retirement after (25) years of service to the Borough of Seaside Park and remain in effect until employee becomes Medicare eligible. The health benefits so provided shall be the same or comparable health benefits that are in effect pursuant to this article at the point of the retiring employee's last day of active service with the Borough of Seaside Park.

The Borough proposes to limit this provision to only those who are currently retired or are current employees. Thus, employee hired after January 1, 2012 would be ineligible for medical coverage upon retirement. In addition, the Borough seeks to insert this sentence:

The health benefits so provided [to retirees] shall be the same or comparable to the health benefits provided to active members of the bargaining unit.

In effect, the Borough asks that retirees and future retirees receive no better health benefit plan than that provided to existing employees at that time. However, again the employer has not supplied an analysis of the cost/benefits of such a proposal, nor has it supported this demand with an adequate rationale. Therefore, I cannot consider it.

NON-ECONOMIC ISSUES:**Grievance Procedure:**

The grievance procedure as it presently exists does not define the term "grievance." The parties agree that a definition is desirable, but disagree over the language of a definition. The PBA proposes:

For purposes of this Agreement, the term "grievance" means any complaint, difference or dispute between the employer and any employee with respect to the interpretation, application, or violation of any of the provisions of this agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any employee(s) covered by this Agreement.

Minor disciplinary matters (less than six (6) days of fine or suspension or equivalent thereof) shall be included in this grievance procedure.

The Borough proposes this definition:

A grievance shall mean any complaint by an employee, the PBA or Employer regarding the interpretation, application, or violation of policies, rules, regulations, collective negotiations agreement, or administrative decisions affecting terms and conditions of employment.

In reconciling the disputed language, I have incorporated the key points from both parties' proposals. I have also included coverage of minor disciplinary matters under the grievance procedure, as this provision is consistent with the provisions of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3, which provides,

Public employers shall negotiate written policies setting forth grievance and **disciplinary review**

procedures by mean of which their employee or representatives of employee may appeal the interpretation, application or violation of policies, agreements and administrative decisions, **including disciplinary determinations**, affecting them, provided that such grievance and **disciplinary review procedures shall be included in any agreement** entered into between the public employer and the representative organization.. . For purposes of this section, minor discipline shall mean a suspension or fine of **less than five days**. . .(emphasis added).

Thus, the PBA-proposed language making minor discipline grievable gives employees an avenue to appeal disciplinary measures consistent with public policy as set forth in the Act that employee have a contractual method to appeal disciplinary measures. I therefore award this grievance definition, to be included in the contract grievance procedure:

For purposes of this Agreement, the term "grievance" means any complaint or dispute between the employer and any employee or the PBA with respect to the interpretation, application, or violation of any of the provisions of this agreement; or any rule, regulation, policy, or administrative decision which affects terms and conditions of any unit employee.

Minor disciplinary matters of less than five (5) days of fine or suspension or equivalent thereof shall be included in this grievance procedure.

(New Article): Preservation of Rights:

The PBA proposes a new maintenance of benefits provision and proposes the following wording:

The parties agree that all benefits, rights, duties obligations and conditions of employment relating to the status of the police department which benefits, rights duties obligations, terms and conditions of employment are not specifically set forth in this

agreement, shall be maintained in not less than the highest standards in effect at the time of the commencement of collective bargaining negotiations between the parties leading to the execution of this agreement.

Unless a contrary intent is expressed in this Agreement, all existing benefits, rights duties obligations and conditions of employment applicable to any officer pursuant to any rules, regulations, instruction, directive, memorandum, statute or otherwise shall not be limited, restricted, impaired, removed or abolished.

The PBA contends that this language is a "prior practice" clause which is appropriate for a small town environment. It notes that this is a small town with a good relationship between the parties and a face-to-face operation. It asserts that past practice is a valid standard for interpreting employees' rights and duties and is mutually beneficial. The Borough objects to the proposed clause.

I find that the inclusion of a past practice clause is appropriate and consistent with the parties' statutory requirements. N.J.S.A. 34:13A-5.3 requires that "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." The Public Employment Relations

Commission and the New Jersey Courts have long held that this statutory requirement applies not only to contractual terms but to working conditions as exist by past practice as well. Accordingly, the PBA's proposal to add a Maintenance of Benefits clause is consistent with the statutory theme. I will include a Maintenance of Benefits clause in my award with the following language:

Unless a contrary intent is expressed in this Agreement, all benefits, rights, duties, obligations and terms and conditions of employment which were in effect on the effective date of this contract shall continue in effect, unless the parties mutually agree in writing to the contrary.

AWARD**Article XXVI - Duration of Agreement:**

January 1, 2012 through December 31, 2014.

Article V — Salary

Effective and retroactive to January 1, 2012, 2% aggregate increase to the bargaining unit total base salary, inclusive of increments and longevity payments. The result of this award is to effectively pay increments and longevity increases only in 2012.

Effective January 1, 2013, 1% across-the-board increases to all unit employees, and restructuring of the salary guide from 7 steps after the academy step to 10 steps after the academy step.

Effective January 1, 2014, increments to be paid to those employees other than those at maximum steps on the guide. Effective July 1, 2014, 1.5% across-the-board increases for all unit employees.

2012-2014 Salary Guide

<u>2012</u>		<u>2013</u>		<u>2014</u>	
<u>Old Step</u>	<u>Rate</u>	<u>Step</u>	<u>Rate</u>	<u>Step</u>	<u>Rate</u>
Acad	35,836	Acad	40,150	Acad	40,752
1	41,591	1	46,702	1	47,403
2	50,370	2	53,202	2	54,000
3	59,148	3	59,702	3	60,598
		4	66,202	4	67,195
4	67,926	5	72,702	5	73,793
		6	77,202	6	78,360
5	76,704	7	81,702	7	82,928
		8	86,202	8	87,495
6	85,482	9	90,702	9	92,063
7	94,260	10	95,202	10	96,630
Sgt	102,194	Sgt	103,216	Sgt	104,764
Lt	107,255	Lt	108,328	Lt	109,953

Article XVI - Clothing Allowance:

Effective and retroactive to January 1, 2012, increase clothing allowance from \$550 to \$650 yearly.

Article V - Grievance Procedure:

Add the following definition of "Grievance":

For purposes of this Agreement, the term "grievance" means any complaint or dispute between the employer and any employee or the PBA with respect to the interpretation, application, or violation of any of the provisions of this agreement; or any rule, regulation, policy, or administrative decision which affects terms and conditions of any unit employee.

Minor disciplinary matters of less than five (5) days of fine or suspension or equivalent thereof shall be included in this grievance procedure.

(New Article): Preservation of Rights:

Unless a contrary intent is expressed in this Agreement, all benefits, rights, duties, obligations and terms and conditions of employment which were in effect on the effective date of this contract shall continue in effect, unless the parties mutually agree in writing to the contrary.

* * *

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.

Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making the award. My Award also explains how the statutory criteria factored into my final determination.

Susan W. Osborn

Susan Wood Osborn
Interest Arbitrator

DATED: April 9, 2012
Trenton, New Jersey

State of New Jersey }
County of Mercer }

On this 9th day of April, 2012, before me personally came and appeared Susan Wood Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

Susan E Peslin

