

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between :

TOWNSHIP OF FAIRFIELD
"the Township or Employer"

and

WEST ESSEX PBA LOCAL 81
"the PBA or Union"

:
:
: **INTEREST ARBITRATION**
: **DECISION**
: **AND**
: **AWARD**

: Docket No: IA-2010-090
:

Before: Robert M. Glasson, Arbitrator

APPEARANCES

FOR THE TOWNSHIP:

Of Counsel and on the Brief:
Matthew J. Giacobbe, Esq.
Ronald Kavanagh, Esq.
Scarinci & Hollenbeck

On the Brief:
Christina Michelson, Esq.

FOR THE PBA/SOA:

Of Counsel and on the Brief:
David J. DeFillippo, Esq.
Klatsky, Sciarrabone & DeFillippo

Procedural History

The Township of Fairfield (the “Township”) and PBA Local 81 (the “PBA”) are parties to a collective bargaining agreements (the “CBA”) which expired on December 31, 2008. (J-4). On January 8, 2010, the Township and the PBA executed an “Addendum” to the CBA. (J-5). The Addendum provides that “. . . the parties agree that this addendum extends the current contract through December 31, 2011 and the only remaining issue between the parties are salaries are to be negotiated on a year to year basis for the years 2009, 2010 and 2011.” The Addendum includes agreements on the work schedule; pension and insurance; vacation, holiday and terminal leave. The Addendum extends the CBA through December 31, 2011 and provides the following language regarding the scope of negotiations for 2009, 2010 and 2011:

8. The employer agrees to seek no further economic concessions from PBA Local 81 during the current contract negotiations and removes all previously discussed economic demands from these negotiations.
9. PBA Local 81 agrees to not seek any further economic demands other than the negotiation of a salary increase for its members for the years 2009, 2010 and 2011 and removes all previously discussed economic demands from these negotiations. (J-5 at 1).

Following the execution of the Addendum, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA filed a petition with the New Jersey Public Employment Relations Commission (“PERC”) on June 14, 2010, requesting the initiation of compulsory interest arbitration. (J-1). The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on July 20, 2010, from its Special Panel of Interest Arbitrators. (J-3).

I conducted several mediation sessions which proved unsuccessful. Formal interest arbitration proceedings were invoked and a hearing was conducted on April 18, 2011, when the parties presented documentary evidence and testimony in support of their positions. At the hearing, I granted the parties' request to supplement the record with financial certifications. Both parties filed financial certifications and post-hearing briefs and the record was closed on September 23, 2011.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension. The parties agreed to extend the time limits for the issuance of the award to December 28, 2011.

The parties did not agree on an alternate terminal procedure. Accordingly, the terminal procedure is conventional arbitration. I am required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria in subsection g. of this section."

Statutory Criteria

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each factor.

(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 condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 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:4-45.1 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 municipality, the arbitrator or panel of arbitrators shall take into account to the extent the 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 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 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)

PBA's Last Offer

1. **Term of Agreement:** January 1, 2009 to December 31, 2011.

2. **Salary:**

The PBA proposes an across-the-board salary increase of 4% effective January 1, 2009; 3.75% effective January 1, 2010; and 3.5% effective January 1, 2011. The salary increases shall be applied to all steps and ranks in the PBA bargaining unit and shall also be applicable to all officers employed after December 31, 2008 regardless of whether said officer is still employed as of the date of the issuance of the Award in this matter.

Township's Last Offer

1. **Term of Agreement:** January 1, 2009 to December 31, 2011.

2 **Article 3 - Salaries:**

(a) All officers shall be paid their yearly salary through twenty-four (24) payrolls per year on the 15th and 30th of each month.

(b) Add seven steps to the salary guides and equalize the steps.

- | | | | |
|-----|-------------------|------|------|
| (c) | Salary increases: | 2009 | 0.0% |
| | | 2010 | 0.0% |
| | | 2011 | 0.0% |
- (d) All salary guide steps should be inclusive in determining any increases.
- (e) Eliminate longevity for all new hires.
- (f) Cap the longevity at the existing rate for all current employees.

PARTIES' POSITIONS

PBA POSITION

The following are the PBA's arguments and contentions in support of the statutory criteria:

Interests and Welfare of the Public

N.J.S.A. 34:13A-16(g)(1) requires the Arbitrator to consider the interest and welfare of the public. In order to properly analyze this factor, the Arbitrator must be aware of just who constitutes the "public" in Fairfield Township.

The PBA describes Fairfield Township as a growing and vibrant community. Fairfield is located in the far northwestern corner of Essex County and has a population of approximately 7,000. The Township is bisected by Interstate 80 and Route 46. Moreover, the Township's land spans 10.5 square miles. According to its website, Fairfield "has a wide variety of parks from small neighborhood parks to large multi-use parks" which were recently upgraded.

The PBA contends that the Township's residents are fairly affluent which is demonstrated by the Township's median household income of \$96,818 which is well above the New Jersey average of \$68,342. Nearly 35% of its residents possess at least a Bachelor's Degree. Moreover, typical of its family-oriented nature, more than 65% of its residents are presently married. (C-1 & C-3).

The PBA points out that Essex County attained an A-1 positive bond rating in 2010. Moreover, the Township is adjacent to Livingston, South Orange, Millburn, North Caldwell and Essex Fells – some of the wealthiest towns in America. (D-1 & D-6).

Fairfield residents are educated, affluent and enjoy rising property values – all of which contribute to its character as a desirable family-oriented community. Respectfully, in order to maintain its status as one of the best places to live in Essex County, it is imperative that Fairfield continue to be able to not only attract but also retain qualified police officers of the highest professionalism and confidence. In order to do this, these officers must be fairly compensated at levels which are comparable to other municipal law enforcement officers in Essex County as well as throughout the state of New Jersey as a whole.

Increased Property Values

The PBA submits that Fairfield is an affluent, family-oriented community which is shown by the large increases in the value of real estate in the Township. In Exhibit E, the PBA traced the average residential sales price for each and every Essex County municipality between 1999 and 2009. The following excerpt from this data illustrates the fact that Fairfield residences are not only valued far above the County average but have soared in recent years:

<u>Year</u>	<u>Fairfield</u>	<u>County</u>	<u>Fairfield's Rank in County</u>
2009	\$519,400	\$480,486	8
2004	\$453,859	\$327,378	6
1999	\$274,893	\$213,934	7

The average residential sales price in Fairfield rose from \$274,893 in 1999 to \$519,400 in 2009 – an increase of 89% . (E-1).

The PBA submits that a Fairfield Township Police officer has a very dangerous and demanding job. Although the Arbitrator is required to compare the salary and fringe benefits of Township Police Officers with other wage earners in both the public and private sector, it must be emphasized that law enforcement is one of the most dangerous and stressful occupations in America. These officers must be properly compensated in order to ensure that the Township will continue to attract and retain high caliber police officers to safeguard the residents as well as businesses in Hanover.

Despite its affluent and family-oriented character, Township Police Officers have responded to and investigated crimes which are as varied in nature as they are numerous. For example, in 2009, Fairfield Police Officers were required to respond to and otherwise investigate such violent crimes as murder, rape, robbery, aggravated assault and domestic violence. The Township's crime rate per 1,000 residents in 2009 was 36.5 — only three other Essex County municipalities had a higher crime rate in 2009: Irvington (60.6); Newark (44.3); and Orange (43.9). (H-22 & 23). This data is even more significant when it is noted that Essex County not only had the most arrests (47,493) in 2009 of any county in New Jersey but also its 2009 crime rate of 61.6 constituted the 7th highest among all New Jersey counties that same year. (H-10).

As detailed above, Fairfield Township Police Officers are extremely busy as well as effective in combating crime. However, the highly volatile nature of law enforcement in New Jersey was underscored by the fact that four officers statewide lost their lives while on the job between July and September 2008 alone. (G-12 to G-19).

Even these grim numbers do not tell the full story. Each year police officers are assaulted in the performance of their duties at an astonishing rate. The 2008 Uniform Crime Report revealed that 2,336 municipal police officers were assaulted in 2008. Incredibly, this

number actually represented a “decrease of 10 percent when compared to 2007.” Thus, despite this “decrease”, one out of every ten municipal police officers was assaulted in 2008. (H-41).

2009 proved to be just as dangerous for New Jersey’s municipal police officers. Once again, one out of every 10 municipal police officers (or a total of 2,156) was assaulted in the line of duty that year. (H-27). The PBA further proved that of the 2,156 municipal police officers assaulted in 2009 – 254 worked in Essex County. Indeed, a disturbing 8.9 out of every 100 Essex County municipal police officers were assaulted in 2009. (H-30).

The dangers of serving as a police officer were brought home to the members of the PBA in late January of 2010. On the evening of January 30, 2010, Fairfield Police Officer Gerald Veneziano, a three-year veteran, was en route to police headquarters to begin his 7:00 p.m. shift. Officer Veneziano was inexplicably shot several times by an assailant less than one block away from police headquarters. Through the quick action of his fellow police officers, who found Officer Veneziano lying outside of his vehicle moments after the gunfire, the officer was rushed to the hospital and, thankfully, survived. (G-8).

Separate and apart from the dangers of police work, are the demands of the job which result in an officer’s enhanced risk for heart disease and other health problems – all of which serve to reduce his/her life expectancy. The impact of rotating shift work – and its nexus to heart disease – was detailed by the Associated Press. (I-36). This factor obviously contributes to the fact that while the life expectancy in the United States is 73 years, “policemen in the US have a life expectancy of 53-66, depending upon which research one decides to embrace.” (I-41).

Moreover, “heart disease is the single greatest cause of early retirement and the second greatest cause of limited duty assignments” for police officers. (I-48). Lastly, police

officers, unfortunately, have a significantly higher risk of suicide and divorce. Indeed, the “divorce rate” is a whopping 80% among law enforcement marriages. (I-52).

Despite all the risks, dangers and personal sacrifices, Fairfield police officers, as detailed above, have been extremely effective in combating crime in the Township. Through the efforts of the Police Department, the Township has maintained its family oriented character and continues to enjoy rising property values.

Accordingly, the PBA asserts that Fairfield Police Officers have an extremely busy and dangerous job and deserve to be properly and fairly compensated.

Lawful Authority of the Employer

N.J.S.A. 34:13A-16(g)(1), (5) and (9), requires an interest arbitrator to analyze the “lawful authority of the employer” in rendering an award. According to the PBA, this analysis focuses on whether the PBA’s economic proposals will create any “cap” difficulties for the Township, specifically the “spending” cap as well as the “tax levy” cap.

The PBA submits that it proved through the submission of a detailed report of financial consultant, Joseph Petrucelli, CPA, FCPA, as well as other exhibits, that its proposals will not present any spending cap nor tax levy cap problem for the Township. Further, the union has demonstrated that the Township possesses the financial wherewithal to easily fund the wage increases contained in its Final Offer.

The PBA maintains that the Township’s fine financial shape is easily illustrated by its ability to not only regenerate millions of dollars in surplus each year but also collect more tax revenue each year than initially budgeted; spend less in police salary and wages than budgeted (creating reserves); reap miscellaneous revenues not anticipated annually; collect more revenue than initially budgeted and/or spend less than initially budgeted for appropriations each year. Moreover, as Petrucelli demonstrated, neither the tax levy cap nor

the spending cap poses any barrier to providing fair and reasonable wage increases to the hard-working Fairfield Police Officers. The PBA offered the following to illustrate that there is no “cap” problem in the Township:

Spending Cap

The Township’s 2010 budget utilized the full 3.5% COLA rate ordinance to maximize the allowable spending cap limit of \$14,769,973. However, the Township limited its appropriations to just \$12,638,998 – leaving \$2,130,975 of available spending in their cap bank for future years spending. “This indicates that the Township does not have a tax levy cap nor a spending cap limitation issue.” (Petrucelli Report at 23).

The 2011 revisions to the levy cap “allows for health care and pension increases above 2% to be excluded from the” new levy cap.

Tax Levy Cap

The max amount to be raised by taxation in 2010 was calculated to be \$12,114,947. However, the Township elected to utilize only \$11,990,634 to be raised by taxation for municipal purposes – thus “foregoing \$124,313...of available tax levy.” This additional sum “could have been used to reduce the anticipated surplus used in the budget or fund the requested PBA’s salaries and wages increase.” (Petrucelli Report at 22).

Petrucelli also emphasized the Township’s long-standing ability to regenerate nearly a million dollars in surplus on an annual basis. This is illustrated below:

2008 Surplus Regeneration

December 31, 2007 fund balance	\$2,357,969
January 1, 2008 fund balance	\$2,357,969
- \$ utilized in 2008 budget	<u>-\$2,000,000</u>
\$ surplus left over	\$ 357,000
December 31, 2008 fund balance	\$1,457,010
- surplus left over 1/1/08	<u>-\$ 357,000</u>
\$ surplus regenerated in 2008	\$1,000,010

2009 Surplus Regeneration

December 31, 2008 fund balance	\$1,457,010
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January 1, 2009 fund balance	\$1,457,010
- \$ utilized in 2009 budget	<u>- \$1,166,277</u>
\$ surplus left over	\$ 290,733
December 31, 2009 fund balance	\$1,050,579
- surplus left over 1/1/09	<u>- \$ 290,733</u>
\$ surplus regenerated in 2009	\$759,846

2010 Surplus Regeneration

December 31, 2009 fund balance	\$1,050,579
January 1, 2010 fund balance	\$1,050,579
- \$ utilized in 2010 budget	<u>- \$ 800,000</u>
\$ surplus left over	\$ 250,579
December 31, 2010 fund balance	\$1,725,903
- surplus left over 1/1/10	<u>- \$ 250,579</u>
\$ surplus regenerated in 2010	\$1,475,324

Accordingly, in 2008, 2009 and 2010, Fairfield regenerated more than \$3.3 million in surplus, an annual average of \$1,111,726. (Petrucelli Report at 13). The ability to regenerate surplus on an annual basis is evidence that the Township is a financially secure municipality. Petrucelli further showed that the Township has increased its revenue raised by taxation by 57.12% between 2004 and 2010. (Petrucelli Report at 5).

Petrucelli showed that Fairfield regularly spends less on police salary and wages than it initially budgets to spend. The amount left over remains in a reserve account for up to one year and then lapses into surplus. For example, the Township reserved \$154,110 in police salary and wages in 2009 – coupled with another \$101,623 in “other” police expenses in 2009. Thus, for calendar year 2009, Fairfield spent \$255,734 less than it budgeted to spend for police salaries, wages and other expenses. (Petrucelli Report at 2).

Further, Petrucelli’s report shows that the Township has budgeted fewer monies for police salaries and wages than it actually spent the year before for several years. For example, in 2009, the Township spent just \$4,067,889 in police salary and wages and reserved

\$154,110. For 2010, the Township budgeted to spend \$3,939,000 for police salary and wages. In 2010, the Township actually spent \$4,055,085 in police salary and wages and \$66,914 was reserved. Yet, in the 2011 budget, the Township only set aside \$3,823,000 for police salary and wages – or 5.7% less over 2010’s spending. (Petrucelli Report at 2).

While budgeted police salary and wages decreased by 5.72% in 2011, Petrucelli emphasized that “all other 2011 budgeted Township salaries and wages have increased by 7.60% over the actual amounts paid in 2010”. (Petrucelli Report at 3).

Petrucelli further demonstrated that the cost of owning a home in Fairfield between 1998 and 2009 has greatly increased. According to his expert calculations, a police officer needs to earn \$99,621 in 2009 to qualify for a mortgage on the same house in which he needed to earn \$61,806 in 1998. (Petrucelli Report at 19). Accordingly, Fairfield police officers need to receive a fair wage increase in order to keep pace with the rising cost to continue to live within the Township.

The PBA submits that the most telling and significant data contained in Petrucelli’s report is the fact that it costs each household in Fairfield only \$60.90 a month (or \$2.03 per day) for “round the clock, 365 days a year coverage for police services” in Fairfield. (Petrucelli Report at 12).

Every year, Petrucelli’s report explains, Fairfield collects more revenue than initially budgeted to collect and/or spends less than originally budgeted to spend – and not by a narrow margin, but by more than a million dollars. For example, the Township’s “excess results from operations” in 2010 totaled \$1,475,323. This means that the Township collected more revenue than it initially budgeted to collect and/or spend by \$1.5 million. Although municipal budgets – in principle – are supposed to “balance” (i.e., appropriations equaling expenditures), Fairfield’s excess results in 2010 “represent 8.54% . . . less spending than

budgeted and unbudgeted revenues. This would indicate the budget performed well.” (Petrucelli Report at 17).

The PBA points out that the Township’s “cash balances” (i.e., cash on hand) routinely exceed \$1 million each year. In fact, as of December 31, 2010, the Township’s cash balance was \$1,439,812 – the highest amount in the last three years.

Based on the above data, the PBA asserts that Fairfield has more than sufficient financial reserves to fund the PBA’s modest salary proposals. In short, Petrucelli’s report proves that Fairfield is in fine financial shape and, further, that the arbitrator is not prohibited by either the “spending” cap or the “tax levy” cap in awarding the fair and reasonable wage increases advanced by the PBA in this matter.

Cost of Living

The PBA maintains that Fairfield police officers must be afforded adequate pay raises in order to keep pace with the rising cost of living in New Jersey as well as the salary increases being extended to public and private sector employees – including within the confines of the Township. By providing Fairfield police officers fair and competitive wages, the Township will not only be able to continue to attract but, more important, retain qualified law enforcement officers. In doing so, the Township will reap the double benefit of maintaining not only an experienced but highly efficient and competent police department capable of serving all of the needs of its residents and business owners.

Comparisons

N.J.S.A. 34:13A-16(g)(2) requires a comparison of wages, salaries, hours and conditions of employment for employees in both the public and private sectors.

In January 2010, PERC issued its Biennial Report on the Police and Fire Public Interest Arbitration Reform Act. The PERC Report includes a summary of the salary

increases resulting from both interest arbitration awards and voluntary settlements. Over the last decade, voluntary settlements have run slightly higher than those set forth in interest arbitration awards – both, however, hovering around an annual average of approximately 4.0%. This is illustrated by the following chart:

<u>Year</u>	<u>Average % Awarded</u>	<u>Average % Settlements</u>
2009	3.75%	3.60%
2008	3.73%	3.92%
2007	3.77%	3.97%
2006	3.95%	4.09%
2005	3.96%	3.94%
2004	4.05%	3.91%
2003	3.82%	4.01%
2002	3.83%	4.05%
2001	3.75%	3.91%

As illustrated above, the average salary increase in all Awards between 2001 and 2009 was 3.84%. The average salary increase in all voluntary settlements during the same period was 3.93%.

PERC's Biennial Report also analyzed salary increases for those in private industry. In 2007, the PBA proved that wages in the "total private sector" increased by 4.3%. Those employees in the construction (4.6%); manufacturing (6.9%); information (5.1%); finance/insurance (6.4%); real estate-rental-leasing (4.5%); professional/ technical services (5.1%) and management of companies/enterprises (6.8%) all earned salary increases above the 4.3% average. Federal government employees in New Jersey enjoyed salary increases of 5.2% in 2007. While employees of local government earned salary increases of 3.5% in 2007, state government employees enjoyed wage increases of 5.0%. (K-36 & K-37).

Other Township Employees

The PBA points out that the Township provided a \$30,000 salary increase, retroactive to January 1, 2009, to its municipal clerk. (H-1 & H-2). The PBA further showed that the Township provided generous salary increases to the Municipal Administrator. The Administrator's 2007 salary was \$133,565. He was provided with a 4% annual increase for the years 2008 and 2009. (Q-3). When comparing the Administrator's salary of \$138,907 in 2008 with those of the Administrators employed by surrounding municipalities, the PBA showed that only Montville and Cedar Grove compensated their Administrators more than Fairfield. (Q-5).

Private Sector Comparisons

The PBA showed that in 2007 Essex County private sector wages increased by 3.8%. In 2006, the average Essex County private wage earner brought home a salary of \$53,842. In 2007, this amount rose to \$55,879 – or 3.8%. (K-37).

The PBA demonstrated that fair and appropriate salary increases continued in 2008 as total private sector wages climbed another 2.5%. Those employees in utilities, construction, information, administrative/waste service, healthcare/social assistance and art/entertainment/recreation all earned raises above the 2.5% average. Significantly, state government employees in New Jersey earned a 5.8% wage increase in 2008. The PBA submits that local governments in New Jersey received a 3.4% increase in wages in 2008. (K-26).

Essex County Comparisons

N.J.S.A. 34:13A-16(g)(2)(a) mandates that the Arbitrator conduct a comparison of salaries with other employees “in public employment in the same or similar comparable jurisdiction” and (c) with other employees “in public and private employment in general.” Therefore, a comparison of Fairfield Police Officers with other law enforcement officers in Essex County is extremely relevant to this analysis.

The PBA acknowledged that Fairfield police officers are among the better paid in Essex County. The Fairfield officers have earned this status due to their excellent performance in providing for the safety and welfare of the public – while at the same time ensuring that the Township maintains its family-oriented, business-friendly character. Moreover, the Township has also benefitted by this fact as there has been very little turnover within the Fairfield Police Department. Indeed, officers tend to spend their entire career with the Township. This phenomenon has resulted in a Police Department which is highly experienced, well trained and extremely efficient.

The PBA submits that the Township’s three-year salary freeze, if awarded, will cause Fairfield police officers to drop considerably in comparison with their law enforcement brethren in Essex County. As a result, officers would no longer have an incentive to remain with the Fairfield Police Department for their entire careers but, instead, would likely opt for “greener pastures” after a few years on the job. In short, if the Township’s proposal is awarded, the Department would become a “stepping stone” in an officer’s career rather than a benchmark.

Moreover, Fairfield would likely be unable to attract any experienced, trained officers from other departments to switch over and immediately enhance the training, experience and efficiency of its own Department. The end result for Fairfield would be increased turnover which, in turn, would cause its training expenses to sky rocket as newer officers would have to be hired and trained.

In sharp contrast, it is respectfully submitted that the PBA's salary proposals are much more reasonable and, in the long run, more beneficial to the residents of the Township.

In 2007, Fairfield police officers received a 4% salary increase. While the Fairfield police officer's 2007 base salary of \$81,661 placed it in the top five in the County, it must be emphasized that their 4% raise was below the 4.40% County average. (L-7).

In 2008, Fairfield police officers received another 4% raise – providing the top paid Fairfield Patrolman with a base salary of \$84,927. (L-8). Once again, the 4% salary increase provided to Fairfield police officers was below the County average of 4.35%.

In 2009, the average Essex County top Patrolman received a wage increase of 3.63%. (L-9). The PBA proposes a slightly higher wage increase – 4% for 2009. If awarded, the Fairfield top Patrolman would earn a base salary in 2009 of \$88,324. The Fairfield police officers' proposed 2009 salary would maintain its place within the top five in the County. On the other hand, the Township's 0.0% salary increase for 2009 would place the Fairfield 10-year veteran's salary below the 2009 County average of \$84,972. (L-3).

For 2010, the PBA proposes a base salary increase of 3.75% while the County, once again, offers 0.0%. If awarded, the County's proposal would fall far below the Essex County average of 3.16% for 2010. Moreover, the 0.0% wage increase would make the proposed 2010 base salary of \$84,927, the 4th lowest in the County. (L-4).

The PBA submits that its 2010 salary proposal is in line with the 3.16% County in 2010. (L-10). Moreover, the proposed salary of \$91,636 would only be slightly above the 2010 County average of \$89,183. (L-4).

In 2011, the PBA showed that the average Essex County top-step Police Officer received a 3.41% average salary increase. The average Essex County top-step base salary in 2011 is \$91,771. Under the Township's salary proposal, a top-step Police Officer would continue to earn – for the third straight year – a base salary of just \$84,927 – or nearly \$7,000 below the Essex County average. Under the Township's salary proposal, a top-step Patrol Officer would earn the lowest base salary in Essex County in 2011 – trailing the next lowest – Newark (\$87,248) – by nearly \$3,000. (L-5).

The PBA submits that its proposed 3.5% salary increase is consistent with the Essex County average of 3.41%. Further, the PBA's salary proposal would result in a base salary for a top paid Fairfield officer of \$94,843. Such a salary would only be slightly above the Essex County average and would place the Fairfield officers in the top half of Essex County municipal police officers for 2011. (L-5).

According to the PBA, the same pattern will hold true when the proposed salary increases advanced by the Township and the PBA are applied to the Fairfield Police Sergeants, Lieutenants and Captains.

In conclusion, the PBA asserts that the data convincingly demonstrates that there is no justification for an Award of the Township's salary proposals. To the contrary, the PBA's proposals are fair, reasonable and in line with that provided to other Essex County law enforcement officers. The PBA submits that an Award of the Township's wage proposals would have a dramatic and adverse impact on the Fairfield Police Department's future as

officers would no longer be rewarded or otherwise have any incentive to spend their entire careers with the Department. In the long run, the residents and business owners of Fairfield will suffer as the Township will no longer be able to attract and – more importantly – retain high caliber police officers.

For all of the above reasons, the PBA asserts that its last offer is the most reasonable and that it be awarded in its entirety.

TOWNSHIP POSITION

The following are the Township's arguments and contentions in support of the statutory criteria:

Interests and Welfare of the Public

The arbitrator must consider the “interests and welfare of the public” in determining his award. N.J.S.A. 34:13A-16(g)(1); Hillsdale PBA, 137 N.J. at 83. In the Appellate Division's decision in the Hillsdale matter, the Court found that the public interest factor “focuses in part on the priority to be given to the wages and monetary benefits of public employees within a municipality's budget and plans.” Hillsdale, 263 N.J.Super. at 188. “It is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award. That would also conflict with other enumerated factors and render them hollow.” Id.

The New Jersey Supreme Court emphasized that “the public is a silent party” to the interest arbitration process, and that “an award runs the risk of being found deficient if it does not expressly consider” the public interest. Hillsdale, 137 N.J. at 82-83. “Indeed, the Arbitration Act expressly requires the arbitrator to consider the public interest and public welfare.” Id.

Arbitrators historically understood this criterion as requiring that public safety employees be well compensated. However, the Appellate Division directed that this criterion be interpreted differently, holding that it “focuses in part on the priority to be given to wages and monetary benefits of public employees within a public employer’s budget and plans.” Hillsdale, 263 N.J. Super. at 188. In other words, an interest arbitrator is required to balance the expense borne by the taxpaying public with the need to ensure that the necessary services are provided. Thus, the Township’s offer should be considered reasonable and accepted.

The Township maintains that its offer is clearly more supportive of the interests and welfare of the public. The final offer of the Township will accomplish several important public policy goals. It will enable the Township to maintain its fiscal stability, while managing the risk and volatility of the current economy. Moreover, it will provide the opportunity for the Township to continue to offer health insurance coverage to its employees while confronting the ever-increasing health insurance costs. Additionally, the offer will ensure that the Township’s police officers, who are statutorily entitled to the interest arbitration process, do not receive far superior wages and benefits than civilian employees, who do not enjoy such benefits and who have been previously subject to layoffs, furloughs, reductions in hours, and removed from health insurance coverage.

The PBA will continue to enjoy its competitive edge with the Township’s final offer. The Township’s final offer clearly takes the best interests and welfare of the public into account, while the PBA’s offer blindly ignores the failing economy, increases in health care costs, pension contribution increases, decreases in State aid, lack of surplus, and a remarkably high unemployment rate.

**Comparisons to Public Employment in the Same
or Similar Comparable Jurisdictions**

The Township submits that an interest arbitrator's task is to take the competing final offers of the parties and craft an appropriate award based upon the statutory factors. The Township asserts that its last offer is more reasonable when compared with the other employees in the same or similar jurisdictions and other employees generally.

This factor requires the Arbitrator to make a comparison of the wages, salaries and conditions of employment of Fairfield Township police officers with the civilian employees of the Township and other police officers in comparable jurisdictions. The Township contends that the evidence presented shows that the Township's offer is more reasonable when compared to what Essex County police officers in other municipalities are receiving. Moreover, the Township's offer will achieve economic and fiscal stability for the Township in light of the 2.0% hard tax cap levy imposed in 2011, the fiscal/economic crisis of the State of New Jersey, increases to medical benefits and pension contributions on behalf of the Township's police officers, decreases in State Aid, and a reduction of surplus for the Township to rely upon.

In comparison to other police employees, Fairfield Township police officers are extremely well-compensated. In addition, it is common for interest arbitration awards to contain wage freezes as requested by the Township in its final offer. For example, in the matter of Township of East Orange and East Orange FOP Lodge 111, Arbitrator Mastriani's award included a wage freeze in the first and third years of the seven-year agreement. Further, In the Matter of Borough of North Arlington and PBA Local 95, Arbitrator Mason's award included a wage freeze in 2011, and an increase of 2.5% in 2012 and 2.5% in 2013. Another recent award in which Arbitrator Mason included a wage freeze was Borough of

Spotswood and PBA Local 225. In Spotswood, Arbitrator Mason awarded 0% in 2011, 2% in 2012 (effective July 1, 2012) and 2% in 2013.

Other recent public sector settlements in New Jersey demonstrate that the Township's proposal is far more in line with the increase provided to public sector employees within New Jersey. In the matter of Borough of Bergenfield and PBA Local 309, Arbitrator Pierson awarded a 2.5% salary increase for each of the four years of the contract. Furthermore, in *Berkeley Heights*, the parties agreed to salary increases of 0.0% in 2009, 0.0% in 2010, 3.0% in 2011, 3.0% in 2012, 3.0% in 2013.

According to the Township, a trend has begun with awarded salary increases below 3.0% in response to the economic climate of the State, the 2.0% hard tax cap levy, and increases in healthcare and pension contributions. Arbitrator Weisblatt issued an award in County of Essex and PBA Local 183, with the following salary increases: January 2008-2.85%; January 2009-0%; September 2009-2.75%; and July 2010-2.50%. In Borough of Rutherford and PBA Local 300, Arbitrator Mastriani provided an award in salary of: 2.25% effective October 1, 2008; 2.75% effective July 1, 2009; 2.7% effective July 1, 2010; 1.5% effective January 1, 2011; 1.5% effective July 1, 2011; 1.5% effective January 1, 2012; and 1.5% effective July 1, 2012. Lastly, in Asbury Park and PBA Local 6, Arbitrator Mastriani awarded salary increases of 2.5% effective October 1, 2008; 2.5% effective July 1, 2009; and 2.5% effective July 1, 2010.

The Township submits that Fairfield police officers continue to receive higher salaries than many police officers throughout the State and Essex County. The Township argues that the PBA did not produce sufficient evidence to justify its requested salary increases of 4.0% in 2009, 3.75% in 2010 and 3.5% in 2011.

Accordingly, the Township's proposals are far more reasonable and should be adopted by the Arbitrator.

Overall Benefits

The Arbitrator must compare the benefits received by Fairfield Township police officers to those in comparable jurisdictions. In comparing all fringe benefits, Fairfield Township offers benefits that exceed or are similar to the Essex County average.

Fairfield police officers are afforded exceptional paid sick leave benefits compared to others in Essex County. The majority of municipalities offer between 10 and 15 days per year. Fairfield police officers receive unlimited sick time. (T-72, T-73). This represents the highest amount of sick days afforded in Essex County.

Further, Fairfield Township police officers receive 24 hours of personal time each year. This exceeds the County average of 1.6 days per year. (T-74). Additionally, Fairfield Township police officers receive thirteen holidays, on par with the County average of 13.3 days. (T-77, T-78). Moreover, officers receive four bereavement days for the death of an immediate family member and are eligible for an additional four days where exigent circumstances or hardship necessitates the request. (T-79). The vacation benefit in Fairfield Township is among the most generous in the County for those officers with fifteen or more years of service. Officers with at least fifteen years of service receive 200 hours of vacation time. This is equivalent to 25 days, the high for the County. (T-81). Additionally, Township police officers receive longevity payments which are on par with other municipalities in the County. (T-82). The court time minimum payment for police officers in Fairfield Township is also on par with the County average. Moreover, the Township provides an educational

incentive program for its officers whereby the Township will pay up to 100% of the cost of tuition and books. (T-4).

A common benchmark for police officer salaries is minimum and maximum salaries. The starting salary for patrol officers in Fairfield Township in 2008 was \$41,168. That amount is greater than or almost equal to the Essex County starting salaries in 2009, 2010, and 2011.

The Township submits that it has a starting salary greater than other municipalities in Essex County. Moreover, the Township needs to implement additional salary steps in order to stabilize the Township's finances. Currently, officers not at maximum, receive an 11% to a 14% increase between salary steps. By implementing a new salary schedule which includes seven additional steps for new hires, the Township is ensuring future fiscal stability while still providing substantial step movement to each of the officers.

A comparison must be made with regard to maximum salaries. The maximum salary in Fairfield Township in 2008 was \$84,927. The Township points out that the County average maximum salary is \$85,434 in 2009; \$88,657 in 2010; and \$91,927 in 2011, whereas its three-year salary freeze will maintain the maximum salary at \$84,927. The Township contends that the maximum salary in Fairfield is comparable to the County maximum average salary in 2009, 2010, and 2011.

Lastly, each officer who is not currently receiving the maximum base salary receives a step movement salary increase each year. In 2009, the Township paid \$121,548 in step movement alone. In 2010 that number increased to \$122,514 and in 2011 the Township paid \$79,094 in step movement. On average, PBA members received a 3.50% increase in 2009, and a 3.52% increase in 2010. See Certification of John McCluskey dated July 6, 2011.

The Township maintains that it provides its officers with better benefits than most other municipalities in Essex County. Furthermore, the 2009 maximum salary for patrol officers in Fairfield is on par with the County averages. Moreover, even without any salary increases, the salary will stay competitive with the County averages for 2010 and 2011. Clearly, then, by applying the Township's final offer, the salaries of Township police officers will stay on par with County averages, even in these difficult economic times.

Comparison to Other Township Employees

The Township contends that the salaries and wages of the police department exceed all other departments in the Township. In 2008, the wages for all employees of the Township totaled \$3,010,835, while the salaries of members of the PBA totaled \$3,302,781, representing 52.3% of the total salary payout for the Township. Moreover, as the chart below illustrates, in 2009 and 2010, while the compensation of other Township employees decreased, the compensation of PBA members continued to increase.

Year	Township Employees Salaries and Wages	PBA Salaries and Wages
2009	\$2,589,556	\$3,475,929
2010	\$2,275,142	\$3,478,665

Moreover, the Township paid bargaining unit members \$398,675 in overtime in 2008; \$265,386 in 2009 and \$392,410 in 2010. Thus, based upon the above, the compensation provided to Township police officers exceeds that of any other department in Fairfield Township. Moreover, the police department employees have not been reduced in salary, hours or removed from health benefits like Township employees in order to curb the gap in the budget.

**Financial Impact on the Governing Unit, Its Residents
and Its Taxpayers**

The “financial impact” criteria, N.J.S.A. 34:13A-16(g)(6), requires the arbitrator to “consider the financial impact of his award on the municipality, its residents and its taxpayers, whether wealthy or poor.” Hillsdale, 263 N.J.Super. at 194. The considerations under this factor “do not equate with a municipality’s ability to pay.” Hillsdale, 137 N.J. at 86. This criterion encompasses a far more searching and critical analysis than simply whether a local government has the ability to pay an award. It does not require the local government to prove that it would suffer financial difficulties as a result of an award. Id. Put differently, a local government “should not have to demonstrate it would “be financially crippled before its arguments could be found to be sufficient.” Id. at 194.

The Township submits that its economic offer considers the financial impact on the governing unit, its residents and taxpayers because it takes into account the State and Nation’s bleak economic condition and perhaps the greatest economic turmoil seen in years. The state of the economy certainly impacts upon the Township’s ability to provide a fair economic offer, while continuing to maintain the fiscal stability necessary to operate. The Township points out that it is now limited in its ability to increase its tax rate since it is subject to a 2% hard tax cap levy pursuant to N.J.S.A. 40A:4-45.45 et seq.

The Township asserts that its salary proposal represents a fair balance between reasonable salary increases in the face of an unstable economy in the State, the ever increasing health benefits and pension costs, decrease in State aid, lack of surplus, and ensures the financial stability of the Township.

The Township contends that it is confronting the following difficult fiscal problems and financial challenges:

Reduction in State Aid

The Township's fiscal stability has suffered from a continual reduction in State Aid. The Township's State Aid has been reduced by \$636,451 since 2007. In 2007, State Aid was \$1,821,793 and in 2010 State Aid was \$1,185,342. See Certification of John McCluskey dated July 6, 2011.

Increase to Pension Contributions

The costs related to pension contributions for police officers are also continually increasing. The Township's pension contributions for PFRS alone have increased from \$707,148 in 2008 to \$883,578 in 2010. For PERS, the Township's contributions have increased from \$231,577 in 2008 to \$334,369 in 2010. Thus, in 2010, the total pension costs for the Township were \$1,217,946. Therefore, any increases in salary will further increase the costs of pensions beyond the figures stated above.

Increase in Health Care Costs

The Township continues to struggle with excessive health care costs. In 2009, health care costs for the Township's active police officers were \$721,143; in 2010, \$669,833, and in 2011, costs are projected to be \$677,098. Additionally, the Township must pay the increased cost of health benefits for retired PBA members. In 2009, the cost of retiree health benefits was \$241,282, \$340,569 in 2010, and projected to be \$417,279 in 2011. Thus, in 2011, the Township's projected cost just for the health benefits of active and retired PBA members will be \$1,094,377.

The increases in costs and shortfalls in revenues as outlined in the Certification of John McCluskey are due to the economic climate of the State and Nation and not due to any budgeting mismanagement by the Township. The increased costs of health care and pension contributions are wholly outside the control of the Township and its Governing Body. Moreover, in order to meet the State required "Tax Levy Cap" of 4%, the operating expenses of most departments have been reduced between 2009 and 2010. The Township is currently attempting to stabilize its exceedingly difficult financial situation by seeking wage freezes and increasing the number of steps in the salary guide, yet at the same time, keeping the police officer's salary comparable to other Essex county municipalities.

**Financial Impact on the Governing Unit,
its Residents and Taxpayers**

The Township contends that its salary proposal offer takes into consideration the financial impact on its residents and taxpayers. In 2009 and 2010, the Township implemented layoffs to reduce operating expenses. In 2010, the Township reduced a number of full-time employees to part-time status. As such, the Township's final offer calls for salary freezes due to the Borough's dire financial condition. In contrast, the Union seeks salary increases of 3.5% and above for the duration of the agreement. It is not possible for the Township to provide such increases without laying off and/or reducing the hours of additional Township employees.

Further, the Township's tax collection rate has gone down. In 2009, the tax collection rate was 97.64%, down from 98.31% in 2008. With the 2.0% tax cap in 2011, the Township will only receive an additional \$235,449 in tax collections.

Moreover, the Township's financials reflect a cash surplus decrease from \$2,028,550 in 2008 to \$1,006,432 in 2010. Of that amount in 2010, \$800,000 was used to balance the budget. Consequently, only \$206,432 remained in the 2010 budget to be used in the event of an emergency. Thus, the lack of revenue and decrease in State aid forces the Township to use more and more of the surplus to offset the budget rather than continually raise taxes. Furthermore, with each transfer of surplus to offset the budget, the Township has not been able to replenish every year what was previously used due to a decline in revenues. In 2008, the revenue generated was \$2,651,530. In 2009, revenue decreased to \$2,382,557.

Finally, the Township is facing the largest number of tax appeals ever. However, due to the Township's poor financial condition, it does not have the necessary funds to pay the appeals and must borrow the money.

The Township asserts that its final offer ensures fiscal stability and comparability with other Essex County municipalities. As such, the Township's final offer is reasonable and should be adopted by the arbitrator.

Cost of Living

The Arbitrator is required to consider the cost of living in rendering his award. See N.J.S.A. 34:13A-16(g)(7). In Hillsdale, the Appellate Division faulted the Hillsdale arbitrator for failing to "consider or discuss the disparity between police salary increases and the consumer price index." Hillsdale, supra., 263 N.J.Super. at 195.

The Township maintains that the PBA will not suffer any detriment to their standard of living since the CPI shows only a minor increase in the cost of goods and services.

Moreover, Fairfield police officers are highly compensated compared to their counterparts. Accordingly, the Township's wage offer is reasonable and should be implemented.

Lawful Authority of the Employer

The Appellate Division in Hillsdale interpreted the "lawful authority of the employer" criterion to refer to the Local Government Cap Law. Hillsdale, 263 N.J. Super. at 193. The Supreme Court agreed, stating, "Given the existence of financial constraints and budget caps . . . an award to police or fire departments necessarily affects other municipal employees and the entire municipal budget." Hillsdale, 137 N.J. at 86. In Hillsdale, the Appellate Division required the arbitrator to consider the impact of the award on other budget items. Hillsdale, 263 N.J. Super. at 194. In applying the lawful authority of the employer criterion, the Arbitrator must address the Township's budget cap situation, as well as the statutory requirement that the Township prepare a balanced budget each year.

In the present matter, the Township provided evidence to support its position that its final offer is more reasonable in light of the lawful authority of the employer. As noted previously, the Township is facing increases to insurance costs, cuts in state aid, pension contributions and losses in revenue. The Township submits that its last offer is both fair and equitable and should be awarded.

Statutory Restrictions on the Township

N.J.S.A. 34:13A-16(g)(5) requires the arbitrator to consider the "lawful authority of the employer," and specifically references P.L. 1976, c. 68, which is codified at N.J.S.A. 40A:4-45.1 et seq. The aforementioned statute is commonly known as the "Local Government Cap Law," and states, "it is hereby declared to be the policy of the Legislature

that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to maintain their homesteads.” N.J.S.A. 40A:4-45.1. The New Jersey Legislature established a second tax levy cap established by section 10 of P.L. 2007, c. 62, which is now codified at N.J.S.A. 4-45.45. As part of this legislation, the Interest Arbitration Act was also amended to include a ninth and final criteria for the arbitrator’s consideration, “the statutory restrictions imposed upon the employer,” which specifically includes “the limitations imposed upon the employer by section 10 of P.L. 2007, c.62.” N.J.S.A. 34:13A-16(g)(9).

Section 10 of P.L. 2007, c.62 originally established a tax levy cap of 4% above the previous year’s tax levy. However, on July 13, 2010, Governor Christie signed into law P.L. 2010, c. 44 in order to cut the allowable tax levy increase to 2%. The Township contends that it will have a difficult time generating the necessary money without taking drastic measures to comply with the 2.0% hard tax levy if the PBA’s final offer is accepted.

The Township argues that the PBA’s offer is neither fair, equitable nor realistic under the statutory restrictions imposed by the Local Budget Law, and must be rejected in favor of the Township’s proposal.

Overall Compensation

The Arbitrator must consider the overall compensation received by the Fairfield Township police officers. See N.J.S.A. 34:14A-6(g)(3). Along with their base salary, the Fairfield Township police officers receive the following benefits: court appearances paid at overtime rates, vacation leave, unlimited sick days, comprehensive medical insurance

benefits, educational incentive payments, call-in pay, holiday pay, clothing allowance, longevity, and personal leave. Moreover, each police officer of Fairfield Township is enrolled in the Police and Fireman's Retirement System, which permits a police officer to retire after 20 years of service at 50% of final compensation or after 25 years of service at 65% of final compensation. See N.J.S.A. 43:16A-11.1. The police officers of the Township of Fairfield are more adequately compensated than the majority of the State private sector employees and public sector employees.

Therefore, no salary increases should be required to maintain the PBA's strong overall compensation and benefits compared to other workers. The Township asserts that its last offer is more reasonable and should be awarded.

Continuity and Stability of Employment

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

The Township Police Department has approximately 40 members. (T-12). More important, even though a number of Township employees have been laid off or had their hours reduced, no Township police officer has ever been laid off or put on furlough. The absence of any layoffs, furloughs, and downsizing is in complete and utter contrast to the current economic climate in the nation and in many municipalities within the State of New

Jersey including the Township. Municipal and State employees have been experiencing mass layoffs, job cuts, furloughs, and salary freezes. As of June 2011, New Jersey has the 14th highest unemployment rate in the country. (T-138). Large scale job cuts have been taking place in both public employment and private employment. Private employers have instituted large scale job cuts which make headlines frequently, while Fairfield Township police officers enjoy a secure and stable employment without any threat to job loss or furlough.

The New Jersey Appellate Division noted that there is a “virtual absence of unemployment among police.” Fox, 266 N.J.Super. at 519. Likewise, police officers are not affected by the trend toward downsizing or furloughs. Additionally, police services are not subject to privatization like other public sector services. Simply put, Township police officers are secure in their employment without any concern for layoffs or downsizing even during such dire economic times. As such, the Township’s police officers will continue to enjoy continuity and stability of employment. Thus, the Township’s offer is more reasonable.

In conclusion, the Township asserts that its final offer is fair, reasonable, well-balanced and provides an intelligent approach for future financial stability. The Township submits that its proposals will keep Fairfield Township police officers on par with the County average while still providing additional fringe benefits above the County average. The Township asks that its last offer be awarded in its entirety.

Discussion

The parties presented testimony and more than 200 documentary exhibits totaling thousands of pages in support of their last offers. I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the criteria.

I will set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and arguments regarding the statutory criteria primarily to its own last offer and to the last offer of the other party. I will not do so because, in this conventional proceeding, the terms of the award will be the reference point rather than the parties' last offers. Conventional arbitration is a more flexible process which grants the arbitrator broad authority to fashion the terms of an award based on the evidence without the constraint of selecting any aspect of a final offer submitted by the parties. The prior statute required the selection of the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of showing a need for such change. I shall apply this principle to all new proposals. The following are the terms of my award:

1. I shall award a three-year agreement. The duration of the new three-year agreement shall be January 1, 2009 to December 31, 2011. This is effectively a stipulated agreement as both parties sought a three-year agreement.
2. I shall award the following changes and increases to the salary schedule:
 - (a) Effective July 1, 2009, all steps on Schedule A-1 and Schedule A-2 shall be increased by 2.5%.
 - (b) Effective July 1, 2010, all steps on Schedule A-1 and Schedule A-2 shall be increased by 2.5%.
 - (c) Effective January 1, 2011, all steps on Schedule A-1 and Schedule A-2 shall be increased by 2.5%.
 - (d) Effective December 30, 2011, all new hires will be hired pursuant to a new salary schedule (Schedule A-3) which will include two (2) additional steps. Step 1, "First year of Service", is a 12-month step and shall be \$30,000. All other steps shall be twelve-month steps and shall be equalized between Step 1 and Step 9, the maximum step of \$91,457. The maximum step is the "Ninth year of Service" step. The maximum step on Schedule A-2 is effectively the "Seventh year of Service" step.
 - (e) Effective December 30, 2011, the longevity schedule for new hires shall be as follows:

Completion of 10 years	2% of base rate
Completion of 15 years	4% of base rate
Completion of 20 years	6% of base rate
Completion of 24 years	8% of base rate
 - (f) All salary increases are fully retroactive to the above effective dates.

Cost of Salary Proposals

The current PBA bargaining unit (at the close of the record) for 2009 includes one Lieutenant, eight Sergeants, two Corporals, 18 Patrol Officers at maximum, two Patrol Officers at the 5th Year Step, two Patrol Officers at the 4th Year Step, one Patrol Officer at the 3rd Year Step, four Patrol Officers at the 2nd Year Step and two Patrol Officers at the 1st Year Step. The total base pay salary for 40 bargaining unit members in 2009 is \$3,151,700. The cost of longevity for the 40 bargaining unit members in 2009 is \$104,300. The salary cost-out shall be calculated on base salary including longevity of \$3,256,000.

The following calculations do not assume any resignations, retirements, promotions or additional new hires. Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. The calculations of the parties' last offers do not include incremental step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. The Township calculated the cost of increments as \$121,548 in 2009, \$122,519 in 2010 and \$79,094 in 2011. (Certification of John McCluskey at 5). I calculate the incremental costs as \$71,612 in 2009, \$84,552 in 2010 and \$74,300 in 2011. This calculation is based on my review of the PBA's Financial Report (Certification of Joseph Petrucelli at Tab 14) and Township Exhibit 13. Both documents show 11 Police Officers on the incremental steps and entitled to receive increment salary increases in 2009, 2010 and 2011. Historically, incremental costs have not been factored in by the parties. These incremental costs fluctuate depending on the amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer's average salary costs down because senior officers are replaced by entry level officers making substantially less than a maximum step officer's salary. The PBA

bargaining unit has above average incremental costs as more than 25% of the bargaining unit is receiving automatic increments.

Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. Calculation of the parties' last offers for 2009, 2010, 2011 and 2012 do not include the cost of increments.

**Cost of Parties' Salary Proposals
and the Awarded Salary Increases**

2009

The PBA proposed a 4% across-the-board increase to be effective January 1, 2009. The cost of the PBA proposal (excluding increments) in 2009 is \$130,240. The total cost of the PBA's salary proposal in 2009 is \$3,386,240. The Township proposed no salary increases in 2009. The total cost of the Township's salary proposal in 2009 is \$3,256,000. I awarded a 2.5% salary increase effective July 1, 2009. The cost of the 2.5% increase in 2009 is \$40,700. This is equal to a 1.25% payout in 2009. The additional 1.25% payout will be paid out in 2010.

2010

The PBA proposed a 3.75% across-the-board increase to be effective January 1, 2010. The cost of the PBA proposal (excluding increments) in 2010 is \$126,984. The total cost of the PBA's salary proposal in 2010 is \$3,513,224. The Township proposed no salary increases in 2010. The total cost of the Township's salary proposal in 2010 is \$3,256,000. I awarded a 2.5% salary increase effective July 1, 2010. The cost of the 2.5% increase in 2010 is \$41,718. This is equal to a 1.25% payout in 2010. The additional 1.25% payout will be paid out in 2011.

2011

The PBA proposed a 3.5% across-the-board increase to be effective January 1, 2011. The cost of the PBA proposal (excluding increments) in 2011 is \$122,963. The total cost of the PBA's salary proposal in 2011 is \$3,636,187. The Township proposed no salary increase in 2011. The total cost of the Township's salary proposal in 2011 is \$3,256,000. I awarded a 2.5% salary increase effective January 1, 2011. The cost of the awarded 2.5% increase in 2011 is \$85,521. The total salary base in 2011 is \$3,506,356

I calculated the incremental costs as \$71,612 in 2009, \$84,552 in 2010 and \$74,300 in 2011. All of the incremental costs have been paid in 2009, 2010 and 2011. The only new costs to the Township are the salary increases effective July 1, 2009, July 1, 2010 and January 1, 2011.

Interests and Welfare of the Public

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the Township to exceed its authority under the CAP law. The award can be funded without the Township exceeding its spending authority.

The interests and welfare of the public require the arbitrator to balance many considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other

hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Police Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Police Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony." (In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

I shall now discuss the issues with respect to the interests and welfare of the public factor and comparability.

Term of Agreement

I shall award a three-year agreement effective January 1, 2009 to December 31, 2011 which is effectively a stipulated agreement as both the Township and the PBA proposed a three-year agreement effective January 1, 2009 to December 31, 2011.

Salary

The sole issue in this matter is salary. While I am required to evaluate the merits of the disputed issues individually, I am guided by criterion N.J.S.A. 34:13A-16 (g) (8) that directs the consideration of factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. An element that must be considered is the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under all of the criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award and the requirement to balance all of the major components included in the award.

PERC has recognized that arriving at an economic award is not a “precise mathematical process” and given that the statute sets forth general criteria rather than a formula, the treatment of the parties’ proposals involves judgement and discretion and an arbitrator will rarely be able to demonstrate that an award is the only “correct” one. See Borough of Lodi, 24 NJPER 466 (29214 1998). I have awarded the above salary increases and a new salary and longevity schedule for new hires for the following reasons:

First, salary and health care are often linked in bargaining. Modifications on health care influence the level of salary increases. It is undisputed that the cost of health insurance coverage is a significant component of employee benefits exceeded only by the cost of pension contributions. Health insurance is a costly fringe benefit that must be considered as part of the cost of employment and part of the overall wage and fringe benefit package of an employee.

The Township calculated the cost of health benefits in 2010 as \$669,883 for all active police officers. The Township projected the 2011 cost of health benefits to be \$677,098. Since the close of the hearing, P.L. 2010, c. 2 was amended by P.L. 2011 c.78. Chapter 78 mandates contributions from public employees to defray the cost of health insurance benefits. Chapter 78 further provides for a minimum contribution of 1.5% of base salary up to a maximum of 35% of the cost of the health insurance coverage. This will greatly increase the contributions to the cost of health insurance for the vast majority of the PBA bargaining unit members. The mandated contributions are phased in over four years. The mandatory contributions range from 3% to 35% of the cost of coverage. The percentage of contribution ranges from 3% of family coverage premium costs for an employee earning \$25,000 annually to 35% of family coverage premium costs for an employee earning \$110,000 or more annually. The following shows the percentage cost of family coverage:

\$70,000 to less than \$75,000	22% of the cost of coverage
\$75,000 to less than \$80,000	23% of the cost of coverage
\$80,000 to less than \$85,000	24% of the cost of coverage
\$85,000 to less than \$90,000	26% of the cost of coverage
\$90,000 to less than \$95,000	28% of the cost of coverage
\$95,000 to less than \$100,000	29% of the cost of coverage
\$100,000 to less than \$110,000	32% of the cost of coverage
\$110,000 or more	35% of the cost of coverage

This means that a Fairfield Township police bargaining unit member earning \$90,000 annually will be paying 28% of the cost of family coverage when Chapter 78 is fully implemented. The cost of family coverage in Fairfield in 2011 is \$23,224 annually.

2012 would be the second year of the phase-in at 50% of the annual contribution rate. Thus, a police officer earning \$80,000 annually would contribute 12% of the cost of coverage. The contribution for family coverage would be \$2,787 annually in 2012. This would increase to \$4,180 (18%) in 2013 and to \$5,574 (24%) in 2014. The former 1.5%

contribution in effect from May 22, 2010 through the first six months of 2011 was \$1,200 annually.

A police officer earning \$90,000 annually would contribute 14% of the cost of coverage. The contribution for family coverage in 2012 would be \$3,251 annually. This would increase to \$4,876 (21%) in 2013 and to \$6,502 (28%) in 2014. The former 1.5% contribution in effect from May 22, 2010 through the first six months of 2011 was \$1,350 annually.

A police officer earning \$100,000 annually would contribute 16% of the cost of coverage. The contribution for family coverage in 2012 would be \$3,716. This would increase to \$5,574 (24%) in 2013 and to \$7,432 (32%) in 2014. The former 1.5% contribution in effect from May 22, 2010 through the first six months of 2011 was \$1,500 annually.

This means that in 2014, a police officer earning \$80,000 will contribute 5.6% of base salary toward the cost of full family health coverage. This is equal to 5.8% at \$90,000 and 5.96% at \$100,000. The maximum contribution of 35% applicable to salaries of \$110,000 or more is \$8,128 annually in 2014. This is nearly \$6,500 more than the \$1,650 generated by the 1.5% contribution.

The above analysis shows that the enactment of Chapter 78 provides the Township with substantial cost containment of health benefits. The Township will realize a significant increase in health benefit contributions from its police officers as the health benefit premium sharing is phased in between 2011 and 2014. The former 1.5% of base salary contribution will be equivalent to more than 5.5% of base salary for more than 90% of the bargaining unit by 2014. The contribution rate will be 1.5% of base salary in 2010 and 2011. In 2012, the

contribution rate will increase to the equivalent of at least 2.75%; in 2013 it will increase to the equivalent of at least 4.13% and then to the equivalent of least 5.5% in 2014.

The true value of increased cost sharing is shown by calculating the contributions in 2012, 2013, and 2014. In 2012, the total base salary under the terms of the award will be \$3,507,110. The former 1.5% contribution would have yielded \$52,600 in 2012. Under the new premium sharing formula, the contribution will be the equivalent of \$93,500 in 2012; \$140,420 in 2013; and to \$187,000 in 2014. The above numbers are based on the Township's 2011 premium rates. However, if the premium rates increase in 2012, 2013 and 2014, the Township will receive even higher contributions from its police officers since the percentage contributions are applied to the premiums not an officer's base salary.

The Township will achieve a significant increase in health care contributions and its police officers will see a commensurate decrease in their annual salary. This is equivalent to approximately 4% annually in 2014.

Chapter 78, when fully phased in, will provide a significant offset against current premiums. It will also provide protection against future premium increases as such increases will be shared by the Township's police officers. Simply stated, the vast majority of police officers in the PBA bargaining unit will be contributing between 24% and 35% of future premium increases.

Second, effective January 1, 2012, all new hires will be hired pursuant to a new salary schedule (Schedule A-3) which will include two additional steps. The "First Year of Service" Step shall be \$30,000. All other steps will be equalized between the first step (\$30,000) and the maximum salary of \$91,457. This is the same maximum salary on Schedule A-1 and A-2 applicable to all officers hired before January 1, 2012. The new salary schedule (with two additional one-year steps) will result in future savings to the Township of nearly \$100,000

in cumulative earnings as each new officer progresses through the steps of the salary schedule to maximum. In the first five years of employment, the cumulative earnings on Schedule A-3 are reduced by nearly \$60,000 when compared to the same movement on Schedule A-2. Schedule A-2, if not modified, had provided a 62% salary increase after only four years on the job. The cumulative salary savings generated by a new salary schedule also benefits the bargaining unit as a whole. Salary schedules that allow accelerated movement to the maximum step will eventually undermine the ability of the parties to negotiate salaries for maximum step police officers since a significant expenditure of available funds will be needed to pay less experienced officers high salaries. As maximum salaries have increased significantly in the last 15-20 years, it follows that additional steps must be added to ensure that experienced officers continue to receive competitive salary increases. Ignoring this issue will create serious problems for the parties in future negotiations. This is becoming increasingly important as resources decline and the costs of annual increments become a bigger part of the funds available for salary increases. During the last several years, it has become commonplace to see arbitrated and negotiated contracts with extended salary schedules for new hires.

The modifications to the salary schedule will give the Township considerable future savings which will offset the cost of senior police officer salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department. These changes will not impact on the Township's ability to recruit and retain police officers since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for all police officers.

This will become more significant in 2012 when salary increases will be limited to 2% of base salary inclusive of incremental costs and longevity costs. The additional steps will decrease the Township's incremental costs. These automatic incremental increases would have diminished the PBA's ability to negotiate salary increases for experienced officers.

Third, I awarded a modified longevity schedule applicable to all employees hired on or after December 30, 2011. The new longevity schedule eliminates the 2% longevity step after five years of service. The new salary schedule (A-3) has two additional steps. This means that a police officer hired on or after December 30, 2011 will now take an additional two years to reach maximum after the completion of eight years of service. Under Schedule A-1, an officer reached maximum after four years of service and then received a 2% longevity increase after the completion of five years of service. There is simply no sound basis to continue a five-year longevity step when the new salary schedule (A-3) requires the completion of eight years of service to reach maximum. This is consistent with my reasoning in adding two additional steps to Schedule A-2.

The new longevity schedule is 2% after completion of ten years of service; 4% after the completion of fifteen years of service; 6% after the completion of twenty years of service; and 8% after the completion of 24 years or more of service. Thus, there will be no longevity costs to the Township for new hires until at least 2022. The modified longevity schedule and the additional steps on the salary schedule will provide for a more equitable distribution of future salary increases to the Township's experienced police officers. This will become more significant in 2012 when salary increases will be limited to 2% of base salary inclusive of incremental costs and longevity costs. The additional steps will decrease the Township's incremental costs.

Fourth, while the PBA has submitted considerable comparability salary data showing that the average annual increase is higher than the awarded salary increases, I find that much of the comparability data relied upon by the PBA is “dated” as many of the CBAs in the record were negotiated or arbitrated in better economic times. Comparability data is deserving of considerable weight in negotiations and arbitration. Comparability data must be measured against and balanced with the other statutory criteria. In past years, comparability data was measured against annual cost-of-living increases which were consistent with the average annual salary increases. In other words, when the CPI was between 3.5% and 4%, the average salary increases were between 3.5% and 4%. In 2007, the CPI was 3.7% and the average increases in PERC reported awards and voluntary settlements were 3.77% and 3.97%. However, the CPI has declined dramatically in recent years and there has not been an equivalent decline in the average salary increases. The CPI was 1.6% in 2008 and 2.3% in 2009 and the average increase in PERC reported voluntary settlements and awards in 2008 and 2009 ranged from 3.6% to 3.92%. Obviously, the salary increases lagged behind the changes in the CPI. This commonly occurs since comparability data is derived from multiple year contracts whereas the CPI is measured on a monthly and annual basis.

The most recent cost of living data shows that the Consumer Price Index (“CPI”), as published by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”), for New York-Northern New Jersey increased by 1.4% in 2010 and by 3.3% through October 2011. Thus, the average increase in the CPI during the last four years is 2.15%. This dramatic decline in the CPI must be given considerable weight. I note that this decline in the CPI is mirrored by a significant decline in the most recent PERC salary data. The average increase in PERC reported awards and voluntary settlements for the period January 1, 2010 through

October 15, 2010 is 2.5% annually. The average increase in awards posted on the PERC webpage in 2011 is 2.25%. This is 1.5% below the average of the PERC reported settlements and awards in recent years. This decline in salary increases in 2010 and 2011 is a recognition of not only the decline in the CPI but it is also a recognition of the decline in the ability of a public employer to fund salary increases at prior levels. It is undisputed that a public employer's ability to maintain revenue levels in 2010 and beyond has been severely diminished. The Tax Levy Cap in 2011 is 2%. Also, the Appropriations Cap has been reduced from 3.5% annually to 2.5% annually. This will severely limit the ability of a public employer to maintain the current level of services if salary increases continue to exceed increases in the CPI by up to 2% annually. Salary increases at 2008 and 2009 levels will only further reduce a public employer's ability to maintain the current level of services and will result in layoffs and/or furloughs. It is well established that many police and fire departments throughout the State have experienced massive layoffs, demotions and furloughs. We have also seen the parties working together to avoid layoffs and/or demotions by agreeing to postpone or modify certain economic benefits.

In prior years, the economy was much stronger than it is currently. We have experienced one of the worst recessions since the 1930s with high unemployment; a massive deficit in the State budget; hundreds of millions of dollars in reduced State Aid to municipalities; and tens of thousands of municipal, county and state employees being laid off or furloughed. Furloughed employees effectively receive a salary reduction of 2% for each week they are furloughed. State employees are experiencing not only furloughs but wage freezes as well. Municipalities are experiencing a record number of tax appeals with significant potential loss of tax revenues and increased costs to defend such appeals, thereby

undermining the tax base. Moreover, pension costs are at an all-time high with many municipalities contributing 25% or more of a police officer's salary to PFRS. The above events must be factored into the analysis of what weight to give to the statutory criteria.

Fifth, the Township's proposal for a three-year salary freeze for maximum-step Patrol Officers and higher ranking officers is not justified on the evidentiary record in this matter. The Township contends that the maximum salary in Fairfield is comparable to the Essex County maximum average salary in 2009, 2010, and 2011. Yet, its own data, summarized in its brief, shows that the maximum Patrol Officer salary will fall from one of the highest in the County to one of the lowest after a three-year salary freeze. The Township submitted data showing that the County average maximum salary is \$85,434 in 2009; \$88,657 in 2010; and \$91,927 in 2011. Under the Township's proposal, the maximum-step salary in Fairfield will remain at \$84,927 in 2009, 2010 and 2011. This is \$7,000 less than the Township's own salary data showing the average maximum-step salary as \$91,927 in 2011. This data is not supportive of the Township's proposed three-year salary freeze.

Further, the Township submitted salary data which supports the awarded salary increases and does not support the Township's proposed three-year salary freeze. I note that a number of the comparables are outside of Essex County.

There were no awards with a three-year salary freeze. There were two other awards (*North Arlington* and *Spotswood*) cited by the Township that showed a wage freeze in one of three years with an average increase of 1.67% annually and 1.33% annually.

The Township cited the *East Orange* award which included two years with a 0.0% salary increase in a seven-year agreement. A review of the award shows that salaries increased by 2%, 3.5%, 3.5%, 4.0% and 3.5% in the other five years. In one of the 0.0%

years, holiday pay (5.4%) was rolled into base salary and in the other 0.0% year, a 2% lump sum payment was negotiated. The average salary increase over the seven-year agreement was 2.4%. Including the holiday roll-in brings the average base salary increase to 3.2% annually.

The Township also cited awards that averaged between 2.0% and 2.75% annually: *Bergenfield* - 2.5% average annually; *Essex County* - 2.0% average annually with a freeze in one of four years; *Rutherford* - 2.75% annually; and *Asbury Park* - 2.5% annually. On balance, the comparability data submitted by the Township is supportive of the awarded salary increases.

The Township proposed the elimination of longevity for all new hires and the capping of longevity for all current bargaining unit members. A review of the salary data in the record is not supportive of the Township's proposal. The Township, in its brief, acknowledged that "Township police officers receive longevity payments which are on par with other municipalities in the County." (T-82). A review of T-82 shows that the vast majority of departments in the County continue to provide percentage longevity to its police officers and that the majority of departments in the County have not eliminated longevity for new hires.

Accordingly, I find that the evidentiary record does not support the Township's proposal to eliminate longevity for all new hires and to cap longevity for all current bargaining unit members. The Township's longevity proposal is denied.

In summary, I find that the PBA and the Township salary proposals are both outside the current trends in negotiated settlements and awards as well as the average increase in the CPI. The PBA is significantly above these current trends and the Township is significantly below the current trends. I found that comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial

resources, decreased cost-of-living and recent declining salary increases. Comparability data from prior years cannot be given as much weight as more current salary data, cost-of-living and budget data. I have awarded salary increases that recognize the significant decline in the cost-of-living, acknowledged the Township's (and other public employers) reduced ability to fund salary increases at prior levels, and noted the substantial decline in average salary increases in 2010 and 2011.

**Comparison of The Wages, Salaries, Hours
and Conditions of Employment**

Comparisons of the wages, salaries, hours and conditions of employment of the Township's police officers are to be made with other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar jurisdictions.

It is well established that there are no easily identified private sector police officers who perform services similar to those performed by Township police officers. Neither party submitted salary data on this sub-factor since none exists. A police officer position is a uniquely public sector position that does not lend itself to private sector comparisons.

I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement:

. . . troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police.

They may be close in some general characteristics and in “Hay Associates points”, but in broad daylight they do seem quite different to most observers. The weight given to the standard for comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data. (*Village of Ridgewood*, PERC Docket No. IA-94-141 at 29-31).

There is no data in the record to evaluate the comparison to other employees performing the same or similar services in private employment. I have given this sub-factor no weight. The second part of this sub-factor requires a comparison with other employees generally in private employment. Neither party emphasized private employment comparisons.

I take arbitral notice that the awarded salary increases which average 2.5% annually, are higher than average salary increases in private employment. I conclude that the awarded salary increases, while higher than private employment salary increases in general, are acceptable when measured against the totality of the terms of the award. This sub-factor is not entitled to significant weight.

The next comparison is with public employment in general. Neither party submitted any salary data on public employment in general. I have served as a mediator, fact-finder and interest arbitrator (binding fact-finding) in many cases involving other public sector employees; i.e., school district employees and non-police municipal and county employees. A review of this salary data shows that the average annual salary increases in public employment in general are consistent with the awarded salary increases. This sub-factor is supportive of the awarded salary increases.

I shall now address the third sub-factor which includes several elements. The first element is internal comparability with other Township employees. The record does not

include salary data on other Township employees except for certain police officers not in the PBA bargaining unit.

Lieutenant Manna was paid \$109,639 in 2008 as a member of the PBA bargaining unit. Manna was promoted to Deputy Chief in 2008 at a salary of \$118,410 and is currently receiving a salary of \$129,799. This is an increase of 9.8% in his salary as Deputy Chief. ” (E-13). PBA Exhibit S shows that Deputy Chief Manna’s “Contract of Employment” specifically states that “the Township shall not provide additional monetary remuneration for holidays . . . of for longevity of employment with the Township.” The “contract of Employment” further provides that Manna’s salary shall be adjusted on January 1, 2010 or anytime thereafter . . . to assure that Manna’s salary is 2.5% greater than that of the highest paid officer of the next lowest rank that is currently filled, inclusive of that officer’s longevity and holiday pay.”

Deputy Chief Gutkin’s salary was also \$118,410 in 2008. Gutkin’s salary increased to \$125,000 in 2009 and to \$129,799 in 2010. Gutkin’s salary increased by 5.57% in 2009 and by an additional 3.84% in 2010. Deputy Chief Gutkin retired in February 2011. (E-13).

Chief Voelker was a Lieutenant in 2008 when he was promoted to Chief of Police. Chief Voelker’s salary was \$128,125 in 2009; \$131,370 in 2010; and \$133,044 in 2011. Chief Voelker received a 2.5% salary increase in 2010 followed by a 1.27% increase in 2011. (E-13). The record also shows that the Township’s Administrator received a 4% salary increase in 2008 and 2009. The 2009 salary of \$144,464 was frozen in 2010 and 2011. (PBA Exhibit Q).

The PBA also noted that the Township, on January 4, 2010, granted a \$30,000 salary increase to the Township Clerk retroactive to January 1, 2009. I have no way of evaluating this salary increase without knowing the salary history and the requirements of the job.

I find that this sub-factor is supportive of the awarded salary increases in 2009, 2010 and 2011 and completely at odds with the Township's proposed three-year salary freeze. There is simply no basis for the Township to propose a three-year salary freeze at the same time it is providing salary increases to high-ranking members of the Police Department and to the Township Administrator.

I provided extensive analysis of the third sub-factor, comparison to the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with employees performing the same services in public employment, namely, comparisons to other police officers in similar jurisdictions in my discussion of *Salary* on pages 40-51.

I found that the comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and declining salary increases. I have awarded salary increases that recognize the significant decline in the cost-of-living, acknowledge the Township's (and other public employer's) reduced ability to fund salary increases at prior levels, and the substantial decline in average salary increases in 2010 and 2011.

Lawful Authority of the Employer

Three of the statutory criteria, N.J.S.A. 34:12A-16g(1), (5) and (9), refer to the lawful authority of the employer. These factors, among other things, require the arbitrator to consider the limitations imposed on the Township by the CAP law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

More specifically, g(1) refers to the original 1976 Cap law; g(5) refers to the lawful authority of the employer and cites the 1976 Cap law; and g(9) refers to the recently amended Tax Levy Cap law which limits tax levy increases from year-to-year. The significant change in the Levy Cap is the reduction of the Levy Cap from 4% annually to 2% annually. The Appropriations Cap has also been reduced from 3.5% to 2.5%. It is well established that arbitrators must recognize and respect the statutory limits which have been placed on public employers. The Township and all other municipalities in the State face constraints on their ability to increase appropriations and their ability to raise taxes. The expenditure or appropriations cap applies to the total current expense portion of the budget and not to any particular line item within the budget.

The cost of the award is 7.5% over three years. I have reduced the cost of the 2.5% annual salary increases to 1.25% annually in 2009 and 2010 by making the salary increases effective July 1 in 2009 and 2010. The incremental costs will be significantly reduced in 2012 when Schedule A-3 is implemented.

The cost of the award is reduced by the cost containment savings generated by the premium sharing contributions mandated by the enactment of P.L. 2010, c. 2 and P.L. 2011 c.78. This is approximately 0.6% in 2010 and 1.5% in 2011. As discussed above, when fully implemented, the vast majority of the Township's police officers will be contributing an average of 5.5% of base salary toward the cost of health insurance premiums. This means that in 2014, a police officer earning \$80,000 will contribute 5.6% of base salary toward the cost of full family health coverage. This is equal to 5.8% at \$90,000 and 5.96% at \$100,000. The maximum contribution of 35% applicable to salaries of \$110,000 or more is \$6,522 annually in 2014.

Finally, I awarded a new salary schedule and longevity schedule for new hires to be effective December 30, 2011. The new salary schedule (with two additional steps) will result in future savings to the Township of nearly \$100,000 in cumulative earnings as each new officer progresses through the steps of the salary schedule to maximum. In the first five years of employment, the cumulative earnings on Schedule A-3 are reduced by nearly \$60,000 when compared to the same movement on Schedule A-2. Schedule A-2, if not modified, would have provided a 62% salary increase after only four years on the job. While the Township will not realize these savings immediately, the new salary schedule will benefit both the PBA and Township as more funds will be available to pay senior officer salaries. The new longevity schedule, with the elimination of the five-year 2% step and a 2% reduction in all other longevity steps will reduce the Township's future longevity costs.

There is absolutely no evidence in the record to show that the terms of the awarded salary increases or any other aspect of this award will cause the Township to approach the limits of its financial authority or to breach the constraints imposed by the three statutory criteria, N.J.S.A. 34:12A-16g(1), (5) and (9), in funding the salary increases awarded herein.

**Financial Impact on the Governing Unit,
its Residents and Taxpayers**

The above discussion under the *lawful authority* is applicable to the *financial impact* factor and need not be repeated. For all of the reasons cited above, I conclude that there is no evidence that the terms of my award will require the Township to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not directly impacted by this proceeding nor is there any evidence that the terms of this award will impact on the Township's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

Based on the evidence in the record, I conclude that the financial impact of the award will not adversely affect the governing unit, its residents and its taxpayers.

Cost of Living

Arbitrators must consider changes in the cost of living. The CPI has declined dramatically in recent years and there has not been an equivalent decline in the average salary increases. The CPI was 1.6% in 2008 and 2.3% in 2009 and the average increase in PERC reported voluntary settlements and awards in 2008 and 2009 ranged from 3.6% to 3.92%. Obviously, the salary increases lagged behind the changes in the CPI. This commonly occurs since comparability data is derived from multiple year contracts whereas the CPI is measured on a monthly and annual basis.

The most recent cost of living data shows that the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), for New York-Northern New Jersey increased by 1.4% in 2010 and by 3.3% through October 2011. Thus, the average increase in the CPI during the last four years is 2.15%. This dramatic decline in the CPI must be given considerable weight. I note that this decline in the CPI has also seen significant decline in the most recent PERC salary data. The average increase in PERC reported awards and voluntary settlements for the period January 1, 2010 through October 15, 2010 is 2.5% annually. The average increase in awards posted on the PERC webpage in 2011 is 2.25%.

I conclude that the awarded base salary increases, while slightly higher than the average increase in the cost of living, provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Township's police officers. I have given this sub-factor considerable weight and find that in a period of

sustained low inflation, the sharp reduction in the CPI must trump comparability data that lags behind the current economic and budgetary data and legislative mandates.

Continuity and Stability of Employment

The terms of my Award will maintain the continuity and stability of employment for the Township's police officers. The salary award in this matter will not jeopardize employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Township to continue to recruit and retain qualified police officers.

This factor was given considerable weight in the awarding of a new salary schedule for new hires. The cumulative salary savings generated by Schedule A-3 to the Township also benefits the bargaining unit as a whole. The modifications to the salary schedule will give the Township considerable future savings which will offset the cost of senior police officer salaries thus maintaining a competitive salary and the continuity and stability of employment that is essential to a productive and effective police department. These changes will not impact on the Township's ability to recruit and retain police officers since the maximum salaries will remain the same on both salary schedules thus maintaining the career ladder for all police officers.

I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

Overall Compensation

A review of this factor requires consideration of 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.” I have considered the overall compensation received by the Township’s police officers and find that the terms of my Award will maintain existing levels.

Summary

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have also determined the total net economic annual changes for each year of the agreement and concluded that those changes are reasonable under the statutory criteria.

In summary, I found that the comparability data garnered from settlements reached in prior years is not entitled to significant weight in a period of diminishing financial resources, decreased cost-of-living and recent declining salary increases. Comparability data from prior years cannot be given as much weight as more current salary, cost-of-living and budget data. I have awarded salary increases that recognize the significant decline in the cost-of-living and the substantial decline in average salary increases in 2010 and 2011. I have acknowledged the Township’s (and other public employers) reduced ability to fund salary increases at prior levels.

Accordingly, I hereby issue the following award:

AWARD

1. **Term of Agreement**

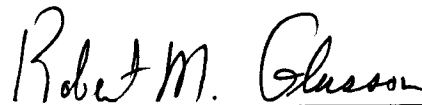
January 1, 2009 through December 31, 2011.

2. **Salary & Salary Schedule**

I shall award the following changes to the salary and longevity schedules:

- (a) Effective July 1, 2009, all steps on Schedule A-1 and Schedule A-2 shall be increased by 2.5%.
- (b) Effective July 1, 2010, all steps on Schedule A-1 and Schedule A-2 shall be increased by 2.5%.
- (c) Effective January 1, 2011, all steps on Schedule A-1 and Schedule A-2 shall be increased by 2.5%.
- (d) Effective December 30, 2011, all new hires will be hired pursuant to a new salary schedule (Schedule A-3) which will include two (2) additional steps. Step 1 shall be \$30,000. All other steps shall be twelve-month steps and shall be equalized between Step 1 and Step 9, the maximum step of \$91,457. The maximum step is the "Ninth year of Service" step. The maximum step on Schedule A-2 is effectively the "Seventh year of Service" step.
- (e) Effective December 30, 2011, the longevity schedule for new hires shall be as follows:

Completion of 10 years	2% of base rate
Completion of 15 years	4% of base rate
Completion of 20 years	6% of base rate
Completion of 24 years	8% of base rate
- (f) All salary increases are fully retroactive to the above effective dates.



ROBERT M. GLASSON
ARBITRATOR

Dated: December 22, 2011
Pennington, NJ

SCHEDULE A-1
SALARIES

	Effective <u>07/01/09</u>	Effective <u>07/01/10</u>	Effective <u>01/01/11</u>
Captain	\$126,186	\$129,340	\$132,574
Lieutenant	\$112,380	\$115,189	\$118,069
Sergeant	\$98,552	\$101,015	\$103,541
Corporal	\$90,056	\$92,308	\$94,616
 <u>Police Officers</u>			
Academy Level	\$47,562	\$48,751	\$49,970
First year of Service	\$54,574	\$55,938	\$57,337
Second year of Service	\$65,518	\$67,156	\$68,835
Third year of Service	\$71,421	\$73,206	\$75,037
Fourth year of Service	\$76,450	\$78,361	\$80,320
Thereafter per year	\$87,050	\$89,226	\$91,457

SCHEDULE A-2**SALARIES**

Applicable to Newly Hired Police Officers

Hired on or after January 1, 2003

	Effective <u>07/01/09</u>	Effective <u>07/01/10</u>	Effective <u>01/01/11</u>
Captain	\$126,186	\$129,340	\$132,574
Lieutenant	\$112,380	\$115,189	\$118,069
Sergeant	\$98,552	\$101,015	\$103,541
Corporal	\$90,056	\$92,308	\$94,616

Police Officers

First year of Service	\$42,197	\$43,252	\$44,333
Second year of Service	\$47,161	\$48,340	\$49,549
Third year of Service	\$52,747	\$54,065	\$55,417
Fourth year of Service	\$60,193	\$61,698	\$63,240
Fifth year of Service	\$68,259	\$69,965	\$71,714
Sixth year of Service	\$76,947	\$78,870	\$80,842
Thereafter per year	\$87,050	\$89,226	\$91,457

SCHEDULE A-3

SALARIES

Applicable to Newly Hired Police Officers
Hired on or after December 30, 2011

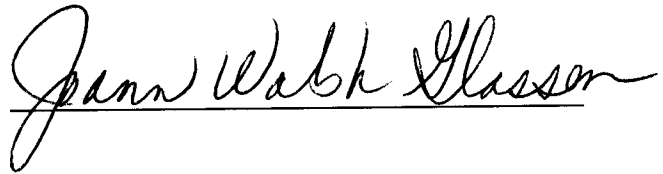
Captain	\$132,574
Lieutenant	\$118,069
Sergeant	\$103,541
Corporal	\$94,616

Police Officers

First year of Service	\$30,000
Second year of Service	\$37,680
Third year of Service	\$45,360
Fourth year of Service	\$53,040
Fifth year of Service	\$60,720
Sixth year of Service	\$68,400
Seventh year of Service	\$76,080
Eighth year of Service	\$83,760
Thereafter per year	\$91,457

STATE OF NEW JERSEY) ss.:
COUNTY OF MERCER)

On this 22nd day of December 2011, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

A handwritten signature in cursive script, reading "Joann Walsh Glasson", written over a horizontal line.

JOANN WALSH GLASSON
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 12/11/2016