

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:

	X	
BOROUGH OF NEW MILFORD,	X	
	X	
Public Employer,	X	
	X	INTEREST ARBITRATION
-and-	X	DECISION AND AWARD
	X	
NEW MILFORD PBA LOCAL NO. 83,	X	
	X	
Labor Organization,	X	
	X	
PERC Docket No. IA-2012-008	X	
	X	

INTRODUCTION

The New Milford Policeman's Benevolent Association, Local 83 ("Local 83" or the "PBA"), and the Borough of New Milford (the "Borough" or "New Milford") previously entered a collective bargaining Agreement for the term between January 1, 2008 and December 31, 2011, (the "Agreement" or "CBA"). (Joint Exhibit 3.) In anticipation of its expiration, these parties directly bargained over terms for a successor agreement. Negotiation sessions were held on November 4, 2011, November 22, 2011, and on December 13, 2011. A final bargain on all disputed issues was not achieved.

Local 83 filed a Petition to Initiate Compulsory Interest Arbitration (the "Petition") with the State of New Jersey Public Employment Relations Commission ("PERC", or the "Commission"). (Joint Exhibit 1.) The Borough was also served with a copy of the Petition, which denoted seven issues for submission to arbitration. (Joint Exhibit 1, Appendix A.)

The issues were listed as:

ECONOMIC

Wage Increase

Article XIV – Longevity

Article XIX – Holidays

Article XLIX – Detective Squad

Article LI – Standby

Work in Higher Rank (New Proposal)

NON-ECONOMIC

Article IX

(Joint Exhibit 1, Appendix A.)

The Borough responded via letter dated January 12, 2012, where it designated twenty (20) economic issues, and 31 Non-Economic Issues. (Joint Exhibit 2.)

The Commission, pursuant to its Rules, designated the undersigned as Interest Arbitrator. At an initial meeting held on January 30, 2012, I conducted a mediation session with the aim of amicably resolving all, or some of the disputed issues. The parties, at that time, affirmed their voluntary resolution of several disputes. Citing to PBA Exhibit 2, these issues are: Item 1B – The word “Probation” on the Wage Schedule will be changed to “Pre-Academy Certification Rate”; Item 4A – The Uniform allowance will be increased by \$100.00 to Seven Hundred Dollars (\$700.00); Item 6 – The mileage allowance will be changed to the current IRS rate; and Item 8B – Paragraph E in Article 50 governing Terminal Leave will be deleted.

Each party’s final offer submission was tendered to me, and exchanged in a timely manner.

A hearing was held on February 2, 2012 at which the parties were represented by competent and experienced counsel. Local 83 and the Borough sponsored witness

testimony, and submitted multiple documents that were admitted into evidence. At the conclusion of the hearing, each party acknowledged that it had a full and fair opportunity to present proofs and testimony. Thereafter, the Borough and Local 83 exchanged, and filed post-hearing briefs with the undersigned Interest Arbitrator.

FINAL OFFER SUBMISSIONS

PBA's Final Offer

1. The PBA proposes a four (4) year contract to succeed the prior Agreement.
2. The PBA proposes a wage increase of 2.75% effective on each successive February 1 over the four (4) year term.
3. The PBA proposes an elimination of the twenty-five percent (25%) offset on the holiday fold-in provision. The issue was set forth on the PBA Proposal Sheet as Issue No. 5, as follows:

Modify Paragraph C of Article 19 by deleting the provision at the end of said paragraph reflecting the "subtracting twenty-five percent (25%) language. Thereafter, the full value of holidays would be used in computation.

4. The PBA proposes a Work in Higher Rank Modification, which was detailed in the PBA Proposal Sheet at Item No. 10, as follows:

Whenever a member is caused to work in a higher rank position then said member shall be paid at the higher rank rate of compensation for all time so worked.

(PBA Exhibits 1 & 2.)

Borough Of New Milford's Final Offer

The Borough's final offer is as follows:

I. ECONOMIC PROPOSALS

- A. **Article 53 Term of Contract:** January 1, 2012 through Dec 31, 2014
- B. **Article 8 Salary:** The Borough proposes the following salary increase:
January 1, 2012: 0%
January 1, 2013: 0%
January 1, 2014: 2%

Salary guide:

Effective January 1, 2012, all new hires will be hired pursuant to a new salary guide which will include 2 additional steps. These steps shall be one (1) year steps and will be between Step 1 and the maximum Step 9. The Probation Step will be changed to Pre-Academy Certification Rate.

C. Article 9, Work Day, Work Week and Overtime/Comp Time

1. Overtime Compensation: Insertion of par. E to read:

In the event, the Borough Hall is closed due to inclement weather, hurricane, or power outages, only those employees scheduled to work shall receive the regular salary. No additional compensation or overtime will be granted unless authorized by the Chief of Police or his designee.

2. Inclement Weather: Limit pay during inclement weather as follows:

In the event, the Borough Hall is closed due to inclement weather, hurricane, or power outages, only those employees scheduled to work shall receive the regular salary at straight pay. No additional compensation or overtime will be granted unless authorized by the Chief of Police or his designee.

D. Article 14 Longevity: The Borough seeks the following:

1. Current employees: Effective January 1, 2012, all longevity payments currently paid per the following schedule in an amount not to exceed an annual payment of \$10,000 until retirement or separation from employment:

Three percent (3%) of base pay after four (4) years of service
Four percent (4%) of base pay after eight (8) years of service
Five percent (5%) of base pay after twelve (12) years of service
Six percent (6%) of base pay after sixteen (16) years of service
Seven percent (7%) of base pay after twenty (20) years of service
Eight percent (8%) of base pay after twenty-four (24) years of service

2. New employees: Employees hired after December 31, 2011 will adhere to the following schedule for annual payments until retirement or separation from employment:

Completion of ten (10) years - \$1,500
Completion of fifteen (15) years - \$3,000
Completion of twenty (20) years - \$4,500
Completion of twenty-five (25) years - \$6,000

E. Article 17 Vacation: Modify vacation leave for new hires as follows:

Employees of the Police Department shall receive vacation on the following basis:

0 to 5 years – 5 days
5 to 15 years – 10 days
15+ years – 15 days

Employees will be permitted to carry over up to six (6) unused vacation

days from over year to the next (non-cumulative).

F. Article 18 Personal Leave: Each employee will have three (3) days of personal leave. The personal leave shall not accumulate and must be used in the year it is earned.

G. Article 19 Holiday: Modification relative to calculation in Article 19, Par. C as follows:

Holidays shall be eliminated and the thirteen holidays will be converted into base pay effective January 1, 2011. The amount shall be calculated based on the base salary divided by 1946 hours. The hourly rate is then multiplied by 13 holidays multiplied by 8 hours multiplied by 75% to determine the amount of holiday pay to be rolled into the base pay. The 2011 Base with Holidays Rolled In will be effective for all employees of the bargaining unit as set forth in the revised Appendix A3.

H. Article 20 Sick Leave: Modify sick leave as follows:

1. **Current employees:** Employees hired before January 1, 2012 will adhere to the following. Employees shall be eligible to receive five (5) sick days for each calendar year. Upon retirement or death, the employee or his/her estate or designated beneficiary will receive full payment for any unused accumulated sick leave computed on the basis of final wages in an amount not to exceed \$15,000. Current employees with more than \$15,000 shall be capped at the level that is "in the bank" as of December 31, 2011.

2. **New employees:** Employees hired after January 1, 2012 shall be eligible to receive five (5) sick days for each calendar year worked with benefits when he is unable to work due to a verifiable sickness, injury or illness..... Employees will not be permitted to bank any sick days.

I. Article 23 Medical Contract: The Borough proposes the following:

1. **Current employees:** The Borough proposes that all employees shall contribute a percentage of the employee's total annual salary or a percentage of the annual premium as per state law. Also, the employee may opt out and receive a cash payment from the Borough, to be included in the paycheck spread out over the course of the year in the amount of 25% of the premium or \$5,000 whichever is greater.

2. **Retirees:** Payment for retiree health benefits subject to state law.

J. Article 50 Terminal Leave:

1. **Modification of par. B, as follows:**

All accumulated and unused holidays earned prior to January 1, 2011 shall be frozen at the then current rate to date of retirement.

2. **Modification of par. C, as follows:**

All unused vacation days as well as those personal days earned prior to December 31, 2011 shall be frozen at the then current rate.

3. Elimination of par. E.

4. Modification of par. F to read:

The employee shall submit his/her retirement requests at least 6 months prior to the date of retirement. Upon calculation of the accumulated leave bank, the Borough reserves the right pay for all time due over a 5 year period rather than a lump sum payment in lieu of a protracted terminal leave. The failure to provide at least 6 months notice shall result in a forfeiture of the additional twenty (20) days. No payment under this section shall count toward nor affect, either by increasing or decreasing, any pension or retirement benefit due the employee.

5. Elimination of par. G.

(Borough Exhibit 3.)

FINDINGS OF FACT

Based on the record, I find the following as undisputed facts:

1. The Borough is located in Bergen County, and covers approximately 2.3 square miles.

(PBA Exhibit 3; Borough Exhibit 5.)

2. Six municipalities border New Milford. They are Bergenfield, Dumont, Haworth, Oradell, River Edge, and Teaneck.

3. More than 16,300 persons reside in the Borough, which is governed a Mayor and a six-member council. (PBA Exhibit 3; Borough Exhibit 5.)

4. Between December 26, 2010 and October 26, 2011 the municipality and its residents experienced several emergencies. These included a blizzard, two unexpected snowstorms, and Hurricane Irene. (Testimony of Ann Subrizi.)

5. The hurricane led the Hackensack River to flood with resulting residential property damage within the Borough. (Testimony of Ann Subrizi.)

6. 150 New Milford homes are currently on a "severe repetitive loss" list as the result of repeated flooding of the Hackensack River. (Testimony of Ann Subrizi.)

7. The homes may be razed, and eliminated from the Borough's tax base. (Testimony of Ann Subrizi.)
8. There are 6,346 households, and 4,207 families residing in New Milford. (Borough Exhibit 14; PBA Exhibit 3.)
9. The median per capita income in 2009 was \$36,031 rising to \$42,006 in 2010. (Borough Exhibit 13; see also Borough Exhibit 2(b), page 11.)
10. The most recently reported household median income is \$81,708. (Borough Exhibit 2.)
11. About 4.6 % of the families are below the poverty line, compared with 4.3% for all of Bergen County. (Borough Exhibit 13.)
12. Between 2008 and 2011 the municipal tax rate increased by an average of 4.94%. (Borough Exhibit 2(b).)
13. Between 2008 and 2011 the average bill in New Milford increased by 4.60 per annum, resulting in a rise of the average residential tax bill from \$8,698 to \$9,898. (Borough Exhibit 2(b).)
14. In the same period New Milford's operating budget rose by 4.66% from \$17,260,981 to \$18,063,633. (Borough Exhibit 2(b), page 17.)
15. Total salaries and wages for 2011 were \$7,219,349; equivalent to 39.99% of operating budget. (Borough Exhibit 2(b), page 20.)
16. Under the arbitration reform legislation "base salary" is "the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract."

17. In 2011, the base salary for represented, New Milford police personnel was \$3,251,604.
18. The aforesaid "base salary" was calculated as follows: \$3,096,261 (wages under salary schedule including step increases) plus; \$155,343 (Longevity) (Borough Exhibit 2(a), page 1.)
19. Based salary for Local 83's bargaining unit members, in 2011, was 46% of wages and salaries for all New Milford employees.
20. Based salary for Local 83's bargaining unit members, in 2011, was 18% of New Milford's operating budget.
21. From 2008 to 2010 current fund balance decreased by 2/3rds from \$1,017,742 to \$335,695. (Borough Exhibit 2(b), page 14.)
22. On November 10, 2011 Moody's Investors Services ("Moody") downgraded New Milford's General Obligation Debt Rating from Aa3 to A1. (Borough Exhibit 5.)
23. Moody reported that the downgrade "reflects New Milford's moderately-sized tax base, favorable socioeconomic profile and low debt burden." (Borough Exhibit 5.)
24. It further noted that its "rating also incorporates the borough's recently narrowed financial flexibility, evidence by reduced cash and Current fund balance levels, renewed need for cash flow borrowing and more stringent state-wide property tax levy increase limitations." (Borough Exhibit 5.)
25. Moody also characterized the Borough as benefiting from above-average wealth levels, low unemployment (i.e., 7.6% as of September 2011), and low debt burden. (Borough Exhibit 5.)
26. Judicial notice is taken that the changed rating reduced New Milford's general obligation debt quality from "high" to "upper medium grade."

27. Historically, the Borough's Police Department has employed an average of 33-sworn personnel.
28. In 2010 the Borough hired two patrol officers. (Borough Exhibit 2.)
29. Throughout the first 6-months of 2011 the Borough's Police Department was comprised of 34-sworn personnel.
30. On June 30, 2011 Officer Gerard Oleskowicz left the Department at top pay, and benefits.
31. The vacancy created by Officer Oleskowicz retirement has not been filled.
32. On December 31, 2011 Lieutenant Bruce Raffo left the Department at top pay and benefits.
33. The vacancy created by Lieutenant Raffo's retirement has not been filled.
34. While other sworn personnel are eligible for retirement, none have announced their intentions.
35. Including the Chief of Police—who is not in the bargaining unit—as of January 1, 2012 the Department had 32-sworn personnel. This equates to 1.96 officers for each 1,000 Borough residents. (See PBA Exhibit 6.)
36. The "officer to 1,000 resident" ratio for Bergen County averages approximately 2.63. (See PBA Exhibit 6.)
37. The bargaining unit now is comprised of 24 non-supervisory Officers; 6 Sergeants; and 2 Lieutenants.
38. Two of the sworn officers serve in the Detective Bureau.
39. With two exceptions, the sworn officers are at the top three steps of the Agreement. (Borough Exhibit 2(a), page 4.)
40. Represented employees work a schedule of 21-shifts, with 4-sworn officers assigned to each shift. (See PBA Exhibit 4, Testimony of Nicholas DiGenio.)

41. The Borough has announced plans to promote up to 12-officers; 6 to Sergeant, and 6 to Lieutenant. (Testimony of Ann Subrizi; See also Borough Exhibit 24.)
42. The promotion of 6-officers to Sergeants effective April 1, 2012 would add \$33,741 to 2012 contract costs. (Borough Exhibit 2(a), page 1.)
43. Six (6) promotions to Lieutenants effective March 1, 2012 would add \$38,330 to 2012 contract costs. (Borough Exhibit 2(a), page 1.)
44. Within the Borough's jurisdiction there are: 55-eateries; 2-CVS drug stores; 3-public schools, 3-private schools; 7- banks; Curtis Publications; a Shoprite supermarket; a nursing home; and a Bergen County Park. (Testimony of Nicholas DiGenio; see also PBA Exhibits 3, 7 & 8.)
45. The Borough also is home to several houses of worship.
46. For crime index reporting purposes, the Borough is classified as an "Urban Center."
47. In 2010 there were 7,625 General Calls ("GCs") to the New Milford Police Department. (PBA Exhibit 6.)
48. The violent crime rate, for 2010, was 0.3 per thousand, and the non-violent crime rate was 6.1 per thousand. (Borough Exhibit 10; PBA Exhibit 10).
49. In 2011 there were 8,868 General Calls. The greatest number of these involved traffic including: 53-motor vehicle accidents; 1510-motor vehicle stops; 473-traffic enforcement actions; 1-hit and run with injuries; and 90-traffic related services. (PBA Exhibit 5.)
50. In 2011 there were also: 1-attempted suicide; 2-auto thefts; 27-burglaries; 6-violent disputes; 7-bank escorts; 43-psychiatire/emotionally disturbed persons; 3-robberies; 2-sexual assaults; 4-simple assaults; and 1-weapons related incident. (PBA Exhibit 5.)
51. Throughout the day, and in particular during commuting hours, the traffic flowing through the Borough is at its heaviest level. (Testimony of Nicholas DiGenio; PBA Exhibit 9.)

52. During day time hours, non-residents also enter, and remain in the Borough for assorted purposes including food & pharmaceutical purchases, banking, education, visiting restaurants, and private sector employment. (Testimony of Nicholas DiGenio.)
53. At night, New Milford becomes more of a "bedroom community."
54. Among other public outreach programs bargaining unit members assist with a Junior Police Academy, DARE, the Drug Alliance, Crime Stoppers, and car seat installations by certified installers. (Testimony of Nicholas DiGenio; Testimony of Ann Subrizi.)
55. The Borough's law enforcement personnel assist Bergen County by participation in a Rapid Deployment Force (5 officers), Fatal Accident Team (1 officer), and by liaising with the Gang Task Force (1 Sergeant and 1 Detective). (Testimony of Nicholas DiGenio.)
56. Borough police personnel also coordinate with departments in adjoining municipalities; the converse is true as well. (Testimony of Nicholas DiGenio.)
57. New Milford's police force has a superior level of expertise, and is well respected throughout the community. (Testimony of Ann Subrizi and Nicholas DiGenio.)
58. Officer DiGenio testified, without contradiction, that the Police Department has a high *esprit de corps*.
59. White collar Borough employees are represented for the purposes of collective bargaining by the RWSDU, Local 108 ("Local 108"). (Borough Exhibit 7.)
60. Local 108 in a document dated February 18, 2011 agreed to a wage freeze for the entire year in exchange for the Borough's promise not to implement layoffs, or furloughs during the calendar year. (Borough Exhibit 7.)
61. Employees in the Public Works Department are represented for the purposes of collective bargaining by the New Milford Department of Public Works Benevolent Association ("PWBA"). (Borough Exhibit 6.)

62. The PWBA, in a document dated February 14, 2011, agreed to a wage freeze 2011 in exchange for the Borough's promise not to implement layoffs, or furloughs during the calendar year. (Borough Exhibit 6.)
63. Employees in the New Milford Public Library are represented for the purposes of collective bargaining by the Library Union, Local 108 Public Employee Division, RWDSU, WFCW ("Library Union"). (Borough Exhibit 9.)
64. In a Memorandum of Agreement dated March 23, 2011, the Library Union agreed to a 0% salary increase for the third year of its 2009-2011, labor agreement in exchange for the Borough's promise not to implement layoffs, or furloughs during the calendar year. (Borough Exhibit 9.)
65. PBA Local 83 was asked, but declined to waive the 3.5% salary increase reflected in Appendix A-1 of the Agreement. (Testimony of Ann Subrizi; see also Joint Exhibit 3, page 26.)
66. The parties' collective bargaining agreement expired on December 31, 2011.
67. The Borough's proposed a three year contract with salary increases of: January 1, 2012: 0%; January 1, 2013: 0%; and January 1, 2014: 2.0%.
68. Within this proposal, the value to represented employees would be increased by \$72,071, if the slated promotions to superior ranks take place.
69. The PBA's proposed a four year contract with salary increases of: February 1, 2012: 2.75%; February 1, 2013: 2.75%; February 1, 2015: 2.75%; and February 1, 2015: 2.75%.

INTEREST ARBITRATION STANDARDS

Under New Jersey Law interest arbitration follows impasse in negotiations between public employers and law enforcement employees over the terms for a successor collective bargaining agreement. In this matter, the disputed issues are to be resolved by

"conventional arbitration," meaning that after carefully weighing proofs and arguments as they appear on the record the arbitrator will impose the terms of their new labor agreement. See N.J.S.A. 34:13A-16d. This is a "heavy responsibility," undertaken only after the Public Employment Relations Commission, and its appointed interest arbitrator are certain that the parties have attempted to agree on the issues in dispute.

Municipal residents, and union members alike depend on their representatives to bring their insights and negotiation skills to the bargaining table. An arbitration award, no matter how wise, is never as good as the parties' worst bargain. This aphorism is validated in each and every appeal, which parties bring to the Commission, from interest awards.

To guide and control the process our Legislature has developed a set of detailed standards. The arbitrator's task is to decide interest disputes.

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

- (1) The interests and welfare of the public.** Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:**
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.**

- (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c.425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) **The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.**
- (4) **Stipulations of the parties.**
- (5) **The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).**
- (6) **The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c.62 (C40A: 4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the proceeding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award for each ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.**
- (7) **The cost of living.**
- (8) **The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.**

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

(Emphasis added.)

Each party bears responsibility for adducing evidence that it believes may be relevant and essential to the arbitrator's application of these factors. Indeed, "the arbitrator need not require the production of evidence on each factor." Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 83 (1994). This is the parties' job.

THE PARTIES' POSITIONS ON, AND THE ARBITRATOR'S ANALYSIS OF, THE FACTORS

The arbitrator's duty is to evaluate disputed issues, based on the record, using the legislature's enumerated factors. Due weight must be given to each factor that is deemed relevant. When comparing the wages, salaries, hours, and conditions of employment in the same, or similar jurisdictions the arbitrator is to consider PERC's published comparability guidelines.

The arbitrator may determine that a factor is irrelevant. In such instances, an explanation is required about why the factor was deemed irrelevant. Factor 6 is the sole exception to this rule. In every interest arbitration the parties shall introduce evidence on, and the arbitrator shall analyze and consider the "financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P. L. 2007, c.62 (C40A:4-45.45), and tax payers."

The format for the following factor analysis is: A. The Boroughs Position; B. The PBA's Position; and C. The Arbitrator's Analysis Including Relevance/Weight.

Factor 1: Interests and welfare of the public

A. The Borough's Position

From, what it characterizes as, indisputable facts evidencing a precarious financial backdrop, the Borough submits that the record contains sufficient evidence that its

proposed final offer “while Spartan by standards, is the only offer which will not negatively impact the interest of the public, the Borough, other Borough employees, or the PBA bargaining unit members.” (Borough Post Hearing Brief, p. 16.) This is a particularly difficult time for the Borough given the devastating weather over the past 15-months, and the specter of losing homes located in flood prone areas from the tax rolls. This, New Milford argues, is not the time to burden taxpayers with funding increased wages, and terminal leave payouts.

Importantly, other Borough employees received “zero percent” wage and salary increases for 2011. “Their sacrificial give back should not go unrecognized by this Arbitrator.” (Borough Post Hearing Brief, p. 18.)

Since 2008 New Milford has been operating on a declining budget, a contracting tax base, shriveling state aid, and a falling budget surplus. “Consequently, it is imperative for the Borough to control the costs of its largest expenditures [i.e., salaries, wages, & fringe benefits] in order to mitigate the burden on the taxpayers, who will ultimately have to bear the bulk of the costs of the increase in salaries and benefits.” (Borough Post Hearing Brief, p. 18.)

B. The PBA's Position

“The interest and welfare of the public in the Borough of New Milford are well protected and served by the sworn personnel of the New Milford Police Department.” (Final Summation of PBA, page 6.)

During daylight hours the Borough is a busy place. Residents, visitors, and transient commuters benefit from a range of services including responses to the increasing call volume. Officers are highly trained, and supply new and enhanced services including: two School Resource Officers; Junior Police Academy; Car Seat

Certified Installers; officers with foreign language skills; a police boat; and participation in drug awareness and prevention programs.

"The nature of services was acknowledged to be diverse even in the employer's own proofs...New Milford is a busy place with a high level of noted offenses. This is a challenging law enforcement environment." (Final Summation of PBA, page 8.)

Never-the-less bargaining unit members have been required to do more with less since the Borough has historically permitted the force to remain understaffed. Officers, accordingly, are working at a high level of economic efficiency.

C. The Arbitrator's Analysis Including Relevance/Weight

Interests and welfare of the public are extremely relevant, but difficult to weigh

In 2009, Local 83 and the Borough of New Milford participated in interest arbitration before Jeffery B. Tener, former Chair of the Public Employment Relations Commission. Seven months following the close of those hearings, Arbitrator Tener delivered a 59-page, well-reasoned decision. Borough of New Milford and PBA Local 83, Docket No. IA-2008-070. He explained that while the public's interest and welfare is an important factor to be considered, it is difficult to quantify and apply. *Id.* at 48. Applying this factor requires balancing the public's interest in effective law enforcement against reasonable and competitive wages and benefits for police officers. *Id.* Arbitrator Tener concluded, "it is apparent, even without looking at specific financial factors, that the Borough is hard-pressed to provide the level of police services that it would like to provide even though...the wages and benefits which it provides to its officer are low compared to others in the County." *Id.* at 49.

The same is true today. The public deserves an equitable balance between the quantity/quality of law enforcement services, and the price tag. The police deserve to be

fairly compensated for the value of these services to the public. My award is designed, within the applicable caps, to balance these competing interests.

Factor 2: Comparison of the wages, salaries, hours, and conditions of employment

A. The Borough's Position

As a general matter, New Milford contends that its offer is consistent with salary and other direct monetary benefits of sworn officers in neighboring communities. Any comparison with all Bergen County municipalities would be inappropriate. More specifically, the Borough notes:

(a) There is "growing trend toward of low to moderate salary increases." (Borough Post Hearing Brief, p. 20.) This element movement is shown by pre-arbitration cap resolutions in the City of Englewood, Englewood Cliffs, Hasbrouck Heights, Norwood, North Arlington, Spotswood, and Waldwick. Also, the elimination of longevity for new hires is becoming more common. (See Borough Post Hearing Brief, p. 20.) New Milford needs to control longevity, holiday pay, and terminal leave to avoid tax increases and/or cuts in necessary programs.

(b) "The PBA enjoys wages, salaries and conditions which are rapidly diminishing in the public sector." (Borough Post Hearing Brief, p. 22.) Historically generous, in comparison with other public sector employees, police economic packages are no longer feasible given the 2008 fiscal crisis and subsequent tax levies. Unlike other public employees, PBA members are not subject to furloughs. Accordingly, the Borough's sole recourse is to trim or eliminate benefits. This is particularly apt with regard to the terminal leave provision. This benefit is much more generous for police, than for personnel in the white collar and DPW units.

(c) While few private sector jobs are comparable to those of urban police officers, several non-law enforcement occupations are both dangerous and pay less. Included

among them are convenience store clerks, and urban taxi drivers. Moreover, "few, if any, public or private sector employees can retire after 25 years of service at a 70% pension, inclusive of health benefits." (Borough Post Hearing Brief, p. 22.)

B. The PBA's Position

The compensation program for New Milford police personnel is among the poorest in all of Bergen County. By way of example, examining "top step," pay rates for 21 other law enforcement units the Borough falls 17.65% below average. This statistical shortfall is not supplemented by differentials, equity adjustments, or other special allocations. Indeed, it would require four years of 7.093% increases "just to catch up and achieve average." (Final Summation of PBA, page 19.) The PBA proposal will keep the Borough's officers at the bottom of the pack, while the employer's proposal will intensify the shortfall.

Too, holiday pay is below the level of other bargaining units. Indeed, owing to the workings of Article Nineteen, Section C, New Milford police have "the lowest holiday benefit in the entire County of Bergen." (Final Summation of PBA, page 16.)

Local 83 rejects the proposition that comparing law enforcement officers to private sector employees will add to the analysis of this matter. "In the first instance, there is no comparable private sector job to that of a police officer." (Final Summation of PBA, page 22.) Among their unique obligations is 24-hour a day duty, whether "on or off the clock," to enforce the law within New Jersey's territorial limits. They must reside in New Jersey, be trained and periodically recertified in firearms use, and operate within strict regulatory limits. In summary, they work "within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility." (Final Summation of PBA, page 28.)

C. The Arbitrator's Analysis Including Relevance/Weight

Comparison of wages, salaries, hours, and conditions of employment is relevant, and merits considerable weight

"Comparison" traditionally is a crucial element when assaying proposed wage changes. Pay levels vary from place to place, between types of employers, and between employers in the same industry, e.g., textiles, municipal government, and health care. Comparison, within each category, examines internal and external consistency. By way of example, it is appropriate to appraise New Milford police wages against those for other Borough employees, and against law enforcement personnel in nearby communities. There are a plethora of possible considerations when making such comparisons. When, by way of example, intercommunity match-ups are being made comparability considerations may include: size/composition of police forces; size/density of population; per capita income; property assessments; taxes; violent & nonviolent crime rates; and quantity/quality of police services.

The Borough of New Milford is an urban center. Its police officers work full days dealing with a large influx of people through, and into the community. Traffic related events, interpersonal conflicts, call for help etc keep its 31-officers engaged. With 1.96 officers per 1,000 residents the Borough is understaffed; even without the 16% increase in general calls that occurred during 2011. Then too, there are violent crimes at a rate of 0.3% per thousand. The word "only" should never be used before this statistic. In sum, the conditions of work are stressful, and at times dangerous. The most appropriate comparison is to sworn personnel in other communities.

The arbitrator agrees with the PBA that police work can hardly be compared with private sector employment. The Union aptly cited Borough of River Edge and PBA Local

201, PERC 1A-97-20, in which Interest Arbitrator Carl Kurtzman addressed the intellectual hazards of police officers to private sector workers. He wrote:

[There is] a lack of specific private sector occupational categories with whom meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualification for public sector police and their training and unique responsibilities which require public sector police to be available and competent to protect the public in different emergency circumstances set public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight.

Id. at 30.

The best source of comparison is to the wages, hours, and conditions of employment of sworn personnel in similar municipalities within geographic proximity of one another. Reviewing the contracts in evidence, and discounting the PBA's calculation that New Milford officers fall 17.65% below their Bergen County colleagues, a clear wage disparity exists. Even with the 3.5% increase that officers received in 2011 under the expiring agreement, they are among the lowest paid within the County's seventy municipalities. As of December 31, 2011 the record reveals the top step, annual salaries for patrol officers working in several reasonably comparable Bergen County communities. Those top step salaries are:

Municipality	Salary
Allendale	\$111,572
Edgewater	\$107,615
Cresskill	\$106,683
Dumont	\$101,634
Glen Rock	\$109,183
Haworth	\$100,767
Hasbrouck Heights	\$112,217
Midland Park	\$113,402
Oradell	\$105,885
Waldwick	\$115,781
Wallington	\$109,535

From the record supplied by the parties, it is evident that at a top step of \$98,493 (\$102,441 including the roll-in of holidays previously awarded by Arbitrator Tener, Joint Exhibit 1, page 26), sworn officers are indeed among the lowest paid in the County.

The record contains no data supporting a conclusion that other economic factors significantly counterbalance the picture reflected in Local 83's salary guide.

Factor 3: Overall Compensation Presently Received

A. The Borough's Position

Although municipalities differ, the wages and benefits provided to New Milford PBA are both fair and competitive. Their pension, disability and medical benefits are superior to those of other employees. "In sum, the compensation criterion reveals an economic package which is generally competitive." (Borough Post Hearing Brief, p. 24.)

B. The PBA's Position

Recent modifications to the pension and health care statutes deplete the buying power of police officers, and thus diminish their overall compensation. These statutory transformations operate "to the direct benefit of each respective public employer, here the Borough of New Milford," (Final Summation of PBA, page 34) by shunting costs onto the employees.

At the same time other bargaining unit benefits in the total compensation package are either mid-range, or below average. Vacation and sick leave allowance are virtually the same throughout Bergen County. Moreover, there "are no other unusual, or unique benefits available to the Police Officers in New Milford." (Final Summation of PBA, page 16.) For example, the Borough does not afford night or rotational differentials, or a weapons allowance.

The holiday pay benefit is the lowest in Bergen County. This is attributable to the provision in Article 19 permitting a twenty-five percent (25%) reduction from each

holiday's full value. Not content with this situation, New Milford's now proposes altering the method calculating holiday pay formula, and thus further reducing this benefit.

C. The Arbitrator's Analysis Including Relevance/Weight

Overall Compensation Presently Received--While a Net Advantage to Bargaining Unit Members--Has Been Diminished

Most residents of New Jersey are in the same boat. The economic downturn has hit everyone, and made life more difficult. While an economic comeback may well have begun, it has not arrived in force. The wage component of overall compensation is below what would be anticipated in more normal times.

Overall compensation, however, is more than wages. "This factor requires an arbitrator to consider all of the economic benefits received by employees involved in a case, including direct wages, vacations, excused leaves, insurance, pensions, and medical benefits. It thus directs a focus on all employee benefits, not just the items at issue in the case." Borough of Hasbrouck Heights and PBA Local 102, IA-2010-053, page 68. In this light, New Milford's officers enjoy fringe benefits that are competitive with their Bergen County peers, and no doubt the envy of many private sector employees. They gain from holidays, vacation days, sick leave, medical coverage, and participation in the PFRS.

The picture is less bright than was true in 2008. Local 83 accurately asserts that statutory pension and medical plan amendments require employees to expend money on contributions that formerly were paid by the public employer. Chapter 78 of the Laws of 2011 increased the share of health benefits coverage paid by public employees and retirees. Police contributions toward pensions have also increased.

Factor 4: Stipulations of the Parties

There were no substantive stipulations

Factors 5 & 6: The Lawful Authority of the Employer, and The Financial Impact on the Governing Unit

A. The Borough's Position [Combined Statement Touching Lawful Authority & Financial Impact]

"Fiscal responsibility is a factor that directly impinges upon the Borough's ability to continue to provide adequate public services." (Borough Post Hearing Brief, p. 24.) New Milford is duty bound to provide adequate public services, within the restraints of its budget as informed by the CAP laws. In keeping with these responsibilities the Borough has decided to fill the two vacancies, which arose in 2011. It has, as well, called for promotional examinations for 6-sergeants and 6-Lieutenants. Given these needed initiatives, any savings from the retirements of the two senior officers will be minimal.

In PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), the New Jersey Supreme Court stated that "the financial impact criterion requires consideration of the municipality's ability to initiate existing local programs and services, and to initiate new programs and services." (Borough Post Hearing Brief, p. 25.) Moreover, before all else, interest arbitrators must determine that public employers are legally capable of raising sufficient revenue to fund their awards. In this matter, "the Borough is over its levy cap." (Borough Post Hearing Brief, p. 32.) It is unable to fund salary increases for its police officers. Granting the PBA's proposal (an 11% wage increase over 4-years) would burden residents and taxpayers by causing tax increases. The financial impact would be too great. In contrast, the Borough's offer is fiscally prudent, and would keep the police officers "generally competitive" with those in surrounding municipalities.

B. The PBA's Position [Combined Statement Touching Lawful Authority & Financial Impact]

"A consideration of the proofs in this case consistent with criteria g5, g6 and g8 provide no impediment whatsoever to an award of the PBA Position as presented. The referenced statutory limitations are in line with the "Appropriation Cap", the later passed "Levy Cap" and the so-called "Hard Cap". (Final Summation of PBA, page 32.)

Understanding the application of these Caps, Local 83 emphasizes, turns on correctly computing the bargaining unit's base wage point. In particular, the base wage calculation is essential to the arbitrator's application of the "Hard Cap" statute. The PBA calculates this base to be \$3,233,692. It notes this sum differs from the Borough's calculation by "only Seventeen Thousand Nine Hundred Twelve Dollars (\$17,912.00). (Final Summation of PBA, page 32.) It attributes this "delta" to the reduction in longevity caused by the retirements of Officer Oleskiewicz and Lieutenant Raffo in 2011. It adds that their absence from payroll also resulted in a reduction of overall police operational costs.

The PBA gives great attention to the impact of Chapter 78 of the Public Laws of 2011 on pensions, and on employee contributions to health care costs. Mandated increases in payments toward pensions represent a rise of "1.5% over what had previously been the highest contribution rate in the country." (Final Summation of PBA, page 32.) Moreover, by 2015 police contributions toward medical insurance will be 35% of premium. The combined result of these statutory changes is that police throughout New Jersey will net less money in their paychecks.

These changes, conversely, have worked to the benefit of governmental units. In New Milford's case, its anticipated payment to the Police and Fire Retirement System ("PFRS") was reduced \$217,983. This reduction lowers police services costs by 6.76% directly inuring to the Borough's financial benefit. The four-year phase-in of employee contributions toward health also will result in increasing savings for New Milford.

Combined with the savings flowing from the Raffo & Oleskiewicz retirements, the reduction in pension and health care contributions allows New Milford to finance the PBA's last offer without increasing payroll. "In effect, the entire PBA Last Offer Position

can be funded from any one of a number of sources in reduced costs to this Municipality without increasing the payroll at all." (Final Summation of PBA, page 37.)

No negative factors impact the Borough's ability to pay bargaining unit members in keeping with the PBA's Last Offer. New Milford has almost two billion dollars in taxable land & improvements, a tax rate lower than several nearby towns, and mid-range *per capita* income. With a gross tax levy of \$45,165,561, a collection rate exceeding ninety-eight percent (98%), and debt well below New Jersey's statutory limit of 3.5% of equalized value New Milford is in a strong fiscal position. "In sum, there is an exceptionally high net valuation of approximately Two Billion Dollars, a competitive if not low effective tax rate, and a very favorable debt picture. This is not a poor town." (Final Summation of PBA, page 41.) The future could be even brighter given development plans, by S. Hekemian Group, for a 14-acre site on the banks of the Hackensack River.

C. The Arbitrator's Analysis Including Relevance/Weight on Lawful Authority, and Financial Impact

As More Money is Allocated to the Police Contract, Less is Available for Other Priorities

Arbitrators must recognize the statutory limits placed on employers in this era of caps. The record is clear that New Milford has reduced financial flexibility as demonstrated by the reduction of its reserves, and the need to request other bargaining units to choose between layoffs and foregoing negotiated increases that were to take effect in 2011. Moody's downgrade of the general obligation debt rating while not a disaster was far from a vote of confidence. It reflected that rating organization's opinion that the Borough's reduction of reserve combined with New Jersey's tax levy limitations could force it into the debt market, where its chances of default would be somewhat greater than in prior years. While New Milford may not be poor, it does have cash flow issues.

Local 83 rightly notes that reductions in health care and pension contributions, and the savings resulting from the Raffo & Oleskiewicz retirements in 2011 have worked to the Borough's economic benefit. Each month these positions remain vacant the Borough saves almost \$13,000 in wages. The reduction of \$217,983 in the PFRS billing for 2012 also directly affects New Milford's police service costs. As Local 83 argues, "[i]n essence, the Employer could fund the entire Last Offer Position and 'keep the change' for use in other Municipal priorities." (Final Summation of PBA, page 38.)

New Milford can lawfully fund more than the 0%, 0%, and 2% economic offer that it has proposed, and perhaps even the PBA's proposal of 2.75% across-the-board over a four-year contract. The question is where the proper balance exists between both proposals.

Factor 7: The Cost of Living

A. The Borough's Position

"Any increase should not exceed the CPI for the Northeast Region." (Borough Post Hearing Brief, p. 26.) In this instance, the PBA's proposed salary adjustments are double the Consumer Price Index ("CPI"). According, the Borough asserts that any increase should not exceed the CPI for the Northeast Region.

B. The PBA's Position

The Bureau of Labor Statistics has calculated the cost of living to be 3.4% over the last twelve months; with the cost of fuel and other commodities having significantly risen. "This alone guarantees that an award of the PBA's Position as presented will guarantee a loss of...real money value as inflation exceeds the amount sought." (Final Summation of PBA, page 45.) Granting the Borough's Last Offer would further reduce the purchasing power of officers and their families; this "would be disastrous." Id.

C. The Arbitrator's Analysis Including Relevance/Weight

Cost of Living is a Weighty Factor Affecting Both Parties

Rising prices place economic demands on wage earners who by definition receive predictable sum in their paychecks, and on organizations tied to budgets. Whether purchased at retail, or wholesale increased gasoline costs have an effect on both employees and on their organizational employers. Organizations, of course, often are in a better position to cope.

From November 2010 through November 2011, the CPI for all items rose on an upward slope with the cost of food increasing by 4.6%. (Borough Exhibit) The overall increase of 3.4% cited by Local 83, was above the 2.7% for 2009 noted by Arbitrator Tener in his previous Interest Arbitration Award.

The arbitrator concludes that continued cost of living increases most likely will affect the Northeast Region of the United States during the next two years.

Factor 8: Continuity and Stability in Employment

A. The Borough's Position

Nothing supports a conclusion that the Borough has been plagued by turnover, or instability within the ranks of its police officers. The current compensation level has been sufficient to attract and retain qualified sworn personnel.

B. The PBA's Position

Not Available

C. The Arbitrator's Analysis Including Relevance/Weight

Workforce Stability Depends on Multiple Factors, and Has Limited Relevance at Present

At present, the continuity and stability of the workforce has limited relevance in New Milford, and elsewhere. The economic climate assures that private and public sector

employees have limited prospects and motivation for changing employers. This factor, however, still merits consideration.

With need to fill out its ranks, and the retirement of more senior officers, the Borough of New Milford will increasingly be in the market for recruits. Other Bergen County municipalities with richer employment packages would be more attractive to the available labor pool. Additionally, less senior officers who have gained from New Milford's training, as the economy improves, may opt to move toward greater pay and benefits.

Factor 9: Statutory Restrictions

Under the Arbitration Reform Act interest arbitrators shall not render awards which, on an annual basis increase, base salary items by more than 2.0 percent of the aggregate amount spent in the twelve months immediately preceding the expiration of the collective agreement subject to negotiation. The parties acknowledge this rule's applicability to the within arbitration.

DISCUSSION

Interest arbitrators are required to issue written reports explaining how each statutory criterion played into their final determination, and why that determination is reasonable as a matter of law. We also are required to certify that statutory limitations imposed by the levy cap have been accounted for in our awards. This is not a simple task.

In this matter, the record consisting of more than three thousand pages has been culled, the parties positions reviewed and analyzed, and the determination explicated in keeping with the statutory criteria. The resulting award is no more, or less than what may be anticipated in our turbulent times. People and institutions have been damaged by the

post Lehman Brothers' fallout. Where positions collide everyone wants a "fair" solution. They often differ over what is fair.

The 9-criteria in our interest arbitration statute are guides toward resolving economic conflicts touching protective services personnel, and the citizens they serve and defend. The criteria are not ironclad rules. They are, however, applied by neutrals that "do not have a dog in the fight."

This case touches dedicated police officers, and New Milford's residents who have watched municipal costs and property taxes rise to a level many deem unacceptable. There are no villains, only people seeking a fair outcome. This determination is a fair balancing of their interests within the law.

In these respects, I can do no better than to quote from Arbitrator Lawrence Henderson in Borough of Hasbrouck Heights and PBA Local 102, Docket No. IA-2010-053. As with Arbitrator Henderson, "In arriving at the award in this matter, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. My weighing and balancing of the nine criteria, particularly those pertaining to the public interest, financial impact, and comparisons with other employees, leads me to award a total economic package that is more than proposed by the Borough but less than proposed by the PBA." Id. at 55.

Award Synopsis

My award, as entered below, is:

1. Contract Duration: 3-years;

2. Salary Schedule:

July 1, 2012:	1.0%
January 1, 2013:	2.0%
January 1, 2014:	2.5%

3. Periodic payment option for terminal leave.

4. Any proposal not granted is denied.

Contract Duration

The rate of change in New Jersey's public sector militates for a two-year contract. Legal and regulatory evolution, economic fluctuations, the housing market, and myriad other forces make this a foreboding time for predictions. Similarly, within New Milford, the impact on ratables of flood-damaged properties, and/or the outcome of planned development by S. Hekemian Group are unknown. A two-year contract would allow the parties greater flexibility to adapt to changing times.

Conventional arbitration permits neutrals to set durations other than those proposed by labor and management. In this instance, I have chosen a three-year term in partial deference to the parties who clearly view "longer as better." Three years is preferable to four since it lessens the chance that changed circumstances will create unforeseen events.

Salary Schedule

Each step of the salary guide shall be adjusted, as follows:

July 1, 2012:	1.0%
January 1, 2013:	2.0%
January 1, 2014:	2.5%

The salary guide for the three years of the next contract keeps within the caps, and balances the Borough's immediate need to cope with the budget issues it faces. Nudging the municipality to give short shrift to other priorities does not comport with the boarder duty of interest arbitrators. As the Supreme Court noted:

The statutory direction to consider the financial impact on the municipality demands more than answer the question whether the municipality can raise the money to pay the salary increase. 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 PBA Local 207 at 86.

While the Borough avows that it cannot sustain a "financial hit" of the type contained within the PBA offer, the arbitrator believes that it can easily live within the graduated salary guide increases in his economic award of 1.0%, 2.0%, and 2.5% over three years. Indeed, since the 1.0% increase is not implement until July 1, 2012 the effective rate for the first year of the contract is 0.5%.

Article 50 Terminal Leave

New Milford advanced a series of proposals to modify Article 50 of the Agreement. This provision governs terminal leave for employees who retire from the bargaining unit. It provides for leave to be computed, as follows:

A. Seventy-five percent (75%) of accumulated sick days for the entire period of employment which the total is not to exceed 183 working days.

A1. Unused sick leave earned from January 1, 2010 Forward shall be paid at the rate earned and not at the rate in effect at the time of retirement. The most recently earned sick leave shall be deemed to be used first, and

B. All accumulated and unused holidays earned prior to January 1, 2011 to the date of retirement, and

C. All unused vacation days as well as those personal days Earned prior to December 31, 2009, and

D. For employees, who, during the term of this contract attain 20 or more years of service with the Borough of New Milford, those employees only will receive an additional twenty (20) working days towards terminal leave.

It also allows lump sum payments in lieu of leave in Paragraph F, which reads,

If the employee submits his/her retirement request prior to October 1st of any given year, the employee can receive a lump sum payment payable by April 15th of the following year (year of retirement) for all time due in lieu of protracted terminal leave. The choice shall remain solely with the employee.

New Milford, proposed several changes to Article 50, including replacing the text of Paragraph F with,

The employee shall submit his/her retirement requests at least 6 months prior to the date of retirement. Upon calculation of the accumulated leave bank, the Borough reserves the right pay for all time due over a 5 year period rather than a lump sum payment in lieu of a protracted terminal leave. The failure to provide at least 6 months notice shall results in a forfeiture of the additional twenty (20) days. No payment under this section shall count toward nor affect, either by increasing or decreasing, any pension or retirement benefit due the employee.

Parenthetically, it should be noted that each party sought removal of Paragraph E from Article 50.

The Borough's Paragraph F submission addresses the parameters for giving retirees a contractual right to opt for lump sum payouts, in lieu of terminal leave. Modifying this provision could have a positive budgetary impact on the municipality.

Terminal leave permits covered bargaining unit members to use earned leave days--as calculated in Paragraphs A to D--prior to retirement. This allows them to continue to collect paychecks until their official retirement date, while being relieved from reporting for duty. Under the current, and proposed versions of Article 50's Paragraph F, they also are entitled to opt for a lump sum payment in lieu of leave days.

Other than workplace gossip, employers often have little indication about when an employee will elect retirement. This is reflected in the Borough's Post Hearing Brief. It observes on page 3, "Currently, there are officers who are eligible to retire; however, it is not known whether the[y] will retire during the term of this contract." Predicting retirement dates is easier said than done. Similarly, accurately forecasting whether a retiree will choose a lump sum payout over terminal leave is difficult, if not impossible. These uncertainties make budget projections problematical. Also, the amounts in question are not insubstantial.

A Patrolman 7 earning \$102,441 who retires after 25-years of service with 180 leave days would be entitled to a lump sum payout exceeding \$50,000. Especially in hard

economic times, funding this payment could be a tricky proposition depending on the Borough's expense projections. It is understandable, that New Milford would benefit from its Paragraph F proposal by:

1. Establishing that employees "shall," submit retirement requests at least 6-months in advance of separation; and
2. Reserving a right to pay over a 5-year period, rather than a lump sum payment.

The arbitrator, however, believes that this proposal goes too far. Emergencies, health conditions, family issues, opportunities, or simply being "worn out" may all influence when someone decides to end employment. Officers may not know until late in the game when retirement is prudent, or for that matter essential. Also, unfettered managerial discretion to disburse payments over 5-years may lead to perceived abuses, and consequent conflicts. If a retiree perceived that payments were being arbitrarily made to him/her, resultant conflict resolution costs could quickly consume savings related to this unfettered option.

This said, all parties would benefit from a structured, periodic payment procedure triggered by retiring employees who were free to select payment options. Extended payments, would lessen the chances of incurring additional debt to fund this benefit. Retiring sworn personnel, moreover, could address the tax consequences of different payment schemes, and effectively annuitize a portion of their income. Accordingly, As revised, the paragraph F (which given the parties' mutual desire to delete current Paragraph E) is to be re-designated as "Paragraph E," shall read:

If the employee submits his/her retirement request prior to October 1st of any given year, the employee can receive a lump sum payment payable by April 15th of the following year (year of retirement) for all time due in lieu of protracted terminal leave.

Alternatively, the employee may, within two months prior to his/her planned retirement, request periodic payments, as follows:

One-third of the total payable within sixty (60) days of the effective

retirement date;
An equal amount of one-third payable three hundred sixty-five (365)
days thereafter; and
A final amount of one-third payable three hundred sixty-five (365)
days thereafter.

The choice between a lump sum, and a one-third payment schedule shall
remain solely with the employee.

Any Proposal Not Granted is Denied

The parties advanced a number of other proposals beyond wages, and contract term. Local 83 seeks modifications to holiday pay calculations, and the addition of a work in higher rank provision to the Agreement. The Borough meets the PBA holiday pay proposal with one of its own, and challenges the "work in higher title" proposal as impinging on management's staffing prerogatives. (Borough Post Hearing Brief, pages 9 & 33.)

New Milford also proposes: additional steps to the salary guide; changes to overtime availability during inclement weather, hurricanes or power outages; longevity modifications for current employees; a second tier longevity schedule for new employees; a second tier vacation leave formula for new hires; changes to Article 18 governing personal leave; modification of Article 19, paragraph C as to holiday pay calculation; sick leave modifications for current employees; a second tier sick leave provision for new employees; health benefit modification for current employees, and for retirees; and modifications to the terminal leave.

The PBA comments that most of these proposals "have little or nothing to do with the established savings or even long term savings as there would be no budgetary impacts on many of these items for many Municipal Budget years." (Final Summation of PBA, page 2.)

With the exception of terminal leave, the arbitrator has chosen not to rule on these other issues.

Conventional arbitration takes place in the "disputed issue" context. Indeed, the statutory framework lists factors that arbitrators are to consider when resolving differences over the parties' proposals. A reasoned interest arbitration analysis must be preceded by proposals having been: identified; examined; debated; examined; and ultimately recognized as in dispute. These obligations, as shown by the record, were clearly met so far as contract term, wage increments and terminal leave.

The same cannot be said for the other proposals for which the record is insufficient to allow a determination on these other issues.

AWARD

1. There shall be a three-year agreement effective January 1, 2012 through December 31, 2014.

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

July 1, 2012:	1.0%
January 1, 2013:	2.0%
January 1, 2014:	2.5%

3. Article Fifty governing Terminal Leave is modified as follows:

Paragraph E is deleted.

Paragraph F is re-designated Paragraph E, and modified to state:

E. If the employee submits his/her retirement request prior to October 1st of any given year, in lieu of terminal leave, the employee can receive a lump sum payment payable by April 15th of the following year (year of retirement) for all time due in lieu of protracted terminal leave.

Alternatively, the employee may within two months prior to his/her planned retirement request periodic payments, as follows:


One-third of the total payable within sixty (60) days of the effective retirement date;

An equal amount of one-third payable three hundred sixty-five (365) days thereafter; and


The choice between a lump sum, and a one-third payment schedule shall remain solely with the employee.

Former Paragraph H is re-designated as Paragraph G

5. Except as the parties may otherwise mutually agree, the provisions and terms and conditions of the prior agreement shall continue in effect in the new agreement unchanged.


Patrick R. Westerkamp, Esq.

On this 27th day of February 2012, before appeared Patrick R. Westerkamp, Esq., to me known and known to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.


ORR WESTERKAMP
 NOTARY PUBLIC OF NEW JERSEY
 Commission Expires 7/18/2016