

In the Matter of Interest Arbitration Between:

CITY OF PATERSON

“Public Employer,”

- and -

**PATERSON PBA LOCAL NO. 1 &
PATERSON SUPERIOR OFFICERS
ASSOCIATION**

“Unions.”

Docket Nos. IA-2009-015 & IA-2009-016

**INTEREST ARBITRATION
DECISION AND
AWARD**

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Brian W. Kronick, Esq.
David K. Broderick, on the brief
Genova, Burns & Vernoia

For the Unions:

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

I was designated by the New Jersey Public Employment Commission to serve as interest arbitrator after the City of Paterson [the "City"] and PBA Local No. 1 and the Paterson Superior Officers Association [the "PBA"]¹ reached impasses in negotiations. Each employee organization filed petitions to initiate interest arbitration. Mediation sessions were held resulting in the narrowing of remaining issues. Because the impasse remained, formal interest arbitration hearings were held on October 26, 2009 and October 27, 2009, at which time testimony and documentary evidence was submitted into the record. Because the parties did not agree on an alternative terminal procedure, the arbitration proceeded under the terminal procedure of conventional arbitration under which the arbitrator has the discretion to render an award that is not confined to the last offers of either party. See, N.J.S.A. 34:13A-16(c)(1). The record was closed on or about March 1, 2010 upon receipt of post-hearing briefs. Additional submissions were received and accepted in August 2010 concerning the amended tax cap levy.

The petitions before me were not formally consolidated. However, all parties recognized that the goals of economy and efficiency would be met by receiving evidence that was common to each negotiating unit during the course of the hearings without having to independently resubmit documentary or

¹ The employee organizations will be referred to collectively as the PBA unless a specific designation is required

testimonial evidence in duplicate fashion. It was also agreed that a single decision would issue covering both units.

At the hearings, the City and the Unions argued orally and submitted testimonial and documentary evidence into the record. Testimony was received from Detective Steven Olimpio, President of PBA Local No. 1, Anthony Zambrano, Controller and Acting Finance Director and James Wittig, Chief of Police. As indicated above, post-hearing briefs were submitted by both parties, the last of which was received on or about March 1, 2010.

As required by statute, each party submitted a final or last offer. They are as follows:

FINAL OFFERS OF THE PARTIES

City of Paterson

1. **Article 5 – Police Officer Rights**

No Change

2. **Article 7 – Work Schedule and Conditions**

Article 7.1 – Delete the present language and replace with the following:

“All employees shall have tours of duty not in excess of eight (8) consecutive hours in one (1) day and no more than forty (40) hours in one (1) week; except all employees assigned to Patrol Divisions Platoons A and B, Community Policing, and Traffic Division, shall be on a work schedule of four (4) consecutive work days of eight hours and thirty minutes (8 ½

hrs), followed by two (2) consecutive days off which constitutes one week (4&2 Schedule). These employees shall not have tours of duty in excess of eight hours and thirty minutes in any one (1) day, and no more than 171 hours in a twenty-eight (28) day work period. Any work in excess of one hundred seventy-one (171) hours in a twenty-eight (28) day work period shall be compensated at time and one half (1 ½)."

*Note – Change all references to the 4&4 Schedule in the Agreement to reflect the new 4&2 Schedule.

Article 7.1.4 – Add the following sentences:

"The City can deny the swap of hours if it would result in the substitute employee being entitled to overtime or compensatory time."

Article 7.2 – Delete second sentence with respect to 4&4 Schedule.

3. **Article 15 – Military Obligations***

No Change.

4. **Article 21 – Personal Leave**

Article 21.1 – Delete the first and second sentences and replace with the following:

Newly hired employees shall receive three (3) personal hours for the initial month of employment if they begin on the work on the 1st through 8th day of the calendar month, and 0 hours if they begin on the 9th through 23rd day of the month.

After the initial month of employment and up to the end of the first calendar year, employees shall be credited with three (3) hours for each month of completed service. Thereafter, employees shall be credited with forty (40) hours of personal leave each calendar year.

Article 21.2 – Add a new subsection as follows:

* In their last offer, the PBA has not made a proposal with respect to this issue and, for this reason, Article 15 – Military Obligations will not be addressed in this decision.

“Unused personal leave shall not accumulate from year to year and must be utilized in the year in which leave time is credited to the employee.”

Article 21.1.3 – Add a new subsection as follows:

“Personal leave may be used by employees for any reason subject to the following provisions:

- a. Personal leave may be used only with the prior approval of the employee’s Commanding Officer.
- b. An employee who retires or otherwise separates from employment with the City shall forfeit any and all unused personal leave time.”

5. **Article 27 – Overtime**

Article 27.1 – Delete the present language and replace with the following:

“Overtime shall consist of all official police duty worked in excess of the employees’ regularly scheduled shift, or one hundred seventy-one (171) hours in a twenty-eight (28) day work period, with the exception of “Court Time.”

Article 27.6 – Add a new paragraph as follows:

“At its sole discretion, the employer may require an employee to use accumulated compensatory time.”

6. **Article 29 – Wages**

Article 29.1 – The City proposes the following salary increases:

- A. August 1, 2008 – 2.0%
- B. August 1, 2009 – 2.0%
- C. August 1, 2010 – 2.5%

Article 29.7 – Add additional language as follows:

“At the sole discretion of the City, Officers will be assigned the position of Detective. The Detective designation is an assignment not a promotion. Notwithstanding the above language, personnel assigned to the position of Detective

shall not receive any additional compensation or benefits. if an officer is re-assigned out of the Detective position at the sole discretion of the Chief, which results in a loss of the stipend, this decision shall not be considered a demotion and shall not be subject to the grievance and arbitration procedure."

7. **Article 30 – Longevity**

Article 30.1 – Add additional language as follows:

"Employees hired on or after August 1, 2008 shall receive an additional percentage of longevity increment as follows:

Completed Years	Increase
5 years	2%
10 years	4%
15 years	6%
20 years	8%
24 years	10%

8. **Article 31 – Health and Welfare Benefits**

Article 31.1.1 – Amend as follows:

"The deductible for employees hired on or before July 31, 2008 shall be as follows:

Single coverage	\$300.00
Family coverage	\$450.00

The deductible for employees hired on or after August 1, 2008 shall be as follows:

Single coverage	\$500.00
Family coverage	\$750.00

Article 31.3 – Amend the last sentence as follows:

"The employee co-pay will be \$5.00 for generic, and \$15.00 for name brands, including oral contraceptives."

9. **Article 32 – Legal Defense of Employees**

No Change.

10. **Article 35 – Off-Duty Employment**

No Change.

11. **Article 41 – Term of Contract**

The term of the contract will run from August 1, 2008 through July 31, 2011.

PBA LOCAL 1 & SOA

1. **Wage Increase**

- A. The organizations propose an across-the-board wage increase of five percent (5%) effective each contract year to be effective on July 1 of each year. Increases will be across-the-board at each rank, step and position.
- B. The Associations are proposing a five (5) year contract to commence July 1, 2008 and have a term through June 30, 2013.
- C. Both Associations seek a reduction in the number of Steps on their respective Salary Guides. The PBA is seeking to reduce the Salary Guide by two (2) Steps. The SOA is requesting to reduce the Salary Guide by one (1) Step so that a promoted person would go to the top pay upon promotion.

2. **Article 5 – Police Officer Rights** (page 7) The Associations propose a modification of Paragraph 5.3.2 so as to provide a forty-eight (48) hour delay for any interrogation or interview of a Police Officer following the use of deadly force. This delay shall be effective for Administrative purposes and shall not preclude the Employer from gaining necessary information for emergent law enforcement purposes.

3. **Article 18 – Maternity Leave** (PBA Contract page 36/SOA Contract page 37) - The Associations propose a replacement of the current language with the attached proposed language.

- A. Female Police Officers shall advise the Employer of a pregnancy. The rights of a female Police Officer shall include but not be limited to the following provisions.
 - 1. The female Police Officer shall be permitted to work her normal duties so long as such work is permitted by a doctor's note. The doctor shall be a physician of the female Police Officer's own choosing.
 - 2. In addition to the other provisions of this Article, the female Police Officer shall be permitted to use accumulated sick time, compensatory time off and any other accumulated time benefits which she may have during the period of her pregnancy and the period following childbirth.
 - 3. Upon returning from maternity leave the Officer shall be returned to work without loss of seniority or benefits and shall be returned to the same position as worked prior to utilizing leave.
 - 4. The female Police Officer shall at all times be kept at full benefits and shall be considered as on active duty for all computation purposes.
 - 5. Upon return to active duty status, the female Police Officer shall be placed in the same position which she held before departing for maternity status.
 - B. Both male and female Police Officers shall be permitted such time and such terms and conditions as are provided under the Federal Family Leave Act and the New Jersey Temporary Disability Benefits Law.
- 4. **Article 30 – Longevity Adjustment** (PBA Contract page 50/SOA Contract page 51) - The Associations propose a modification of the Longevity Guide so as to match the previously arbitrated/negotiated Fire Department and Fire Supervisor Contracts of the City of Paterson.
 - 5. **Article 31 – Health and Welfare Benefits**
 - A. Paragraphs 31.3.2.1 (PBA Contract page 43/SOA Contract page 36) - The Associations propose a modification of this contract to provide that whenever an employee retires under a pension as defined by

the New Jersey Police and Fire Pension Laws and said employees are hired before June 1, 2006 who retire on a qualifying pension, their spouse and their dependent children under the age of twenty-three (23) shall be entitled to a continuation of the drug-prescription plan without cost to the retiree.

- B. The Associations both propose additional language be added to this Article, a copy of which is annexed.

31.8 Disputes arising between the parties concerning whether the City has violated the provisions of Section 31.1 of this contract by reducing or diminishing in any way the full coverage of the City Hospital-Medical plan as concerns the provision of benefits for individual employees, retirees and/or members of their families shall, at the Associations request, be addressed in the following manner:

- A. The Association shall bring one or more such disputes to the attention of a person designated for such purpose in the City's Personnel Office within a reasonable period of time after the Association has learned of such dispute(s) and the City's Personnel Office shall promptly investigate the dispute(s) and arrange a meeting with the Association within fifteen (15) business days of its being notified of the dispute(s) in order to discuss the dispute(s) with the Association. If no resolution of a dispute is reached, the Association may submit any such unresolved dispute(s) to arbitration under **Section 6.9** of this contract within fifteen (15) business days of the City's written expression of its final position of the unresolved dispute(s).
- B. At the arbitration hearing(s) scheduled by the Arbitrator selected under this provision, the Arbitrator shall be authorized to address any disputes that have been submitted to the Personnel Office by the Association and which have remained unresolved following the meeting provided for above as of the date of the hearing(s).

- C. If the Association is successful in securing an award in its favor from the Arbitrator selected under the procedures herein, the Arbitrator shall be authorized to award to the Association all or part of its attorney fees and costs, as the Arbitrator shall, in his or her discretion deem appropriate, including the Arbitrator's fees and expenses, involved in the prosecution of the arbitration.
- 6. **Article 32 – Legal Defense of Employees** (PBA Contract page 56/SOA Contract page 57) - The Associations propose an additional provision be added for the City to pay the respective Association on an annual basis One Hundred Fifty-Six Dollars (\$156.00) per member for the purpose of establishing a legal fund for the Associations' members. The number of members in each Association would be fixed at each Association's respective census effective July 1 of each year.
 - 7. **Article 35 – Off Duty Employment** (PBA Contract page 59/SOA Contract page 60) – The Associations propose a modification at paragraph (e) so as to specify the negotiated flat rate and the Employer's Administrative charge.

BACKGROUND

The issues in dispute have been presented within this general overview. The City of Paterson is one (1) of seventeen (17) municipalities within Passaic County and comprises approximately 8.7 square miles. The City is multi-diverse with a reported night time population of approximately one hundred fifty thousand (150,000) and a daytime population of about two hundred thousand (200,000). The Unions presented testimony that the nighttime population well exceeds the reported number and provided examples such as the presence of the Passaic County Community College, an institution that draws a substantial number of nighttime students to the City's campus. The Unions submit that the crime rate,

the calls for service and the understaffing of the department make police work challenging and dangerous.

As of October 1, 2009, the City employed three hundred forty-six (346) rank and file officers whose average salary is \$63,690. Nineteen (19%) percent of the officers are at top step pay of \$80,138. The average seniority in the unit is ten (10) years. The supervisory unit consists of one hundred ten (110) Superior Police Officers whose average salary is \$100,679. The average seniority in the superior officers unit is 19 years. Paterson ranks highest of all the municipalities within the County in violent crimes and non-violent crimes, including murder, rape and robbery. Notwithstanding this, the PBA asserts that the City police officers receive pay that ranks among the lowest in all of Passaic County. According to the Uniform Crime Reports, Paterson ranks among the highest of the fifteen (15) identified urban cities in the State of New Jersey. The City ranks number four (4) in violent crimes, number three (3) in robbery and number three (3) in burglary, to name a few. Non-criminal infractions within the City were also shown to be at high levels. The most recent reported year showed that the Paterson Municipal Court is in receipt of five million nine hundred fifty-nine thousand ninety-nine dollars (\$5,959,099.00) in fines, almost entirely generated by the Police Department. In 2008, the police department received approximately two hundred twenty thousand (220,000) calls for service. This number only includes calls received from residents requesting to dispatch police services.

Notwithstanding the heavy demands for police services, the police officer/citizen ratio in the City is the lowest of the largest New Jersey cities with a ratio of 3.26 per 1,000 citizens. The Unions also point out that the City's police officers have a significantly lower number of years of service than most departments and, therefore, are less expensive to staff. The Union also notes that the City received just over thirty-seven million dollars (\$37,000,000.00) in Federal Government funding for twenty-five (25) new officers and argues that newer, less costly officers are replacing senior officers. According to Chief Wittig, seventy-five (75) additional officers have been requested to join the force because, currently, the Police Department is operating below the minimum number of officers per ordinance. Ordinance requires five hundred nineteen (519) officers and that number is projected to increase to six hundred nineteen (619). Despite the Police Department operating below minimum required levels, Chief Wittig testified that the Police Department has met the demands of service and has exceeded in meeting its obligations.

The City argues that its Final Offer is reasonable and fair when considering the financial insecurity of the City, the productive and efficient administration of the police department, and the comparative wages and benefits of other similarly situated employees throughout the State of New Jersey. The City submits that its Final Offer supports the interests and welfare of the public more than does the PBA's. The City stresses that the State of New Jersey has designated the City as a "distressed city," which was summarized by the City to

mean that the City cannot maintain the necessary level of services to its taxpayers while keeping property taxes at reasonable levels and within the statutorily mandated property tax cap. As a result of this designation, the City received state funding in the amount of thirty million (\$30,000,000.00) in 2008 and twenty-seven million (\$27,000,000.00) in both 2009 and 2010.

In order to receive the state funding, the New Jersey Division of Local Government Services ("LGS") requires the City to enter into a Memorandum of Understanding ("MOU"), wherein the City agrees to hiring, promotion, and salary freezes absent LGS approval, preparation of a plan to reduce employees, monthly revenue and funding reports, a funding freeze for new or expanded programs, and general state oversight. Anthony Zambrano is the Controller for the City and acting finance director. He testified that the State reviews the City's financial statements to determine the City's ability to tax its residents and pay its own bills in order to make adjustments to the aid received by the City.

The City offers statistics showing that overall compensation and benefits are generous. In 2008, the City's rank and file police officer earned a base salary average of \$63,690.00 per year and the average Superior Police Officer earned a base salary average of \$100,679.00 per year. Meanwhile, the average City per resident capita income was fifteen thousand one hundred and forty-two (\$15,142.00) in 2008 and the median household income was thirty-four thousand one hundred twenty-nine dollars (\$34,129.00). According to the U.S. Census,

14.4% of Passaic County residents live below the poverty level. The average rank and file police officer salary was three hundred twenty-one percent (321%) higher than the per capita average and the superior police officer average salary was five hundred sixty-five percent (565%) higher.

The overall compensation of the City's police officers also includes longevity payments, up to thirty-five (35) vacation days, five (5) personal days, unlimited sick leave, seven hundred twenty (720) hours of terminal leave, health benefits with no contribution² and only a small contribution for prescription drugs, and pension enrollment.

The City also argues that its work schedule proposal of eight and a half (8 ½) hour four (4) consecutive work days, followed by two (2) consecutive days off will serve the interests and welfare of the public by reducing overtime payments and absenteeism. Zambrano testified that one million three hundred eighty-seven thousand eight hundred thirty-nine dollars (\$1,387,839.00) was expended in overtime payments in 2008 and one million one hundred sixty-three thousand five hundred twenty-three dollars (\$1,163,523.00) in 2009. According to the testimony of Police Chief James Wittig, the average absenteeism is twenty-five (25) officers per day, much of which is believed to be related to officer fatigue as a result of the current four (4) consecutive work days of eleven and one-quarter

² During the course of the proceeding, P.L. 2010, Ch. 2 was enacted, effective May 21, 2010, and required employees to contribute 1.5% of base salary towards health insurance unless there was a labor agreement in effect at that time.

(11 ¼) hour day schedule. According to Chief Wittig, the change would likely result in less use of sick time and increased police presence on the streets.

Yet, when the City compares the current 4 & 4 work schedule with other police departments, the City states, "This work schedule is a benefit not bestowed on many other officers in the area." According to the City, this work schedule permits officers "...to make a substantial wage, working a second job." Chief Wittig acknowledged in testimony that the Unions support the current 4 & 4 schedule and agreed that changing the schedule could create an unpleasant atmosphere.

The City shows that City police officer salaries exceed other City civilian employees. The highest civilian employee salary in 2010 was a Department of Human Resources Supervisor at seventy-nine thousand two hundred and six (\$79,206.00) while the top salary for a Police Officer in 2008 ranged from eighty thousand one hundred and thirty-eight dollars (\$80,138.00) for a rank and file police officer to one hundred eighteen thousand one hundred and six dollars (\$118,106.00) for a Captain. The Union responds that this valuation should be viewed in light of the fact that it takes significantly longer for Paterson's police officers to reach top step salary in comparison to the rest of the County and even then, the pay compares unfavorably. The City's police officers must climb eleven (11) steps to reach top pay, four (4) years longer than the average of other municipalities according to the PBA. The Union seeks a step reduction whereby

the PBA's salary guide is reduced by two (2) steps and the SOA's is reduced by one (1) step.

The City also compared the Unions' benefits to those of other civilian unions showing the Unions receive up to eighteen to twenty percent (18% - 20%) in longevity payments per year while other civilian unions receive a maximum longevity payment of twelve percent (12%). The City claims that its longevity bonus after twenty-four (24) years is well above that of the other Passaic County Municipalities and pursuant to a chart, well above other urban police departments:

**Big 8 Municipal Comparisons
Rank & File and Superior Officers
Longevity Bonus**

MUNICIPALITY	YEARS/PERCENTAGE OF BASE SALARY
Camden	0-9 years = 0% 10-14 years = 3% 15-19 years = 5% 20 years = 7% 21-23 years = 9% 24+ years = 11%
Elizabeth	5 years = 2% 10 years = 4% 15 years = 6% 20 years = 8% 25+ years = 12%
Jersey City	4-7 years = 2% 8-11 years = 4% 12-15 years = 6% 16-19 years = 8% 20-22 years = 10% 23-24 years = 12% 25-27 years = 14% 28+ years = 16%
Newark	5 years = 4% 10 years = 6% 15 years = 8% 20 years = 10% 25 years = 12%

	30+ years = 14%
Passaic	5 years = 2% 10 years = 4% 15 years = 6% 20 years = 10% 24 years = 12% 30 years = 14%
Trenton	5 years = 2% 10 years = 4% 15 years = 7.5% 20 years = 9% 24 years = 10.5% 29+ years = 11%
Woodbridge	6 years = 2.5% 11 years = 4% 15 years = 5.5% 21 years = 7% 23 years = 9.5%
Paterson (R&F)	5 years = 2% 10 years = 4% 15 years = 6% 20 years = 12% 24 years = 18%
Paterson (SOA)	5 years = 2% 10 years = 4% 15 years = 6% 20 years = 12% 24 years = 20%

The Union rebuts the City's position arguing that since the longevity program is a percentage of base pay, the low base pay more than offsets the perceived value of the longevity program.

The City submits that its Final Proposal will maintain wage parity with the only other City uniformed employees, the firefighters. The City contends that parity, or internal comparability, must be measured in dollar increases and not

percentages.³ Comparisons of police officer and firefighter wages from 2005 through 2008 are as follows:

**Paterson Intra-City Comparisons
Starting Salary (Rank & File) (E147)**

Union	2005	2006	2007	2008	2009
Firefighter	\$26,003	\$27,174	\$28,396	\$29,390	\$30,419
Police R&F	\$26,460	\$27,717	\$29,034	\$30,413	

**Paterson Intra-City Comparisons
Top Salary (Rank & File) (E148)**

Union	2005	2006	2007	2008	2009
Firefighter	\$73,158	\$76,450	\$79,891	\$82,687	\$85,581
Police R&F	\$71,759	\$74,450	\$77,241	\$80,138	

**Paterson Intra-City Comparisons
Top Salary (Rank & File) (E148)**

Union	2005	2006	2007	2008	2009
Police Deputy Chiefs	\$115,862	\$120,207	\$124,714	\$129,391	
Police Captains	\$105,667	\$109,630	\$113,741	\$118,006	
Police Lieutenants	\$94,491	\$98,034	\$101,710	\$105,525	
Police Sergeants	\$85,409	\$88,612	\$91,935	\$95,383	
Fire Deputy Chiefs	\$122,708	\$127,309	\$132,402	\$137,698	\$142,517
Fire Battalion Chief	\$109,676	\$113,789	\$118,341	\$123,074	\$127,381
Fire Captains	\$92,463	\$96,624	\$100,972	\$104,506	\$108,164

The Unions disagree that the City's proposal will maintain internal comparability. The PBA points out that, through an arbitration award, the firefighters received a 3.5% increase for fiscal years 2009 and 2010 and an award that is consistent with the City's proposal of 2.5% in 2008 and 2009 would

³ It is noted that the firefighter figures for 2008 and 2009 reflect the implementation of 3.5% increases effective July 1, 2008 and September 1, 2009 while the police figures reflect January 1, 2008 adjustments for the expired contract and for contract years August 1, 2007 through July 31, 2008.

result in a decrease in the internal comparability of 3%. The Unions also note that, up until recent years, the firefighters' longevity progression was identical to that of the police unions but that the State Department of Treasury, Division of Pensions has required the progression to be reviewed and revised as a prerequisite to falling within appropriate pensionable computation. President Steven Olimpio testified that the existing pension program was audited by the pension board and that the pension board approved the past two (2) contracts but directed a revision. According to Olimpio, if the proper revisions are not made, the pension board may disallow credible salary computation on the longevity benefit. The firefighters' longevity progression was negotiated and arbitrated for the purpose of being in accord with State's requirements and the Union is only requesting that the same resolution achieve in the fire department be awarded herein.

The City prefers to compare its longevity bonus with the other "Big 8" cities, which include Paterson, Camden, Elizabeth, Jersey City, Newark, Passaic, Trenton, and Woodbridge. The City contends that the longevity bonus upon reaching twenty-four (24) years is above average in comparison to the Big 8. Starting salary for rank and file police officers in Paterson in 2008 was thirty thousand four hundred and thirteen dollars (\$30,413.00), which is below the Big 8 average starting salary of thirty-three thousand six hundred ninety-seven dollars (\$33,679.00). However, according to the City, in 2008, Paterson's top salary rank and file police officer earned one hundred twenty-six dollars

(\$126.00) above average, Sergeants earned seven hundred and eleven dollars (\$711.00) above average, Lieutenants earned six hundred and fifty-three dollars (\$653.00) above average and Captains earned one thousand one hundred seventy-five dollars (\$1,175.00) above the Big 8 average.

The Unions focus on the fact that the City's police officers base pay is fifteen thousand one hundred fifty-three dollars (\$15,153.00) below the Passaic County average which, in its view, necessitates an 18.9% increase in one year simply to bring them up to par. The PBA submits the following chart supporting its conclusion:

**Comparison of Top Patrol Officer Pay
Rates (2009) Based on PBA/SOA Exhibits**

	2008 Base at Top Step
Wayne	\$108,629
Clifton	\$95,570
Englewood	\$103,891
Hawthorne	\$93,171
Passaic City	\$84,797
West Milford	\$90,494
Elmwood Park	\$104,776
Bergen Sheriff	\$98,067
Oakland	\$100,600
Bloomington	\$87,192
Glen Rock	\$100,984
Little Falls	\$85,056
Lyndhurst	\$98,698
Wood-Ridge	\$101,319

Closter	\$104,405
Cedar Grove	\$85,056
Bergen County Prosecutor's Office	\$113,104
East Hanover	\$92,981
Fairview	\$89,111
Florham Park	\$89,491
Glen Ridge	\$79,482
Haledon	\$85,986
Haworth	\$88,555
Mahwah	\$108,264
Montvale	\$94,987
Northvale	\$94,835
Paramus	\$114,402
Parsippany	\$85,587
Saddle Brook	\$102,214
Average 2008 Base	\$95,291
Paterson 2008 Patrolman Max	\$80,138
Paterson Compared to Average	(\$15,153) (18.9%)

The City acknowledges that the base salaries are lower than the Passaic County average. However, the City claims that the Big 8 cities provide a better basis for comparison rather than does the County average. To support its view, the City submits the following charts of comparisons that include starting salary, top patrol officer pay and superior officer pay:

Starting Salary – Rank and File

TOWNSHIP	2005	2006	2007	2008
Camden	\$26,500	\$27,030	\$27,571	\$29,108
Elizabeth	\$42,019	\$43,280	\$44,578	\$45,915
Jersey City	\$36,616	\$37,898	\$39,319	\$40,891
Newark	\$27,624	\$28,729	\$29,878	\$31,073

Passaic	\$33,156	\$34,483	\$25,000	\$26,000
Trenton	\$26,203	\$27,186	\$28,205	\$29,192
Woodbridge	\$40,000	\$40,000	\$40,000	\$41,600
Average	\$32,020	\$33,101	\$32,425	\$33,697
Paterson	\$26,460	\$27,717	\$29,034	\$30,413

Top Salary – Rank and File

TOWNSHIP	2005	2006	2007	2008
Camden	\$67,662	\$69,015	\$70,396	\$74,320
Elizabeth	\$73,579	\$75,786	\$78,060	\$80,402
Jersey City	\$73,712	\$76,292	\$82,551	\$85,854
Newark	\$72,026	\$74,907	\$77,903	\$81,019
Passaic	\$75,385	\$78,400	\$81,536	\$84,797
Trenton	\$66,136	\$68,616	\$71,189	\$73,680
Woodbridge	\$79,780	\$82,931	\$86,083	\$89,526
Average	\$71,417	\$73,836	\$76,939	\$80,012
Paterson	\$71,759	\$74,450	\$77,241	\$80,138

Top Salary- Sergeants

TOWNSHIP	2005	2006	2007	2008
Camden	\$78,771	\$81,953	\$86,522	\$89,983
Elizabeth	\$90,402	\$93,872	\$96,688	\$99,589
Jersey City	\$88,188	\$91,275	\$94,698	\$98,249
Newark	\$81,442	\$84,700	\$88,088	\$91,611
Passaic	\$86,070	\$89,513	\$93,094	\$96,817
Trenton	\$78,167	\$81,098	\$84,139	\$87,084
Woodbridge	\$88,555	\$92,053	\$95,551	\$99,373
Average	\$84,514	\$87,781	\$91,254	\$94,672
Paterson	\$85,409	\$88,612	\$91,935	\$95,383

Top Salary - Lieutenants

TOWNSHIP	2005	2006	2007	2008
Camden	\$85,679	\$89,140	\$94,110	\$97,874
Elizabeth	\$98,870	\$103,134	\$106,711	\$109,914
Jersey City	\$97,360	\$100,768	\$104,527	\$108,468

Newark	\$90,036	\$93,637	\$97,383	\$101,278
Passaic	\$94,332	\$98,106	\$102,030	\$106,111
Trenton	\$89,896	\$93,267	\$96,765	\$100,151
Woodbridge	\$98,297	\$102,180	\$106,063	\$110,305
Average	\$93,496	\$97,176	\$101,084	\$104,872
Paterson	\$94,491	\$98,034	\$101,710	\$105,525

The City also submits that its police officers receive other benefits of employment that off set this deficiency. Such benefits include having the highest number of compensable vacation days, an above average number of personal leave days, unlimited sick leave, and a below average contribution towards health insurance.

The Unions, however, note that other police departments receive benefits that are not received by the City's police officers such as other types of paid differentials and benefits, including a nineteen hundred forty-six (1,946) hour work schedule in comparison to the City's two thousand eighty (2,080) hours. The City points out that there are several Passaic County municipalities with a lower starting salary than Paterson and further that, when looking to the top salary comparison, the municipal average includes Wayne whose officers earn well above the average at eighteen thousand dollars (\$18,000.00) more for rank and file officers, twenty-one thousand dollars (\$21,000.00) more for Sergeants. In the City's view, comparisons to Wayne are inappropriate based upon ratable and socio-economic indicators.

The City presented testimony that the City had approximately nine hundred thousand dollars (\$900,000.00) in budget reserves for police officer salary increases for the Fiscal Year 2008 but that, in the Fiscal Year 2009, only approximately two hundred thousand dollars (\$200,000.00) remained in budget reserves. The City argues that, because of the budget reserves, there is little remaining revenue from which to fund police officer salary increases. The City's municipal debt service was ten million nine hundred forty-five thousand thirty-seven dollars (\$10,945,037) in 2008 and is projected to be ten million nine hundred fifty-one thousand five hundred forty dollars (\$10,951,540.00) in 2009.

The Unions point out, for purposes of showing the City's fiscal well-being, that the City's debt load is a mere 0.96% while the statutory limit is 3.5%. Meanwhile, the City's anticipated surplus has grown by 27.7% from 2008 to 2009 with five million four hundred ninety-eight thousand three hundred sixty-five dollars (\$5,498,365.00) in surplus. The Unions also note that there are many outside sources that fund law enforcement operations, such as fine receipts, initiative funds, grants and other programs totaling as much as six million seven hundred forty-five thousand six hundred eleven dollars (\$6,745,611.00), not including the three million seven hundred forty-seven thousand three hundred seventy-five dollars (\$3,747,375.00) the City received from the American Recovery and Reinvestment Act of 2009 and the City's administration of off-duty police officer work. However, according to Zambrano's testimony, the City does not profit from its administration of off-duty police work.

According to the City's calculations, the total cost of the Unions' wage proposal over the Unions' proposed five (5) year contract is one hundred thirty-six million nine hundred six thousand three hundred fifty-nine dollars (\$136,906,359.00) for the PBA and seventy-five million six hundred twenty-three thousand seventy-two dollars (\$75,623,072.00) for the SOA. The City also reminds that the Property Tax Cap Law provides for a maximum allowable increase of four percent (4%).⁴ Operating under this statutory provision, the tax levy garnered ninety million six hundred seventy-two thousand dollars (\$90,672,000.00) in 2008 and was anticipated to garner ninety-seven million fifty-two thousand nine hundred fifty-two dollars (\$97,052,952.00) in 2009 and ninety-eight million seventy-one thousand dollars (\$98,071,000.00) in 2010.

The Unions rebut that the City has been the recipient of many new ratables and boasts one of the lowest tax rates in the County while having the highest property values and one of the highest tax collection rates. According to the Annual Financial Statement for 2008, the City's collection rate was 98.66%. The City, however, states that the tax burden being placed on the City's residents not only comes from sixty-seven percent (67%) of the City's real taxes being collected from residential properties, but also from the County's open spaces taxes, the school levy and the county tax rate increases. The City further points out that it had 2,645 County Board tax appeals in 2008 and 1,987 in 2009 and maintains 1,765 tax exempt parcels of property.

⁴ I note that legislation revised this number to 2% for 2011.

The Unions review of the levy cap calculation shows that ninety-seven million two hundred eighty thousand seven hundred five dollars (\$97,280,705.00) was permitted to be raised in taxes but that the actual amount raised was only ninety-four million two hundred ninety-nine thousand four hundred seventy-nine dollars (\$94,299,479.00). The Union therefore argues that the budget was “under cap” by two million nine hundred eighty-one thousand two hundred twenty-six dollars (\$2,981,226.00). The Union further argues that the City’s actual expenditures for 2009 fell below the appropriations cap by approximately twelve million dollars (\$12,000,000.00).

The City responds that the appropriations cap merely limits the funds that may be spent in a given budget year without any regard for how those expenditures will be funded. According to the City, it has no means of raising the funds to expend even if it wanted to reach the threshold allowable amount under the appropriations cap. The City concludes that the only way to fund the Unions’ final offer would be through the reduction or elimination of services, programs and positions. The City has already implemented layoffs and a paycheck postponement plan, wherein every City employee, except the police officers, agreed to defer receipt of their paycheck for five (5) days. Although police officer layoffs were avoided in 2009, the City projects that awarding the Unions proposals would cause the potential for massive layoffs and would upset the stability and continuity of employment of its police officers.

Other non-economic changes are sought by the Unions. One is a provision adding a forty-eight (48) hour delay before the interrogation of a police officer following the use of deadly force. Olimpio testified that officers involved in a traumatic event need time to “settle in and realize what has occurred” before being interrogated. Olimpio also testified that in 99.9% of cases, the officer involved in the use of deadly force are under severe enough stress to require medical attention. The City responds that the Unions have not carried their burden of establishing the need for this modification, especially in light of Chief Wittig’s testimony that there has never been an issue with the police department’s administrative investigations following the use of deadly force. The City similarly concludes that the Unions did not carry their burden to establish necessity for the addition of language regarding maternity leave since the only testimony in support was by Olimpio who said that the reason for the change was to ensure that the sixty-eight (68) female officers are covered.

DISCUSSION

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

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when

considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).

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

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

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

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

Any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the awarding of any single change can reasonably impact upon the resolution of other issues. Put another way, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be required after assessing the merits of any individual issue within the context of an overall award. As has been recognized on judicial review, judgment and discretion must be exercised when weighing record evidence and applying the statutory criteria. I must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria. N.J.S.A. 34:13A-16d(2).

Duration

The duration of the contract is in dispute. The Unions request a five (5) year contract term beginning on August 1, 2008 and expiring on July 31, 2013 while the City proposes a three (3) year contract term beginning August 1, 2008 and expiring on July 31, 2011. The expired agreement had a five (5) year term and the current agreements with the Firefighters' Association, the Fire Officers' Association, Deputy Fire Chiefs Association and the Battalion Chiefs' Association were also five (5) years. The City's proposal is stated to be directed towards having all of its labor agreements expiring in 2011 and to promote greater parity

among its units, and especially with the firefighters. The PBA notes that the contract expirations have been different in the past, that there is greater stability in the longer term agreement and that there is no objective basis for it to receive a contract that is two (2) years less in duration than the firefighters.

I find that a contract term extending through July 31, 2012 to be the more reasonable contract duration based upon the record before me. An additional year beyond what the City has proposed but one year less than the PBA has proposed will benefit the parties and the public. An immediate return to negotiations, without a brief respite, will not promote the stability and harmony that is the stated purpose of the law. It will also provide a reasonable time period for the parties to engage in cooperative, joint efforts to arrive at the resolution of issues, such as the work schedule and overtime, that the record shows has not benefited from any dialogue whatsoever. As Chief Wittig candidly acknowledged, there was only one phone discussion over the issue of alternative work schedules. Moreover, the statutory change in the tax levy cap going into 2012 has been taken into consideration in my analysis of the salary issue. Accordingly, I award a contract term commencing August 1, 2008 and expiring on July 31, 2012.

Article 18 – Maternity Leave

The PBA has proposed a comprehensive Maternity Leave provision as set forth in its final offer to modify the existing language that is currently set forth in

Article 18. Based upon the testimony in this proceeding (see that of Chief Wittig and Officer Olimpio), no actual grievances or disputes have arisen under the present Maternity Leave provision set forth at Article 18 of the Agreement. Officer Olimpio has raised theoretical issues of significance that concern cumulative sick time, compensatory time, seniority, assignments and similar types of details that could potentially arise. He also noted that the department has up to 68 female officers and that contractual protection is now warranted for that reason. However, he also has acknowledged that the Chief of Police has been understanding in situations involving maternity leave and that the parties have been able to avoid disputes under the existing language contained in Article 18. Given this, and the fact that the current provision contains standards that the parties have met, I do not award the detailed provision proposed by the PBA to supplement or replace the language in Article 18. However, for the purpose of noticing unit members of their statutory rights, I award the language proposed by the PBA as paragraph (B) that would notice all parties of their rights under relevant law consistent with the notice provision that concerns military rights that is set forth in Article 15. Accordingly, I award the following language to be added to Article 18:

Both male and female Police Officers shall be permitted such time and such terms and conditions as are provided under the Federal Family Leave Act and the New Jersey Temporary Disability Benefits Law.

Article 27 – Overtime

The City has proposed two changes to the existing overtime provision set forth in Article 27. They are as follows:

Article 27.1 – Delete the present language and replace with the following:

“Overtime shall consist of all official police duty worked in excess of the employees’ regularly scheduled shift, or one hundred seventy-one (171) hours in a twenty-eight (28) day work period, with the exception of “Court Time.”

Article 27.6 – Add a new paragraph as follows:

“At its sole discretion, the employer may require an employee to use accumulated compensatory time.”

The record evidence with respect to the overtime issue consists mainly of the actual overtime costs incurred and opinions about the causes of the expense. In FY2008, the City expended \$1,387,839 in police department overtime and \$1,163, 523 FY2009. The testimony concerning overtime that does exist was offered by Chief Wittig in the context of the City’s proposal regarding the work schedule change. Indeed, it appears that the overtime proposals are directly tied to an awarding of the City’s work schedule proposal. It is the Chief’s belief that there have been overtime issues connected to the work schedule because officers who work a steady five and two schedule, on an eight (8) hour day, sometimes are needed to cover patrol shifts who work the 4x4 shift. These officers are assigned to the Detective Bureau, the Narcotics Bureau and the Communication Division. He testified that when he has to draw personnel from

these units to supplement patrol, they have to work extra hours thus causing overtime costs to increase. Although the Chief points to the work schedule as the problem, he acknowledged other factors such as the detective bureau being down in staff by a squad, that overall staffing is at a low ebb, that calls for service are heavy due to "continuous demand," it cannot be reasonably concluded that the City's overtime proposals would appreciably diminish current overtime costs. Because I have not awarded the City's work schedule proposal, an instead have awarded a joint committee to address the issues raised by the Chief of Police that concern issues that relate to the work schedule and overtime, I decline to award the City's proposals here and instead defer these and other relevant issues to the joint committee.

Article 31 – Health and Welfare Benefits

Both Parties propose a change to Article 31, which cover Health and Welfare Benefits. The City's proposed change would alter Article 31.1.1, which currently provides for a two hundred dollar (\$200.00) deductible for Single Coverage and a three hundred and twenty-five dollar (\$325.00) deductible for Family Coverage, effective November 1, 1993. The proposal would raise the deductible to three hundred dollars (\$300.00) for Single Coverage and four hundred fifty dollars (\$450.00) for Family Coverage for employees hired on or before July 31, 2008 and for those employees hired on or after August 1, 2008, the deductible would be raised to five hundred dollars (\$500.00) for Single Coverage and seven hundred fifty dollars (\$750.00) for Family Coverage. The

City also proposes to raise the employee co-pay of Article 31.3 from four dollars (\$4.00), including oral contraceptives to five dollars (\$5.00) generic and fifteen dollar (\$15.00) name brand, including oral contraceptives.

The Unions proposal to Article 31.3.2.1 is directed towards employees hired before June 1, 2006 who retire under a pension as defined by the New Jersey Police and Fire Pension Laws and who retire on a qualifying pension. Under its proposal, the employee, his or her spouse or dependent children under the age of twenty-three (23) would be entitled to a continuation of the drug-prescription plan without cost to the retiree. This benefit is currently being provided under the contract's existing terms:

Effective November 1, 1993, the City shall pay the full cost of the Drug Prescription Plan for the individual employee, spouse, and dependent children under the age of twenty-three (23) for employees who retire on a paid pension under the following conditions. This provision shall only apply to employees who retire:

After twenty-five (25) years of continuous service with the city; or

After fifteen (15) years of continuous service with the City at age 62 or older; or

On an accidental disability pension or ordinary disability pension with not less than five (5) years of continuous service with the City.

The Unions also propose an Addendum be added to Article 31 as Article 31.8. Olimpio testified that the proposal is for the purpose of protecting retirees from any action by the City that violates the already existing provisions of Article

31.1 by reducing or diminishing their coverage. The proposed provision of Article 31.8 also establishes a procedure for disputes, including a provision authorizing the Arbitrator to award attorney fees and costs, including the Arbitrator's fees and expenses. According to Olimpio, currently, when a grievance is filed and won pursuant to Article 31.1 on behalf of these retired employees, the City still refuses to pay and the Unions are left to file another grievance to enforce the award. According to Olimpio, the proposed provision of Article 31.8 will force accountability upon the City.

I first address the City's prescription proposal. Currently, Article 31.3 requests a co-payment of \$4.00 for drugs including oral contraceptives. The City's proposal would require co-pays of \$5.00 for generic and \$15.00 for name brands, including oral contraceptives. The proposal is, on its face, reasonable. It adjusts the co-payments to be more within the norm of this benefit as is provided in most other jurisdictions. The public interest will be served by employees making a greater contribution towards the City's increasing costs of providing this benefit. The record reflects that between November 1, 2007 and July 31, 2009, the City spent approximately \$2.295 million in prescription drug payments for members of the police department. The City's proposal would also encourage the use of the lower cost generic drugs by requiring payments based upon tiering the benefit between generic and name brand drugs. Accordingly, this proposal is awarded to be effective as soon as it can be implemented by the City but with no less than fourteen (14) days written notice to the PBA.

The City has also proposed increases in deductibles. Currently, under Article 31.1.1, the deductible is \$200 for single coverage and \$325 for family as established on November 1, 1993. Given this lengthy passage of time without any adjustments in deductibles and the sharp increases in health insurance premiums, as reflected in the increase from \$16,827,324 in 2008 to \$18,525,430 for public safety employees, an increase in deductibles is reasonable and furthers the interests and welfare of the public who bears the bulk of the costs of providing the benefit. I award the proposal with a modification in the amount and effective dates for new employees who would be covered under the second tier of deductible levels. The effective date for new employees shall be as of the date of this award and the deductible for these newly hired employees shall be \$400.00 and \$600.00. Accordingly, Article 31.1.1 shall read as follows:

31.1.1 The deductible for employees employed as of February 16, 2011, will be as follows:

Single Coverage	\$300.00
Family Coverage	\$450.00

The deductible for employees hired on or after February 17, 2011 shall be as follows:

Single Coverage	\$400.00
Family Coverage	\$600.00

The Union's proposal is not substantive. It would provide a procedural mechanism to resolve disputes that arise under the City's Hospital and Medical plan. Testimony reflects that such disputes are commonplace and there has

been difficulty in finalizing any awards that have been issued in favor of the PBA. I award the Union's proposal but with certain modifications. The modifications will provide additional time to the time limits that the PBA has proposed and also provide an even handed remedy to either losing party rather than just the City depending upon the merits of either party's positions as determined by the arbitrator. The Award has also deleted reference to the arbitrator's authority to award attorney's fees. Accordingly, I award the following:

31.8 Disputes arising between the parties concerning whether the City has violated the provisions of Section 31.1 of this contract by reducing or diminishing in any way the full coverage of the City Hospital-Medical plan as concerns the provision of benefits for individual employees, retirees and/or members of their families shall, at the Associations request, be addressed in the following manner:

- A. The Association shall bring one or more such disputes to the attention of a person designated for such purpose in the City's Personnel Office within a reasonable period of time after the Association has learned of such dispute(s) and the City's Personnel Office shall promptly investigate the dispute(s) and arrange a meeting with the Association within thirty (30) business days of its being notified of the dispute(s) in order to discuss the dispute(s) with the Association. If no resolution of a dispute is reached, the Association may submit any such unresolved dispute(s) to arbitration under **Section 6.9** of this contract within thirty (30) business days of the City's written expression of its final position of the unresolved dispute(s). A failure of the City to provide a written expression within the aforementioned time limits shall constitute a denial of the Association's claim.

- B. At the arbitration hearing(s) scheduled by the Arbitrator selected under this provision, the Arbitrator shall be authorized to address any disputes that have been submitted to the Personnel Office by the Association and which have remained unresolved following the meeting provided for above as of the date of the hearing(s). The arbitrator shall be limited to enforcing the terms of the existing plan and shall not have the power to add to, modify or subtract from its terms absent the consent of the parties.
- C. If the Association is successful in securing an award in its favor from the Arbitrator selected under the procedures herein, the Arbitrator shall be authorized to award to the Association all of the Arbitrator's fees and expenses involved in the prosecution of the arbitration. If the Association is unsuccessful in securing an award in its favor, the arbitrator shall be authorized to award to the City all of the Arbitrator's fees and expenses, involved in the prosecution of the arbitration. Disputes over the interpretation of this clause shall be within the sole discretion of the arbitrator.

I do not award the PBA's proposal concerning retiree prescription benefits as contained in the existing Article 31.3.2.1. That provision provides a substantive benefit for employees, effective November 1, 1993, and insufficient justification has been provided in this proceeding to either alter or expand upon the scope of the existing benefit.

Although the City has sought concessions regarding deductibles and prescription co-pays, neither party has made a proposal regarding employee co-payments towards health insurance, I take official notice of an act by the New

Jersey Legislature requiring the payment of 1.5% of base salary towards health insurance effective May 21, 2010. Because employee contributions towards health insurance as well as the health insurance benefits themselves are terms and conditions of employment, any such contributions made by employees should be reflected in the terms of the collective negotiations agreement similar to other contributions, co-payments and deductibles that currently exist in Article 31. Accordingly, I award the following language:

Pursuant to P.L. 2010, c.2., unit employees shall make contributions toward health insurance coverage in the amount of 1.5% of base salary. This level of employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an employee's requirement to make contributions toward the payment of health insurance.

Article 7 – Work Schedule and Conditions

The City has proposed to change the work schedule set forth in Article 7 of the contract. In simple terms, it would modify the existing 4&4 schedule to a 4&2 schedule. The existing schedule was implemented pursuant to a past voluntary agreement between the parties. The 4x4 schedule provides for four days on followed by four days off resulting in one hundred eighty three (183), eleven (11) hour and fifteen (15) minute workdays. It operates with four squads on four overlapping shifts that start at 4:30 a.m., 7:00 a.m., 3:15 p.m. and 8:00 p.m. This schedule applies to the uniformed or patrol division, the traffic division and the emergency response division.

According to Chief Wittig's testimony, the department is efficient, "but it could be more efficient." The major advantage he seeks are a reduction in the amount of overtime that is currently incurred, the greater flexibility he believes he would have under the proposed schedule to deploy police officers on a more targeted basis and his belief that absenteeism would be reduced by avoiding the "fatigue factor" that can promote an absence on the fourth day that a police officer is scheduled to work.

The Chief acknowledged on cross-examination that the department employs excellent police officers who perform a higher quality job, that the force has absorbed increased obligations and workloads, that the workload exceeds that which exists in all other Passaic County towns and that this has been accomplished with staffing levels that are at a low ebb. He acknowledged that the current work schedule has the overwhelming support of the police force and that it provides for overlaps which permits appropriate staffing to meet specific needs if "you have the personnel." On this latter point, he testified that current staffing levels are 494, that the TO calls for 519 and that he hopes to add more personnel under federal funding in an attempt to meet a projected TO of 619.

The Chief further acknowledged that his desire to put extra officers on at particular hours could be met with some changes in start times but that he feared opposition through PBA grievance because his authority to do so is now limited to altering times that are within one hour. He also acknowledged that there has

been very little communication between the City and the PBA on this point and others that deal with scheduling and flexibility. With respect to the proposed 5x2 schedule, he agreed with the premise of PBA questioning that a change to the eight (8) hour day would result in taking paid leave in eight (8) hour blocks instead of eleven (11) causing an additional three (3) days off per year and further, that the reworking of schedules "would cause a nightmare."

I am convinced after reviewing the parties' positions on the work schedule issue that the City and the PBA would benefit by maintaining the existing terms regarding work schedule for the balance of this Agreement and to engage in bilateral discussion, which has heretofore been absent, that could form the basis for necessary clarifications and/or changes to the work schedule and/or overtime going forward into a future agreement. The record reflects that earnest discussions did not occur on these issues and the information and evidence required to determine the merits of any revision to the existing work schedule simply does not exist on this record developed before me. Accordingly, I conclude that the City has not met its burden on this issue. I award the formation of a joint scheduling committee to meet no later than June 1, 2011 for the purposes set forth above. The committee shall meet on at least a sixty (60) day basis thereafter.

Because of the denial of the City's proposal to change the 4&4 work schedule, its proposal to delete the second sentence of Section 7.2 must also be denied.

The City also proposes additional language to Article 7.1.4 of the contract to provide the City with the authority to deny the swap of hours if such a swap would result in the substitute employee being entitled to overtime or compensatory time. It would accomplish this by adding the following language:

"The City can deny the swap of hours if it would result in the substitute employee being entitled to overtime or compensatory time."

There is merit to the City's proposal. The City should reasonably expect that hours of swap be consistent in terms of cost. The ability to swap hours is, in and of itself, a benefit to the officers but should not result in the City being required to pay premium pay to the employee who substitutes for that shift. Accordingly, the City's proposal is awarded.

Article 21 – Personal Leave

The City has proposed to revise Article 21.1 to modify the number of personal hours received by newly hired employees. Its proposal would modify the amount of personal leave time for new employees as follows:

Newly hired employees shall receive three (3) personal hours for the initial month of employment if they begin on the work on the 1st

through 8th day of the calendar month, and 0 hours if they begin on the 9th through 23rd day of the month.

After the initial month of employment and up to the end of the first calendar year, employees shall be credited with three (3) hours for each month of completed service. Thereafter, employees shall be credited with forty (40) hours of personal leave each calendar year.

The PBA urges rejection of this proposal.

I find merit to this proposal. It allows for the accrual and proration of leave time connected to when new employees begin to work and by their months of employment. After the initial year of employment, the amount of personal leave time would be consistent with that of existing employees. The proposal is awarded.

The City has proposed a new section, 21.2 that would prohibit accumulating personal leave from year to year. The proposed language adding Article 21.2 is awarded with the following modification. The accumulation of leave should not be permitted unless an officer has evidence that he or she has been denied the use of requested time and that such denial would cause the loss of the entitlement due to the expiration of the calendar year. Under such circumstances the accumulation of such leave shall be permitted through the next calendar year. The awarded language, effective August 1, 2011 shall state:

Unused personal leave shall not accumulate from year to year and must be utilized in the year in which leave time is credited to the employee unless a request for personal leave has been denied resulting in the loss of the annual entitlement during that calendar

year. Under such circumstances, the accumulation of personal leave that has been denied in one calendar year shall be accumulated through the next calendar year.

The language proposed by the City under Article 21.1.3(a) states that "Personal leave may be used only with the prior approval of the employee's Commanding officer." The current contract states at Article 21.1.1, "Scheduling of Personal Days must be approved by the Commanding Officer contingent upon manpower requirements." Since the issue of Commanding Officer approval is already addressed within the language of the existing contract, it need not be repeated under a new section. Thus, the proposed language is denied. The City has also proposed to require retirees and those separated from employment to forfeit unused personal leave time. The City has not established a basis to remove this accrual benefit for those who retire or separate from employment unless such separation has not been in good standing. Accordingly, I award the following as a new subsection 21.1.3(a):

- (a) An employee who retires or otherwise separates from employment with the City shall forfeit any and all unused personal leave time if such separation has not been in good standing.

Article 30 – Longevity

Both parties have made proposals to modify the existing provision concerning longevity. The record reflects that the primary motivation for the changes sought arises from concerns raised by the Division of Pensions and Benefits raising issues concerning whether certain longevity payments, pursuant

to the existing schedule, should be creditable towards an employee's pension in the Police and Firemen's Retirement System. The existing longevity schedule provides for the following benefit:

Completed Years	Increase
5 years	2%
10 years	4%
15 years	6%
20 years	12%
24 years	18%

The City proposes to add language to Article 30 – Longevity that would significantly reduce the longevity schedule for newer employees. It reads as follows:

“Employees hired on or after August 1, 2008 shall receive an additional percentage of longevity increment as follows:

Completed Years	Increase
5 years	2%
10 years	4%
15 years	6%
20 years	8%
24 years	10%

The PBA proposes a modification of the Longevity Guide so as to match the previously agreed upon language in the FMBA firefighters unit that expired on June 30, 2010.

The parties do not dispute that the longevity adjustment clause of Article 30 should be addressed to help satisfy pension board requirements. The City

has introduced the letter regarding longevity payments from the Division of Pensions into evidence.

It is significant that the FMBA agreement and that of the fire officer units, prior to their 2009 arbitration awards, had similar, if not identical longevity provisions as what presently exists for the police unit. Those Awards⁵ reflect the same concern of the parties to that which has been raised in this proceeding, namely, the desirability of having the New Jersey Division of Pensions continue to credit certain longevity payments for the purpose of calculating pension benefits. In both of the fire department proceedings before separate arbitrators, albeit with different labor counsel, the City voiced agreement to the content of the employee organization's longevity proposals, and only objected to the timing of their implementation. The unions to those proceedings sought a July 1, 2005 implementation date while the City sought July 1, 2009 implementation dates in the FMBA unit and a January 1, 2010 date for the fire officer units to delay the impact of any cost additions that might be created by the schedule change. The City's agreement with the FMBA in that arbitration proceeding was depicted to have been based upon its decision to "honor" a tentative accord on identical terms that had been reached with the FMBA in 2007. The fire officer's award shows similar reasoning.

⁵ See City of Paterson and Paterson Fire Officers' Association, Paterson Deputy Fire Chiefs' Association, and Paterson Battalion Chiefs' Association, Docket Nos. IA-2008-057, IA-2009-007, and IA-2009-006, issued June 21, 2009 and City of Paterson and Paterson Firefighters Association, Docket No. IA-2008-040, issued July 24, 2009.

The main changes that would result if the revised FMBA longevity clause were to be applied to the PBA are as follows. The 12% step at twenty (20) years of service would be reduced to 10%. The 12% step would be reinstituted at a new twenty-one (21) years of service step. A 14% step would be added at a new twenty-two (22) years of service step. A 16% step would be added at a new twenty-three (23) years of service step. The 18% step at twenty-four (24) years of service would remain the same as in the expired contract.

The PBA and SOA have met their burden to justify their longevity proposal. The spreading of the longevity steps at nine 2% increments between five (5) years of service and twenty-four (24) years of service is an attempt to satisfy the concerns expressed to the City by the Division of Pensions. Moreover, their proposal is consistent with the changes that were negotiated and then arbitrated by the City and the fire unions and, as stated previously, had received the consent of the City. The record is bereft of any support as to why the terms of the PBA's longevity benefit should be different as to that which was stipulated to in the fire department proceedings. On this issue, internal comparisons must be given the greatest weight in order to maintain stable labor relations and to promote morale within the public safety department, all of which is in the public interest. This is especially so given the fact that historically, the terms had been the same and the revisions that were voluntarily agreed to were due to a common concern that the new longevity schedule, pursuant to the terms

of the contracts, should endeavor to meet the eligibility requirements for credit under applicable law and rules of the Division of Pensions.

The revised schedule will have cost impact which must be factored into the overall terms of the award in their totality. When doing so, I award an effective date of August 1, 2010, the contract year in which I have not awarded changes to the steps of the salary schedule. A precise cost cannot be determined due to changes in staffing levels during the course of this proceeding. The roster⁶ submitted into evidence reflects that seventy-one (71) officers were at maximum step of twenty-four (24) years whose benefits would not change. Twenty-three (23) officers at the step of twenty-one (21) years would, as in the past, remain at the twelve (12%) percent step of the schedule without additional cost. The roster reflects that there are no officers at the twenty (20) year step who, at the ten (10%) percent step, would otherwise have received two (2%) percent less so there is no cost offsets in 2011 for this step. The costs would arise from the sixteen (16) officers at the twenty-two (22) years of service who, at fourteen (14%) percent, would receive an additional two (2%) percent and the thirteen (13) officers who, at the twenty-three (23) year step who, at sixteen (16%) percent, would receive an additional four (4%) percent. The cost of a new eight (8%) percent step at eighteen (18) years will be offset by the 2% reduction at the twenty (20) year level. At best estimate, there would be approximately thirty-six (36) officers out of a combined 457 on the roster who would receive

⁶ Employer Exhibit #1.

additional longevity. The approximate cost of the proposal in the third year of the agreement calculates to \$97,200 or 0.3%.

Based upon the above, I award a longevity schedule consistent with that contained in the FMBA agreement to be effective August 1, 2010 as follows:

<u>Years of Service</u>	<u>Longevity</u>
Five (5) years of service:	2%
Ten (10) years of service:	4%
Fifteen (15) years of service:	6%
Eighteen (18) years of service:	8%
Twenty (20) years of service:	10%
Twenty-one (21) years of service:	12%
Twenty-two (22) years of service:	14%
Twenty-three (23) years of service:	16%
Twenty-four (24) years of service:	18%

I also award similar language that was consented to in the FMBA proceeding that:

Should the New Jersey Pension Board make any claim the above longevity schedule violates the New Jersey pension law or is not eligible for pension credit under applicable rules, the City will cooperate with the Union in seeking an agreed upon solution.

Given the absence of a second tier of longevity in the fire department units, I do not award the longevity scale for new employees proposed by the City.

Article 5 – Police Officer Rights

The PBA proposes a modification of Paragraph 5.3.2 so as to provide a forty-eight (48) hour delay for any interrogation or interview of a police officer following the use of deadly force. The proposal states that the delay shall be effective for administrative purposes alone and shall not preclude the City from gaining necessary information for emergent law enforcement purposes.

I find that the Unions proposed changes to the existing Police Officer Rights language found in Article 5 was not supported by sufficient evidence that would establish a basis for the proposed changes. The only evidence regarding the need for a forty-eight (48) hour delay for an interrogation or interview of a Police Officer following the use of deadly force was the testimony of Olimpio. He said that "...A lot of times what happens is when you're involved in these traumatic events, you tend to feel a little bit lost, a little bit confused, so by increasing the 48-hour delay, it gives the officer a time to settle in and realize what has occurred and then take the proper steps to be conducted or to be interviewed, interrogated basically." According to Olimpio, the forty-eight (48) hour delay would give the Officer time to understand what had occurred and give the Officer "...time to walk through the incident piece by piece and give a clear interview or interrogation of the incident that occurred without being confused or without being nervous or having anxiety attacks at that point."

Olimpio's testimony cannot be disputed but it cannot be determined that it would generally apply to most such incidents. There was no evidence presented to establish that interviewing a Police Officer within forty-eight (48) hours of the use of deadly force has ever resulted in inaccurate or inadequate information during the administrative investigation or has ever compromised the testimony of a police officer. Chief Wittig testified that there has never been an issue in the administrative investigation following the use of deadly force. There was also no evidence to suggest that the administration is not cognizant and sensitive to the emotional situation of the Police Officer involved in the use of deadly force during its investigation. Accordingly, this proposal is denied.

Article 32 – Legal Defense of Employees

The Associations propose that an additional provision be added to the Agreement that would require the City to pay the respective Association, on an annual basis, One Hundred Fifty-Six Dollars (\$156.00) per member for the purpose of establishing a legal fund for the Associations' members. The number of members in each Association would be fixed at each Association's respective census effective July 1 of each year.

There is an existing provision covering the issue of legal defense. Article 32 already provides for the legal defense of the employees to be provided by the City in accordance with N.J.S.A. 40:A: 14-155. Under this current provision, the City will provide for the legal defense of an employee "... whenever an employee

is a defendant in any action or legal proceeding arising of or incidental to the performance of his duties including false arrest, detention or imprisonment, or malicious prosecution, libel, slander, defamation or violation of rights of privacy, wrongful entry or eviction or other invasion of private occupancy, and invasion of civil rights, and will provide for the payment of compensatory damages assessed against the employee acting in good faith within the scope of their duties.” The record does not show evidence that would suggest that the current provision of Article 32 does not fully and adequately provide for the legal defense of the members. Therefore, the proposed additional language to Article 32 is denied.

Article 35 – Off Duty Employment

The PBA proposes a modification at paragraph (e) so as to specify the negotiated flat rate and the City’s Administrative Fee. Currently, this section states that “Employees so assigned shall be compensated at a rate of pay equal to the greater of one and one half times the employee’s regular rate of pay or a flat rate to be determined through negotiations.” Testimony showed that the intent of this proposal is to provide for clarification. The existing language sets compensation at one and one half times an employee’s regular rate of pay and does not appear to require clarification.

The remaining portion of the proposal is aimed at specifying the City’s Administrative Fee. Testimony on this point was given by Controller and Acting Finance Director Anthony Zambrano. Zambrano offered broad testimony on the

Fee which is presently \$5.00 per hour that includes 6.2% of a construction job's \$60.00 Fee per hour or about \$3.60 of the \$5.00 Fee. He further testified to the administrative and secretarial costs of administering the program and concluded that the City does not make a profit, that his knowledge shows a negative cash flow from which he opined that the Fee should be increased to "make the City whole."

Based upon the record, there is insufficient justification to modify or clarify the current language in Article 35. The proposal is denied.

Article 29 – Wages

The parties' salary proposals reflect sharp disagreement as to how the wage schedules should be modified. The City has proposed salary increases of 2.0% effective August 1, 2008, 2.0% effective August 1, 2009, and 2.5% effective August 1, 2010. The Union has proposed annual increases of 5% effective on July of each year and applied to each rank, step and position extending through June 30, 2013. In addition to the across the board increases, the parties have proposed additional language that impacts upon compensation. The City has proposed that:

"At the sole discretion of the City, Officers will be assigned the position of Detective. The Detective designation is an assignment not a promotion. Notwithstanding the above language, personnel assigned to the position of Detective shall not receive any additional compensation or benefits. if an officer is re-assigned out of the Detective position at the sole discretion of the Chief, which

results in a loss of the stipend, this decision shall not be considered a demotion and shall not be subject to the grievance and arbitration procedure.”

The PBA has proposed a reduction in the number of steps on the rank and file and superior officer salary guides. Specifically, “[t]he PBA is seeking to reduce the Salary Guide by two (2) Steps. The SOA is requesting to reduce the Salary Guide by one (1) Step so that a promoted person would go to the top pay upon promotion.”

I first address the parties’ proposals that supplement their across the board salary increase proposals. After thorough review of the record, I find neither proposal to be supported by sufficient credible evidence that would justify an award of either proposal. The existing salary schedules are based upon an award between the parties issued by this arbitrator on May 25, 2006 (See PERC IA-2004-110 and IA-2004-111). The combining of various wage schedules at that time was justified based upon ameliorating the consequences of the merging of police officers employed by the Paterson Housing Authority with those in the City’s police department. A summary of that rationale need not be set forth here. It is sufficient to say that the number of steps in the present salary schedule was the result of the salary explanation set forth in that proceeding. The PBA now seeks to revisit that schedule and compress the number of steps on that schedule.

A review of the PBA's argument with respect to salary compression reflects that some reasonable compression would be desirable given the length of time that it now takes a new police officer to move through the salary schedule. A comparative review of a police officer at year seven (7) for example, reflects a significantly lower salary than virtually all external comparables for a police officer with that seniority. Officer Olimpio testified that the existing salary schedule negatively impacts upon the continuity and stability of the City's police officers. He testified that:

It takes a long time to get to top salary and a lot of the other departments are at less steps, so it makes it easier for them to retain them. And we fixed it from the last contract to a percentage, a small percentage, but we need to fix that more where we retain our police officers.

We're training them and they're leaving and benefitting other departments where they're getting the experienced officer from Paterson and we're losing them, so we need to somehow fix that problem, get rid of these two steps and more and retain more of our officers.

While there is, in the abstract, evidentiary support for the PBA's proposal as it relates to external comparability and continuity and stability of employment, I am unable to award the step reductions that it seeks in both units. The simple fact is that it would yield substantial costs that would directly and negatively impact on the City's finances. The cost of step reductions would be above and beyond the costs that the parties have calculated for the across the board increases and the PBA's proposal has not taken those costs into consideration. I give more weight to the financial impact criterion and conclude that the additional

costs of this proposal that would extend beyond the overall costs required by the award would not be consistent with the financial impact criterion if this proposal were to be awarded. As pointed out by the City, the elimination of two steps before the top step would result in an additional cost of approximately \$11,000 per officer and for superior officers, an elimination of the first step would result in an additional cost to the City of approximately \$6,000 per officer in that range. During this contract term, such additional costs are not warranted. For the reasons stated, the PBA's proposals with respect to step reduction are denied.

I also reject the City's proposal to add additional language to Article 29.7 regarding Detectives. The existing provision provides additional compensation to Detectives and does not directly address the administrative issues raised by the City. The record does not adequately reflect the justifications that are necessary to strip Detectives of their additional compensation or to provide the contract language sought by the City. For these reasons, the City's proposals in regard to Article 29.7 are denied.

I next turn to the parties proposals concerning the across the board increases. They have, on this issue, submitted voluminous and comprehensive evidence which, while thoroughly reviewed and considered, cannot be fully summarized within the confines of this analysis. The evidence includes, but is not limited to, workload and crime statistics, police officer turnover and the causes for same, budget testimony from Finance Director Anthony Zambrano,

extensive documentary evidence concerning internal and external salary comparisons, arbitration awards between the City and its fire unions, the statutory limitations on increases in appropriations and revenues, the City's demographics and socio-economic profile, the City's official budgets and other budget documents including revenues, fund balances, debt, tax collection rates, tax rates, state aid and funding, financial impact, certain City expenditures including pensions and the general economic climate within the City and beyond.

The entire record of this proceeding on the salary issue must be evaluated in the context of my application of the statutory criteria and the results of this issue within the totality of terms of the Award. As indicated previously, I find all of the criteria to be relevant, but some are entitled to greater weight than others. It must also be understood that rarely is there a line of demarcation that isolates the evidence concerning a single criterion from the other. This is so because there are interrelationships, and often contradictions, between one or more of the criteria. For this reason, it is unusual for a single criterion to control or dispose of a major issue such as salary. By way of example here, President Olimpio's testimony and charts reflect a loss of seventy-five (75) officers for reasons of other than retirement between 2003 and 2008 and that his exit interviews with departing officers show that salary and length of time to get to top step were the major reasons for these separations. He also testified that the hiring and training process is very costly based upon a 22-week course that is offered by the in-

house training arm called the Paterson Police Academy.⁷ Olimpio offered an un rebutted estimate that a 32 member recruiting class would cost the City about \$660,000 in salaries benefits for the trainers and for equipment. The salary proposal of the PBA at 5% annually with step reductions would, more than likely, ameliorate the turnover but reliance upon the continuity and stability criterion, to the exclusion of the comparability or financial impact criteria would not represent a reasonable determination of the salary issue. This and other potential similar examples of conflicting criteria demonstrates that all of the relevant factors must be carefully weighed and balanced by the arbitrator who must exercise reasonable judgment and discretion when doing so. Another complexity is that during a single contract term covering several years may lead to different weight being given to different criteria in different contract years.

In this particular case, the overriding criterion entitled to the greatest weight is the interests and welfare of the public due mainly to the fact that its application directly or indirectly embraces and/or interrelates with many, if not all, of the other individual criteria.

Turning to the specific evidence in the record, the arbitration awards between the City and the Paterson Firefighters Association (Docket No. IA-2008-040, issued July 24, 2009) and between the City and the Paterson Fire Officers' Association, Paterson Deputy Fire Chiefs' Association, and Paterson Battalion Chiefs' Association (Docket Nos. IA-2008-057, IA-2009-007, and IA-2009-006,

⁷ The City provides its own police academy for new recruits.

issued June 21, 2009) must be carefully evaluated for their relevance to this proceeding. All of the five Unions received contracts that were five years in length with wage increases that were effective on the first date of each contract year reflected below:

Contract Year	PFA		PFOA		PDFCA		PBCA	
2005	7/1	3.75%	8/1	3.75%	8/1	3.75%	8/1	3.75%
2006	7/1	4.5%	8/1	4.5%	8/1	4.5%	8/1	4.5%
2007	7/1	4.5%	8/1	4.5%	8/1	4.5%	8/1	4.5%
2008	7/1	3.5%	8/1	3.5%	8/1	3.5%	8/1	3.5%
2009	7/1	3.5%	8/1	3.5%	8/1	3.5%	8/1	3.5%

In each of the above negotiations and arbitration proceedings⁸, the length of the agreements and the wage increases were officially documented to reflect that there were voluntary understandings entered into between the City and each of the four unions.⁹ In the three supervisory bargaining units, the City, during those proceedings, confirmed that it neither opposed nor challenged the wages that had been the subject of tentative agreements. Moreover, the Award between the City and the Paterson Firefighters' Association reflected certain understandings as to the City's own view as to its ability to fund the wage increases that it had agreed to:

The City has stipulated there are no impediments under the statutory criteria governing this proceeding, to my awarding these increases. Transcript at 53. During the hearings, the City also

⁸ The arbitration awards reflect that transcripts of the proceedings were taken.

⁹ Though not officially treated as stipulations pursuant to N.J.S.A. 34:13A-16g(5), the awards clearly and unmistakably reflect that the agreements on duration and wages were treated as such.

represented it was not arguing an inability to pay these increases. Transcript at 54. It emphasized the tentative accord was reached between the Mayor and Association in 2007, before severe economic and financial events occurred in the national and regional economies. The City indicated it is honoring the wage accord set forth in Article 5, even if not legally bound to do so, recognizing it was reached after good faith bargaining.

In light of the foregoing representations and the parties' agreement they be granted, I shall award the agreed upon wage increases. Doing so will achieve a level of overall compensation for City firefighters in line with other comparable bargaining units within the City. The increases also comport with overall compensation paid by comparable communities within the region, to employees performing similar duties. I am convinced the wage increases will maintain a stable workforce, and will assist the City in advancing morale amongst its firefighters, who are routinely called upon to respond to emergencies and high risk situations. The public is not advantaged by a rift amongst its police and fire bargaining units if this unit was awarded substantially different terms of compensation.

The City acknowledges its ability to pay the wage increases being awarded. Even beyond the City's representation, evidence presented at the hearings convinces me the City is able to afford these wage increases without undue strain upon its budget and without violating restrictions set forth in the New Jersey Cap Law. In all, I am persuaded the proposed increases should be granted under the relevant statutory criteria.² These increases shall be paid within a reasonable period of time, not to exceed two (2) months.

² The proposed wage increases were not disputed by the parties, who waived further submission of evidence concerning cost of living, continuity and stability of employment, statutory restrictions imposed on the City and other statutory criteria. Instead, the parties agreed there were no impediments under the statutory criteria to my awarding these increases.

This proceeding does involve a contract of different duration than those in the fire department cited above. But there are two years, 2008¹⁰ and 2009, that do overlap. They are the last two years of the fire contracts and the first two years of the police contracts. By way of comparison, the contract durations and

¹⁰ The actual contract years are, or would be, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 due to the effective dates of all of the agreements being either July 1 or August 1.

wage increases in the fire units and the wage proposals in this proceeding are as follows:

	All Four Fire Unions	City	PBA	SOA
2005	3.75%			
2006	4.5%			
2007	4.5%			
2008	3.5%	2.0%	5%	5%
2009	3.5%	2.0%	5%	5%
2010	Contract expires	2.5%	5%	5%
2011	--	--	5%	5%
2012	--	--	5%	5%

The fire union agreements are relevant to the extent that there is substantial credible evidence that internal comparisons have been given significant weight by all of these parties during salary negotiations in the past and, in fact, according to the arbitration awards, did so when arriving at the 2005-2009 increases. In this proceeding, both parties have recognized the relevance of internal comparability. The application of this subsection of the statutory criteria, N.J.S.A. 34:13A-16(g)(2)(c), is well established as well as its link to the public interest and continuity and stability of employment criteria. See In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008).¹¹ It has been well established that the public interest is not served by unstable labor relations and the undermining of employee morale by disruptions in long standing patterns between and among bargaining units that, as here, share a strong community of interest.

¹¹ See also County of Union v. Union County Corrections Officers, PBA Local 999, PERC No. 2003-33 and PERC No. 2003-87.

The City, in this proceeding, has noted that the prior fire union awards achieved a level of wage parity with the police officers and further, that its proposal to the police unions is intended to seek parity with the firefighters but in wage amounts rather than in the amount of percentage wage increase, because if it were required to apply the identical percentage of wage increase to the police in 2008 and 2009 it would place the top step wage in excess of that in the fire department. Zambrano's testimony on re-direct examination confirmed that the City's view of parity in this proceeding is in the actual dollars or salary received by a police officer rather than parity in the amount of percentage increase.

For the sake of clarity, I return to the City's intra-city comparisons at top salary for the rank and file for the two contract years (2008 and 2009) that overlap between the fire and police departments:

**Paterson Intra-City Comparisons
Top Salary (Rank & File) (E148)**

Union	2008	2009
Firefighter	\$82,687	\$85,581
Police R&F	\$80,138	

One area of clarity that is required here is that the \$82,687 top step for the firefighter in 2008 in the above reflects the 2008 wage increase that was effective on July 1, 2008 for the contract year that extended through June 30, 2009. In contrast, the \$80,138 top step for the police officer, as shown above, reflects the 2007 wage increase that, through arbitration award, had a deferred effective date

of January 1, 2008 but fell within the contract year of August 1, 2007 through July 31, 2008. Thus, the above chart reflects wages for firefighters that have already been set for the contract years 2008 and 2009 while the wages for police officers reflect the 2007 wage increase with contract years 2008 and 2009 to be determined in this proceeding.

The position of the PBA in this proceeding is not consistent with the contract results in the fire department for 2008 and 2009 and it seeks wage increases that are well in excess of producing parity with the fire unions either in terms of dollars or percentages. The PBA's view is that external comparisons with other police departments are more controlling. The evidence on this point is voluminous and I will limit the claimed support for its view by referencing a few of the comparisons it has made between the City of Paterson at top step (\$80,138) with the higher levels of pay received in the City of Passaic (\$84,797), Little Falls (\$85,056), Haledon (\$85,986), and Clifton (\$95,570), as well as percentage increases that it asserts represent the averages for 2008 and 2009 within the County of Passaic and elsewhere.

The PBA's salary position, while well articulated, is clearly not supportable by application of the statutory criteria unless this arbitrator were to sustain its arguments that the evidence on turnover, workload, the crime statistics, the danger of the work, the decrease in staffing, the excellence of the department and its productivity in comparison with police departments elsewhere that do not

match the profile of Paterson, requires raises resulting in comparable pay to those other police departments and the large increases that are necessary to reach those levels. The record tends to support the PBA's profile of the Paterson police department, but the wage requirements it seeks are not sustainable either by internal comparisons or by a broader application of the statutory criteria that compels consideration of the City's finances. The percentage increases sought by the PBA are well in excess of the average increases yielded in the external comparables, in excess of the internal comparisons in the fire department, in excess of the cost of living data and, while perhaps justified by the demonstrated need to promote continuity and stability of employment, the wage levels sought also conflict with the City's overall financial posture. This includes the taxpayer's ability to meet the costs required to fund the new labor agreement at the levels sought by the PBA, the City's obligations not to exceed the appropriation or revenue caps or to cause spending that is so disproportionate to the City's ability to meet its other financial obligations yet remain within its budget and taxing limitations. For these reasons, to the extent that the PBA relies upon law enforcement comparability in other jurisdictions, its salary position must be denied.

I am persuaded, on this record, that a modification of the salary schedule for contract years 2008-2009 and 2009-2010 that yields the dollar amounts that are required to establish top step salary levels that are equivalent to those that were established in the fire department represents the most reasonable

determination of the salary issue for those two contract years. The percentages are somewhat lower than the 3.5% increases received in the fire department but will, as noted by the City, meet the stated objective of the City to keep “the fire settlements and police settlements on par.” This requires higher increases than the City has formally proposed, but an adoption of the City’s salary proposals would defeat the dollar consistency required to maintain the stability in the contractual relationships between the two departments. The dollar amounts to achieve this result translate into percentages of 3.18% and 3.5% for the rank and file police officers for contract years 2008-2009 and 2009-2010. The evidence concerning the City’s finances during these years reflects that the expenditures necessary to support these increases, coupled with a deferred effective date for 2009-10, and can be funded without adverse financial impact within the statutory requirements. I award the 2008-2009 increase effective August 1, 2008 and, for reasons relating to the City’s finances set forth below, the effective date of the 2009-2010 increase shall be deferred six months to February 1, 2010. The respective top step salaries for the two departments for the two contract years shall be aligned as follows:

**Paterson Intra-City Comparisons
Top Salary (Rank & File)**

Union	2008	2009
Firefighter	\$82,687	\$85,581
Police R&F	\$82,687	\$85,581

The result for the SOA shall be consistent but cannot be so clearly developed. This is so because of different rank structures between the two

departments and because relationships between ranks are inconsistent and defy identical treatment in terms of dollar increases as an end product to the salaries for those ranks. For this reason, the percentage increases yielded by the dollar adjustments for the rank and file police officers should also be applied to the SOA. When doing so, the percentage increases (3.18% and 3.5%) are also somewhat less than what was awarded to the fire officers (3.5% and 3.5%) during the 2008 and 2009 contract years, but this difference is not unreasonable and consistency in differentials between the rank and file police officers and the police superior ranks will be maintained.

During the next two contract years 2010 and 2011 (with effective dates of August 1), there are no public safety settlements or awards and the predominant weight during these two contract years must be given to the City's finances which, as the record shows, are clearly not as healthy as they were in the preceding years and the ample evidence in the record reflects a declining economic environment with its adverse consequences on the City. The City's finances, as reflected in Zambrano's testimony and in the budget figures, have declined due to many factors. For this reason, as explained below, I do not award an increase in the salary schedule for the third contract year effective August 1, 2010 and award an increase in the fourth contract year of 2.0% effective August 1, 2011.

Both parties have submitted cost projections of their respective proposals.

I will base my calculations upon the scattergrams of the police department for the rank and file and the superior officers that were submitted into the record by the City. [See C. Exs. #8 & #9]:

RANK AND FILE SCATTERGRAM
AS OF 10/1/09

Step	Salary	Number of Officers	Total per step
Police Officer Detective	\$82,138	65	\$5,338,970
Police Officer - Grade 1	\$80,138	69	\$5,529,522
Patrolman - Grade 1	\$76,622	27	\$2,068,794
Patrolman - Grade 2	\$69,785	23	\$1,605,055
Patrolman - Grade 3	\$63,570	12	\$762,840
Patrolman - Grade 4	\$57,920	0	\$0
Patrolman - Grade 5	\$52,783	36	\$1,900,188
Patrolman - Grade 6	\$48,115	25	\$1,202,875
Patrolman - Grade 7	\$43,869	52	\$2,281,188
Patrolman - Grade 8	\$40,010	0	\$0
Patrolman - Grade 9	\$36,502	36	\$1,314,072
Patrolman - Grade 10	\$33,312	1	\$33,312
Patrolman - Academy	\$30,413	0	\$0
Total # of Officers	346		
Total Base Pay	\$22,036,816		
Average Officer Base Pay	\$63,690		
% of Officers at Top Step	19%		

SUPERIOR OFFICERS SCATTERGRAM
AS OF 10/1/09

Step	Salary	Number of Officers	Total per step
Deputy Police Chief	\$129,391	3	\$388,173
Captains	\$118,006	6	\$708,036
Lieutenants	\$105,525	34	\$3,587,850
Sergeants	\$95,383	67	\$6,390,661
Total # of Officers	110		
Total Base Pay	\$11,074,720		
Average Officer Base Pay	\$100,679		

Based upon the above projections, a 1% increase in base pay for 2008 would be \$331,115. A 3.18% increase would, on an annual basis, yield \$1,059,568. A 1% increase in base pay for 2009 would be \$342,704. A 3.5% increase would, on an annual basis, yield \$1,199,464. Because of the deferral of this increase to February 1, 2010, the costs would be approximately \$600,000 for that contract year with a flow through of the unexpended similar amount into the third contract year commencing August 1, 2010. A status quo in the salary schedule would be maintained through the third contract year ending July 31, 2011. The salary schedule for the fourth contract year that commences August 1, 2011 will be modified by a 2.0% increase effective August 1, 2011 at a projected cost of \$680,000. The precise amount of cost cannot be determined due to the large turnover in the department and retirements which does not allow me to determine a completely accurate gross salary amount for each contract year. There are also cost impacts such as longevity which the City has calculated as costing approximately \$8,000 annually for each one (1%) percent increase in base salary. I have considered the overall cost impact of the increases for all four years in rendering a reasonable determination of the salary issue. In sum, the salary schedules and ranks shall be adjusted over the four years as follows:

August 1, 2008	3.18%
February 1, 2010	3.5%
August 1, 2010	0.0%
August 1, 2011	2.0%

In rendering the salary portion of the Award, I have given the most weight to internal comparisons with the contract terms set in the fire department for 2008 and 2009 and the financial impact of the Award on the City, including its statutory obligations, for all four years of the Agreement. In respect to financial impact, the six month deferral of the salary increase during the second year, the freezing of the schedule in the third year followed by a 2.0% increase in the fourth year reflect overall terms that can be met by the City within its budgetary and lawful requirements. The historical costs of maintaining a competent police force in a high crime, urban environment have been high as reflected in the fact that the overall costs of the City's public safety (police and fire) obligations total approximately \$100,000,000 and approach 50% of its municipal budget. Yet, individual police officer cost, at a \$63,690 average base salary per officer and a \$100,000 average base salary per superior officer ranks at the lower end of base salary costs within Passaic County. The increases awarded, while having financial impact on the City, are below the average increases in salary among law enforcement comparables for each contract year that is subject to this award due to the City's financial circumstances. The increases, on average, exceed the CPI data through the date of the Award but are consistent with the City's observation that its offer achieves this result as well.

In respect to the City's finances, the terms of the award are responsive to the credible testimony of Zambrano and the financial documents in evidence. While acknowledging the City's history of being able to generate surplus,

Zambrano noted that in 2010, the City began to utilize more surplus funds as revenue into the succeeding budget year than had been generated in 2009. It appears that this draw down will continue. In 2009, the City's COMPTRA payment was reduced by the State in the amount of \$1,100,000. Its distressed city aid was reduced from \$30 million in 2008 to \$27 million in 2009. Pension contributions increased by \$4 million for public safety between 2007 and 2008 with additional, more modest increases thereafter. These and other costs show an increasing reliance upon tax revenues to support expenditures and this source will be further limited in FY2011 due to an amended tax levy. Zambrano's testimony reflects that budget construction has been more difficult in light of constraints imposed by the appropriation and tax levy caps in conjunction with losses in state aid. Zambrano further testified that the City was compelled to file a lay-off plan in 2009 with the Department of Personnel. The terms of the Award are intended to provide a reasonable balance between the public's need to maintain a competent, productive police department, the need to maintain stable labor relations and morale within the public safety department at costs that can be funded within the strong budgetary pressure that the City has experienced.

Accordingly, and based upon all of the above, I respectfully submit the following Award:

AWARD

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

2. **Duration (PBA & SOA)**

There shall be a four-year agreement effective August 1, 2008 through July 31, 2012.

3. **Article 7 - Work Schedule and Conditions (PBA & SOA)**

I award the formation of a joint scheduling committee to meet and discuss the feasibility of any proposed change to the existing work schedule including its implementation and administration and any compensation/benefit issues that relate to any work schedule change. The committee's work shall not be limited to a work schedule change and shall encompass issues such as the start and end times of shifts, the implementation of special shifts such as a power shift and overtime costs caused by transfers from one shift to another. The committee shall meet no later than June 1, 2011 for the purposes set forth above. The committee shall meet at least on a sixty (60) day basis thereafter.

The following language shall be added to Section 7.1.4:

The City can deny the swap of hours if it would result in the substitute employee being entitled to overtime or compensatory time.

4. **Article 21 – Personal Leave (PBA & SOA)**

Article 21.1 shall be modified ... as follows:

Newly hired employees shall receive three (3) personal hours for the initial month of employment if they begin on the work on the 1st through 8th day of the calendar month, and 0 hours if they begin on the 9th through 23rd day of the month.

After the initial month of employment and up to the end of the first calendar year, employees shall be credited with three (3) hours for each month of completed service. Thereafter, employees shall be credited with forty (40) hours of personal leave each calendar year.

Section 21.2 shall be modified as follows:

Unused personal leave shall not accumulate from year to year and must be utilized in the year in which leave time is credited to the employee unless a request for personal leave has been denied resulting in the loss of the annual entitlement during that calendar year. Under such circumstances, the accumulation of personal leave that has been denied in one calendar year shall be accumulated through the next calendar year.

A new Section 21.1.3(a) shall be added as follows:

An employee who retires or otherwise separates from employment with the City shall forfeit any and all unused personal leave time if such separation has not been in good standing.

5. **Article 30 – Longevity (PBA & SOA)**

Effective August 1, 2010, the longevity schedule shall be modified to reflect the following:

<u>Years of Service</u>	<u>Longevity</u>
Five (5) years of service:	2%
Ten (10) years of service:	4%
Fifteen (15) years of service:	6%
Eighteen (18) years of service:	8%
Twenty (20) years of service:	10%
Twenty-one (21) years of service:	12%
Twenty-two (22) years of service:	14%
Twenty-three (23) years of service:	16%
Twenty-four (24) years of service:	18%

Should the New Jersey Pension Board make any claim the above longevity schedule violates the New Jersey pension law or is not eligible for pension credit under applicable rules, the City will cooperate with the Union in seeking an agreed upon solution.

6. **Article 31 – Health Insurance (PBA & SOA)**

31.1.1 The deductible for employees employed as of February 16, 2011, will be as follows:

Single Coverage	\$300.00
Family Coverage	\$450.00

The deductible for employees hired on or after February 17, 2011 shall be as follows:

Single Coverage	\$400.00
Family Coverage	\$600.00

Article 31.3 – Amend the last sentence as follows effective as soon as it can be implemented by the City but with no less than fourteen (14) days written notice to the PBA:

“The employee co-pay will be \$5.00 for generic, and \$15.00 for name brands, including oral contraceptives.”

Article 31.8 – Add new section:

31.8 Disputes arising between the parties concerning whether the City has violated the provisions of Section 31.1 of this contract by reducing or diminishing in any way the full coverage of the City Hospital-Medical plan as concerns the provision of benefits for individual employees, retirees and/or members of their families shall, at the Associations request, be addressed in the following manner:

- A. The Association shall bring one or more such disputes to the attention of a person designated for such purpose in the City's Personnel Office within a reasonable period of time after the Association has learned of such dispute(s) and the City's Personnel Office shall promptly investigate the dispute(s) and arrange a meeting with the Association within thirty (30) business days of its being notified of the dispute(s) in order to discuss the dispute(s) with the Association. If no resolution of a dispute is reached, the Association may submit any such unresolved dispute(s) to arbitration under **Section 6.9** of this contract within thirty (30) business days of the City's written expression of its final position of the unresolved dispute(s). A failure of the City to provide a written expression within the aforementioned time limits shall constitute a denial of the Association's claim.

- B. At the arbitration hearing(s) scheduled by the Arbitrator selected under this provision, the Arbitrator shall be authorized to address any disputes that have been submitted to the Personnel Office by the Association and which have remained unresolved following the meeting provided for above as of the date of the hearing(s). The arbitrator shall be limited to enforcing the terms of the existing plan and shall not have the power to add to, modify or subtract from its terms absent the consent of the parties.
- C. If the Association is successful in securing an award in its favor from the Arbitrator selected under the procedures herein, the Arbitrator shall be authorized to award to the Association all of the Arbitrator's fees and expenses involved in the prosecution of the arbitration. If the Association is unsuccessful in securing an award in its favor, the arbitrator shall be authorized to award to the City all of the Arbitrator's fees and expenses, involved in the prosecution of the arbitration. Disputes over the interpretation of this clause shall be within the sole discretion of the arbitrator.

Article 31 – Add new language:

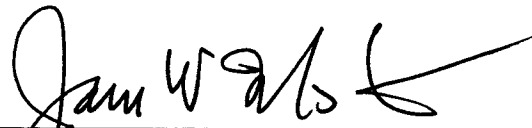
Pursuant to P.L. 2010, c.2., unit employees shall make contributions toward health insurance coverage in the amount of 1.5% of base salary. This level of employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an employee's requirement to make contributions toward the payment of health insurance.

7. **Article 29 – Wages (PBA & SOA)**

The salary schedules at each step and rank shall, retroactive to their effective dates, be modified as follows:

August 1, 2008	3.18%
February 1, 2010	3.5%
August 1, 2010	0.0%
August 1, 2011	2.0%

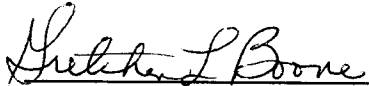
Dated: February 17, 2011
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 17th day of February, 2011, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2013