

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

Borough of Carteret,
“Borough”

- and -

Docket No. IA-2024-005

PBA Local 97A, Superior Officers Association
“SOA or Union.”

Before: Brian W. Kronick, Esq., Interest Arbitrator

Appearances:

For the Borough:

H. Thomas Clarke, Esq.
Apruzzese, McDermott, Mastro & Murphy PC

For the SOA:

Leonard C. Schiro, Esq.
Mets, Schiro, McGovern, Manetta & Milewski LLP

PROCEDURAL HISTORY

Police Benevolent Association Local 97A, Superior Officer's Association (the "SOA") and the Borough of Carteret (the "Borough") are parties to a Collective Negotiations Agreement with an effective term of January 1, 2017 through December 31, 2021 (the "Agreement").

The parties had engaged in good faith negotiations resulting in an impasse.

On December 5, 2023, the PBA filed the instant Petition to Initiate Compulsory Interest Arbitration with PERC (the "Petition") pursuant to the Police and Fire Interest Arbitration Reform Act, N.J.S.A. 34:13A-16 (the "Act"). The Petition was held in abeyance as the parties pursued voluntary mediation with the undersigned. On May 12, 2024, PERC randomly appointed me as arbitrator. On May 31, 2024, a mediation session was held as required by the Act. Since a settlement was not achieved through mediation, an Interest Arbitration hearing was scheduled for July 17, 2024.

As required by the Act, Final Offers were to be submitted by July 7, 2024, ten (10) days prior to the date of the hearing, which was extended to July 9, 2024. In lieu of hearing, both parties submitted numerous exhibits addressing the statutory criteria in support of their respective Final Offers. The Borough exhibits are referenced as "B- " and the SOA exhibits as "SOA- ". The SOA also submitted a Financial Report from Timothy E. Piotrowski, CPA/CFF, CMFO, PSA (the "Financial Report") in support of its Final Offer and the Borough's ability to pay. The Borough submitted a certification from Robert Bergen, Esq., Borough Counsel. The parties were given until August 1, 2024 to submit post-hearing briefs.

This proceeding is governed by the Police and Fire Interest Arbitration Reform Act as set forth in N.J.S.A. 34:13A-16 through N.J.S.A. 34:13A-16.9 as amended on June 24, 2014 by P.L. 2014, c. 11 (the "Act"). The Act requires the use of conventional arbitration, however, the strict limits on the amount of base salary increases have sunset and this agreement is not subject to those limitations. Still, the Award must be in compliance with the Act, the appropriations and tax levy limitations in P.L. 1976, c. 68 (C. 40A:4-45, *et. seq.*) and Section 10 of P.L. 2007, c. 62 (C. 40A:4-45:45) and, most importantly, must be in the interest and welfare of the public. This Interest Arbitration Award is issued in accordance with the 16g interest arbitration criteria to the extent deemed relevant. See N.J.S.A. 34:13A-16.7(b) and N.J.S.A. 34:13A-16g.

Pursuant to P.L. 2014, c. 11, the arbitrator has 90 days from appointment, or by August 12, 2024, in which to render an award. This has resulted in a greatly compressed time period for issuance of the Award.

THE FINAL OFFERS

In accordance with the Act, each party submitted a Final Offer (the “Final Offer”).

THE BOROUGH OF CARTERET’S FINAL OFFER

1. **DURATION:** 1/1/2022 through 12/31/2026
2. **WAGES: Article III – Salary and Longevity**

All employees (inclusive of steps) to receive a 3.0% increase to base pay retroactive to January 1, 2022; a 3.0% increase to base pay retroactive to January 1, 2023; a 3.0% increase to base pay retroactive to January 1, 2024; a 3.0% increase to base pay retroactive to January 1, 2025; a 3.0% increase to base pay retroactive to January 1, 2026.

SALARY GUIDE

	2021	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
	2.5%	3.0%	3.0%	3.0%	3.0%	3.0%
Sergeant	\$ 127,686.00	\$ 131,516.58	\$ 135,462.08	\$ 139,525.94	\$ 143,711.72	\$ 148,023.07
Lieutenant	\$ 136,441.00	\$ 140,534.23	\$ 144,750.26	\$ 149,092.76	\$ 153,565.55	\$ 158,172.51
Captain	\$ 145,206.00	\$ 149,562.18	\$ 154,049.05	\$ 158,670.52	\$ 163,430.63	\$ 168,333.55
All Employees promoted to the Rank of Sgt after 1/1/2017 shall progress according to the step scale below. A Step shall be equivalent to one (1) calendar year in grade and employees shall progress on the anniversary of their appointment, unless otherwise notes.						
	2021	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
Sergeant Steps	2.5%	3.0%	3.0%	3.0%	3.0%	3.0%
1st 6 mon	\$ 123,272.00	\$ 126,969.76	\$ 130,778.86	\$ 134,702.22	\$ 138,743.29	\$ 142,905.59
2nd 6 mon	\$ 124,220.00	\$ 127,946.39	\$ 131,784.78	\$ 135,738.32	\$ 139,810.47	\$ 144,004.78
Start of 2nd year	\$ 125,168.00	\$ 128,923.01	\$ 132,790.70	\$ 136,774.42	\$ 140,877.65	\$ 145,103.98
Start of 3rd year	\$ 126,116.00	\$ 129,899.63	\$ 133,796.61	\$ 137,810.51	\$ 141,944.83	\$ 146,203.17
Start of 4th year	\$ 127,686.00	\$ 131,516.58	\$ 135,462.08	\$ 139,525.94	\$ 143,711.72	\$ 148,023.07

3. **Article V – Detective and Special Allowances**

Grade 5: Change \$1050 to \$1100 on January 1, 2022; Change \$1100 to \$1150 on January 1, 2023; Change \$1150 to \$1200 on January 1, 2024; Change \$1200 to \$1250 on January 1, 2025; Change \$1250 to \$1300 on January 1, 2026.

Grade 4: Change \$1300 to \$1350 on January 1, 2022; Change \$1350 to \$1400 on January 1, 2023; Change \$1400 to \$1450 on January 1, 2024; Change \$1450 to \$1500 on January 1, 2025; Change \$1500 to \$1550 on January 1, 2026.

Grade 3: Change \$1550 to \$1600 on January 1, 2022; Change \$1600 to \$1650 on January 1, 2023; Change \$1650 to \$1700 on January 1, 2024; Change \$1700 to \$1750 on January 1, 2025; Change \$1750 to \$1800 on January 1, 2026.

Grade 2: Change \$1800 to \$1850 on January 1, 2022; Change \$1850 to \$1900 on January 1, 2023; Change \$1900 to \$1950 on January 1, 2024; Change \$1950 to \$2000 on January 1, 2025; Change \$2000 to \$2500 on January 1, 2026.

Grade 1: Change \$2050 to \$2100 on January 1, 2022; Change \$2100 to \$2150 on January 1, 2023; Change \$2150 to \$2200 on January 1, 2024; Change \$2200 to \$2250 on January 1, 2025; Change \$2250 to \$2300 on January 1, 2026.

4. **Article XIV-College Credit**

Section A. Amend to indicate that any course earning college credit for covered employees after 12/31/22 must be approved by the Borough to be eligible to be included in the per annum calculation.

Section B. Amend to indicate that proof of successful completion of a course shall be submitted within 90 days of receipt of same by the employee to be eligible for reimbursement.

Section C. Amend to indicate that reimbursement shall be for police related and or core course only. Revise as follows:

Associate's Degree

Effective January 1, 2022, change \$300 to \$400

Bachelor's Degree

Effective January 1, 2022, change \$500 to \$600

Master's Degree

Effective January 1, 2022, change \$1000 to \$1250

Doctorate's Degree

Effective January 1, 2022, change \$2000 to \$2250

5. **Article IX – SOA Rights**

Revise Section A:

- A. The Borough agrees to deduct from the salaries of its employees, subject to this Agreement, dues for the S.O.A. Such deductions shall be made in compliance with Chapter 123, Public Laws of 1974, N.J.S.A. 52:14-15.9(g). Dues shall be transmitted to the S.O.A. on a monthly basis.
- B. A check-off shall commence for each employee who signs a properly dated authorization card supplied by the S.O.A. and verified by the Borough Treasurer during the month following the filing of such card with the Borough.

- C. If during the life of this Agreement there shall be any change in the rate of membership dues, the S.O.A. shall furnish the Borough written notice thirty (30) days prior to the effective date of such change and shall furnish to the Borough either new authorizations from its members showing the authorized deduction for each employee, or an official notification on the letterhead of the S.O.A. and signed by the President of the S.O.A. advising of such changed deduction.
- D. The S.O.A. will provide necessary “check-off authorization” form and the S.O.A. will secure the signatures of its members on the forms and deliver the signed forms to the Borough Clerk.
- E. The Authorization shall remain in full force and effect during the full term of an employee’s employment, unless properly withdrawn. To withdraw from a dues authorization an employee must submit a written request to withdraw from the Association to the responsible payroll clerk for the Employer within ten (10) following each anniversary date of his/her employment. Once the Employer’s payroll clerk receives the request, it will notify the Association within five (5) business days. The properly filed withdrawal will become effective on the 30th day after the employee’s anniversary date of employment.
- F. Employees may voluntarily pay a fair share fee to the Union. The requirements regarding the fair share fee shall be applied consistent with the U.S. Supreme Court’s June 27, 2018 decision in Janus v. AFSCME, Council 31 and the New Jersey Workplace Democracy Enhancement Act. The Borough agrees to deduct the fair share fee from the earnings of those employees who elect not to become members of the S.O.A. and transmit the fee S.O.A. accounts.
- G. The S.O.A. shall indemnify, defend and save the Borough harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Borough in reliance upon salary deduction authorization cards or the fair share assessment as furnished by the S.O.A. to the Borough, or in reliance upon the official notification on letterhead of the S.O.A. signed by the President of the S.O.A. advising of such changed deduction.

THE SOA’S FINAL OFFER

A. ARTICLE III-SALARY AND LONGEVITY

- 1. Section A. 3% increase across the board with a salary adjustment entering 2024 for Sergeants. Salary adjustments split over three years for Lieutenants and Captains.

Eff. 1/1/22 3.0% ATB
 Eff. 1/1/23 3.0% ATB
 Eff. 1/1/24 3.0% ATB
 Eff. 1/1/25 3.0% ATB
 Eff. 1/1/26 3.0% ATB

- 2. Section A, (2) Salary Guide:

	2021	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
Sergeant	\$ 127,686.00	\$ 131,517.61	\$ 135,463.14	\$ 150,173.11	\$ 154,678.30	\$ 159,318.65
Lieutenant	\$ 136,441.00	\$ 140,534.23	\$ 144,750.26	\$ 152,697.76	\$ 160,883.70	\$ 169,315.21
Captain	\$ 145,206.00	\$ 149,562.18	\$ 154,049.05	\$ 162,275.52	\$ 170,748.78	\$ 179,746.25

3. Section A, (3) Sergeant Steps

	2021	2022	2023	2024	2025	2026
1st 6 mon	\$ 123,272.00	\$ 126,970.16	\$ 130,778.26	\$ 141,363.99	\$ 145,604.91	\$ 149,973.06
2nd 6 mon	\$ 124,220.00	\$ 127,946.60	\$ 131,784.99	\$ 143,516.75	\$ 147,821.65	\$ 152,256.95
Start of 2nd year	\$ 125,168.00	\$ 128,923.04	\$ 132,790.73	\$ 145,702.29	\$ 150,072.75	\$ 154,574.95
Start of 3rd year	\$ 126,116.00	\$ 129,899.48	\$ 133,796.61	\$ 147,921.11	\$ 152,358.13	\$ 156,928.87
Start of 4th year	\$ 127,686.00	\$ 131,517.61	\$ 135,463.14	\$ 150,173.11	\$ 154,678.30	\$ 159,318.65

B. ARTICLE V- DETECTIVE AND SPECIAL ALLOWANCES

Amend to include the following as reflected under the PBA's contract:

Section A (1) increase Detective Special Stipends as follows:

Grade 1:

Effective January 1, 2022, \$1,100 shall be added to the base
Effective January 1, 2023, \$1,150 shall be added to the base
Effective January 1, 2024, \$1,200 shall be added to the base
Effective January 1, 2025, \$1,250 shall be added to the base
Effective January 1, 2026, \$1,300 shall be added to the base

Grade 2:

Effective January 1, 2022, \$1,350 shall be added to the base
Effective January 1, 2023, \$1,400 shall be added to the base
Effective January 1, 2024, \$1,450 shall be added to the base
Effective January 1, 2025, \$1,500 shall be added to the base
Effective January 1, 2026, \$1,550 shall be added to the base

Grade 3:

Effective January 1, 2022, \$1,600 shall be added to the base
Effective January 1, 2023, \$1,650 shall be added to the base
Effective January 1, 2024, \$1,700 shall be added to the base
Effective January 1, 2025, \$1,750 shall be added to the base
Effective January 1, 2026, \$1,800 shall be added to the base

Grade 4:

Effective January 1, 2022, \$1,850 shall be added to the base
Effective January 1, 2023, \$1,900 shall be added to the base
Effective January 1, 2024, \$1,950 shall be added to the base
Effective January 1, 2025, \$2,000 shall be added to the base
Effective January 1, 2026, \$2,050 shall be added to the base

Grade 5:

Effective January 1, 2022, \$2,100 shall be added to the base
Effective January 1, 2023, \$2,150 shall be added to the base
Effective January 1, 2024, \$2,200 shall be added to the base
Effective January 1, 2025, \$2,250 shall be added to the base
Effective January 1, 2026, \$2,300 shall be added to the base

C. ARTICLE XIV-COLLEGE CREDIT

Section B: Amend to indicate that reimbursement shall be for police related and or core courses only.

D. PREAMBLE

All dates shall be conformed to the new contract term.

E. ARTICLE XIX, TERM

All dates shall be conformed to the new contract term, January 1, 2022 through December 31, 2026.

BACKGROUND

The parties to this proceeding are the Borough of Carteret and Police Benevolent Association Local 47A, Superior Officers Association.

A. Demographics

The Borough of Carteret is located in northeastern Middlesex County, and borders Linden and Rahway and Woodbridge. Carteret is governed by a Borough form of government. According the 2023 U.S. Census data, the Borough has a population of 25,281 people. (B-2). As of 2020, it has a population of approximately 25,326 residents which is its highest decennial count ever, with a 10% increase since the last census count performed in 2010. (SOA-G-5). It is 4.4 square miles, which averages out to be 5,745 people per square mile. (B-5). Of the 25,281 people, 7.6% of the population is under 5 years old, 32.9% are under 18 years old, and 14.2% are over 65 years old. (B-2). The median age is 37.6 years old. (B-5).

As of the 2023 Census data, the Borough had 8,153 households. The Borough's racial makeup was 31.8% white, 16.3% black or African American, .2% Native American, 25% Asian, and 35.2% Hispanic or Latino. Further, 35.5% are foreign born people.

The median home value in 2023 was \$337,500, which is less than both the median home value in Middlesex County and New Jersey. (B-3). The median household income was \$79,049 and the per capita income was \$31,861. 10.1% of the population in Carteret are living below the poverty line.

B. Borough of Carteret Police Department

The Borough's Police Department is a Civil Service jurisdiction. The SOA Agreement covers officers within the Police Department whose job titles are Captain, Lieutenant, and Sergeant. (SOA-G-1). The Civil Service Commission's definition of Police Captain is "under the supervision of the Chief or Deputy Chief of Police during an assigned tour of duty, the Captain has charge of subordinates engaged in activities intended to provide assistance and protection for persons, safeguard property, assure observance of the laws, and apprehend lawbreakers. (SOA-G-15). A Lieutenant's role is to work under supervision of the Captain and take charge of police platoons or perform specialized supervisory policy duties. (SOA-G-16). The Police Sergeant's role is not dissimilar, as it also requires them to have charge of police activities intended to provide assistance and protection for persons, safeguard property, and assure observance of the laws, and apprehend lawbreakers. (SOA-G-17).

The Patrol Officers are represented by PBA Local 47 and are parties to a collective negotiations agreement with the Borough for the term January 1, 2022 through December 31, 2026. The Captains, Lieutenants and Sergeants are represented by PBA Local 47A, Superior Officer's Association and are parties to a collective negotiations agreement for the term January 1, 2017 through December 31, 2021. The SOA represents all police Captains, Lieutenants, and Sergeants employed by the Borough. (SOA-G-1). Currently, the SOA negotiations unit consists of 19 members, broken down as follows: 1 Captain; 2 Lieutenants; and 16 Sergeants. (SOA-G-21). Currently, of the 16 Sergeants, 7 of them are already at top step, earning \$127,687. (SOA-G-1; SOA-G-21). Comparatively, compared to the PBA's top step Patrol Officer, a Patrol Officer at the top of Step 10 will earn \$126,536.69 in 2024. (SOA-A-1). This evaluation does not include longevity.

A Patrol Officer that has worked for the Borough for 12-14 years, accumulates a longevity increase of 4%, bringing the total for a Patrol Officer at top step with 10-14 years of service to \$131,598.15. *Id.*

Patrol Officers working for the Borough for 15 to 19 years enjoy a longevity rate of 6%, which if at top step is \$134,128.89 by the end of 2024. *Id.* Patrol Officers with 20 to 24 years will have 10% added to the base, bringing the total compensation for 2024 to \$139,190.35. 25 to 28 years served in the Borough earns a 12% longevity increase, or \$141,721.09. *Id.* A Patrol Officer serving the Borough for 29 years or more at the top step will earn an extra 15% in longevity, bringing their gross salary in 2024 to \$145,517.19. *Id.*

Article II of the Agreement sets the work schedule for SOA unit members. (SOA-G-1). Employees assigned to Patrol Division's workday consist of not more than ten (10) consecutive hours in a twenty-four (24) hour period. *Id.* The Captain's workday consists of not more than eight (8) consecutive hours in a twenty-four (24) hour period. All other employees' workdays consist of not more than nine (9) consecutive hours in a twenty- four (24) hour period. *Id.*

The Borough's violent crime rate is 1.63 crimes per 1,000 residents. (SOA-G-6). It has a larger property crime rate, affecting 12.91 crimes per 1,000 residents. *Id.* The chances of becoming a victim of a violent crime in Carteret is 1 in 614, which is lower than the state's average crime rate, 1 in 493. *Id.* Similarly, the chances of becoming a victim of a property crime in Carteret is 1 in 77, which is lower than the state average of 1 in 71. *Id.* The low crime rates can be attributed to the hardworking members of the Carteret Police Department.

POSITION OF THE PARTIES

The SOA's Position

The SOA submits that it has set forth a fair and equitable salary proposal that would provide SOA members with a salary comparable to other towns and municipalities in Middlesex County, while simultaneously addressing the inequity of supervisors making less than those they supervise. The SOA argues its proposal stays consistent with the percentage pattern of settlement within the Borough, addresses the inequities and also stays within the confines of the pattern of settlement given the additional monies provided to the Fire Lieutenants. The SOA notes its proposal addresses the inequity in calendar year 2024 so as to minimize and negate any financial impact on the Borough.

The SOA asserts the Borough's offer fails to address the inequity and in fact will only exacerbate the unfairness of its salary proposal. They argue it will not bode well in the long term as SOA members will continue to have their salaries eroded by subordinate salaries as percentage salary increases alone will only perpetuate and exacerbate. The SOA's proposal seeks to narrow the inequity of the current situation in Carteret of PBA members making more than their Sergeants and will also address the poor standing of SOA salaries for Carteret as compared to other Middlesex County departments.

The SOA argues the Borough has the funds to honor the SOA's salary proposal, and the Arbitrator must grant the SOA's Final Offer. They maintain that continuing to permit top step patrolmen to earn more than their supervisors will lead to lessening morale, as the Supervisors have more responsibilities yet make less than their subordinates. They argue that the Sergeants, Lieutenants, and Captains all must study and prepare for exams, and oversee the actions of their subordinate Patrol Officers. Ultimately, SOA members are more technically qualified to perform their job duties than Patrol Officers are at theirs and as such, the SOA's offer must be awarded, and the pay gap must end.

The Borough's Position

The Borough argues its Final Offer is consistent with the pattern of settlement with the Borough's other bargaining units and consistent with the long history of pattern of settlement with the PBA. They maintain that the Arbitrator should place the most weight on the settlements, salary, benefits, schedule, and other relevant terms and conditions provided to other employees of the same public entity. They argue that disparity among employees of the same employer will negatively impact morale, undermine effective collective negotiations, and lead to mistrust and animosity among employees. Maintaining equity and consistency of settlements with employees of the same employer is essential not only from an economic standpoint, but also from a public policy standpoint.

The Borough argues its Final Offer to the SOA is consistent with the wage increases voluntarily agreed to by the Borough's other bargaining units – 3% per year. The Borough notes the only deviation from the pattern was the settlement with the Fire Lieutenants represented by the FMBA. In 2022 and 2023, all FMBA members received a 3% increase. Effective upon ratification in April 2023, the Fire Lieutenant differential was increased to 7% above a top step fire fighter. The Borough submits the deviation was justified and necessary and is not relevant to the SOA.

The Borough argues the most compelling pattern of settlement is the historic wage pattern of settlement with the PBA. They note the PBA voluntarily agreed to a 3% per year across-the-board increase covering January 1, 2022 through December 31, 2026. They submit that since the inception of the SOA, the PBA and SOA have always received the same wage increase. The Borough argues its pattern of settlement with the PBA, as well as the other bargaining units, is overwhelming. The Borough's Final Offer seeks to continue the pattern of settlement with the SOA that they argue will assure a generous level of benefits and continue to provide competitive salaries and benefits to SOA members.

The Borough asserts the SOA is seeking a significant salary adjustment, well above the 3% across-the-board increase pattern of settlement. The Borough submits the SOA cannot meet its burden to justify a deviation from this well-established pattern of settlement. The Borough acknowledges that some newly promoted sergeants can earn less than top step PBA members and notes that this is because newly promoted Sergeants are not eligible for longevity, whereas senior PBA members at top step are entitled to longevity. The Borough recognizes that there are some long tenured PBA members who earn more than some junior Sergeants based on their years of service to the Borough not the nature of their job. The Borough suggests this has not had a negative impact on morale. The Borough maintains that the SOA's Final Offer attempts to address a short-term alleged problem with a permanent solution that will cost the Borough for years to come. The Borough maintains there is no justification to deviate from the 3% per year across-the-board increase proposed by the Borough.

The Borough argues the SOA is relying on the Financial Report to argue that the Borough has the ability to pay for the SOA Final Offer. The Borough argues the arbitrator is urged not to give weight to the SOA's ability to pay analysis. They maintain that the ability to pay is not the issue here. In addition, no one in the Borough has received increases like the SOA is proposing here, and the Financial Report failed to consider the impact of awarding the SOA's Final Offer on the other Borough employees and the Borough's budget.

The Borough submits it has presented the Arbitrator with evidence that covers all the pertinent statutory criteria in support of its Final Offer, and its position is more reasonable and realistic than the position advanced by the SOA and should be awarded.

INTEREST ARBITRATION CRITERIA AND ARGUMENTS

A. The Arbitrator's Authority

Public employers and public safety unions are statutorily mandated to resolve their labor disputes pursuant to the Police and Fire Interest Arbitration Reform Act, N.J.S.A. 34:13A-16 (the "Act"). By enacting the Act, the Legislature recognized the unique and essential duties police officers and firefighters perform and the life-threatening dangers they face. The purpose of the interest arbitration procedure is to promote and protect the well-being of New Jersey citizens, the efficient operation of police and fire departments as well as the high morale of employees that perform this important work.

B. Statutory Criteria

In rendering an award, the Arbitrator must consider the following nine (9) factors:

1. The interest and welfare of the public;
2. Comparison of wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with 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;
 - b. In public employment in general;
 - 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)
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. The stipulation of the parties;
5. The lawful authority of the employer;
6. The financial impact on the governing unit, its residents and taxpayers;
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 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).

The Arbitrator must render an award based on the evidence on the record considering the statutory criteria set forth above. The opinion and award must clearly address the criteria. It must include a discussion of the evidence as it relates to the statutory criteria, the weight accorded to each criterion and the reason for the decision. The opinion and award must also explain whether any of the criteria were deemed to be irrelevant and why.

This Award will be issued under concept of “conventional authority” pursuant to N.J.S.A. 34:13A-16d; and N.J.A.C. 19:16-5.7(e). Under conventional authority, an arbitrator’s award is not limited by either party’s final offer. Rather, the arbitrator has the power to select from either party’s last offer or, alternatively, the arbitrator may use his or her judgment and grant an award that he or she feels is more reasonable than any offers made by the parties. See, e.g., Hudson County Prosecutor and PBA Local 232, Docket No. IA-96-178 (July 28, 1997) (Arbitrator did not err by establishing third year salary for Town prosecutor investigators which was lower than the employer’s offer).

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. The burden must be met by sufficient evidentiary support. No proposed issue can be deemed presumptively valid in the absence of justification that is supported by credible evidence. Indeed, labor stability is partly conditioned upon the parties consistency in the application and implementation of terms and conditions of employment as set forth in the parties’ agreement. For this reason, changes in terms and conditions of employment should not be awarded lightly. Moreover, 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. A decision on an individual issue will include considering the reasonableness of awarding that issue in relation to the overall terms of the award. Indeed, while there may be merit to awarding or denying a single issue if it were to stand alone, a different conclusion is reached when considered within the context 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.

The parties have submitted extensive documentation and comprehensive position statements addressing the statutory criteria which I have reviewed and considered under the 16g criteria. The issues in dispute are both economic and non-economic. Each issue in dispute will be addressed below and will include an analysis of the issue and an award resolving that issue.

The 16g Criteria

The Interest and Welfare of the Public, N.J.S.A. 34:13A-16g(1)

The Interest and Welfare of the Public criteria is the most significant of all statutory factors to be considered and an Arbitrator must give due weight to the interest and welfare of the public when issuing an award. It is a criterion that includes the financial impact of the awarded increases and the desirability of maintaining employee morale for the Town’s police officers. Indeed, the criteria recognizes the interest of the public in knowing that its police department is staffed by competent, dedicated personnel possessing good working morale, and the interest of the public in avoiding higher taxes and/or diminished services.

As Arbitrator Mastriani recognized in Point Pleasant and PBA Local 106, IA-2012-001 (September 19, 2011): “The interest and welfare of the public is entitled to the most weight because it is a criterion that embraces many other factors and recognizes their interrelationships, including the financial impact of an award on the governing body and taxpayers.” See also Town of Seaside Park and PBA Local 182, IA-2012-022 (April 9, 2012) (“The interest and welfare of the public is not only a factor to be considered, it is the factor to which the most weight must be given.”). “Arbitrators have reviewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale.” See Sayreville and PBA Local 98, IA 2006-047 (November 5, 2008).

The New Jersey Supreme Court emphasized that “the public is a silent party” to the interest arbitration process, and that “an award runs the risk of being found deficient if it does not expressly consider” the public interest. Hillsdale, 137 N.J. at 82-83. “Indeed, the Arbitration Act expressly requires the arbitrator to consider the public interest and public welfare.” *Id.* “An award that ignores the interests and welfare of the public or subordinates these interests to other considerations would tend to undermine the intent and purpose of the Act itself.” Township of West Windsor, Docket No. IA-2019-014, June 20, 2019. In the Appellate Division’s decision in the Hillsdale matter, the Court found that the public interest factor “focuses in part on the priority to be given to the wages and monetary benefits of public employees within a municipality’s budget and plans.” Hillsdale, 263 N.J. Super. at 188. “It is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award. That would also conflict with other enumerated factors and render them hollow.” *Id.* Arbitrators historically understood this criterion as requiring that public safety employees be well compensated. However, the Appellate Division directed that this criterion be interpreted differently, holding that it “focuses in part on the priority to be given to wages and monetary benefits of public employees within a public employer’s budget and plans.” Hillsdale, 263 N.J. Super. At 188. In other words, an interest arbitrator is required to balance the expense borne by the taxpaying public with the need to ensure that the necessary services are provided.

Taking a cue from Arbitrator Licata, “to recognize commonality and to avoid redundancy,” the SOA grouped the interest and welfare of the public (N.J.S.A. 34:13A-16g(1)) and financial impact criteria (N.J.S.A. 34:13A-16g(5), (6) & (9)). Paterson, PERC Docket No. IA-2024-002 at 4. The SOA asserts that throughout its negotiations, the Borough has never stated it cannot fund the SOA’s requests for raises. The Financial Report shows there is more than enough surplus for the Borough’s ability to pay.

The SOA cites to the Financial Report to show the Borough has the funds to grant the SOA’s salary proposal. The SOA notes that one way to maximize revenues is to raise the statutorily allowed tax levy. The SOA argues the Borough has historically left large amounts of tax revenue unassessed. The 2022 budget left \$1,257,791.13 of available tax revenue unassessed. The 2023 budget left \$21,656.55 of available tax revenue unassessed. The 2024 budget left \$754,164.70 of available tax revenue unassessed. The Financial Report notes that maximizing the annual tax levy results in a higher base tax levy subject to the 2% increase for the following budget year, so each subsequent budget year tax levy would be allowed a great statutory increase. The SOA submits the additional tax revenue raised is sufficient to prospectively fund the SOA Final Offer.

SOA argues the Borough could also use part, or all, of its Fund Balance to fund the SOA’s proposed salary increase. The Fund Balance represents the monies that have accumulated over the years as a result of municipal operations. It is similar to the Retained Earnings of a business. It is often considered a measure of available expendable financial resources. Municipalities regularly use some of this fund balance as a source of revenue (Surplus Revenue) in its annual budget.

The Financial Report also shows the Borough has continuously generated a surplus each year since 2020. For example, the fund balance as of January 1, 2020 was \$7,670,498.53. The Borough used \$3,000,000 of the surplus and its remaining balance was \$4,670,498. Additionally, there was excess from operations/revenue totaling \$3,017,019.20, bringing the fund balance for the year of 2020 to \$7,687,517.73. In 2021, the fund balance was \$7,687,517.73, once more, the Borough used \$3 million dollars of the surplus, with a remaining balance of \$4,687,517.73. The Borough did not utilize even half of its excess and ended the 2021 year with a fund balance of \$8,014,065.63— concluding the year with \$326,547.90 more than what it started with. The trend continued in 2023 and most recently in 2024.

The Financial Report notes that by the end of 2023, the Borough had used 43.12% of its surplus, and, to date, has used 43.51% of it this year. The SOA submits that the Borough's theme is to consistently not utilize and maximize the amount of surplus it uses. In the past four years, the Borough has not used more than half of the surplus generated. They argue this surplus could be redirected to the Borough's hardworking police force, and the Borough's finances still would not be affected.

The SOA notes that since its last contract, the Borough has received millions toward funding its restoration. For example, the Howell-based George Harms Construction Company was awarded \$7.9 million dollars for in-water work. (SOA-G-8). Mayor Reiman was quoted as saying, "this is truly an exciting time for Carteret...soon the ferry will safely and efficiently deliver commuters from Carteret and the surrounding area every day to downtown Manhattan and the Financial District." *Id.* The Mayor continued to state, "once the waterside improvements are done, we will operate a ticket booth out of a kiosk and an app on a smart phone until the Carteret Intermodal Transportation Building is completed." *Id.* The Mayor, and Carteret officials, are fully expecting an influx of capital in the coming years. This is great news for the citizens and Borough, and only further underlines its ability to pay the Borough's police force.

The SOA notes that Mayor Reiman's Administration has already secured over \$70 million in federal and state grants, including several competitive funds, such as the aforementioned 2022 FTA grant and a Congressional appropriation. *Id.* The Police Department also generates revenue for the Borough through fines and citations.

The SOA notes the Financial Report also addresses how the Borough can adequately and sufficiently afford to grant the SOA's salary requests. The SOA and Borough Final Offer wage proposals are for 3% in 2022 and 2023. In 2024, 2025 and 2026 the wage proposals were for 3% and the SOA Final Offer also adds longevity. This key distinction between the offers is where the parties significantly differ. The Financial Report compared the SOA's final wage proposal with the Borough's. The Financial Report cost out shows the SOA Final Offer in 2022 costs \$1,557,332.33 a \$6.35 increase over the cost of the Borough's Final Offer that costs \$1,527,325.98. In 2023, the cost of the SOA proposal is \$2,222,465.43 an \$9.96 increase over the cost of the Borough Final Offer of \$2,222,455.67. In 2024, the SOA Final Offer costs \$2,726,231.31 and the Borough Final Offer costs \$2,632,531.10, a difference of \$93, 700.22. In 2025, the SOA Final Offer costs \$2,901,869.12 and the Borough Final Offer costs \$2,715,127.45, a difference of \$186,741.67. In 2026, the SOA Final Offer costs \$3,017,539.57 and the Borough Final Offer costs \$2,808,184.69, a difference of \$209,344.88. The total five (5) year cost of the SOA Final Offer is \$12,395,437.77. The total cost of the Borough Final Offer is \$11,905,634.69. The SOA Final Offer is \$489, 803.08 more than the cost out of the Borough Final Offer. The total difference between the SOA's and the Borough's proposals is \$489,803.08 over 5 years. The SOA submits its proposal seeks to address the disparity between the PBA's top step and the SOA members, especially when factoring in longevity. The SOA's proposed step guide would resolve the inequity of pay between the PBA members and the SOA.

The SOA notes the Borough settled with the FMBA with salary increases of 3% with an additional 7% increase to above top rate fire fighters for 2023, 2024, and 2025. They note this increase was first seen in 2023, when a Lieutenant for the FMBA received \$121,026.07. (SOA-A-1). Applying the

7% differential, the Lieutenant then received \$125,644.15. *Id.* This trend continued into 2024, with the Lieutenant earning \$129,413.48. *Id.* In 2025, a Lieutenant will earn \$133,295.88 when applying the 7% differential. *Id.*

The SOA argues the Borough does not offer this same courtesy to the SOA permitting Patrol Officers to earn more than Sergeants and Lieutenants when including longevity pay. The FMBA's first level of supervisors is Lieutenants, unlike the SOA's first level of supervisor role which is Sergeant. The SOA notes that Borough Attorney certifies the Captain position for firemen has not been filled since 2018 and is claiming Lieutenants will do the work of Captains. The SOA argues a simple desk audit under N.J.A.C. 4A:3-3.9 would illustrate that Lieutenants are working outside of their job titles, and the Captain's position would be mandated by virtue of law.

The SOA notes its proposal seeks to have Sergeants in 2024 earn \$150,173.11. Comparing this to the top step of Patrol Officer earning \$145,517.19, this increase is only 3.1%, or 4% less than the FMBA's proposal. The Borough still benefits from the SOA's proposal for the SOA could have sought to match the FMBA's 7% increase, which would bring the 2024 Sergeant's amount to \$155,703.39.

The SOA argues that the FMBA created a 7% separation between top step Fire Fighter and Lieutenant, juxtaposed to the SOA's proposal which only creates a 3.1% difference between top step Patrol Officer and Sergeant. The SOA further argues the proposal would not hinder the Borough's ability to pay. For example, the SOA's proposal for 2024 increases the total salary owed to Sergeants, Lieutenants and Captains to \$93,700.22. They argue this is a nominal amount when considering the remaining amount in the surplus fund for 2024 of \$5,843,079.23.

The Financial Report compared the cost of the Borough's Final Offer with the SOA's proposal and concluded that over the span of the contract, it would cost taxpayers \$46.19 during that span. Divided over the five-year period, this brings the total cost to each taxpayer to \$9.24 per year.

The SOA argues the Borough can afford to pay for this SOA proposal if awarded. It currently has ample funding in the fund balance (\$7,687,517.73). This will enable the Borough to prospectively fund the SOA's Final Offer wage proposal for 3% wage increases. Furthermore, the SOA notes it has foregone retroactivity for 2021, 2022 and 2023 to lessen the financial hardship on the Borough.

The SOA submits "the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels in order to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest." Leonia - and- PBA Local 381, P.E.R.C. Docket No. IA-2004-053, 2005 WL 6709534 at 39 (Glasson, R. 8/15/05); *see also* Camden County -and- PBA Local 351, P.E.R.C. Docket No. IA-2003-033, 2004 WL 6011513 at 39 (Glasson, R. 9/3/04). The SOA argues that when the Borough's proposal regarding wages is analyzed under the microscope of the working conditions of the SOA unit members, awarding the SOA proposal will be in the best interest and welfare of the public. SOA unit members have continued to work and perform their duties, and they do so with full awareness that their colleagues in the Fire Department have been given substantial raises to address the inequities within the Fire Department, while the SOA has not. They argue the SOA will continue to suffer the economic hardship and professional humiliation of having subordinates make more money than they do. There is simply no excuse for the SOA members to be making less than top step Patrol Officers.

The SOA submits that no other Police Department in Middlesex County suffers from this same issue, and in fact, the only other department that did was the FMBA, which the Borough addressed and rectified in its past negotiations. Therefore, the SOA argues that awarding all or part of the Borough's Final Offer is not in the interests and welfare of the public. On the other hand, awarding the SOA's Final Offer

would serve to raise the sagging morale that has plagued this Department and in turn make it more effective and productive in serving the public.

The Borough does not suggest the inability to pay. Instead, the Borough argues it has a wage pattern of settlement with its other bargaining units. In addition, besides the current round of bargaining, the Borough argues it has a long history of pattern of settlement between the PBA and SOA.

The Borough notes that in the current round of bargaining, the Borough's wage pattern of settlement is a 3% across-the-board increase to wages. They note that this wage pattern is greater than the 2.5% wage increase the dispatchers received when this round of bargaining began in 2019. The Dispatchers agreement provides for 2.5% increases to top step from 2020 through 2024. Local 2291 agreed to 2.5% increases to top step from 2020 to 2022 and 3% increases through 2027. Local 3850 agreed to 2% increases in 2020-2022 with 3% increase from 2023 through 2027.

The FMBA salary increase in 2020 was 2% and increased to 3% for 2021 through 2025. The only deviation from the pattern of settlement was upon ratification in April 2023 with the Fire Lieutenants in the FMBA. The Borough maintains the deviation from the 3% pattern of settlement for Lieutenant effective upon ratification was for a good reason and actually resulted in cost savings for the Borough.

The Borough submits that during the latest round of bargaining with the FMBA, one of the key issues in negotiations involved the elimination of Acting Captain Pay. (*See* B-53 and Bergen Cert. at ¶ 3.) When the Lieutenant position was created in 2013, there were four Captains in the Fire Department. *Id.* By the middle of 2018, three Captains had retired, and one was demoted. *Id.* Since then, the Captain position has not been filed. *Id.* Therefore, the only Superior Officers in the Fire Department are Fire Lieutenants. *Id.* Under the terms of the 2016 through 2020 Memorandum of Agreement, the 2020 Lieutenant salary was \$110,756, and top rate Fire Fighter was \$107,461, which equated to a 3% differential above top rate Fire Fighter. *Id.* and B-52.

In 2017, the FMBA filed a grievance alleging the Borough had failed to pay Fire Lieutenants Acting Captain Pay under Article VIII of the Collective Negotiations Agreement. *Id.* The Arbitrator ruled for the FMBA and found that Fire Lieutenants were entitled to Acting Captain Pay. The Borough challenged the arbitration award, which was upheld by the Chancery Division, reversed by the Appellate Division, with the Supreme Court reversing the Appellate Division decision and reinstating the arbitration award. *Id.* and B-54. Therefore, pursuant to the Supreme Court decision, on shifts that Fire Liutenants were working, the Borough was paying Fire Lieutenants at the higher Captain's rate of pay under the Acting Captain language in the CNA. *Id.* By paying the Fire Lieutenants at the higher Captain's rate of pay, it cost the Borough thousands of dollars per year. *Id.* From 2017 through 2022, the Borough paid out an additional \$201,208.73 in Acting Captains pay above the Fire Lieutenants rate. *Id.*

During the FMBA negotiations which commenced in 2021, the Borough proposed to eliminate the Acting Captain Pay article in the CNA. *Id.* The FMBA opposed deleting the Acting Captain Pay article. *Id.* Subsequently, the Borough made a final offer to the FMBA which included a 3% across the board increase to rank and file fire fighters, and a differential of \$5,000.00 between Lieutenants and top rate Fire Fighter in order to delete the Acting Captain Pay article. *Id.* This was also rejected, and the FMBA filed for Interest Arbitration. *Id.*

Following several negotiations sessions and Interest Arbitration mediation, the Borough agreed to increase the Fire Lieutenant differential to 7.0% above top rate Fire Fighter. *Id.* In return, the FMBA agreed to delete the Acting Captain Pay language and replace it with "Acting Lieutenant" language. *Id.* and B-51. By agreeing to increase the Fire Lieutenant differential to 7.0% above top step Fire Fighter, the Borough was able to stop paying Fire Lieutenants at the higher Captain's rate of pay under the Acting Captain Pay article in the CNA. *Id.*

The Borough submits the deviation from the 3% pattern of settlement for the Fire Lieutenants was justified. The Borough argues the SOA's reliance on the 2023 Fire Lieutenant differential increase is misplaced since the Fire Lieutenant differential was increased in order to change the Acting Captain language and save money. The differential was not increased as part of a salary adjustment due to alleged poor morale as the SOA is seeking here. The differential was increased so that the Borough could stop paying Fire Lieutenants at the Captain rate when they were working. By increasing the Fire Lieutenant differential and deviating from the pattern only upon ratification, it actually saves the Borough money.

The Borough argues this one-time deviation from the 3% pattern should not also apply to the SOA bargaining unit. Instead, the Borough argues its Final Offer of 3% across-the-board wage increase, which is consistent with the wage pattern in the Borough and the PBA pattern of settlement should be awarded. The PBA received increases of 2.5% in 2020 and 2021. The PBA agreed to 3% across-the-board wage increases for 2022 through 2026, the same across-the-board wage increase proposed to the SOA. The Borough maintains that historically, the SOA has always received the same across-the-board increase as the PBA. The PBA and SOA have received identical across the board salary increases since at least 2003. They argue this long history of pattern of settlement is overwhelming and should be given significant weight here. The Borough has included in its Final Offer an almost identical package on the terms and conditions of employment that were voluntarily accepted by the PBA. This includes a 3% across the board increase per year for the proposed 5-year duration. The Borough's Final Offer also increased the detective allowance, increased college credit pay, and revised language on SOA rights, which are all provided for in the PBA MOA. (B-37).

The Borough notes that the crux of the SOA's argument was that it proposed a salary adjustment due to alleged poor morale in the Department. The Borough notes the SOA's broad claim for alleged poor morale is that there are a select few newly promoted Sergeants who earn less than very senior top step PBA members who receive an additional 10% or 12% in longevity pay. However, the Borough notes the SOA's argument is not supported by any evidence in the record. The Borough argues the SOA has not provided a certification from any of its members, alleging that morale in their bargaining unit is poor.

The Borough also notes that through its significant proposed wage adjustment, the SOA is attempting to gain back what it had voluntarily gave up in the past two negotiations. They note that in 2012, the SOA (and PBA) voluntarily agreed to eliminate longevity. In return, both bargaining units received a 2% across the board increase. Then, only five years later during the parties' prior negotiations, the SOA voluntarily agreed to a new step guide for Sergeants promoted after January 1, 2017. In return, the SOA received a 2.5% increase per year. It is now these newly promoted sergeants who are seeking a significant wage adjustment despite these prior settlements.

The Borough submits that the newly promoted sergeants were hired after 2012, thus making them ineligible for longevity. The fact that the SOA voluntarily agreed to eliminate longevity for those hired after January 1, 2012 and a new step guide for Sergeants promoted after January 1, 2017 in return for a greater wage increase during those negotiations, is alone one reason why this arbitrator should not grant the SOA's wage adjustment. As part of the quid pro quo, the SOA received a greater wage increase in return for these concessions. This was the same wage increase the PBA received. By agreeing to those items, the SOA and Borough agreed to the same terms as the PBA and the Borough. The same should be awarded during this round of negotiations. The Arbitrator should not break the pattern of settlement by awarding significant salary adjustments that add money back into their salaries which they had previously agreed to give up. Essentially, through the SOA's significant salary adjustment, it is attempting to add longevity back into their base salaries.

The Borough asserts that the SOA's reason that its 2024 Sergeant salary adjustment should be awarded is that there are PBA members at top step who are receiving longevity that are earning more than newly promoted Sergeants. The Borough notes that longevity pay is additional compensation which recognizes length of service with an employer. Thus, they maintain that any PBA member at the top step

earning more than a new Sergeant is solely earning more money based on their years of service, not the type of work they are performing. Sixteen (16) out of forty-six (46) current PBA members are eligible for longevity. (B-77). Thirty (30) out of the current forty-six (46) PBA members were hired after January 1, 2012 and not eligible for longevity. There are currently thirteen (13) out of twenty (20) SOA members who are receiving longevity pay, which means seven (7) out of twenty (20) are not eligible for longevity. (B-78). The Borough notes that the SOA is seeking a significant salary adjustment to fix alleged problems that currently impact seven (7) none of its members. They note that there are currently nine (9) Sergeants who are receiving longevity, yet the SOA is still seeking a 10.5% wage increase in 2024 for all the Sergeants.

The Borough notes that the 1/3rd of the PBA bargaining unit eligible for longevity ranges from 13 years of service to 25 years of service. Specially, one PBA member has 13 years of service, one member has 15 years of service, 7 members have 18 years of service, one has 19 years of service, and 6 members have at least 20 years of service. Over the next few years more PBA members will retire that currently earn longevity. Through attrition, these members will be replaced with PBA members who are not eligible for longevity. As a result, at a time not too far in the future, there will either be very few or no PBA members all who are earning longevity, which means there will not be any very senior PBA members at top step earning more than a newly promoted Sergeant. Therefore, the Borough argues the SOA's significant proposed wage adjustment seeks to make a permanent adjustment for a short-term alleged problem, despite not having any evidence to support its argument. The Borough notes that if any type of adjustment is made above 3%, it will stay in base salary and the cost to the Borough will continue to accumulate year after year. In addition, by significantly adjusting the salary of Sergeant, the SOA's proposal includes significant wage adjustment for Lieutenants and Captains.

The Borough argues the SOA's argument is flawed practically as well. In the PBA, an officer at the top step with 20 years of service earned \$127,357. Since that officer was hired before January 1, 2012, the officer earned an additional \$11,577.9 in longevity. Then, an officer hired after January 1, 2012 at the top step earned \$115,779. Both officers are at the top step, and both are performing the same job. However, the employee who was hired after January 1, 2012 earns less because the PBA agreed to eliminate longevity, not because their job is any different. Despite this, the PBA agreed to a 3% per year increase in this round of bargaining. The same can be said for Sergeants in the SOA, or any other Superior Officer for that matter hired before or after January 1, 2012. There are Sergeants hired after January 1, 2012 who would be at the same Sergeant step as a Sergeant hired before January 1, 2012. Based on the 2021 guide, the Sergeant hired before January 1, 2012, with 10 years of service, would earn \$132,794.48. That Sergeant earns an additional \$5,107.48 in longevity. However, a Sergeant hired after January 1, 2012 would earn \$127,687. Again, both have the same job, yet those sergeants who were hired before January 1, 2012 earn more in longevity. This is because longevity recognizes length of service. Since both bargaining units agreed to eliminate longevity for new hires back in 2012, this situation exists in both bargaining units. Since longevity recognizes length of service, it should not be a reason to award the SOA's wage adjustment.

In addition, it is the Borough's position that there is not a morale issue in the SOA which would warrant the Arbitrator deviating from the long history of pattern of settlement with the PBA. Retention is a great indicator of employee morale, and the SOA has had excellent retention. SOA members are only leaving by way of retirement. In the past two years, the Department has promoted eight sergeants from the PBA. Eleven (11) PBA members sat for the promotional exam in October 2022. (B-108). Six (6) sergeants received promotions from that list in 2022, and two others received promotions in 2023. (B-106). If morale was so poor based on the SOA's argument that some very senior PBA members earn more than Sergeants due to longevity, one would assume these PBA members would not be seeking a promotion into the SOA bargaining unit. Those sergeants who received promotions had hire dates that ranged from August 6, 2008 to January 9, 2018.

The Borough notes that a newly promoted Sergeant with four (4) years of experience went from \$69,868.00 to \$123,272.00 a 76.4% increase, or \$53,404. Other PBA members who were hired on the same date as them would be at step 4, earning \$69,868, and would have to wait six (6) years to get to top step of the PBA salary guide. A newly promoted Sergeant with five (5) years of experience earned \$123,272 up from \$76,854.00 a 60.4% increase, or an additional \$46,418. If morale was so poor, these police officers would not be seeking promotions and thus receiving 76.4% increases in some cases. If there was such an issue with supervising other PBA members earning more with longevity, one would assume these police officer would remain in the PBA, progress through the guide, and wait until they reach top of the guide. This has not happened. These Sergeants knew there was the potential a limited number of top step PBA members could make more due to longevity. Seeking a promotion into the SOA bargaining unit gives these Sergeants more career earnings, especially when compared to other PBA members when hired around the same date as them.

The Borough maintains that not only is SOA's argument short sighted, but its earnings argument is flawed. Under the Borough's Final Offer of 3% per year through 2026, and assuming no increase until 2029, a newly promoted Sergeant would earn \$1,133,862.21 in just base salary over that period of time. (B-75). When compared to a top step PBA member without longevity, a newly promoted Sergeant would earn almost \$100,000 more in cumulative earnings over those 8 years. *Id.* When compared to a PBA member with 10 years of service and earning 4% longevity (then moves to 6% longevity in 2027), the newly promoted Sergeant would earn almost \$50,000 more over those 8 years than the PBA member. *Id.* When compared to a PBA member at top step with 15 years of service earning 6% longevity (and moving to 10% longevity in 2027), the newly promoted Sergeant would earn almost \$20,000 more in cumulative earnings. *Id.*

The Borough suggests that the only hypothetical PBA members that could have greater cumulative earnings than a newly promoted Sergeant over those 8 years would be a PBA member with 20 and 25 years of service as of 2022. *Id.* A PBA member with 20 years of service would only earn \$13,753 more than the newly promoted Sergeant. However, the PBA member with 20 years of service in 2022 would have 27 years of service in 2029 and most likely retire prior to that point. A PBA member with 25 years of service in 2022 would only earn \$26,418 more than a newly promoted Sergeant by 2029. Under this illustration, that PBA member would have 32 years of service and by that point the PBA member would be retired, and the issue would be moot.

The Borough maintains that even without longevity, newly promoted Sergeants earn more over their career, and are better off. They assert the Borough's Final Offer continues that. Under the illustration, by 2029, a Sergeant may only have 12 years of service to the Borough and would be making slightly less over that 8-year period of time than a 32 or 27 year police officer, who could again either be retired or near retirement. This 12-year Sergeant would continue to work and continue to earn more money. Moreover, the illustration assumes no increase in 2027, 2028, and 2029, but obviously if the same increase was given to both the PBA and SOA, the percentage increase on the SOA rate would result in a larger dollar increase due to the higher rate of pay. Therefore, Sergeants would continue to have greater cumulative earnings.

The Borough maintains that the SOA cannot demonstrate any justification which would warrant breaking the pattern of settlement. While there was good reason to deviate from the Borough pattern of settlement and increase the Fire Lieutenant differential to 7%, no such justification exists to deviate from the long pattern of settlement between the SOA and PBA.

The Borough urges the Arbitrator to consider what kind of impact deviating from the pattern of settlement could have on the morale of the entire Police Department, as well as all Borough employees. They argue this would mean all other Borough employees, who earn less than SOA members, would have received a lower wage increase. This would certainly not be good for morale in the Borough. They suggest this would mean the highest earning members in the Department would be receiving the largest increase. They also argue one would assume that if the SOA received more than 3% per year, in the next round of

negotiations the PBA would certainly be seeking significant wage adjustment in order to catch up to their superiors. They note this is why the PBA and SOA always received the same increase and why maintaining their historical pattern of settlement is so important.

The Borough maintains there must be universal application of the terms and conditions of employment that are applicable to all employees. Breaking the pattern of settlement would change the tone of collective negotiations in the Borough going forward. No union would ever be the first to settle. The Arbitrator would be setting a new pattern – wait until every other contract is concluded and then ask for more. Worse still, such an award encourages intransigence, dissuades voluntary settlements, and leads the parties down the path to interest arbitration and the costs associated therewith. Such results are not in the interest of the public.

The Borough does not argue about the ability to pay. The Borough argues for maintaining responsible budget management. The Financial Report recognized that the Borough has benefited from sound fiscal management.

The Financial Report points out that the Borough has been able to regenerate its funds balance. The Borough submits that because the Borough may have money left at the end of a budget year, does not mean the Borough can spend that money in the next budget year nor does it mean that it is surplus funds. They note that the money may be reserved for outstanding expenditures or have restrictions on what that money can be utilized for. In addition, the Financial Report discusses the net surplus that represents the difference of the surplus earned versus the surplus utilized. The largest increase appears in 2022. In that year, the Borough notes it had filed one hundred reverse tax appeals totaling approximately \$5,039,000 against the Borough's largest commercial taxpayers. The Borough notes that if it were not successful, the Borough would have lost approximately (\$2,366,419.30). The Borough notes that the increase in surplus over this four-year period is due to a one-shot revenue deal that will not be available in future years. They note a municipality cannot rely on a non-recurring revenue to pay for a recurring expense, i.e., salaries. That "one shot" revenue is not a reason why the SOA's Final Offer should be awarded, and its surplus should not be a reason why an excessive salary adjustment should be awarded to its highest paid employees.

The Borough has continually recognized surplus revenue as a result of lapsed appropriate reserve balances. Reserves that are lapsed to surplus are added into the year-end surplus number and is only one component of the overall operations. Only a relatively small amount of the remaining budget, as compared to the entire year's budget, has lapsed. The Borough must always show a positive number to be in compliance with the State budget laws. The reason for the excess each year is due to management controlling expenditure throughout the budget year.

The Borough notes the Financial Report suggests the Borough has maintained consistently strong collections from 2019 to 2023. The Borough notes that in 2023, the tax collection rate dropped to the lowest level in the past 5 years. This can be attributed to the effects of rising inflation and the ability of our homeowners to pay taxes. Future years remain unclear. The Financial Report notes the Borough consistently generated excess results of operations every year since 2019. While that is true, this excess is primarily used as a revenue offset in the following year's budget year. If those excess declines, the difference generally has to be raised by increased taxes. Without regenerating revenue, the Borough would plummet into annual operating deficits which would be recorded as a deferred charge and would have to be raised by taxation in the following year.

The Financial Report indicates that the Borough's borrowing ability is not financially extended and shows that the Borough has the ability to borrow additional funds in the amount of \$54,863,487. The Borough maintains that it does not fund operations through the issuance of debt. What is important is the tax impact on the average homeowner of the Borough's debt obligations and for the 2022 tax year the Gross debt per Capita is \$4,985, for each resident based upon a population of 25,326. (2020 Census).

The Financial Report states that the budgeted police salaries and wages have resulted in reserves. The Borough notes that this is typically the case in a police department because a municipality budgets for the worst case scenario. The Borough notes that if the funds are not used, they lapse and can be used on the next budget. Moreover, the Report states the Borough received offsetting revenues generated by the Police Department. However, grants received are for specific purposes and cannot be utilized to fund raises of any kind.

The Financial Report states that the Borough has maintained a level percentage of revenue by taxation, and also states that the Borough has not maximized taxation in 2022 to 2024 and claims that the additional tax levy could have been used to fund the SOA's Final Offer. The Borough argues it must operate within the limits of the CAP Levy Laws and must always be below the maximum levels. The Borough notes that the Report fails to mention is that each year the Borough must consider the tax impact on the average homeowner.

The Borough is not arguing the inability to pay, it is arguing it should not be required to pay something not reasonable. Here, the Borough argues reasonable, and fair is 3% per year across the board, which is consistent with the pattern and what other employees received. Anything above the pattern of settlement, especially what the SOA is proposing, would significantly impact the Borough, especially considering the increased costs the Borough already has to manage and pay for. The Borough's budgeted operating expenses continue to grow (B-94). The Borough, like other municipalities, is also faced with increased health care and pension costs. The cost of health benefits has increased significantly since 2021. (B-100). Specifically, just for the SOA bargaining unit, the Borough's cost of health benefits increased \$134,402.64 from 2021 to 2023. (B-99). The total cost for the SOA from 2019 to 2023, minus employee contributions, was \$1,775,127.88. *Id.* In addition, the Borough's budgeted pension costs continue to increase (B-101; B-102).

The Borough notes its Municipal Tax Levy has consistently increased since 2013. (B-93). They argue the taxpayers should not be expected to fund an excessive increase for their Superior Officers, who are the highest paid employees in the Borough, especially considering the employees they supervise agreed to a 3% per year increase. It should be pointed out that neither Mr. Piotrowski nor the Borough for that calculated the additional cost to the taxpayers for longevity, overtime, holiday, increased medical costs and increased pension costs that must be borne by the Borough. Most importantly, the Borough argues the Financial Report only focuses on the SOA increase. The Borough argues the Financial Report is flawed because it fails to consider the potential impact awarding the SOA's Final Offer could have on the entire Borough and the Borough's budget.

The Borough argues that because it may or might be able to afford greater than what it proposed in its Final Offer does not mean it should. They submit the SOA's argument is not based on good, prudent, and fiscally responsible government. The SOA's offer disregards any budget impact of its offer, the impact on other Borough employees and, most importantly, Carteret residents. The Borough is in good fiscal health at the present time because of prudent and effective management. The Borough argues it should not be punished for that.

Comparability 16g (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 C.34:13A-16.; provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

Private Employment

The 2021 Private Sector Wage Survey indicates that private sector wages increased 10.4% between 2019 and 2020. New Jersey Public Employment Relations Commission Private Sector Wage Changes, 2019-20 PERC Private Sector Wage Survey.pdf (nj.gov).

The 2022 Private Sector Wage Survey reveals a 3.4% increase in private sector wages. New Jersey Public Employment Relations Commission Private Sector Wage Changes, 2020-21 PERC Private Sector Wage Survey.pdf (nj.gov).

The 2023 Private Sector Wage Report shows a 2.9% increase from 2021 to 2022. New Jersey Public Employment Relations Commission Private Sector Wage Changes, 2021-22 PERC Private Sector Wage Survey.pdf (nj.gov).

Although an arbitrator must consider the general level of wage increases in the private sector, an arbitrator is not required to accord such statistics any weight. Indeed, unless a party presents credible evidence comparing a private sector classification to a public sector classification, the private sector comparison will be considered but not given much weight. I do not afford much weight to the private sector comparison but note the parties' arguments.

Public Employment in the Same or Similar Comparable Jurisdictions

Same Jurisdiction

Internal comparability can be broken down into two general categories consisting of uniformed and non-uniformed employees within the same jurisdiction. An internal pattern of settlement in the same jurisdiction involving both uniform and non-uniform employees is a significant factor in the determination

of an award because it usually corresponds to a public employer's budgetary capabilities and connotes uniform treatment.

In the Matter of Interest Arbitration between the County of Union and FOP Lodge 103, IA-2010-118, Arbitrator Hundley noted that PERC issued a directive that arbitrators must consider evidence of settlements between the employer and other negotiations units, as well as claims that those settlements constitute a pattern. *See Union Cty.*, P.E.R.C. No. 2003-33, 28 NJPER 459, (¶33169 2002) and *Union Cty.*, P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003). Further, arbitrators must fully articulate the rationale for any decisions to deviate from an internal settlement pattern. *Union Cty.*, P.E.R.C. No. 2003-33; *Union Cty.*, P.E.R.C. No. 2003-87. The principle underlying these decisions is that maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. *Id.*

The Borough asserts the best basis of comparability in this case is “. . . public employment in the same . . .” jurisdiction. N.J.S.A. 16(g)(2)(c). The Borough's finances, working conditions, community, socio-economic factors, etc. are identical for all Carteret employees. The Borough argues it has demonstrated that pattern of settlement, history of pattern of settlement, and internal comparability are the most relevant factors.

The Borough asserts it has a pattern of settlement that must be followed. The Borough's Collective Negotiations Agreement (“CNA”) with its Dispatchers expired on December 31, 2019. Following negotiations with the Dispatchers, the parties entered into an agreement effective January 1, 2020 through December 31, 2024. The Dispatchers CNA provides for a 2.5% increase to top step only in each year of the agreement. (B-55). Next, the Borough settled with AFSCME Local 2291 and AFSCME Local 3850. AFSCME Local 2291 represents its blue-collar employees, and AFSCME Local 3850 represents its white-collar employees. The Borough entered into agreements with both bargaining units effective January 1, 2023 through December 31, 2027. (B-58 and B-59). The Local 2291 CNA provides that all Top Rate employees and at top rate receive a 3% increase per year. (B-58). The Local 3850 CNA provides for a 3% across-the-board increase per year. (B-59). Then, on December 31, 2020, the CBA between the Borough and FMBA Local 67 expired. After several negotiations sessions with the FMBA and the commencement of interest arbitration proceeding, the parties reached a settlement before arbitration hearings commenced. The FMBA settlement provided for a 5-year CNA, with a 3% across-the-board increase per year. (B-51). Effective on ratification in April 2023, the Lieutenant differential was increased to 7% above Top Step Firefighter. *Id.* As part of the agreement to increase the Lieutenant differential, the parties agreed to replace “Acting Captain” language with “Acting Lieutenant” language, which was a major issue in negotiations. *Id.* (B-51).

Following the Borough's settlement with the FMBA, the Borough reached an agreement with the PBA. The PBA settlement provides for a 3% across-the-board increase. (B-37). The parties also agreed on other notable items such as increased detective allowance, college credit and PBA rights language. The terms of the PBA settlement are set forth in the PBA MOA and CNA for the period January 1, 2022 through December 31, 2026. (B-38). Those issues in the PBA MOA that are relevant to the SOA are included in the Borough's Final Offer to the SOA.

The last open CNA in the Borough is with the SOA. Following the Borough's settlement with the PBA, the Borough proposed the PBA settlement to the SOA, which was rejected. The Borough's Final Offer to the SOA is consistent with the settlement reached with the PBA. Further, the 3% across-the-board increase is consistent with the wage pattern of settlement with the other Borough bargaining units.

Since the inception of the SOA, the SOA has always received the same across-the-board wage increase as the PBA. (B-36 through B-50; B-39). During the last round of negotiations (for the CNA that

covered the term of 2017 through 2021) the 2% interest arbitration cap was still in place. Despite the 2% cap, the Borough and the PBA agreed to an across-the-board increase of 2.5% per year. A 2.5% increase per year was obviously above the 2% cap. (B-41). Consistent with the historical pattern of settlement, the Borough and the SOA also agreed to a 2.5% across-the-board increase, the same increase accepted by the PBA. This was also above the 2% cap. As part of the 2.5% per year settlement, the parties also agreed to a new step guide for Sergeants promoted after January 1, 2017. (B-40).

Then, during negotiations for January 1, 2012 through December 31, 2016 CNA, the Borough and PBA agreed to a 2% per year increase, plus step. (B-45). By agreeing to an increase above 2%, the PBA agreed to eliminate longevity for those hired after January 1, 2012. (B-45). In addition, the parties agreed to a new scale for those hired after January 1, 2012. *Id.* Following this PBA settlement, the SOA also agreed to a 2% per year increase for the years 2012 through 2016, as well as the elimination of longevity for those hired after January 1, 2012. (B-43 and B-44). This agreement was consistent with the PBA and SOA history of pattern of settlement. The Borough argues that the SOA is now seeking to use the elimination of longevity as a basis to get a larger across-the-board increase.

The Borough notes that Carteret Superior Officers cannot argue that their terms and conditions of employment are not superior to those of other Borough of Carteret employees. In fact, a review of the total regular earnings in 2022 shows that 17 out of the top 21 Borough of Carteret employees were SOA members. (B-65). By virtue of the fact that their base salaries are much higher, SOA members earn more money than almost every other public employee in the Borough. SOA members also have a superior pension when they retire. When compared to all other Borough employees, as well as other Carteret residents, a 3% increase on 2023 salaries ranges from \$3,923.37 for newly promoted Sergeants to \$4,621.47 for Captains.

Moreover, the Borough argues that when compared to all other Borough employees, the SOA has great opportunities to earn extra compensation through overtime and off-duty pay, similar to the PBA who also received a 3% increase per year. (B-68). In 2022, gross pay ranged from \$207,012.47 to \$134,829.50. When compared to the PBA, the Borough notes the SOA compares favorably. In 2021, the last year of the prior PBA CBA, police officer starting salary was \$39,080. Then, after 10 years, cap out at \$115,779. The key point here is that it takes 10 years for a PBA member to reach top pay. By comparison, for those Sergeants promoted before January 1, 2017, they reached top pay immediately. For Sergeants promoted after January 1, 2017, they reach top pay after 3 years. In addition, Lieutenants and Captains reach top pay immediately upon promotion. Again, the PBA settled for 3% across-the-board per year, plus increases to detective allowance, college credit and PBA Rights. That settlement set the pattern of settlement for the Police Department.

The Borough notes the SOA also compares favorably to the FMBA. In Carteret, the FMBA bargaining unit includes both rank and file firefighters and Superior Officers. The only Superior Officer rank in the FMBA bargaining unit is Fire Lieutenant. There are currently five (5) Fire Lieutenants in the Carteret Fire Department, compared to 21 Superior Officers in the Police Department represented by the SOA. In the most recent round of negotiations, the Fire Lieutenant differential was increased to 7% above top rate firefighter.

By comparison, the SOA has three ranks: Sergeant, Lieutenant and Captain. The Sergeant has four steps to the top step. A review of the last two PBA and SOA CNAs as well as the proposed Sergeant salaries under the Borough's Final Offer, shows the Sergeant differential varied from 6.5% at Sergeant first step to 10.3% at Sergeant top step.

The Fire Lieutenant is the only superior officer in the Fire Department and has a current differential of 7% above top step fire fighter. An SOA Sergeant, which is the lowest of three ranks in the Police Department, has a differential of 10.3% above top step police officer after only 3 years. After 6 months of

being promoted to Sergeant, a Sergeant earns a differential of 7.3% above top step police officer. The Borough argues that even after the FBMA most recent settlement, the SOA differential is greater when compared to the FMBA.

The Borough notes that one of the SOA's main arguments in support of its salary adjustment is that a top step police officer with longevity can earn more than a sergeant without longevity. However, in the FMBA, there are top step fire fighters earning more than a fire lieutenant. (B-109). There are four (4) top step fire fighters with longevity who are earning more than a Lieutenant in 2024, and two (2) that are only earning about \$150 less than another Lieutenant.

The Borough maintains the SOA members in the Police Department compare very well to the Superior Officers in the Fire Department. While the Fire Lieutenant's differential was increased upon ratification during the last round of negotiations, the decision was necessary in order to change the Acting Captain language and save a significant amount of money. Based on the comparison of SOA wages to Fire Lieutenants, there is no reason to adjust the SOA's salaries above the Borough's proposed 3% per year across-the-board increase. The Borough submits its Final Offer should be awarded based on how the SOA compares to all other Borough employees and the PBA, consistent with the pattern of settlement.

Similar Comparable Jurisdictions

External comparability consists of comparisons between the group subject to the petition and other public safety employees in similar jurisdictions, other public employees, generally, and private sector comparisons. In weighing salary statistics introduced by a party, I observe that PERC has promulgated guidelines that may be broken down into the following five general categories:

1. Geographic comparability, contiguous jurisdiction or nearby, size of jurisdiction, and nature of employing entity;
2. Socioeconomic considerations, basically a comparison of the type of statistics found in the New Jersey Municipal Data Book and the UCR, such as population density, cost of living, crime rate, violent crime rate, fire incident and crime rate, etc.;
3. Financial considerations, such as the tax collection rate, state aid, budget surplus, surplus history, ratios of tax revenue to total revenue, etc.;
4. Compensation/benefits provided to employees of the comparison group; and
5. Any other comparability considerations deemed relevant by the arbitrator.

Salary comparisons

The SOA argues that when compared to similarly situated public employees, SOA unit members have had their economic standing reduced below other law enforcement units within Middlesex County. The salaries of SOA unit members must be compared to those of other large municipal police departments within New Jersey as well as municipal police departments within Middlesex County. Currently, SOA unit members are paid less than superior officers in large police departments throughout the State. (See SOA Binder A and B). The SOA's Final Offer seeks to bridge the ever-widening wage gaps between comparable superior officers in the rest of the State and County.

The SOA submits it is appropriate to compare the wage and overtime package of the SOA unit against other Police Departments within Middlesex County to see how the former stacks up. The SOA notes the most striking example of this rampant wage disparity between SOA unit members and other superior officers is when the salaries in Carteret are compared with the salaries in Edison. The salaries earned by superior officers in both departments are strikingly disparate.

The SOA's proposal recommends that a Sergeant in Carteret earn \$150,173.11 in 2024. (SOA-G-2). The SOA's proposal aims to narrow the gap between the Borough and its neighboring towns. In 2024, a Sergeant in Edison will earn \$155,536.00. (SOA-A-6b). A Lieutenant in Edison earns \$174,978, and a Captain \$196,851. *Id.* Conversely, the Borough's proposal for a Sergeant continues to make the Borough unable to afford the neighboring areas. For example, the Borough proposes to pay Sergeants \$139,525.94 in 2024. Should the arbitrator award this, it would continue to stifle the morale and growth of the Carteret Police Department. Awarding the SOA's Final Offer will result in a \$5,362.89 disparity in pay for Sergeants. While awarding the Borough's Final Offer would result in 3 times the damage and leave the SOA members still \$16,010.06 behind their neighbors in Edison.

The SOA notes the South Brunswick's SOA also enjoys significantly higher wages than those of the SOA. For example, a First Year Sergeant will earn \$163,531—or \$13,357.89 more than the SOA's Final Offer. The SOA suggests the disparity under the Borough Final Offer would be even larger, and instead award the SOA with \$24,005.06 less than the South Brunswick Sergeant's first year's pay. The most drastic disparity between SOA unit members and superior officers amongst Middlesex County Townships and Borough is shown in the rank of Captain. The SOA's proposal for Captains in 2024 is \$162,275.52. For comparison, Edison's Captain earns over \$30,000 more, earning \$196,851.

Lastly, when considering other public sector unions not involved in law enforcement, Rutgers and Part Time lecturers reached an agreement in 2023, earning an increase of 10% for the fall 2023 school year. (SOA-G-22). Both public sector and private sector unions have adjusted to the changes in the economy and the Borough's agreement with the SOA should be no different.

The Borough argues that Carteret Superior Officers have fared better than their public sector counterparts. They note public sector employees in New Jersey from 2013 to 2023 received a total increase to wages of 23.3%, whereas SOA members in Carteret received an increase of 26.5%. (B-26). Clearly, Carteret SOA members have benefited from generous wage increase over the years. In fact, if 2020 was removed, which saw a 7.2% increase, the disparity in wage increases would be even greater. *Id.* Further, these increases may or may not include increases due to step movement and longevity. (B-61). Based on a review of the prior increases that SOA members received in those same years, the Carteret SOA received higher across the board wage increase than the increases reflected in (B-62). These statistics show the reasonableness of the Borough's final offer at 3% per year.

The Borough argues that other public sector employers are seeing costs increase which is causing serious budget concerns. One reason for this is the increased cost in health benefits. Some municipalities, such as Newark and Trenton, were forced to drop the state health benefits plan due to the 20% increase in premiums the state saw in 2023. (B-30 and B-35). The Borough of Carteret has had to endure these cost increases as well, just like its fellow public sector employers.

The Borough maintains that many of the municipalities submitted by the SOA are not comparable to Carteret as required by N.J.A.C. 19:16-5.14(d). They note that many jurisdictions selected by the SOA are considerably larger, comprised of different communities and have different socio-economic conditions than Carteret. This is an unfair and unreasonable comparison. For example, one will assume that the SOA will compare itself to municipalities like Edison, North Brunswick, East Brunswick Sayreville or Woodbridge, and point to their higher rates of pay in order to argue their Final Offer should be awarded.

However, the only commonality is that they are all located in Middlesex County. The Borough submits that many of the CBAs submitted by the SOA are not relevant.

The Borough notes it has submitted evidence that shows which jurisdictions are comparable to Carteret based on population, median home value, median household income, per capita income, persons in poverty, and crime statistics. (B-63). They argue this comparison is more appropriate and relevant to this matter. When the arbitrator compares Borough of Carteret Superior Officers with other Superior Officers in comparable municipalities, Carteret SOA members compare favorably they argue.

In 2021 only three (3) municipalities out of thirteen (13) offered a higher Sergeant salary than Carteret. Then, only five (5) out of thirteen (13) municipalities offered a higher Lieutenant salary in 2021. If the Lieutenant's 2024 salary is compared under the Borough's final offer, only four (4) municipalities offer a higher Lieutenant rate using comparable 2024 salaries. It is important to note that one of the four municipalities ahead of Carteret in Lieutenant salary is Middlesex Boro, which offers \$3 more than Carteret. Thus, essentially there would only be three comparable municipalities ahead of Carteret. The 2021 Captain rate was approximately \$6,000 behind Middlesex Boro which falls in the middle of comparable municipalities. In 2024, Carteret is only \$3,800 behind under its final offer. The Borough's final offer of 3% in 2025 and 3% in 2026 will continue increase the competitiveness of not only the Captain rate, but Sergeant and Lieutenant as well.

The Borough argues that Carteret SOA members also compare favorably to other municipalities that have similar median household incomes. Carteret ranks 23rd out of 25 Middlesex County municipalities for median household incomes. B-64. While New Brunswick is not comparable to Carteret, Carteret falls between Dunellen and Perth Amboy. In 2021, a Sergeant in Carteret earned approximately \$10,000 to \$15,000 more than Sergeants in Dunellen and Perth Amboy. Likewise, Lieutenants in Carteret earned over \$10,000 more than Lieutenants in Dunellen and Perth Amboy. Besides similar median household incomes, Perth Amboy is similar to Carteret in terms of per capita income and crime rate 100,000 people. Again, Carteret SOA members earn significantly more than Perth Amboy superior officers.

The Borough argues that two other jurisdictions that share several similarities to Carteret are South Amboy and Rahway. (B-63). While Rahway is located in Union County, its borders Carteret. When one compares both municipalities, Carteret Sergeants earn more than Sergeants in South Amboy and Rahway. In addition, Carteret Lieutenant earned more than Lieutenant in South Amboy in 2021, and only about \$1,000 less than Lieutenant in Rahway. While a Carteret Captain rate is below Rahway, the Borough's offer of 3% per year reduces that gap and makes the Captain rate more competitive.

The Borough maintains that SOA members have competitive rates of pay when compared to similar jurisdictions. (B-63). While they are not rated number 1, their rates are very competitive. If one were to look at the PBA salaries for those jurisdictions, the top step salary also falls in a similar range to those comparable jurisdictions. Once again, the PBA settled for 3% per year. This is yet another reason why the Borough's Final Offer should be awarded. The SOA should not be awarded any more than the PBA.

Moreover, the Borough argues the evidence proves that retention in the SOA bargaining unit is outstanding. SOA members are not leaving to seek employment in other municipalities. SOA members are only leaving by way of retirement. (B-79).

The Borough maintains that Carteret Superior Officers are doing very well when compared with public and private employees in general, as well as other Superior Officers throughout the state. The Borough submits it has offered the SOA a very fair and generous wage increase, which also includes increases to non-salary items which further enhances its compensation package. Moreover, the Borough's final offer is in line with the increases that other Borough of Carteret employees received.

Interest Arbitration Awards

According to PERC's interest arbitration salary increase analysis, the average overall increase for post-2012, non-2% cap awards was 2.4%. (B-62). The average increase for all awards was 2.1%, and the average voluntary I.A. settlement was 1.88%. In 2019, there were six (6) total awards, with five (5) that were not subject to the 2% interest arbitration cap. The average annual salary increase for those awards was 3.62%. *See* New Jersey Public Employment Relations Commission Interest Arbitration Salary Increase Analysis. The one (1) award subject to the 2% cap provided annual salary increases of 2.06%. *Id.*

Overall Terms and Conditions of Employment 16g(3)

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.

The evidence considered by the Arbitrator encompasses the *status quo* terms and conditions of employment.

The SOA submits the parties do not differ much on the remaining issues of their contract. Rather, the SOA's Final Offer simply seeks to narrow the wage gap between it and the neighboring towns within Middlesex County. Moreover, awarding the SOA's Final Offer will prevent SOA unit members from losing their standing among similarly situated law enforcement units in the County. The SOA's Final Offer will provide pay increases that will attract better recruits and ease the burden of high attrition rates. Accordingly, the Arbitrator must award the compensation package set forth in the SOA's Final Offer.

The Borough argues that the current compensation package provided to SOA members is excellent. The Borough suggests its Final Offer will continue those excellent benefits and increase wages by 3% per year, increase the detective stipend, and increase education pay, which is all consistent with the PBA pattern of settlement.

The Borough submits that the SOA members are the highest paid employees in the Borough, only behind the Borough engineer, Chief of Police and Treasurer. (B-65 through B-68). In 2021, the last year of the CNA, one SOA member earned \$155,776.65 in just regular earnings and longevity. (B-66). The lowest earning member earned \$130,995.01 in regular earnings and longevity. In 2021, the last year of the parties' agreement, one SOA member earned a total of \$194,130.41. In that same year, two members earned more than \$170,000, and two members earned more than \$180,000. *Id.* Then, in 2022, one SOA member earned \$207,012.47, while three other members earned more than \$170,000. Finally, in 2023, one SOA member earned \$191,277.52, and again there were other SOA members not far behind earning over \$180,000 and \$170,000. The Borough of Carteret median household income in 2023 was \$79,049.

The Borough submits that the Carteret Superior Officers total compensation package includes base salary, longevity, overtime pay, off-duty pay, vacation, holidays, education pay, personal days, medical benefits and pension. (*See* B-71 through B-74). They note a Sergeant who was promoted after January 1, 2017 earned a compensation package worth approximately \$225,004.08. For a Sergeant promoted after January 1, 2017, after only three (3) years, the 2021 base salary increased to \$127,686, for a total compensation package of \$231,986. For those Sergeants who were promoted before January 1, 2017, a Sergeant with 10 years of service had a total compensation package worth approximately \$237,094.23, after 15 years of service \$242,103.45, and after 20 years of service \$249,666.39. (B-72). A Lieutenant with 15 years of service had a compensation package worth \$258,789.40, then \$266,870.90 after 20 years of service,

and \$269,599.72 after 25 years of service. Exhibit B-73. Finally, a Captain with 20 years of service had a compensation package worth \$270,966.06, and after 25 years that package increased to \$273,870.18. (B-74.)

The Borough notes it contributes to the State's pension system and SOA members' retirement. In 2022, the Borough budgeted \$2,864,164.84 in PFRS pension costs, which then increased to \$3,577,529.98 in 2023, then \$3,527,896 in 2024. (B-102). Specifically, the Borough's average annual pension contribution per SOA members is \$48,233.78 in 2021. (B-73).

In 2021, the cost of medical benefits to the Borough per SOA member averages \$18,950. The SOA's Financial Expert points to the fact that Superior Officers are contributing toward the cost of their health benefits. The Borough notes that all Borough employees contribute toward their health care costs.

The Borough notes that the Carteret Superior Officers enjoy a generous amount of time off which makes their compensation even more impressive. Under the current collective bargaining agreement, they receive 16 paid holidays, 2 personal days, 4 bereavement leave days, 120 hours sick leave, and 2 to 6 weeks' vacation depending on years of service. The majority of the bargaining unit works 4 days on followed by 4 days off. Therefore, they work approximately 182 days per year, less vacation and other days off.

The Stipulation of the Parties, N.J.S.A. 34:13A-16g(4)

There were no stipulations by the parties.

The Lawful Authority of the Employer, N.J.S.A. 34:13A-16g(5)

N.J.S.A. 34:13A-16g(5) requires the arbitrator to consider the "lawful authority of the employer," and specifically references P.L. 1976, c. 68, which is codified at N.J.S.A. 40A:4-45.1 et seq. The aforementioned statute is commonly known as the "Local Government Cap Law," and states, "it is hereby declared to be the policy of the Legislature that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to maintain their homesteads." N.J.S.A. 40A:4-45.1. The New Jersey Legislature established a second tax levy cap established by section 10 of P.L. 2007, c. 62, which is now codified at N.J.S.A. 4-45.45. As part of this legislation, the Interest Arbitration Act was also amended to include a ninth and final criteria for the arbitrator's consideration, "the statutory restrictions imposed upon the employer," which specifically includes "the limitations imposed upon the employer by section 10 of P.L. 2007, c.62." N.J.S.A. 34:13A-16(g)(9).

Section 10 of P.L. 2007, c.62 originally established a tax levy cap of four percent (4.0%) above the previous year's tax levy. However, on July 13, 2010, Governor Christie signed into law P.L. 2010, c. 44 in order to cut the allowable tax levy increase to two percent (2.0%). As explained above, the two percent (2.0%) tax levy cap "caps the amount that you raise the tax by 2 percent."

The Appellate Division in Hillsdale interpreted the "lawful authority of the employer" criterion to refer to the Local Government Cap Law. Hillsdale, 263 N.J. Super. at 193. The Supreme Court agreed, stating, "Given the existence of financial constraints and budget caps... an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget." Hillsdale, 137 N.J. at 86. In Hillsdale, the Appellate Division required the arbitrator to consider the impact of the award on other budget items. Hillsdale, 263 N.J. Super. at 194. When applying the lawful authority of the

employer criterion, the Arbitrator must address the Town's budget cap situation, as well as the statutory requirement that the Town prepare a balanced budget each year.

Here, Borough has not raised an inability to pay or budget cap problem prohibiting it from funding its Final Offer. Though it raises significant concerns, financial and otherwise, that would arise from an award of the SOA Final Offer it does not argue its ability to pay or budget cap problems resulting from an award of the SOA Final Offer.

The Financial Impact on the Governing Unit, Its Residents, The Limitations Imposed Upon the Local Unit's Property Tax Levy, and Taxpayers, N.J.S.A. 34:13A-16g(6)

N.J.S.A. 34:13A-16g(6) also requires the Arbitrator to consider the financial impact of the parties' offers on the governing unit, its residents and taxpayers. In PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), the court noted that the financial impact requirement in the statute does not equate with the municipalities' ability to pay. *Id.* at 188. The Supreme Court stated in Hillsdale that a municipality should not have to prove that it is not financially able to afford the PBA's final offer. 137 N.J. at 86. This criterion encompasses a far more searching and critical analysis than simply whether a local government has the ability to pay an award. It does not require the local government to prove that it would suffer financial difficulties as a result of an award. *Id.* Put differently, a local government "should not have to demonstrate it would be financially crippled before its arguments could be found to be sufficient." *Id.* at 194. Arbitrators have recognized this fact as well. Arbitrator Barbara Tener analyzed this issue in In the Matter of Interest Arbitration between Borough of Oakland and Oakland PBA Local 164, IA-93-069 (1994) noting that "[T]he affordability of the respective packages is not, in my view, a very weighty factor unless the more reasonable package is also the more expensive. The question of whether the Borough can afford the PBA's offer is not dispositive in this case."

The New Jersey Supreme Court emphasized that "it is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of the public interest arbitration award." *Id.* (quoting Hillsdale, 263 N.J. Super. at 188). Moreover, the municipality does not carry the burden of proving its financial inability to meet the union's final offer. *Id.* In addition, the correct application of this criteria does not require an employer to provide that it would suffer a "substantially detrimental result," or that the financial difficulties would be created or worsened. Hillsdale, 263 N.J. Super. at 194. Rather, the effect that the award will have on other employees and the employer's overall budget must be considered by the Arbitrator. Hillsdale, 137 N.J. at 86.

This criterion requires consideration by the Arbitrator as to how awarding the SOA's Final Offer will impact on the Borough's other employees and upon the entire budget. As noted by the Borough and according to the Borough's calculation, the Final Offer submitted by the SOA will cost the Borough \$1,099,673, or 43.24% for base salary increase alone during the proposed five year duration. (B-107). They argue this is an excessive demand that could have substantial negative impact on the financial condition of the Borough both in the short term and in the future; especially since it could have a significant impact on negotiations with the Borough's other bargaining units.

The Borough argues that if the SOA's Final Offer were awarded, the other bargaining units that have settled will seek increases as well. They note that one can only assume the Fire Lieutenants will be looking for a significant salary adjustment as well. Then, rank and file fire fighters will be looking for an adjustment to keep up with the Fire Lieutenants. The same would apply to the PBA, both AFSCME bargaining units, the Dispatchers and all other non-bargaining unit employees. The Borough argues the cost would be huge and would have a negative impact on the Borough's budget, taxpayers, and residents if such

adjustments were to be made. This would cause the Borough to have to further increase its budget, which would then increase the average tax rate, or eliminate some other recurring cost from its budget.

The Borough asserts that Carteret residents do not have “the ability to pay” greater taxes. They note that per capita income is only \$31,861 and the average Carteret household income is only \$79,049. They argue that Carteret residents should not be expected to pay higher municipal property taxes in order to provide for the SOA’s salary increases, who are already the highest paid employees in the Borough. As stated above, 10.1% of Carteret residents live below the poverty line. (B-2). Expecting these residents to bear a tax increase to satisfy the fiscally irresponsible demands of the SOA is simply unreasonable. New Jersey residents have long endured the burden of the highest average property taxes rates in the country. (B-14 to B-16). The Borough argues it must continue making prudent financial decisions so that the cost of the SOA’s significant Final Offer is not passed on to its taxpayers.

Cost-of-Living Criterion, N.J.S.A.34:13A-16g(7)

The Consumer Price Index “CPI” is a measure of the average change, over time, in the prices paid by consumers for a market basket of consumer goods and services. Goods and services measured by the CPI include food and beverages, housing, apparel, transportation, recreation, education and communication, and all other goods and services. The CPI is the most widely used measure of inflation. The CPI has risen drastically over the last several years. (SOA C-1).

In addition, the CPI is often used to adjust consumer’s income payments, for example, Social Security, to adjust income eligibility levels for government assistance and to automatically provide cost of living wage adjustments to millions of American Workers. *Id.* Accordingly, the CPI is an effective measure of the increase, over time, of the cost of living. The increases in 2019 and 2020 were relatively low (1.6 and 1.3, respectively). However, in 2021 the COLA adjustment increased 5.9%. *Id.* The COLA adjustment increased 8.7% in 2022. *Id.* In 2023, the COLA adjustment was 3.2%. *Id.*

In June 2022, the CPI hit a four-decade high of 9.1%. The Wall Street Journal “U.S. Inflation Hits New Four Decade High of 9.1%”, *available at*, <https://www.wsj.com/articles/us-inflation-june-2022-consumer-price-index-11657664129>. As a result, Interest Arbitrators have been forced to deal with the historically high levels of inflation. In IMO State of New Jersey and New Jersey Law Enforcement Superior Officers Association, IA-2022-005 (Cure, Arb. Apr. 17, 2022), Arbitrator Cure found: “One other statutory factor that stands out and will be considered in analyzing the record before me is the increase in the cost of living. While inflation has been under control for many years, for a myriad of reasons some stemming from the COVID-19 pandemic and disruptions to the supply chain, that is no longer the case.” On appeal, PERC agreed, holding: “[t]he State...argues that [inflation] does not justify a deviation from the State’s pattern. On the contrary, we find that the fact that other units settled when the inflation rate (though rising) was markedly lower supports neither a modification of the award, nor a finding that the arbitrator gave undue weight to the cost of living factor.” IMO State of New Jersey and New Jersey Law Enforcement Superior Officers Association, P.E.R.C. 2022-51, IA-2022-005 (June 30, 2022).

Inflation began to ramp up in 2021. (SOA C-26 through C-37). By December 2021, the CPI had risen by 7.0% over the course of the preceding twelve (12) months. (SOA C- 37). This was the largest twelve (12) month increase since June 1982. *Id.* During this period of time, the energy index increased 29.3% and the food index increased 6.3%. *Id.*

Inflation again increased drastically in 2022. In January 2022, the CPI for the preceding twelve (12) months was 7.5%. (SOA C-38). Over that period, the food index increased 7.0% and the energy index

rose 27%. *Id.* In February 2022, the CPI increased 7.9% over the preceding twelve (12) months, largely the result of a 25.6% increase in the energy index and a 7.9% increase in the food index. (SOA C-39). The increase in the food index was the highest since the period ending July 1981. *Id.* March 2022 saw an 8.5% increase over the preceding twelve (12) months. (SOA C-40). During that period, the energy index increased 32.0% and the food index increased 8.8%. *Id.* In April 2022, the CPI rose 8.3% over the preceding twelve (12) months, with further historical increases in energy, 30.3% and food, 9.4%. *Id.* May 2022 saw an 8.6% increase for the preceding twelve (12) months, with a 34.6% increase in energy and a 10.1% increase in the food index. *Id.*

In June 2022, the CPI increased to 9.1% for the preceding twelve (12) months. (SOA C-43). The energy index rose 41.6% over that period and the food index increased 10.4%. *Id.* Other component indexes showing large increases in June 2022 were those for shelter, used cars and trucks, medical care, motor vehicle insurance and new vehicles. *Id.* The drastic increases to the CPI slowed in July 2022, but the overall index remained high. (SOA C-44). For the twelve (12) months preceding July 2022, the CPI increased 8.5%, with the energy index increasing 41.6% and the food index increasing 10.9%. *Id.* For the twelve (12) months preceding August 2022, the CPI increased 8.3%, with the energy index increasing 23.8% and the food index increasing 11.4%. *Id.* In September 2022, the CPI increased 8.2% over the preceding twelve (12) months, with the food index increasing 11.2% and the energy index increasing 23.8% during that period. (SOA C-46). In October 2022, the CPI increased 7.7% over the preceding twelve (12) months, again led by the energy index, which increased 17.6% over that period and the food index, which increased 10.9%. (SOA C-47). In November 2022, all items index increased 7.1% over the preceding twelve months, with the energy index increasing 13.1% and the food index increasing 10.6% over that period. (SOA C-48). In December 2022, the CPI increased 6.5% over the preceding twelve (12) months, with the energy index increasing 7.3% and the food index increasing 10.4% over that period. (SOA C-49).

In 2023, high levels of inflation continued. For the period ending January 2023, the CPI increased 6.4%, with the food index increasing 10.1% and the energy index increasing 8.7%. (SOA C-50). In February 2023, all items increased 6.0%, with the energy index increasing 5.2% and the food index increasing 9.5%. (SOA C-51). In March 2023, the CPI increased 5.0% with the energy index increasing 6.4% and the food index increasing 8.5% over the preceding twelve (12) months. (SOA C-52). In April 2023, the CPI increased 4.9% over the preceding twelve (12) months, with the energy index increasing 5.1% and the food index increasing 7.7%. (SOA C-53). In May 2023, the CPI increased 4.0% over the preceding twelve (12) months, with the food index increasing 6.7% over that time period. (SOA C-54). In June 2023, the CPI increased 3.0%, with the food index increasing 5.7%. (SOA C-55). July 2023 the CPI began to rise again, this time to 3.2% over the preceding twelve (12) months with the food index increasing 4.9%. (SOA C-56). In August 2023, the CPI increased 3.7% over the preceding twelve (12) months with the food index increasing 4.3% during that period. (SOA C-57). In September 2023, the CPI remained at 3.7%. (SOA C-58). For the twelve (12) months preceding October 2023, the CPI increased 3.2%. (SOA C-59). November 2023 saw an increase of 3.1% for the preceding twelve (12) months. (SOA C-60). The CPI increased 3.4% before seasonal adjustment. (SOA C-61).

In January 2024, the CPI increased 3.1%. (SOA C-62). In February, the increase was 3.2%. (SOA C-63). In March 2024, the CPI unexpectedly rose to 3.5%. The upwards trend continued, as in April it rose to 3.7%, May 3.5% and June 4.2%.

The SOA notes the Financial Report illustrates the cost of living in New Jersey is 11% higher than the national average; Housing is 30% higher than the national average; and utilities are 12% higher. *Id.* The SOA argues its members must receive a raise just to simply keep pace with the ever-changing rates and costs of living in the Garden State. This increase still excludes the mandatory contributions of 10% pension

and 35% health care. *Id.* When considering these issues, the Arbitrator must find and award the hardworking SOA members' salary increases.

The SOA argues its members would need to earn between \$145,931.89 to \$184,263.51 to purchase an average value home in the Borough of Carteret. The SOA argues it is in the Borough's best interest to honor the SOA's salary proposals, as it would encourage other officers to live in the Borough, significantly decreasing their allotted travel time. This in turn could reward the Borough, as it would have less tired officers, and more officers eager to work and report to work, feeling more energized by a shorter commute. Furthermore, it would only strengthen the Police's ties with the community, as community members would likely see their favorite law enforcement personnel on their off days. This could boost morale for both the Borough's citizens and the Department itself.

These increases support the SOA's Final Offer. Although it does not adjust salaries in lock step with inflation, it ensures that SOA unit members will be in a better position to retain some purchasing power. The SOA argues that awarding the Borough's Final Offer will be disastrous as it will ensure that SOA unit members receive no actual pay increases.

The SOA notes that health benefits have not been immune to rising inflation. Pursuant to P.L. 2011, c. 78, all public employees, including SOA unit members, must contribute towards the cost of their health benefits. At their current salaries, SOA unit members must contribute 35% of the cost of the premium for single plans and member and spouse / parent child plans. N.J.S.A. 40A:10-21.1 (2024). For family plans, SOA unit members must contribute between 32% and 35% based on their salaries. *Id.* The SOA's Final Offer provides some relief from the historically high levels of inflation experienced by unit members over the last several years. Although the SOA's salary proposals do not make up for the historic rise in inflation, they make up some ground in the earlier years. This allows SOA unit members to better withstand the inflation onslaught that they have experienced. If the Arbitrator does not award the SOA's Final Offer, SOA unit members will be able to purchase less now than what they could before the expiration of the prior contract. Such an inequitable result cannot stand, and the Arbitrator must award the SOA's Final Offer.

The Borough recognizes the cost of living has significantly increased as a result of higher levels of inflation. The Borough notes that the cost of living has not only increased for SOA members, but it has increased for all Borough of Carteret employees, all Borough of Carteret residents, all New Jersey residents, and everyone in the United States of America.

The Borough argues its employees have been living under the same cost of living situation. However, it notes that SOA members have been the highest paid employees in the Borough. (B-65 through B-68). Therefore, a 3% increase in their base rate equates to a greater dollar increase per year than all other Borough employees. When looking at fellow Carteret residents, the SOA's 3% increase is substantially higher than a 3% increase on top of the Borough of Carteret average household income. Moreover, when compared to Carteret per capita income, the SOA 3% increase is over \$3,000 more than their fellow Carteret residents. The Borough maintains that the SOA members fair better than both Middlesex County and New Jersey median household and per capita incomes.

The Borough argues it is also important to note the Borough's offer of 3% per year, is consistent with the PBA 3% settlement, as well as the FMBA settlement which provided for increases of 3% in 2021, 2022, 2023, 2024 and 2025, with the exception of the Lieutenant differential being increased to 7%. In addition, the Borough's offer of 3% per year is higher in 2022 than the increases received by both AFSCME bargaining units and the Dispatchers in 2022, and greater than the increase the Dispatchers received in 2023 and 2024. The Borough argues its Final Offer is consistent with what other employees received despite the cost of living.

The Borough also argues there are signs that inflation is easing. The Country saw signs of inflation easing in February 2023, as inflation fell for the eight-straight month. (B-82). In March of 2023, food and energy prices dropped as well. (B-81). That trend continued in 2024, when inflation again began dropping in May 2024. (B-83). The June 2024 CPI-U report has area prices up only 0.3% over the past month. (B-86).

The Borough notes that over the past 10 years, the cost-of-living increase for those who receive Social Security benefits has been minimal. (B-80). It is important to look at a side-by-side comparison between COLA from 2012 to 2021 to the increases the SOA received over its past three contracts. In total, the SOA's increase exceeds the COLA increase over that period of time by 3.7%. Specifically, in 2015, Social Security recipients did not see any increase in their benefits. *Id.* For 2016, Social Security recipients received a 0.3% cost-of-living increase. *Id.* Then, in 2018, recipients received a 2.8% increase. *Id.* The next year, in 2018, the Social Security cost of living adjustment was 2.8%. In 2019 however, the increase was 1.6%, followed by 1.3% in 2020 and 5.9% in 2021. (B-80). This is significant given that 14.2% of the population in Carteret receive Social Security benefits. (B-2). This means that almost one-sixth (1/6) of the Borough's population received an average increase of 1.88% from 2012 to 2021. (B-80).

Continuity and Stability of Employment, N.J.S.A. 34:13A-16g(8)

N.J.S.A. 34:13A-16g(8) provides for consideration of:

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 bargaining between the parties in the public service and in private employment.

The continuity and stability of employment criteria incorporates several concepts. The first provides a competitive compensation and benefits package that alleviates excessive turnover thus maintaining "continuity and stability in employment." The second is the concept of the "relative standing" of a negotiations unit with respect to other units of similar employees. Last, the continuity and stability of employment criteria incorporates the consideration of internal settlements and comparability, since deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability.

The "stability and continuity of employment" criteria relates to employment issues such as layoffs, give backs, and salary freezes. Hillsdale, 263 N.J. Super. at 195. Specifically, the Appellate Division stated that arbitrators are required to consider facts such as salary structure, unemployment rates, employee turnover and the "virtual absence of unemployment among police." Fox, 266 N.J. Super at 519.

The SOA argues that awarding the SOA's Final Offer will bolster the continuity and stability of employment of officers employed by the Borough. The SOA proposals seek to largely maintain the status quo with the exception of wage enhancements. The SOA asserts that there is no evidence that the implementation of the SOA's proposal will have a detrimental effect on the continuity and stability of employment for unit members. Police officers should want to become superior officers. There is currently no economic incentive for them to seek a promotion into the SOA unit. The continuity and stability of employment is fostered by the SOA's Final Offer.

This Borough argues this factor weighs heavily in its favor. They assert SOA members are not only well paid, but they have enjoyed continuity and stability of employment. This is reflected by its strong

retention. (B-79). SOA bargaining unit members are only leaving by way of retirement. Half of the bargaining unit has at least 18 years of service to the Borough. In fact, seven (7) superior officers have over twenty (20) years of service with the Borough, and one Sergeant has thirty-three (33) years of service with the Borough. Carteret Superior Officers are not voluntarily leaving to seek employment elsewhere. In 2022, one Lieutenant received a promotion to a Deputy Chief position within the Department, and the Borough also added six (6) new Sergeants by way of promotions. (B-106). Then, in 2023, another Lieutenant was promoted to a Deputy Chief position within the Department, and there were three (3) retirements. The Borough then again added two (2) new sergeants in 2023. The Borough argues that retention has been great in the SOA bargaining unit.

Other Restrictions Imposed on the Employer, N.J.S.A. 34:13A-16g(9)

The Legislature has codified the “cap consideration” requirements and statutory limitations on the employer set forth in section 10 of P.L. 2007, c.62 (C. 40A:4-45.45) in section 16g(9).

ANALYSIS AND AWARD

The Borough and SOA have submitted extensive exhibits, documentation, and comprehensive position statements addressing the statutory criteria in support of their Final Offers. I have reviewed and analyzed the exhibits, documentation, and Parties' submissions and application of the 16g criteria to same. The Parties were represented by extremely competent and zealous advocates. The exhibits were well organized, comprehensive and relevant to the analysis of the 16g criteria. After review of the Final Offers, evidence and arguments, the Award in this proceeding is analyzed and discussed below.

In applying the 16g criteria, the interest and welfare of the public has been given the most weight in this Award. Significant weight was also given to internal comparability; specifically, the settlements with the PBA and FMBA. Internal comparability with the Borough's other civilian bargaining units was given consideration as was the external comparability with other Middlesex County municipal police departments. No weight was given to private sector employment and wages. Great weight has also been applied to the consideration of the other terms and conditions of employment, the cost-of-living criterion and the continuity and stability of employment. The lawful authority of the employer, and the financial impact criteria was also given significant weight, though I note the Borough did not argue or dispute its "ability to pay."

As the Borough has asserted a pattern of settlement, the first step is to determine whether there is a presence of internal settlements that either follow strict terms or terms that are so reasonably consistent with one another that an award must fall within that reasonable consistency. Township of West Windsor and PBA Local 271, IA-2019-014 (2019). PERC and judicial precedent have addressed the issue of pattern of settlement. Internal comparability is referenced in N.J.S.A. 34:13A-16(g)(2)(c), and internal patterns of settlement have been found to implicate this subsection as well under N.J.S.A. 34:13A-16(g)(8) and N.J.S.A. 34:13A-16(g)(1). See I/M/O City of Jersey City and Jersey City Police Benevolent Officers Association, IA 2017-012 (2017). PERC rules and regulations at N.J.A.C. 19:16-5.14(c)(5) also address identifying a "pattern of salary and benefit changes."

Internal comparability has been deemed to be a persuasive factor when evaluating the merits of a disputed issue. However, if sufficient justification is established for deviation, a settlement pattern can be given lesser or no weight. The relevance of this subsection of the statutory criteria, N.J.S.A. 34:13A-16(g)(2)(c), and the rationale for examining this subsection are well established. It has been a criterion advanced in past interest arbitrations by both employers and unions when either party seeks to give meaning to evidence on internal comparability or on an alleged pattern of settlement. N.J.S.A. 34:13A-16(g)(2)(c) requires arbitrators to compare the wages, salaries, hours, and conditions of employment of the employees in the proceeding with those of employees performing similar services in the same jurisdiction and with "other employees generally" in the same jurisdiction. Thus, this subfactor requires the arbitrator to consider evidence of settlements between the employer and its other negotiations units, as well as evidence that those settlements constitute a pattern. See N.J.A.C. 19:16- 5.14(c)(5) (identifying a "pattern of salary and benefit changes" as a consideration in comparing employees within the same jurisdiction). Pattern is an important labor relations concept that is relied upon by both labor and management.

In addition, a settlement pattern is encompassed in N.J.S.A. 34:13A-16(g)(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. See I/M/O City of Jersey City and Jersey City Police Benevolent Officers Association, IA 2017-012 (2017). Indeed, interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. Fox v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), *certif. denied*, 137 N.J. 311 (1994) (in applying N.J.S.A. 34:13A-16(g)(8), arbitrator should have

considered the effect of an award on employees in other units). Arbitrator Hundley noted PERC's directive that arbitrators must consider evidence of settlements between the employer and other negotiations units, as well as claims that those settlements constitute a pattern. Further, arbitrators must fully articulate the rationale for any decisions to deviate from an internal settlement pattern. Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459, (¶33169 2002) and Union Cty., P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003). "If a pattern is not found, the arbitrator is nevertheless required to consider evidence of internal prior settlements under the criterion of internal comparability. If a pattern is found, the arbitrator must either find that there should be adherence or explain why a deviation from the pattern is justified." Township of West Windsor and PBA Local 271, IA-2019-014 (2019). "The principle underlying these decisions is that maintaining an established pattern of settlement promotes harmonious labor relations, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations." Union Cty.

Parity in economic benefits is one of the most basic tenets of sound labor relations. Parity and pattern of settlement prevents whipsawing by either the employer or union; eliminates controversy between bargaining units; and, most importantly, enhances the continuity of peaceful labor relations. It certainly is not in the public's interest to treat one group of employees differently than another. Arbitrator Weisblatt faced the issue of disparate treatment in In the Matter of Interest Arbitration between Township of Holmdel and PBA, Local 239, IA-93-163 (1993) and found that:

The Township presents a compelling argument with respect to the reasonableness of consistency among bargaining units under the public interest criterion. Consistency in treatment among bargaining units of the same employer is unquestionably a generally accepted element of good labor relations policy. Sound and consistent labor relations are certainly in the public interest. It prevents "whipsawing" in negotiations and it reduces the potential for the decline in morale, which often accompanies the perception of disparate treatment. The morale issue is a double-edged sword. Unreasonably favorable treatment of police units could likely cause the morale of the other public employees in the municipality to wane. Such a result would certainly not be in the public interest.

The Borough asserts it has a pattern of settlement that must be followed. The Borough's CNA with its Dispatchers expired on December 31, 2019. Following negotiations with the Dispatchers, the parties entered into an agreement effective January 1, 2020 through December 31, 2024. The Dispatchers CNA provides for a 2.5% increase to top step only in each year of the agreement. (B-55). The Borough next settled with AFSCME Local 2291 and AFSCME Local 3850. AFSCME Local 2291 represents its blue-collar employees, and AFSCME Local 3850 represents its white-collar employees. The Borough entered into agreements with both bargaining units effective January 1, 2023 through December 31, 2027. (B-58 and B-59). The Local 2291 CNA provides that all Top Rate employees and at top rate receive a 3% increase per year. (B-58). The Local 3850 CNA provides for a 3% across-the-board increase per year. (B-59).

On December 31, 2020, the CNA between the Borough and FMBA Local 67 expired. After several negotiations sessions with FMBA Local 67 and the commencement of interest arbitration proceedings, the parties reached a settlement before arbitration hearings commenced. The FMBA settlement provided for a 5-year CNA, with a 3% across-the-board increase per year. (B-51). Effective on ratification in April 2023, the Lieutenant differential was increased to 7% above Top Step Firefighter. *Id.* As part of the agreement to increase the Lieutenant differential, the parties agreed to replace "Acting Captain" language with "Acting Lieutenant" language, which was a major issue in negotiations. *Id.*

Following the Borough's settlement with FMBA Local 67, the Borough reached an agreement with the PBA. The PBA settlement provides for a 3% across-the-board increase. (B-37). The parties also agreed to increased detective allowance, college credit and PBA rights language. The terms of the PBA settlement

are set forth in the PBA MOA and CNA for the period January 1, 2022 through December 31, 2026. (B-38). The issues and terms in the PBA MOA are included in the Borough's Final Offer to the SOA here.

The only open CNA in the Borough is with the SOA. The SOA has always received the same across-the-board wage increase as the PBA. (B-39). From 2003 through 2011, the PBA and SOA always received the same across-the-board increase. (B-47 to B-50). During negotiations for January 1, 2012 through December 31, 2016 CNA, the Borough and PBA agreed to a 2% per year increase, plus step. (B-45). By agreeing to an increase above 2%, the PBA agreed to eliminate longevity for those hired after January 1, 2012. *Id.* In addition, the parties agreed to a new salary guide for those hired after January 1, 2012. Following this PBA settlement, the SOA also agreed to a 2% per year increase for the years 2012 through 2016, as well as the elimination of longevity for those hired after January 1, 2012. (B-43 and B-44). During the last round of negotiations (for the CNA that covered the term of 2017 through 2021) the Borough and the PBA agreed to an across-the-board increase of 2.5% per year. (B-41). Consistent with the historical pattern of settlement, the Borough and the SOA also agreed to a 2.5% across-the-board increase. As part of the 2.5% per year settlement, the parties also agreed to a new step guide for Sergeants promoted after January 1, 2017. (B-40).

Here, based on the evidence in the record, I find the Borough's agreement with PBA Local 47 and history of negotiations with the PBA and SOA establish "terms that are reasonably consistent with one another" to establish a pattern of settlement. Township of West Windsor and PBA Local 271, IA-2019-014 (2019). Here, like with the PBA, the issues of duration, salary, detective allowances, college credit and SOA rights were the subject of negotiations. The PBA Memorandum of Agreement addressed these issues. As a result, the terms settled by the PBA and at impasse here are "reasonably consistent" with one another to establish a pattern of settlement to be followed here. See Somerset County Sheriff's Office, P.E.R.C. No.007-33, 32 NJPER 372 (¶156 2006) *aff'd* 34 NJPER 21 (¶8 2008)(affirming PERC finding that arbitrator reasonably determined that the County's own pattern of settlement with four other law enforcement units warranted a similar award for the fifth unit of law enforcement officers).

Based on the evidence in the record, the Borough's comparability and internal pattern with the civilian bargaining units does not establish terms that are reasonably consistent with one another to suggest a common internal pattern. The Borough's collective negotiations agreements with its civilian units vary in terms of duration, percentage increases, and address other terms and conditions of employment not at issue here or in the PBA Memorandum of Agreement. It is well founded that arbitrators have consistently refused to sustain a "pattern of settlement" argument amongst civilian and law enforcement personnel. Township of Woodbridge and P.B.A. Local 81, IA-96-119 (1998), and I do not find such a pattern of settlement here.

The Borough agreement with the FMBA similarly does not establish terms that are reasonably consistent with one another to suggest a common internal pattern with the SOA. Though the Borough and FMBA can pursue Interest Arbitration to resolve their impasse, the Borough and FMBA settled during the interest arbitration process. The issues in the impasse and resolved in mediation addressed Vacations, Severance Pay, Health and Welfare, Education, FMBA Protected Activity, and a five (5) year duration, January 1, 2021 through December 31, 2025. As to salary, the FMBA agreement provided for salary increases of 3% each year with an additional 7% increase to Lieutenant's above top rate fire fighters for 2023, 2024, and 2025, and removed the Acting Captain title replacing it with Acting Lieutenant language. Notably, the duration of the FMBA Agreement differs from the PBA and SOA, as the FMBA received a 3% increase in 2021 when the PBA and SOA received 2.5% increase. Thus, the Borough agreement with the FMBA does not establish terms that are reasonably consistent with one another to suggest a common internal pattern with the SOA.

Having found a pattern of settlement between the Borough and the PBA and SOA, the analysis and Award of the Final Offer issues is as follows:

Term and Renewal

The SOA Final Offer is for a five (5) year term-January 1, 2022 through December 31, 2026. The Borough's Final Offer also proposes a five (5) year term from January 1, 2022 through December 31, 2026.

Based on the parties agreement as to the term of the Agreement, I award a five (5) year agreement. The term of the Agreement shall be effective as of January 1, 2022 and shall remain in full force and effect through December 31, 2026.

Detective Allowances

The SOA and Borough submitted similar Final Offers with respect to Detective Allowances. The SOA indicated its acceptance of the Borough proposal in its Brief. Based on the Parties' Agreement on the Detective Allowances, I award the following:

Article V – Detective and Special Allowances

Grade 5: Change \$1050 to \$1100 on January 1, 2022; Change \$1100 to \$1150 on January 1, 2023; Change \$1150 to \$1200 on January 1, 2024; Change \$1200 to \$1250 on January 1, 2025; Change \$1250 to \$1300 on January 1, 2026.

Grade 4: Change \$1300 to \$1350 on January 1, 2022; Change \$1350 to \$1400 on January 1, 2023; Change \$1400 to \$1450 on January 1, 2024; Change \$1450 to \$1500 on January 1, 2025; Change \$1500 to \$1550 on January 1, 2026.

Grade 3: Change \$1550 to \$1600 on January 1, 2022; Change \$1600 to \$1650 on January 1, 2023; Change \$1650 to \$1700 on January 1, 2024; Change \$1700 to \$1750 on January 1, 2025; Change \$1750 to \$1800 on January 1, 2026.

Grade 2: Change \$1800 to \$1850 on January 1, 2022; Change \$1850 to \$1900 on January 1, 2023; Change \$1900 to \$1950 on January 1, 2024; Change \$1950 to \$2000 on January 1, 2025; Change \$2000 to \$2500 on January 1, 2026.

Grade 1: Change \$2050 to \$2100 on January 1, 2022; Change \$2100 to \$2150 on January 1, 2023; Change \$2150 to \$2200 on January 1, 2024; Change \$2200 to \$2250 on January 1, 2025; Change \$2250 to \$2300 on January 1, 2026.

College Credit

The SOA and Borough submitted similar Final Offers with respect to College Credit. The SOA indicated its acceptance of the Borough proposal in its Brief. Based on the Parties' Agreement on the College Credit, I award the following:

Article XIV- College Credit

Section A. Amend to indicate that any course earning college credit for covered employees after 12/31/22 must be approved by the Borough to be eligible to be included in the per annum calculation.

Section B. Amend to indicate that proof of successful completion of a course shall be submitted within 90 days of receipt of same by the employee to be eligible for reimbursement.

Section C. Amend to indicate that reimbursement shall be for police related and or core course only. Revise as follows:

Associate's Degree

Effective January 1, 2022, change \$300 to \$400

Bachelor's Degree

Effective January 1, 2022, change \$500 to \$600

Master's Degree

Effective January 1, 2022, change \$1000 to \$1250

Doctorate's Degree

Effective January 1, 2022, change \$2000 to \$2250

SOA Rights

The SOA indicated its agreement to the Borough Final Offer with respect to SOA Rights in its Brief. Based on the Parties' Agreement on SOA Rights, I award the following:

Article IX – SOA Rights

Revise Section A:

- A. The Borough agrees to deduct from the salaries of its employees, subject to this Agreement, dues for the S.O.A. Such deductions shall be made in compliance with Chapter 123, Public Laws of 1974, N.J.S.A. 52:14-15.9(g). Dues shall be transmitted to the S.O.A. on a monthly basis.
- B. A check-off shall commence for each employee who signs a properly dated authorization card supplied by the S.O.A. and verified by the Borough Treasurer during the month following the filing of such card with the Borough.
- C. If during the life of this Agreement there shall be any change in the rate of membership dues, the S.O.A. shall furnish the Borough written notice thirty (30) days prior to the effective date of such change and shall furnish to the Borough either new authorizations from its members showing the authorized deduction for each employee, or an official notification on the letterhead of the S.O.A. and signed by the President of the S.O.A. advising of such changed deduction.
- D. The S.O.A. will provide necessary "check-off authorization" form and the S.O.A. will secure the signatures of its members on the forms and deliver the signed forms to the Borough Clerk.
- E. The Authorization shall remain in full force and effect during the full term of an employee's employment, unless properly withdrawn. To withdraw from a dues authorization an employee must submit a written request to withdraw from the Association to the responsible payroll clerk for the Employer within ten (10) following each anniversary date of his/her employment. Once

the Employer's payroll clerk receives the request, it will notify the Association within five (5) business days. The properly filed withdrawal will become effective on the 30th day after the employee's anniversary date of employment.

- F. Employees may voluntarily pay a fair share fee to the Union. The requirements regarding the fair share fee shall be applied consistent with the U.S. Supreme Court's June 27, 2018 decision in Janus v. AFSCME, Council 31 and the New Jersey Workplace Democracy Enhancement Act. The Borough agrees to deduct the fair share fee from the earnings of those employees who elect not to become members of the S.O.A. and transmit the fee S.O.A. accounts.
- G. The S.O.A. shall indemnify, defend and save the Borough harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Borough in reliance upon salary deduction authorization cards or the fair share assessment as furnished by the S.O.A. to the Borough, or in reliance upon the official notification on letterhead of the S.O.A. signed by the President of the S.O.A. advising of such changed deduction.

Salaries

The significant and only issue in this impasse is the wage proposals of the Borough and SOA, specifically, the increases to salary sought by the SOA in 2024, 2025 and 2026. Both Parties' Final Offers are similar and provide for 3% wage increases in 2022, 2023, 2024, 2025 and 2026. In that regard, the Borough's wage proposal offers the same wage increase that was agreed to by the PBA. Both Final Offers also include the same increase to detective stipend, as well as education pay language. The PBA agreed to a 3% across-the-board increase per year, in addition to the increases in detective stipend, and education pay. The Borough's Final Offer is consistent with the pattern of settlement. The SOA's wage proposal also includes a 3% increase in 2022 and 2023, and includes salary adjustments in 2024, 2025, and 2026 in excess of 3%.

Having found a pattern of settlement between the Borough and the PBA and SOA, the issue is whether the SOA has articulated a rationale for the Borough's deviation from the internal pattern of settlement with the PBA to justify the salary adjustments in 2024, 2025, and 2026. PERC has directed that Arbitrators must fully articulate the rationale for any decisions to deviate from an internal settlement pattern. Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459, (¶33169 2002) and Union Cty., P.E.R.C. No. 2003-87, 29 NJPER 250 (¶75 2003). "If a pattern is not found, the arbitrator is nevertheless required to consider evidence of internal prior settlements under the criterion of internal comparability. If a pattern is found, the arbitrator must either find that there should be adherence or explain why a deviation from the pattern is justified." Township of West Windsor and PBA Local 271, IA-2019-014 (2019).

Based on the evidence in the record and the parties' respective positions, the SOA has not met its heavy burden to justify the deviation from long negotiations history of a pattern of settlement among the PBA and SOA and the 3% pattern of settlement here. The Fire Lieutenant differential was increased in order to change the Acting Captain language and save money and was not increased as part of a salary adjustment due to alleged poor morale or because fire fighters earned more than Lieutenants as the SOA argues here. In fact, in the FMBA, there are still top step fire fighters earning more than a fire Lieutenant. (B-109). There are four (4) top step fire fighters with longevity who are earning more than a Lieutenant in 2024, and two (2) that are earning about \$150 less than another Lieutenant.

The SOA's argument to deviate from the pattern and seek a salary adjustment due to poor morale in the Department is also not supported by any evidence in the record. The alleged poor morale results from newly promoted Sergeants who earn less than top step PBA members who receive an additional 10% or 12% in longevity pay. However, the eventuality that Sergeants not entitled to longevity would earn less than top step PBA members who earn longevity had to be foreseen by the Borough and SOA as a result of

prior negotiations and settlements between the parties' eliminating longevity. In 2012, the SOA (and PBA) voluntarily agreed to eliminate longevity, and during the parties' prior negotiations, the SOA voluntarily agreed to a new step guide for Sergeants promoted after January 1, 2017. The salary adjustments sought by the SOA in 2024, 2025 and 2026 are essentially through longevity that it gave up in prior negotiations.

Longevity pay is additional compensation which recognizes length of service with the Borough. Based on the evidence in the record, any PBA member at top step earning more than a new Sergeant is earning more money based on their years of service, not the type of work they are performing. (B-77). As noted by the Borough, sixteen (16) out of forty-six (46) current PBA members are eligible for longevity. Thirty (30) out of the current forty-six (46) PBA members were hired after January 1, 2012 and not eligible for longevity, which equates to two-thirds of the PBA bargaining unit not being eligible for longevity. The 1/3rd of the PBA bargaining unit eligible for longevity ranges from 13 years of service to 25 years of service. Specifically, one PBA member has 13 years of service, one member has 15 years of service, 7 members have 18 years of service, one has 19 years of service, and 6 members have at least 20 years of service. Over the next few years more PBA members will retire that currently earn longevity. Through attrition, these members will be replaced with PBA members who are not eligible for longevity. As a result, in the near future, there will either be very few or no PBA members all who are earning longevity, which means there will not be any very senior PBA members at top step earning more than a newly promoted Sergeant.

There are currently thirteen (13) out of twenty (20) SOA members who are receiving longevity pay, which means seven (7) out of twenty (20) are not eligible for longevity. (B-78). Thus, as noted by the Borough, the SOA is seeking to deviate from the pattern of settlement for a salary adjustment to fix a problem that currently impacts 7 of its members.

Though not directly addressing the issue of a supervisor making less than a subordinate (which the parties' should have foreseen), I concur with the Borough that the SOA's argument to deviate from the pattern is flawed practically due to elimination of longevity by both units. As a result of the elimination of longevity by both units, Patrol Officers and Superior Officers doing the same work can work earn different amounts based on when they were hired. In the PBA, an officer at the top step with 20 years of service earned \$127,357. Since that officer was hired before January 1, 2012, the officer earned an additional \$11,577.9 in longevity. An officer hired after January 1, 2012 at the top step earned \$115,779. Both officers are at the top step, and both are performing the same job. However, the employee who was hired after January 1, 2012 earns less because the PBA agreed to eliminate longevity, not because their job is any different. Despite this, the PBA agreed to a 3% per year increase in this round of bargaining. The same can be said for Sergeants in the SOA, or any other Superior Officer for that matter hired before or after January 1, 2012. There are Sergeants hired after January 1, 2012 who would be at the same Sergeant step as a Sergeant hired before January 1, 2012. Based on the 2021 guide, the Sergeant hired before January 1, 2012, with 10 years of service, would earn \$132,794.48. That Sergeant earns an additional \$5,107.48 in longevity. However, a Sergeant hired after January 1, 2012 would earn \$127,687. Both have the same job, yet those sergeants who were hired before January 1, 2012 earn more in longevity. Since both bargaining units agreed to eliminate longevity for new hires back in 2012, this situation exists in both bargaining units.

The evidence in the record also supports the fact that the SOA has had excellent retention. SOA members are only leaving by way of retirement. In addition, in the past two years, the Department has promoted eight (8) sergeants from the PBA. Eleven (11) PBA members sat for the promotional exam in October 2022. (B-108). Six (6) sergeants received promotions from that list in 2022, and two others received promotions in 2023. (B-106). Those Sergeants who received promotions had hire dates that ranged from August 6, 2008 to January 9, 2018 so some earn longevity and others do not.

A newly promoted Sergeant with four (4) years of experience went from \$69,868.00 to \$123,272.00 a 76.4% increase, or \$53,404. Other PBA members who were hired on the same date as them would be at step 4, earning \$69,868, and would have to wait six (6) years to get to top step of the PBA salary guide. A

newly promoted Sergeant with five (5) years of experience earned \$123,272 up from \$76,854.00 a 60.4% increase, or an additional \$46,418. If morale were so poor, these police officers would not be seeking promotions and thus receiving 76.4% increases in some cases. If there was such an issue with supervising other PBA members earning more with longevity, one would assume these police officer would remain in the PBA, progress through the guide, and wait until they reach top of the guide. This also has not happened. I agree that these Sergeants knew there was the potential a limited number of top step PBA members could make more due to longevity. Seeking a promotion into the SOA bargaining unit gives these Sergeants more career earnings, especially when compared to other PBA members when hired around the same date as them.

Based on the evidence in the record, even without longevity, newly promoted Sergeants earn more over their career, and are better off. Under the Borough's Final Offer of 3% per year through 2026 and based on its calculations and assuming no increase until 2029, a newly promoted Sergeant would earn \$1,133,862.21 in just base salary over that period of time. (B-75). When compared to a top step PBA member without longevity, a newly promoted Sergeant would earn almost \$100,000 more in cumulative earnings over those 8 years. When compared to a PBA member with 10 years of service and earning 4% longevity (then moves to 6% longevity in 2027), the newly promoted Sergeant would earn almost \$50,000 more over those 8 years than the PBA member. when compared to a PBA member at top step with 15 years of service earning 6% longevity (and moving to 10% longevity in 2027), the newly promoted Sergeant would earn almost \$20,000 more in cumulative earnings. The only hypothetical PBA members that could have greater cumulative earnings than a newly promoted Sergeant over those 8 years would be a PBA member with 20 and 25 years of service as of 2022. A PBA member with 20 years of service would only earn \$13,753 more than the newly promoted Sergeant and would have 27 years of service in 2029 and most likely retire prior to that point. A PBA member with 25 years of service in 2022 would earn \$26,418 more than a newly promoted Sergeant by 2029 and would have 32 years of service and most likely be retired.

Cost-out of Salary Final Offers

While it is undisputed the restrictions of the 2% salary cap no longer apply, N.J.A.C. 19:16-5.7(g)(2) demands that the parties submit written estimates of the financial impact of their respective final offers on the taxpayers. Moreover, N.J.A.C. 19:16-5.9(c) requires that an interest arbitrator's decision shall set forth the cost of all "base salary" items for each year of the award, to include the salary provided pursuant to a salary guide or table, any amount provided pursuant to a salary increment, and amount provided for longevity or length of service amongst other items. According to the express terms of N.J.A.C. 19:16-5.9(c), these cost out figures are necessary in order for an interest arbitrator to determine, pursuant to N.J.S.A. 34:13A-16(d), whether the total net annual economic changes for each year of the award are reasonable under the statutory criteria.

SOA Cost Out

The SOA cost out shows the SOA Final Offer in 2022 costs \$1,557,332.33 a \$6.35 increase over the cost of the Boroughs Final Offer that costs \$1,527,325.98. In 2023, the cost of the SOA proposal is \$2,222,465.43 an 9.96 increase over the cost of the Borough Final Offer of \$2,222,455.67. In 2024, the SOA Final Offer costs 2,726,231.31 and the Borough Final Offer costs 2,632,531.10, a difference of \$93,700.22. In 2025, the SOA Final Offer costs 2,901,869.12 and the Borough Final Offer costs 2,715,127.45, a difference of \$186,741.67. In 2026, the SOA Final Offer costs 3,017,539.57 and the Borough Final Offer costs 2,808,184.69, a difference of \$209,344.88. The total five (5) year cost of the SOA Final Offer is \$12,395,437.77. The total cost of the Borough Final Offer is 11,905,634.69. Over the five (5) year term, the SOA Final Offer is \$489,803.08 more than the cost out of the Borough Final Offer.

Borough Cost Out

The Borough cost out shows a total base salary in 2021 of \$2,543,312.12. The cost of the Borough proposal in 2022 increases to \$2,564,820.85, a \$21,508.73 increase or .85%. In 2023, the base cost increases to \$3,201,549.19, a \$636,728.34 increase or 24.83%. In 2024, the base salary decreases to \$3,137,767.41, a decrease of \$63,781.78 or -1.99%. In 2025, the base salary increases to \$3,246,522.60, an increase of \$108,755.19 or 3.47%. In 2026, the base salary increases to \$3,391,213.69, an increase of \$144,691.10 or 4.46%. In total, the five (5) year cost out of the Borough proposal increases the base salary by \$847,901.57 or 33.34%.

The Borough cost out of the SOA Final Offer shows a total base salary in 2021 of \$2,543,312.12. The cost of the SOA proposal in 2022 increases to \$2,564,820.85, a \$21,508.73 increase or .85%. In 2023, the base cost increases to \$3,201,549.19, a \$636,728.34 increase or 24.83%. In 2024, the base salary increases to \$3,333,368.04, an increase of \$131,806.93 or 4.12%. In 2025, the base salary increases to \$3,474,593.81, an increase of \$141,255.77 or 4.24%. In 2026, the base salary increases to \$3,642,985.49, an increase of \$168,391.68 or 4.85%. In total, the five (5) year cost out of the SOA Final Offer increases the base salary by \$1,099,673.37 or 43.24%.

While the SOA characterizes their wage proposal as 3% ATB, the increases in the guide per rank each year are greater than 3% in 2024, 2025 and 2026. The SOA's Final Offer in 2024 includes Sergeant increases ranging from 8.09% to 10.86%. The Lieutenant increase in 2024 is 5.49%, followed by a Captain increase of 5.34%. In 2025, the Sergeant increase is 3%, but the SOA proposed to increase the Lieutenant rate by 5.36% and the Captain rate by 5.22%. In 2026, the SOA proposed to increase the Sergeant rate by 3%, and the Lieutenant rate by 5.24% and the Captain rate by 5.27%.

The cumulative difference between the Borough's Final Offer and the SOA's Final Offer is not insignificant. The Borough and SOA have different cost-outs for their respective Final Offers. Under the SOA's cost analysis, the SOA calculates that its Final Offer is cumulatively \$489,803.03 more than the Borough's offer. The SOA's Report shows the total cost of the SOA proposal as \$12,395,437.77, and the Borough's total cost as \$11,905,634.69, with the cumulative difference being \$489,803. Under the Borough's cost-out, the total cost of the SOA proposal is \$16,217,341.36, and the total cost of the Borough's cost-out is \$15,541,873, with the cumulative difference being \$675,467.62. (B-106 and B-107). The Borough's cost-out is more accurate than the SOA's and shows that the SOA's Final Offer is \$675,467.62 more than the Borough's offer over the proposed 5-year duration. Under the Borough's cost analysis, the SOA Final Offer increase is \$1,099,673.37, or 43.24% over the proposed 5-year duration. By contrast, the Borough's Final Offer increase is \$847,901.57, or 33.34% over the proposed 5-year duration.

The SOA's Final Offer on salary seeking salary adjustments in 2024, 2025 and 2026 is compelling, practical, understandable and not unreasonable when applying the 16g criteria. However, as discussed above, the SOA's justification for its deviation from the pattern with the PBA does not outweigh consistency in labor relations and the pattern of settlement with the PBA. The SOA is the last law enforcement unit to settle and a deviation from the settlement pattern and award of their proposal will discourage future settlements and undermine employee morale in other units. As noted above, parity in economic benefits is one of the most basic tenets of sound labor relations. Parity and pattern of settlement cuts both ways-it prevents whipsawing by either the employer or union. It also has been found to eliminate controversy between bargaining units and enhance the continuity of peaceful labor relations. The SOA's justifications for deviation from the pattern does not outweigh maintaining an established pattern of settlement that promotes harmonious labor relations, improves compensation, provides uniformity of benefits, maintains high morale, and fosters consistency in negotiations. The SOA has not established sufficient justification for me to deviate from the PBA Agreement or give it less or no weight. Thus, the SOA Final Offer on Salary is not awarded and is denied.

The interest and welfare of the public was given great weight in this Award. The Salary Award is in the interest and welfare of the public as it provides a salary package consistent with the pattern of settlement with the PBA and sufficient to ensure the Police Department is staffed by competent, dedicated superior officers with good working morale. At the same time, the Award does not impact the Borough's ability to fund the agreement without impacting the amounts budgeted for other programs and without exceeding the CAP on municipal expenditures. The Borough is well funded and does not have an ability to pay issue. The Salary Award considers the public's interest in preventing the diminution of service and ensuring that SOA members receive competitive salaries in order to prevent the deterioration of public safety. The Salary Award herein is based on the Borough's historical pattern of negotiations with the PBA and SOA and is in the public's interest as it recognizes the importance of parity and pattern of settlement in labor relations and does not treat one group of employees differently than another.

In reviewing the Parties' arguments and the numerous exhibits admitted into evidence, it is clear that the parties can find comparable data that support the numbers they seek comparing "base pay" at different Departments, other fringe benefits, or some other analysis. The percentage and number comparisons of various salaries alone are problematic when the only item cited is "salary." What makes up "salary" and salary guides significantly vary. Also, collective negotiations by definition involve a "give and take" with the goal of structuring an overall package that includes health benefits, sick leave, vacation leave, longevity, work schedules, college compensation, among other items. Indeed, a good compromise is when both parties are slightly disappointed.

Based on the evidence in the record, the SOA members' salaries are competitive with other Superior Officers in comparable municipalities. In 2021 only three (3) municipalities out of thirteen (13) offered a higher Sergeant salary than Carteret. Only five (5) out of thirteen (13) municipalities offered a higher Lieutenant salary in 2021. The 2021 Captain rate falls in the middle of comparable municipalities. Carteret SOA members also compare favorably to other municipalities that have similar median household incomes. Carteret ranks 23rd out of 25 Middlesex County municipalities for median household incomes. Exhibit B-64. Carteret falls between Dunellen and Perth Amboy. In 2021, a Sergeant in Carteret earned approximately \$10,000 to \$15,000 more than Sergeants in Dunellen and Perth Amboy. Likewise, Lieutenants in Carteret earned over \$10,000 more than Lieutenants in Dunellen and Perth Amboy. Besides similar median household incomes, Perth Amboy is similar to Carteret in terms of per capita income and crime rate 100,000 people. Carteret SOA members earn significantly more than Perth Amboy superior officers. Two other jurisdictions that share several similarities to Carteret are South Amboy and Rahway (B-63). When one compares both municipalities, Carteret Sergeants earn more than Sergeants in South Amboy and Rahway. In addition, Carteret Lieutenant earned more than Lieutenant in South Amboy in 2021, and only about \$1,000 less than Lieutenant in Rahway. While a Carteret Captain rate is below Rahway, the Borough's offer of 3% per year reduces that gap and makes the Captain rate more competitive. granting the Borough's Final Offer will maintain these competitive salaries.

The financial impact and lawful authority of the Borough has been considered and given great weight. I note the Borough has not made an "ability to pay" argument. Though the Borough does not make an "ability to pay" argument, I note the total cost of the Salary Award will have a negligible financial impact on the Borough and its taxpayers. The Borough is well funded and does not have an ability to pay issue. The Financial Report indicates that the Borough revenue collections have been stable, property tax increases have been flat, and the Borough's fund balance has been able to be regenerated. The Borough is in sound financial condition and should be commended for its fiscal management.

The Borough recognizes the cost of living has significantly increased as a result of higher levels of inflation. The Borough notes that the cost of living has not only increased for SOA members, but it has increased for all Borough of Carteret employees, all Borough of Carteret residents, all New Jersey residents, and everyone in the United States of America. Indeed, the Borough employees have been living under the

same cost of living situation. I note the SOA members have been the highest paid employees in the Borough. (B-65 through B-68). Therefore, a 3% increase in their base rate equates to a greater dollar increase per year than other Borough employees. When looking at fellow Carteret residents, the SOA's 3% increase is higher than a 3% increase on top of the Borough of Carteret average household income. When compared to Carteret per capita income, the SOA 3% increase is over \$3,000 more than their fellow Carteret residents.

It is also important to note that the Borough's other bargaining units all settled for 3% per year despite the rise in inflation. This is consistent with the PBA 3% settlement, as well as the FMBA settlement which provided for increases of 3% in 2021, 2022, 2023, 2024 and 2025, with the exception of the Lieutenant differential being increased to 7%. In addition, the Borough's offer of 3% per year is higher in 2022 than the increases received by both AFSCME bargaining units and the Dispatchers in 2022, and greater than the increase the Dispatchers received in 2023 and 2024. Thus, the Borough's Final Offer is consistent with what other employees received despite the cost of living.

I note there are signs that inflation is easing. In February 2023, as inflation fell for the eight-straight month. (B-82). In March of 2023, food and energy prices dropped as well. (B-81). That trend continued in 2024, when inflation again began dropping in May 2024. (B-83). The June 2024 CPI-U report has area prices up only 0.3% over the past month. (B-86).

The evidence in the record supports the notion that SOA members have enjoyed continuity and stability of employment as reflected by its strong retention. (B-79). SOA bargaining unit members are only leaving by way of retirement. Half of the bargaining unit has at least 18 years of service to the Borough. In fact, seven (7) superior officers have over twenty (20) years of service with the Borough, and one Sergeant has thirty-three (33) years of service with the Borough. Carteret Superior Officers are not voluntarily leaving to seek employment elsewhere. In 2022, one Lieutenant received a promotion to a Deputy Chief position within the Department, and the Borough also added six (6) new Sergeants by way of promotions. (B-106). In 2023, another Lieutenant was promoted to a Deputy Chief position within the Department, and there were three (3) retirements. The Borough then again added two (2) new sergeants in 2023. Clearly, retention has not been an issue in the SOA bargaining unit.

As discussed above, based on the application of the 16g criteria to the evidence in record, I find the SOA has not met its burden to prove the salary adjustments in 2024, 2025 and 2026 should be awarded. The Borough has an established pattern of settlement with the police units, and the SOA has not demonstrated sufficient justification to deviate from that pattern based on the FMBA Lieutenant differential. Therefore, based on the pattern of settlement with the PBA and in the interest of the public I award the Borough's Final Offer on Salary.

Based upon the application of 16g criteria and the record before me, I respectfully enter the terms of this Award.

AWARD

DURATION: January 1, 2022 through December 31, 2026

2. **WAGES: Article III – Salary and Longevity**

All employees (inclusive of steps) to receive a 3.0% increase to base pay retroactive to January 1, 2022; a 3.0% increase to base pay retroactive to January 1, 2023; a 3.0% increase to base pay retroactive to January 1, 2024; a 3.0% increase to base pay retroactive to January 1, 2025; a 3.0% increase to base pay retroactive to January 1, 2026.

SALARY GUIDE

	2021	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
	2.5%	3.0%	3.0%	3.0%	3.0%	3.0%
Sergeant	\$ 127,686.00	\$ 131,516.58	\$ 135,462.08	\$ 139,525.94	\$ 143,711.72	\$ 148,023.07
Lieutenant	\$ 136,441.00	\$ 140,534.23	\$ 144,750.26	\$ 149,092.76	\$ 153,565.55	\$ 158,172.51
Captain	\$ 145,206.00	\$ 149,562.18	\$ 154,049.05	\$ 158,670.52	\$ 163,430.63	\$ 168,333.55
All Employees promoted to the Rank of Sgt after 1/1/2017 shall progress according to the step scale below.						
A Step shall be equivalent to one (1) calendar year in grade and employees shall progress on the anniversary of their appointment, unless otherwise notes.						
	2021	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
Sergeant Steps	2.5%	3.0%	3.0%	3.0%	3.0%	3.0%
1st 6 mon	\$ 123,272.00	\$ 126,969.76	\$ 130,778.86	\$ 134,702.22	\$ 138,743.29	\$ 142,905.59
2nd 6 mon	\$ 124,220.00	\$ 127,946.39	\$ 131,784.78	\$ 135,738.32	\$ 139,810.47	\$ 144,004.78
Start of 2nd year	\$ 125,168.00	\$ 128,923.01	\$ 132,790.70	\$ 136,774.42	\$ 140,877.65	\$ 145,103.98
Start of 3rd year	\$ 126,116.00	\$ 129,899.63	\$ 133,796.61	\$ 137,810.51	\$ 141,944.83	\$ 146,203.17
Start of 4th year	\$ 127,686.00	\$ 131,516.58	\$ 135,462.08	\$ 139,525.94	\$ 143,711.72	\$ 148,023.07

3. **Article V – Detective and Special Allowances**

Grade 5: Change \$1050 to \$1100 on January 1, 2022; Change \$1100 to \$1150 on January 1, 2023; Change \$1150 to \$1200 on January 1, 2024; Change \$1200 to \$1250 on January 1, 2025; Change \$1250 to \$1300 on January 1, 2026.

Grade 4: Change \$1300 to \$1350 on January 1, 2022; Change \$1350 to \$1400 on January 1, 2023; Change \$1400 to \$1450 on January 1, 2024; Change \$1450 to \$1500 on January 1, 2025; Change \$1500 to \$1550 on January 1, 2026.

Grade 3: Change \$1550 to \$1600 on January 1, 2022; Change \$1600 to \$1650 on January 1, 2023; Change \$1650 to \$1700 on January 1, 2024; Change \$1700 to \$1750 on January 1, 2025; Change \$1750 to \$1800 on January 1, 2026.

Grade 2: Change \$1800 to \$1850 on January 1, 2022; Change \$1850 to \$1900 on January 1, 2023; Change \$1900 to \$1950 on January 1, 2024; Change \$1950 to \$2000 on January 1, 2025; Change \$2000 to \$2500 on January 1, 2026.

Grade 1: Change \$2050 to \$2100 on January 1, 2022; Change \$2100 to \$2150 on January 1, 2023; Change \$2150 to \$2200 on January 1, 2024; Change \$2200 to \$2250 on January 1, 2025; Change \$2250 to \$2300 on January 1, 2026.

4. **Article XIV, College Credit**

Section A. Amend to indicate that any course earning college credit for covered employees after 12/31/22 must be approved by the Borough to be eligible to be included in the per annum calculation.

Section B. Amend to indicate that proof of successful completion of a course shall be submitted within 90 days of receipt of same by the employee to be eligible for reimbursement.

Section C. Amend to indicate that reimbursement shall be for police related and or core course only. Revise as follows:

Associate's Degree

Effective January 1, 2022, change \$300 to \$400

Bachelor's Degree

Effective January 1, 2022, change \$500 to \$600

Master's Degree

Effective January 1, 2022, change \$1000 to \$1250

Doctorate's Degree

Effective January 1, 2022, change \$2000 to \$2250

5. **Article IX – SOA Rights**

Revise Section A:

- A. The Borough agrees to deduct from the salaries of its employees, subject to this Agreement, dues for the S.O.A. Such deductions shall be made in compliance with Chapter 123, Public Laws of 1974, N.J.S.A. 52:14-15.9(g). Dues shall be transmitted to the S.O.A. on a monthly basis.
- B. A check-off shall commence for each employee who signs a properly dated authorization card supplied by the S.O.A. and verified by the Borough Treasurer during the month following the filing of such card with the Borough.

- C. If during the life of this Agreement there shall be any change in the rate of membership dues, the S.O.A. shall furnish the Borough written notice thirty (30) days prior to the effective date of such change and shall furnish to the Borough either new authorizations from its members showing the authorized deduction for each employee, or an official notification on the letterhead of the S.O.A. and signed by the President of the S.O.A. advising of such changed deduction.
- D. The S.O.A. will provide necessary "check-off authorization" form and the S.O.A. will secure the signatures of its members on the forms and deliver the signed forms to the Borough Clerk.
- E. The Authorization shall remain in full force and effect during the full term of an employee's employment, unless properly withdrawn. To withdraw from a dues authorization an employee must submit a written request to withdraw from the Association to the responsible payroll clerk for the Employer within ten (10) following each anniversary date of his/her employment. Once the Employer's payroll clerk receives the request, it will notify the Association within five (5) business days. The properly filed withdrawal will become effective on the 30th day after the employee's anniversary date of employment.
- F. Employees may voluntarily pay a fair share fee to the Union. The requirements regarding the fair share fee shall be applied consistent with the U.S. Supreme Court's June 27, 2018 decision in Janus v. AFSCME, Council 31 and the New Jersey Workplace Democracy Enhancement Act. The Borough agrees to deduct the fair share fee from the earnings of those employees who elect not to become members of the S.O.A. and transmit the fee S.O.A. accounts.
- G. The S.O.A. shall indemnify, defend and save the Borough harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Borough in reliance upon salary deduction authorization cards or the fair share assessment as furnished by the S.O.A. to the Borough, or in reliance upon the official notification on letterhead of the S.O.A. signed by the President of the S.O.A. advising of such changed deduction.

6. All other proposals by the Borough and SOA not awarded herein are denied and dismissed.

7. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.

8. 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. The Award also explains how the statutory criteria factored into my final determination.

Dated: August 8, 2024



Brian W. Kronick, Esq.
Interest Arbitrator

State of New York }

County of New York } ss:

On this 8th day of August 2024, before me personally came and appeared Brian W. Kronick to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

