

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

In the Matter of the Interest Arbitration Between:

**BOROUGH OF ENGLEWOOD
CLIFFS,**

Docket No. IA-2010-115

Employer

**Interest Arbitration
Decision & Award**

PBA LOCAL 45,

Issued: December 12, 2011

Employee Organization

ARBITRATOR:

Joseph Licata, Esq.

FOR THE EMPLOYER

Avis Bishop-Thompson, Esq.
DeCotiis, FitzPatrick & Cole, LLP

FOR THE PBA

Richard D. Loccke, Esq.
Loccke, Correia, Linsky & Bukosky

PROCEDURAL BACKGROUND

By way of this proceeding, the Borough of Englewood Cliffs (“Borough” or “Employer”) and PBA Local 45 (“PBA”) are involved in the establishment of a first formal collective negotiations agreement, effective January 1, 2009. Since 1978, the Borough has recognized the PBA bargaining unit as the exclusive representative of police officers employed by the Borough below the rank of deputy police chief. Unique to Bergen County, the terms and conditions of employment for Borough police officers have been heretofore set forth by Borough ordinances, orders or memoranda, and/or by virtue of practice or custom. During negotiations and throughout mediation efforts, the parties spent considerable time and resources attempting to agree upon, and reduce to writing, the existing terms and conditions of employment, i.e., the *status quo*.

In addition, the parties attempted to negotiate over what would be become modified or new terms and conditions of employment. After reaching an impasse on both fronts, the PBA filed a Notice of Impasse with the Public Employment Relations Commission seeking mediation assistance. With the assistance of Richard Gwin, Mediator, the parties allegedly resolved many open *status quo* items. During the undersigned’s initial mediation efforts, the PBA produced a draft of a proposed first contract. Many pages of this document contain the initials of both Richard D. Locke, Esq., on behalf of the PBA, and Carter Corrison, Esq., on behalf of the Borough. Thus, believing that many language issues had been resolved, on or about May 28, 2010, the PBA filed a Petition for Interest Arbitration with the Commission concerning the

resolution of what was then believed to be a relatively narrow class of *status quo* language items and a proposed increase in salaries. On June 4, 2010, the Commission filed the Petition under Docket No. IA-2010-115. (Exhibit J3). The Borough subsequently replaced Mr. Corrison as counsel/chief negotiator. By correspondence dated June 21, 2010, new counsel submitted a response to the Petition which, among other things, listed as in dispute each and every article of the PBA's proposed collective negotiations agreement, including the items apparently agreed to by Messrs. Loccke and Corrison. (Exhibit J6). By correspondence dated August 11, 2010, the Assistant to the Director of Conciliation and Arbitration notified the parties and the undersigned of his appointment as Interest Arbitrator, in accordance with the provisions of P.L. 1995, C. 425.

I initially met with the parties for mediation on November 24, 2010. Unfortunately, the Borough did not fully recognize the validity of the alleged tentative agreements reached between Messrs. Loccke and Corrison. In light of the respective positions of the parties, I scheduled an arbitration hearing for February 15, 2011. I further directed the parties that, at the hearing, I would receive evidence concerning both the *status quo* dispute and the parties' respective proposed new or modified terms and conditions of employment. In the interim, the Borough again substituted counsel. By correspondence dated February 4, 2011, Avis Bishop-Thompson, Esq. submitted a notice of representation and requested that the February 15, 2011 Interest Arbitration date be converted to mediation format. In recognition of the strained procedural history, the Borough agreed to bear the cost of the February 15, 2011 mediation.

As a result of the efforts of all involved on February 15, 2011, the parties did reach stipulations in my presence concerning the *status quo* or existing terms and conditions of employment. The byproduct of the parties' stipulations was denominated, "the *status quo* closed" and introduced in evidence as Exhibit J1. The parties correspondingly introduced in evidence as Exhibit J2 the comparatively fewer open *status quo* terms, a/k/a/ the "*status quo* open". At the conclusion of the February 15, 2011 mediation, the undersigned scheduled a first formal day of hearing for March 21, 2011, at which time the parties would present evidence addressing both the "*status quo* open" items and the parties' proposed new or modified terms and conditions of employment under the statutory criteria.

In accordance with N.J.S.A. 34:13A-16f(1) and N.J.A.C. 19:16-5.7(f), the PBA submitted its Final Offer on February 16, 2011. (Exhibit J4). The Borough submitted its Final Offer on March 4, 2011. (Exhibit J5). Consistent with the regulatory framework, I received the Final Offers at least ten days before the scheduled March 21, 2010 hearing. On March 21, 2011, I conducted a hearing in accordance with N.J.A.C. 19:16-5.6(d). At the commencement of the hearing, the PBA proposed, pursuant to N.J.A.C. 19:16-5.4(d), that the undersigned convert the proceeding from the default conventional authority format to a final best offer format. The Borough rejected the proposal and, accordingly, the matter proceeded under conventional authority, N.J.S.A. 34:13A-16d; and, N.J.A.C. 19:16-5.7(e).

Both parties had a full and fair opportunity to develop the record evidence and to argue in support of their respective Final Offers. The PBA presented the testimony of Scott Mura, PBA Chairman. The Borough adduced the testimony of Michael Cioffi, Chief of Police. Additionally, the parties introduced in evidence the following Exhibits:

Exhibit No./ Page No.	Date/Description of Document
JOINT EXHIBITS	
J1	Compendium: “ <i>status quo</i> closed” terms and conditions of employment.
J2	Compendium: “ <i>status quo</i> open” terms and conditions of employment.
J3	Petition to Initiate Compulsory Interest Arbitration, filed June 4, 2010.
J4	PBA’s Final Offer dated February 16, 2011.
J5	Borough’s Final Offer dated March 4, 2011.
J6	Borough’s response to Petition dated June 21, 2010.
PBA EXHIBITS	
P1	Hard copy of PowerPoint Presentation.
P2	Book of Contracts, Tabs 1-7.
P3	Book of Contracts, Tabs 8-12.
P4	Book of Contracts, Tabs 13-18.
P5	Book of Contracts, Tabs 19-24.
P6	Book of Contracts, Tabs 25-28.
P7	Book of Contracts, Tabs 29-33.
P8	Book of Contracts, Tabs 34-38.
P9	Book of Contracts, Tabs 39-45.
P10	Copy of Municipal Budget (2009).
P11	Copy of Municipal Budget (2010).
P12	Copy of Annual Financial Statement (2009).
P13	Copy of Annual Financial Statement (2010).

Exhibit No./ Page No.	Date/Description of Document
PBA EXHIBITS (Cont'd)	
P14	Report of Audit year ending 12/31/09.
P15	Annual Debt Statement (2009).
P16	Annual Debt Statement (2010).
P17	Bergen County Abstract of Ratables (2009).
P18	Bergen County Abstract of Ratables (2010).
P19	New Jersey State Department of Treasury Pension Payments and Deficits.
BOROUGH EXHIBITS	
B1	Total Population 2000-2010 Census New Jersey Municipalities.
B2	Bergen County Municipal Police Department Crime Data for 2009 compiled by the Star Ledger.
B3	Memorandum of Agreement between Borough of Englewood Cliffs and IBT Local 97 (January 1, 2010 through December 31, 2011).
B4	Certification of Steve Wielkocz and Financial Analysis.
B5	Police Payroll History 2006-2010.
B6	Transcript of Proceedings of March 21, 2011.
B7	U.S. Census Bureau, Selected Social Characteristics 2005-2009 (Englewood Cliffs).
B8	U.S. Census Bureau, Selected Economic Characteristics 2005-2009 (Englewood Cliffs).
B9	U.S. Census Bureau, Selected Housing Characteristics 2005-2009 (Englewood Cliffs).
B10	U.S. Census Bureau, Selected Population and Housing Narrative Profile (Englewood Cliffs).
B11	Borough of Spotswood Decision and Award (Frank Mason, Docket IA-2011-0048).
B12	NY-Northern NJ CPI-U Annual Percent Changes.

In accordance with the stipulation of counsel, I held open the evidentiary portion of the record in order to permit the Borough an opportunity to submit a financial certification from its accountants. After receiving the financial certification on April 12, 2011, the parties prepared post-hearing briefs. On or about May 27, 2011, the PBA submitted a "Summation Brief." On or about June 27, 2011, the Borough filed a post-hearing brief.

Subsequent to the submission of briefs, the undersigned requested that the parties submit revised cost-outs in order to more closely reflect the actual size of the bargaining unit and the impact of a percentage change in base salary on total base compensation -- which includes longevity, holiday, and education incentive payments. In addition, I requested that the parties consider whether they could mutually agree to supplement the record with a copy of the 2011 Municipal Budget (adopted in June of 2011) and provide brief commentary. The PBA objected to inclusion of the 2011 Budget. Consequently, the undersigned withdrew the request and the record was closed upon my receipt of the revised cost-outs. Both parties benefited from the skills demonstrated throughout the proceeding by their respective representatives.

The pre-2011 version of N.J.S.A. 34:13A-16f(5) called for an interest arbitrator to issue an award within 120 days of selection or assignment, unless the parties agreed to an extension of time. Pursuant to the consent of the parties' legal representatives, the Commission granted the undersigned extensions of time to issue the within Award on or before December 12, 2011.

THE FINAL OFFERS OF THE PARTIES

***The Final Offer of the Borough of Englewood Cliffs
(Exhibit J5)***

The Borough contends that its Final Offer is in the best interests of the citizens of the Borough and is a realistic offer for the PBA members in light of the restrictions on the Borough's finances. The Borough's Final Offer is as follows:

I. ECONOMIC PROPOSALS

A. **Term of Contract:** January 1, 2009 through December 31, 2012

B. **Salary:** The Borough proposes the following salary increase:

January 1, 2009: 0%
January 1, 2010: 0%
January 1, 2011: 2%
January 1, 2012: 2%

Increase the steps from 9 to 11.

C. **Longevity:** The Borough seeks to modify longevity for active employees as follows:

4 years – 1%
8 years – 2%
12 years – 4%
16 years – 5%
20 years – 6%
24 years – 10%
28 years – 12%

The Borough also proposes the elimination of longevity for new hires.

D. **Sick Leave:** The Borough seeks to modify sick leave as follows:

0 - 5 years – 10 days
After 5 years – 15 days
After 10 years – 20 days

E. **Vacation:** The Borough seeks to modify vacation as follows:

- 1 - 5 years – 10 days
- 6-10 years – 20 days
- 11-15 years – 20 days
- 16-20 years – 25 days
- 21 years & over – 30 days

F. **Death Benefits:** The Borough seeks to modify death benefits as follows:

All unused earned and accumulated sick leave pay up to 150 days.

G. **Terminal Leave:** The Borough seeks to modify terminal leave as follows:

2 months terminal leave for active employees and eliminate terminal leave for all new hires.

H. **Meal Allowance:** The Borough proposes reimbursement for meal allowance up to \$50.00 with receipts daily limited to overnight.

I. **Educational Incentive:** The Borough proposes to eliminate the continuous payment for college credit and limit credit to a one-time payment to classes earned for a defined period.

II. LANGUAGE CLARIFICATION/MODIFICATION:

- A. **Preamble** – Agreed as to language.
- B. **Article II, Employees’ Basic Rights:** Agreed.
- C. **Article III, Association Recognition:** The Borough proposes to exclude Captains.
- D. **Article IV, Exclusivity of Association Representation:** Open
- E. **Article V – Dues – Check Off:** Agreed.
- F. **Article VI – Association Representatives:** Agreed.
- G. **Article VII – Preservation of Rights:** Agreed.
- H. **Article VIII – Salary:** Agreed as to language.

I. **Article IX – Work Schedule, Tour Assignments and Overtime:** Agreed as to language and *status quo*. The Borough proposes the deletion of paragraph 1.

J. **Article X – Administrative Shift Changes, Exchange of Shifts/Days/Hours:** Agreed as to language and *status quo*.

K. **Article XI – Court Time & Court “On Call” Time:** Agreed as to language.

L. **Article XII – Recall:** Agreed as to language and *status quo*.

M. **Article XIII – Priority for Overtime:** Agreed as to language and *status quo*.

N. **Article XIV – Longevity:** Agreed as to *status quo* based upon ordinances.

O. **Article XV – Uniforms:** Agreed as to language and *status quo* based on Chief’s September 30, 2009 order.

P. **Article XVI – Educational Incentive:** Agreed as to *status quo* based on ordinances. Credit will not be continued in the base salary with the payment limited to one-time payment.

Q. **Article XVII – Out-of-Title Compensation:** The Borough proposes the following:

(1) Employees assigned to perform the duties of a high rank, *i.e., Captain, etc.*, for Thirty (30) consecutive working days or more....

R. **Article XVIII – Vacations:** Agreed as to *status quo* based on the ordinance. Borough proposes the following:

Par. 3: If an Employee is on vacation and becomes sufficiently ill, he may have such period of illness charged against sick leave at his option provided that a doctor’s note is supplied.

Par. 4: No Employee who is on vacation shall be recalled except in a case of the full mobilization emergent situation of the Department by the Chief of Police to meet a clear and present danger confronting the Borough.

Par. 6: Vacation shall be selected on a rotating seniority basis rank. Employees will be entitled to submit for vacation time up to *one-half* of the maximum number of days they are entitled to in a calendar year, *at that point the vacation schedule shall recycle*. Then the next Employees shall make their selection, and so on, until the seniority list is exhausted. After all Employees have submitted a request of their calendar year allotment, Employees may submit a request for any additional vacation days they may have acquired *as long as the schedule permits*.

Par. 7: Telephonic requests for the use of acquired leave time may be approved at anytime by the on duty tour commander *with due regard of upcoming events and weather related conditions*.

Par. 11 (new paragraph): If vacation time reaches 60 days accumulation, the Mayor and Council may pay at their discretion. Employees shall take at least half of the vacation days within two (2) years going forward.

S. **Article XIX – Holidays:** Agreed as to language and *status quo*.

T. **Article XX – Sick Leave:** Agreed as to *status quo* based on the ordinance. Borough proposes the following:

Par. 5: Delete

Par 8: Replace with the following language: No employee shall be out more than three (3) days without a doctor's certification attesting to illness. No certificate shall be necessary for less than three (3) days. In the event that in any calendar year the sick days accumulated is more than ten (10) days, a doctor's certificate shall be required for each subsequent absence. The Borough shall be entitled to an independent exam for the alleged illness if it is in excess of ten (10) days or in excess of the aforesaid ten (10) day requirements.

Par. 11(new paragraph): When on sick leave, the employee will list the address and phone number and respond when called during his tour. In the event the employee shall leave the premises, he shall inform the desk of the location and number.

U. **Article XXI - Work Incurred Injury:** Agreed

V. **Article XII – Personal Leave – Emergency Leave:** Agreed.

W. **Article XXIII – Bereavement Leave:** Agreed

X. **Article XXIV – Insurance:** Agrees as to language and *status quo* based on ordinance. Borough proposed the following:

The Borough will continue to provide existing insurance coverage to Employees covered under this Agreement, protecting them from civil suits arising out of the performance of their duties including but not limited to the following: False arrest, malicious prosecution, libel, slander, defamation of character, violation of the right of privacy, invasion of privacy, invasion of the right of privileged occupancy and the invasion of civil rights *as per terms and conditions of the Borough’s insurance coverage. A copy of the policy shall be made available to the bargaining unit.*

Y. **Article XXV – Life Insurance and Death Benefits:** Agreed as to language and *status quo*.

Z. **Article XXVI – Medical, Prescription, Dental & Optical Benefits:** Agreed as to language and *status quo*. The Borough proposes the following:

Par. 1: Replace with the following: The Borough shall provide medical and hospitalization coverage provided by the New Jersey State Health Benefits or its equivalent or what is statutorily required in the event the State Health Benefits is no longer in existence the co-pays and deductibles shall be in accordance with the Borough’s selected plan.

Par. 5: Replace with the following: The employee shall use his insurance in regard to this physical, but any co-pay or additional costs to the employee will be reimbursed by the employer. The employee has the choice of the Borough physician or their own physician if consent is provided via the HIPAA waiver form.

Optical Benefits: Modify 1st sentence to read: The employee will receive one (1) annual eye exam performed by the *physician chosen by the Borough* and at the cost of the Borough.

AA. **Article XXVII – Retention of Benefits:** Open. The Borough proposes the deletion of this provision.

BB. **Article XXVIII – Seniority:** The Borough proposes the following:

Traditional principles of seniority shall apply to lay-off and recall, transfer and any other similar acts. ~~Seniority is defined to mean the accumulated length of service with the Englewood Cliffs Police Department.~~ *Time in service by date of appointment shall apply pursuant to New Jersey State law and can be waived if agreed upon by all parties. Rank and title shall supersede seniority in all circumstances except if contrary*

to law. Promotions shall not be controlled by this article. An Employee's length of service shall no be reduced by time lost due to an absence fro his employment for illness or injury certified by a physician or any period of military service. Such certification shall be subject to review by the Police Surgeon, if any, or any physician mutually acceptable to the parties.

CC. **Article XXIX – Terminal Leave:** Agreed as to *status quo* based on ordinance. The: Borough proposes two months terminal leave for active employees and the elimination of terminal for new hires.

DD. **Article XXX – Military Leave:** Agreed.

EE. **Article XXXI – Meal and Travel Allowance:** Agreed as to *status quo*. The Borough proposes the following:

Meal Allowance: Modify to read, "Employees attending classes at the Police Academy, Training School, Federal, County and State seminars shall receive reimbursement for up to \$50.00 upon the submission of daily receipts and only if overnight."

FF. **Article XXXII – Extra Duty:** Agreed.

Employees hired to work Extra Duty assignments are employed through the Borough. The Employees shall have an on duty *status* and will be covered by all insurance and benefits provided by the Employer *pursuant to the New Jersey law*.

GG. **Article XXXIII – Bulletin Board:** Agreed.

HH. **Article XXXIV – Ceremonial Activities:** Agreed.

II. **Article XXXV – Personnel Files:** The Borough proposes the following:

Par. 1: A Separate ~~personal~~ *personnel* history file shall be established and maintained for each Employee covered by this Agreement. ~~Personal~~ *Personnel* history files are confidential records and shall be maintained in the ~~office of the Chief of Police~~ a *secure location*.

Par. 3: Whenever a written complaint concerning an Officer or his actions is to be placed in his personnel file a copy shall be made available to him and he shall be given the opportunity to rebut it if he so desires, and he shall be permitted to place said rebuttal in his file. *This shall not apply to internal affairs.*

JJ. **Article XXXVI – Off Duty Police Action:** Agreed.

KK. **Article XXXVII - Safety and Health:** Agreed.

LL. **Article XXXVIII – Replacements:** The Borough proposes the elimination of this article.

MM. **Article XXXIX – Grievance Procedure:** Agreed.

NN. **Article XL – PBA Union Business:** Agreed

OO. **Article XLI – Voting:** Agreed

PP. **Article XLII – Emergency Medical Care Coverage:** Agreed.

Employees rendering Emergency Medical Care shall be fully indemnified by the Borough for any and all claims, lawsuit, ~~administrative actions~~ or other matters relating to Emergency Medical Care.

QQ. **Article XLII – Weapons:** Agreed

RR. **Article XLIV – Departmental Investigations:** Agreed

SS. **Article XLV – Data for Future Bargaining:** Withdrawn by the PBA.

TT. **Article XLVI – No Waiver:** Agreed

UU. **Article XLVII – Pension:** Agreed

VV. **Article XLVIII – Changes and Modifications:** The Borough proposes the following:

3rd line modified to read, "...modifications would inure to the benefit of the Employees *or the Employer...*"

WW. **Article XLIX – Saving Clause:** Agreed

XX. **Article L - Term of Contract:** Agreed as to language.

YY. **Article LI – Extension of Contract Protection:** Open

The Final Offer of the PBA
(Exhibit J4)

1. **Term:** January 1, 2009 through December 31, 2014.
2. **Salary:** 3.5% salary increase on each successive January 1 over a 6 year period to commence on January 1, 2009.
3. **Maintenance of *Status Quo* on All Economic Issues:** Maintain the *status quo* on all economic and issues and benefits as they are currently in existence through ordinance and practice.
4. **Exclusivity of Association Representation:** The PBA seeks to have the codify the contract from the prior Agreement with the Borough to have the bargaining unit defined as all sworn Police personnel except the Chief of Police.
5. **Current Work Schedule:** Include the language “current work schedule for all positions covered by this Agreement shall be maintained.”
6. **Work in Higher Rank:** Language was memorialized in the open issues package certified by the parties at the February 15, 2011 meeting.
7. **Insurance Language:** Maintained as an open issue from the original proposal.
8. **Retention of Benefits:** Maintained as an open issue from the original proposal.
9. **Seniority:** Proposed language originally noted as Article XXVIII at page 40 of the Original Proposal with a modification of a deletion of the third line from the word “seniority” to the fourth line to the word “Department”.
10. **Personnel Files:** Maintained as an open issue from the original proposal.
11. **Replacements:** Maintained as an open issue from the original proposal.
12. **Changes and Modifications:** Maintained as an open issue from the original proposal.
13. **Term of contract –** Maintained as an open issue from the original proposal.
14. **Extension of contract proposal.** Maintained as an open issue from the original proposal.

THE POSITIONS OF THE PARTIES

The Position of the Borough of Englewood Cliffs

Initially, the Borough reminds the Arbitrator of his duty to at least consider the statutory criteria, explain why he deems a particular factor relevant or irrelevant, and ultimately, to make “a reasonable determination of the issues”. In sum, an arbitrator’s award “must indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.” Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 83-85; N.J.S.A. 34:13A-16g; and N.J.A.C. 19:16-4.9. The Borough also posits that the Arbitrator must separately determine whether the total net annual economic changes for each year of the Agreement are reasonable under the statutory criteria, pursuant to N.J.S.A. 34:13A-16d. This means that consideration must be given to the reasonableness of each individual issue in dispute in relation to the terms of the entire Award because awarding any single change can reasonably impact the resolution of all the issues in and around the overall cost of the entire Award. With the Arbitrator’s charge thus delineated, the Borough next individually argues in support of its Final Offer by addressing the statutory criteria, as follows:

1. **The Interest and Welfare of the Public, N.J.S.A. 34:13A-16g(1); The Lawful Authority of the Employer, N.J.S.A. 34:13A-16g(5); The Financial Impact on the Governing Unit, Its Residence, The Limitations Imposed Upon the Local Unit’s Property Tax Levy, and Taxpayers, N.J.S.A. 34:13A-16g(6); and Other Restrictions Imposed on the Employer, N.J.S.A. 34:13A-16g(9).**

The Borough stresses that an arbitrator cannot implement an economic proposal without consideration of the municipality's ability to maintain existing local programs and services and/or initiate new programs and services. In view of the low surplus level in the operating budget, the PBA's proposal, if accepted, would undoubtedly require the Borough to either raise taxes (which are already steep) and/or reduce services or programs in other areas of the municipal budget. The Borough refers to the "precarious financial backdrop" surrounding this proceeding and maintains that the PBA's offer will negatively affect the interest of the public. The Borough notes that it is important for the Arbitrator to give heavy weight to the fiscal responsibility element of the interest and welfare of the public criterion, including restrictions imposed by the recent 2% tax levy cap. The Borough includes in its presentation a copy of the Decision and Award of Frank Mason in Borough of Spotswood and PBA Local 225, PERC Docket No. IA-2011-0048. (Exhibit B11). In assessing the fiscal responsibility component of the criteria, the Borough asks the Arbitrator to embrace Arbitrator Mason's reasoning that "it is necessary to examine the Borough's fiscal situation, looking at the trends over a multi-year period to reach some conclusion as to the impact of the issues herein on future budgets." [Borough's post-hearing brief, dated June 27, 2011, page 21].

In doing so, reasons the Borough, the Arbitrator will find that the Borough has been operating on a declining budget since 2008. More recently, the 2% tax levy cap (reduced from 4% to 2% by P.L. 2010, C. 44 on July 13, 2010) has forced Borough officials into the even more fiscally conservative approach, as illustrated more fully by the Financial Certification of its Accountant, Steven Wielkotz. Mr. Wielkotz has

qualified as an expert witness in arbitration in the area of financial analysis of municipal budgets and the financial impact of arbitration settlements on over fifty occasions. According to the Borough, after reviewing all of the budgetary and financial Exhibits introduced in evidence, Wielkocz provided the Arbitrator with a thorough financial analysis encompassing the historical and current financial condition of the Borough, and supplied a comparative cost-out of the Borough and PBA's respective proposals. Based on the report of Mr. Wielkocz, the Borough advances the following financial arguments for the Arbitrator's consideration.

Within the last four years, the Borough's revenues and expenditures have undergone a dramatic shift. There was a slight increase in revenues in 2006 and 2007 wherein the excess to surplus increased from \$1,059,373 to \$1,431,078 (4.06% to 5.11% of revenues, respectively). However, all of that changed in 2008. In 2008, revenues were \$28,931,896, expenditures sharply increased to \$28,282,418 and the excess to surplus was only \$649,478 -- which represented 2.24% of revenues. The surplus continued to decline in 2009. Whereas revenues were \$28,740,149, expenditures were \$28,169,956 and the excess to surplus decreased to \$570,193 -- 1.98% of the revenue. While 2010 bore witness to an increase in revenues to \$29,690,630, expenditures rose to \$29,635,174. The excess to surplus plunged to \$55,456, which represented only 0.19% of revenues. According to the Borough, the history of revenues versus expenditures, the declining surplus account, and the 2% tax levy cap precludes an award of the salary increases sought by the PBA.

The history of the fund balance clearly illustrates a decline in funds utilized in the subsequent years. Specifically in 2004, the fund balance was \$1,530,767. The Borough used \$1,100,000 to fund the 2005 budget. In 2005, the fund balance was \$1,723,345. The Borough carried forward \$1,400,000 for 2006. The 2006 fund balance was \$1,382,718, and the Borough carried \$1,100,000 into 2007. In 2007, the fund balance reached \$1,713,796 and the Borough used \$1,534,000 for 2008. However, according to the Borough, the fund balance dropped to \$839,274 in 2008 and it used \$668,000 for 2009. The low fund balance continued in 2009, specifically, \$731,467, with \$604,000 to be used for 2010. The 2010 fund balance increased, albeit still low, to \$1,137,924. The Borough did not know, at the time, the carryover for the then anticipated 2011 budget. The Borough alleges that it is in a vulnerable position for 2011.

The Borough explained in detail the reasons for its ever-increasing expenditures account. Pension costs have dramatically increased from \$480,767 to \$1,079,591. In the same vein, health benefits have increased from \$500,978 in 2008 to \$950,340 in 2009. The 2010 municipal budget reflected appropriations for SFY 2010 of \$12,681,578. Appropriations within the cap were \$9,270,645. A review of each line item illustrates an attempt by the Borough of fiscal prudence by curtailing expenditures from 2009 to 2010 in light of diminishing surplus and the cap limitations. The Borough more specifically endeavors to control personnel costs through attrition and other operational adaptations. The Borough asserts that it operated with a skeletal staff in other departments; and that it has operated the police department with a hiring freeze, despite retirements. It did so in

order to produce a 2011 Budget under the cap. The Borough reasons that it can no longer insulate its police department against the harsh reality of its budget crisis.

The Borough observes that residents have recently absorbed substantial tax increases. With respect to County taxes, over a four-year period, the levy has substantially increased from \$5,531,638 to \$6,693,971, which amounts to 21% increase. The municipal tax levy has increased to 14%; namely from \$9,226,776 to \$10,527,903. The school tax levy increased in double digits from \$9,932,706 to \$9,975,855 or 12%. During this same four-year period, the tax levy increase outpaced the CPI. The four-year period reflected a tax levy increase from \$23,691,120 to \$27,197,729, or a 14.8% increase. In comparison, the increase in CPI was 5.8%. All of the above results in one simple fact: the Borough must maintain a fiscally conservative position. According to the Borough, the unfortunate but inevitable reality is that all departments will operate at minimal cost.

The Borough's proposal entails 0% for 2009 and 2010 and 2% for 2011 and 2012. Conversely, the PBA proposes a 3.5% increase in salary in each of six years (from 2009 through 2014). The Borough argues that the PBA's proposal from 2009 through 2012 exceeds the costs of the Borough's proposal by approximately \$339,546.00. Over the course of the PBA's proposed six-year contract, the cost of the PBA's proposed salary increases amount to \$707,844.00. Unlike the PBA's proposal, the Borough's proposal contemplates the addition of two salary steps in order to achieve some savings. The Borough also compares the parties' respective proposals concerning non-salary economic items and notes the following cost savings estimated by Mr. Wielkotz.

<u>Benefit Name</u>	<u>Anticipated Savings Borough Proposal Over PBA's Proposal</u>
Vacation	\$45,848.00
Sick Days	\$61,445.00
Longevity	\$211,650.00
Terminal Leave	\$293,755.00

The Borough reasons that the above analysis of the statutory financial criteria demonstrates that the PBA's salary proposal, if accepted, will harm the public interest and even the interests of PBA members. The Borough cautions that such additional costs will inevitably result in no new hires or promotions. Therefore, the Borough asks the Arbitrator to award its offer.

Lastly, the Borough refers to the dilemma of having to make retroactive salary increases in line with the offer of the PBA: "Accordingly, the Borough would take a financial hit since funding for this contract term would necessarily come out of the 2011 budget. Consequently, the proposal made by the PBA should not be awarded."

2. Comparison of Wages, Salaries, Hours and Conditions of Employment, N.J.S.A. 34:13A-16g(2)(a-c).

According to the Borough, based on the PBA's Exhibits (P2-P9), it may be ascertained that Borough police officers are receiving salaries and other economic benefits that are comparable to the level received by police officers in other Bergen County municipalities. Notwithstanding the Borough's evaluation of the PBA Exhibits, the Borough notes that the PBA itself did not present the Arbitrator with a "true comparison" of the data with respect to other employees in the public sector. The Borough asserts that the PBA enjoys wages, salaries and conditions "which are rapidly

diminishing in the public sector”. The Borough asks the Arbitrator to take notice of layoffs in other municipalities in response to the levy cap. In light of the financial crisis commencing in 2008, the Borough suggests that there is no justification to continue to award police employees more favorable increases or terms as compared to their non-police, public sector counterparts.

With respect to private sector comparisons, the Borough acknowledges that few private sector jobs are analogous to that of a police officer. However, even the U.S. Department of Labor Reports delineate several private sector occupations as involving more dangers than police officer, e.g., convenience store clerk, urban taxi driver, steeplejack and coal miner. The Borough additionally notes that private sector employees rarely receive the fringe benefit package applicable to the Borough’s police officers, such as, clothing allowances, yearly education incentives, longevity, unlimited sick time, etc. The Borough asks rhetorically, how many other public or private sector employees can retire after twenty-five years of service at 70% pension with a paid health-benefits package. [Borough’s post-hearing brief, dated June 27, 2011, page 24].

Finally, with respect to the overall compensation criterion, the Borough concludes that it compensates police officers at a high level for their services with due regard for the fiscal realities.

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

The Borough provides the Arbitrator with United States Department of Labor (“USDOL”) CPI statistics for the New York-Northeastern Area showing a 3.8% increase in 2008, 1.5% increase in 2009, 2.4% increase in 2010, and 1.5% increase in 2011. The

Borough next compares total CPI (9.2%) with the PBA's proposed six-year, 21% salary increase. The Borough reasons that the PBA's salary proposal is more than double the increase in CPI. The Borough reasons that any awarded increase should not exceed the CPI for the Northeast Region.

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

The Borough observes the existence of a stable career path within the Borough of Englewood Cliffs Police Department. Indeed, the Borough reasons that vacancies in recent years have occurred only due to retirements or promotions. In sum, the Borough states, "The PBA has failed to present evidence that the current level of compensation was insufficient to attract and retain qualified superior officers."

5. Other Items.

A. Duration.

The Borough requests that the Arbitrator award a contract, effective January 1, 2009 through December 31, 2012. According to the Borough, the duration proposed by it provides an opportunity to absorb new contract terms before commencing negotiations and provides both sides an opportunity to analyze the Borough's fiscal condition with a greater degree of certainty. Thus, the Borough asks the Arbitrator to award a four-year contract.

B. Replacements Proposal.

The Borough asks the Arbitrator to reject the PBA's proposal regarding replacements. The PBA's proposal states, "No full-time employee covered by this Agreement shall be replaced by any non-police, part-time or other personnel." It further

states, “No post presently filled by a full-time employee covered by this Agreement shall be filled by any non-police, part-time or other personnel.” In response to the PBA’s proposal, the Borough relies on existing decisional law of the New Jersey Public Employment Relations Commission and argues that it has the managerial prerogative to deploy police officers based on a matching of qualifications to tasks. The Borough submits that the Arbitrator should reject the PBA’s proposal because it would interfere with the Borough’s managerial prerogatives.

C. Scope of the Unit.

The Borough asks the Arbitrator to reject the PBA’s “Article III – Association Recognition” proposal, to the extent it commingles certain supervisory and non-supervisory police officers. The Borough does recognize that the bargaining unit has been in existence since 1978, but adds that the Deputy Chief replaces the Chief of Police in his absence and, in turn, other police supervisors step into the shoes of the Deputy Chief. The Borough advances for the Arbitrator’s consideration the decision of PERC in New Jersey Turnpike Authority, 31 NJPER 18 (2005). In light of all the foregoing legal and practical considerations, the Borough argues that supervisory and non-supervisory positions do not belong in the same bargaining unit. Conversely, the Borough requests that the Arbitrator deny the PBA’s proposal seeking to exclude only the Chief from the bargaining unit.

Based on the foregoing, the Borough requests that the Arbitrator award the Borough’s Final Offer in its entirety.

The Position of the PBA

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

The PBA reasons that its members provide a high level of services to the residents of the Borough of Englewood Cliffs. In comparison to the residential population of 5,281 (over 3.4 square miles), Englewood Cliffs is one of the busiest towns in Northeast New Jersey, due to substantial corporate activity and commuter traffic. Unit members field one of the heaviest traffic flows and are responsible for providing services to a substantial commercial base. To demonstrate the services provided and challenges faced by Borough police officers, the PBA introduced the testimony of Scott Mura, PBA Chairman together with a corresponding PowerPoint demonstration. (Exhibit P1).

The PBA notes the close proximity of the Borough to the George Washington Bridge and the concomitant New York City-bound traffic flow through Englewood Cliffs from adjacent populations, such as, Englewood, Leonia, Fort Lee, Tenafly and Teaneck. In addition, Borough police officers must enforce motor vehicle violations along Highway 9W, a state road characterized by heavy traffic, three miles of which are comprised of major corporations doing business within the borders of Englewood Cliffs. In addition, the Palisades Interstate Parkway (“PIP”) exits into Englewood Cliffs with substantial traffic from the George Washington Bridge. According to New Jersey Department of Transportation’s statistics, observes the PBA, approximately 17,345 vehicles per day pass the intersection of Palisades Avenue and Hudson Terrace (also known as County Road 505). The PBA adds that 25,000 vehicles per day travel through the intersection of Palisades and Sylvan Avenues.

To illustrate the vast expansion of corporate activity in Englewood Cliffs and the value of such activity to its residents, the PBA introduced, as part of its PowerPoint demonstration, a photograph of a posted sign along Palisades Avenue stating, "The Home of the Trillion Dollar Mile". The Mayor Joseph Parisi, Sr., Charitable Foundation donated the sign as a reflection of pride in the substantial corporate business activity within the borders of Englewood Cliffs. The PBA argues that, as corporate activity expands, police officers assume additional burdens, i.e., more people to protect, more traffic problems and other activities. Also taxing the workload of police officers is the fact that the Borough is home to St. Peter's College and to a plethora of spacious homes and properties exceeding \$1,000,000, on average.

With the role of police officer thus expanding, police officers must correspondingly enhance their level of professional expertise by, among other means, continued certification and participation in training programs, e.g., Active Shooter Training, Click-It or Ticket, DARE, Car Seat Installation Program, EMT training, Over the Limit - Under Arrest, Homeland Security/Counter Terrorism, etc. The PBA asserts that official statistics further demonstrate the expansive role of a Borough police officer. According to Sheet 55 of the PBA's PowerPoint presentation, from 2002 to 2010, summons production increased by 58.5% (from 1,118 to 1,775) and municipal court fines emanating from such enforcement were up 37% (from \$111,549.50 to \$196,970.50). The PBA also introduced evidence from New Jersey Crime Reports showing a breakdown of crimes per 1,000 residents from 1996 to 2009, and a breakdown by subject matter on the 18,770 calls received in calendar year 2010. (Exhibit P1, Sheets 53-55). The PBA

submits that both criminal and traffic violations have substantially increased over the period measured.

The PBA next reasons that, despite the increasing demand for police services, the Borough has permitted, through attrition, a sharp reduction in the size of the police force. Specifically, in 2004, 28 law enforcement employees served the residents of Englewood Cliffs. In 2011, however, the Borough maintained a force of only 23 officers. Out of the nine police officers whom retired since 2006, the Borough replaced only four officers. At the time of the arbitration hearing on March 21, 2011, Scott Mura testified that one other police officer was immediately destined for retirement, effective May 1, 2011 (bringing the unit roster from twenty-three to twenty-two). According to the PBA, the Borough's action of allowing the department to dwindle in size while police responsibilities increase is antithetical to the interest and welfare of the public.

The PBA additionally argues that the Borough's freeze on promotional opportunities, namely, the position of inspector, two police captain positions, and one lieutenant position has significantly damaged the morale of the department. The PBA predicts other adverse consequences to morale such as assigning supervisory responsibility to the subordinate ranks of the police department and the requirement that subordinate ranks perform effectively with less supervision. The PBA points out that Police Chief Michael Cioffi testified as to the continued professionalism exhibited by police personnel in the face of recent attrition and increasing responsibilities. The PBA submits that its economic proposal takes on added significance in light of the overuse of police officers operating within a reduced table of organization and diminishing

promotional opportunities. Indeed, reasons the PBA, in the absence of promotional opportunities, the only career-path incentive takes the form of sufficient increases in the existing salary guide.

Based on the interest and welfare of the public, the PBA asks the Arbitrator to give significant weight to its economic offer of 3.5% across-the-board for six years.

2. Comparison of Wages and Conditions of Employment, N.J.S.A. 34:13A-16g(2)(a-c).

The PBA introduced in evidence eight volumes of contracts involving Bergen County municipalities. (Exhibits P2-P9). For 2010, the average increase, according to the PBA, is 4.407%; for 2011, 3.74%; for 2012, 3.7%; and for 2013, 3.92%. The PBA summarized its percentage increase comparability data as follows:

CHART NO. 2

**AVERAGE BASE RATE INCREASES BASED ON
PBA EXHIBITS**

	2010	2011	2012	2013
East Rutherford	4 (2/2)	4 (2/2)	4 (2/2)	5 (2/3)
Allendale	4.1	4		
Closter	4	4		
Cresskill	3.95	3.95		
Demarest	10.1	3.75	3.75	
Edgewater	3.65	3.75	3.75	3.75
Elmwood Park	3.95	3.95		
Fort Lee	8.5 (7.511)	3 (2.5/1)		
Garfield	4 (2/2)	4	4	
Glen Rock	4			
Harrington Park	4.2	3.5	3.5	3.5
Haworth	4.4	4.4	4.4	
Lodi	3.75	3.75		

Mahwah	6			
Midland Park		2.9	3.1	
Moonachie	4 (2/2)	4 (2/2)		
Oakland	4.2			
Paramus	3	3	3	3
Ridgefield	3.65	3.75	3.75	3.75
Ridgewood	4.1 (2/2.1)	4.1 (2/2.1)	4.1 (2/2.1)	
Rutherford	2.75	3 (1.5/1.5)	3 (1.5/1.5)	
Saddle Brook	4	4		
Tenafly	4.88	3.75	3.75	
Wallington	3.8	3.9	4	
Woodcliff Lake	3.2	2.75	2.75	
Wood-Ridge	4 (2/2)	4 (2/2)	4.5 (2.25/2.25)	4.5 (2.25/2.25)
AVERAGES	4.407%	3.74%	3.70%	3.92%

The PBA submits that its proposed 3.5% across-the-board increase falls below the norm of Bergen County comparables.

The PBA asks the Arbitrator to observe that commencing May 1, 2010, pursuant to new legislation, PBA members began contributing 1.5% of their base salary toward the cost of health benefits. Thus, the PBA's 3.5% wage increase (after deducting a 1.5% health benefits contribution) is actually 2.625% for 2010, and 2% for years 2011-2014. Accordingly, the PBA asks the Arbitrator to recognize the net value of the PBA's 3.5% proposal in relation to the legislatively imposed 1.5% health benefits contribution obligation.

The PBA further observes that it does not seek an enhancement to the *status quo* with respect to all other economic benefits, such as additional paid leave. Rather, the PBA merely seeks to maintain the *status quo*. Conversely, the PBA asserts that the

Borough has failed to provide any meaningful evidence to the Arbitrator to consider in support of a changing the *status quo* with respect to numerous, longstanding economic terms and conditions of employment.

With respect to private sector comparisons, the PBA believes that the Borough failed to provide a private sector benchmark for purposes of comparison to law enforcement officers. The PBA notes that both the United States and New Jersey governments have passed legislation expressly distinguishing police officers from other types of employment; for example, §207(k) of the Fair Labor Standards Act, 29 U.S.C.A. establishes a different work cycle basis for police officers regarding the threshold for overtime compensation. In New Jersey, provisions of Title 40A govern the creation of police departments, the establishment of special qualifications, residency requirements, minimum and maximum age requirements for initial hire, maximum age for compulsory retirement, etc.

Perhaps more distinguishing, police officers have the statutory power of arrest, the right to carry a firearm, etc. The PBA refers to Village of Ridgewood Docket No.: IA-94-141. In that matter, Arbitrator William Weinberg comprehensively explained the distinctions between police officers and other groups of private sector employees offered for comparison and concluded: “The weight given to the standard of 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.”

Based on the foregoing, the PBA reasons that its Bergen County comparisons are entitled to the most weight under the comparability criterion. The PBA notes that the percentage of increases negotiated or awarded with respect to the PBA's Bergen County counterparts exceed the PBA's salary proposal in this matter. For these reasons, the PBA submits that comparability supports its economic offer over that advanced by the Borough.

3. Stipulations of the Parties.

The PBA asks the Arbitrator to consider Exhibit J1, the “*status quo* closed” as the stipulation of the parties within the meaning of N.J.S.A. 34:13A16g(4).

4. Lawful Authority of the Employer and the Impact on the Residents and Taxpayers (16g5, g6 and g9).

The PBA explains that the statutory criteria incorporate the “Appropriations Cap” and the “Levy Cap”. According to the PBA, its proposal does not run into conflict with either cap. The PBA cost-out of the bargaining unit uses 2008 base pay rates. (Exhibit P1, page 36). Using the base rate applicable to 14 patrolmen (top-step, \$110,908.00), 5 sergeants (\$119,781.00), and 2 lieutenants (\$129,364.00), the total cost of base salary for the bargaining unit in 2008 is \$2,410,345.00, 1% of which equates to \$24,103.00. The PBA sets forth the following cost-out with respect to an annual 3.5% increase from 2009 to 2014:

<u>Value of 3.5% Base Payroll Progression <i>Per Annum</i></u>	
2009	\$84,360
2010	\$87,313

2011	\$90,369
2012	\$93,531
2013	\$96,805
2014	\$100,193

According to the PBA, the total cost of its economic proposal is \$552,571.00.

Having said this, however, the PBA asks the Arbitrator to include in the ultimate cost-out significant offsets in the form of the legislatively imposed 1.5% health benefit contribution and the substantial savings resulting from attrition. As set forth by Exhibit P1, page 36, since January 1, 2009 two captains and a police lieutenant have retired without replacement. Each captain earned \$139,713.00 and the police lieutenant earned \$129,364.00. Thus, the total reduction in annual base salary amounts to \$408,790.00. In addition, based on the testimony of Chief Cioffi, two sergeants were set to retire -- one in April of 2011 and the other in December of 2011. In response to the Arbitrator's post-hearing request, the PBA submitted a revised cost-out of the savings associated with the 2011 retirements of Sergeants Rice and Ershadi and Patrolman Ford (who resigned and accepted police employment elsewhere). Each sergeant earned \$119,781.00 and Patrolman Ford earned \$110,908.00 as of calendar year ending 2008. Factoring in the costs of longevity, holiday, 24% pension contributions, and clothing allowance, the PBA calculates a total annual savings of \$176,500.00 for each Sergeant and \$148,990.00 for Patrolman Ford or an additional \$501,990.00. Combining the total reduction to base

payroll, the PBA derives a figure of \$910,780.00, an amount far in excess of the PBA salary increase proposal:

If the entire PBA Wage Increase Proposal is granted as stated, the Borough will be able to fully fund it and still save [more than] a Quarter Million Dollars. There is no economic negative here. There is no additional cost here. The public employer can actually reduce the payroll cost commensurate with the separations of these listed people, as well as fully pay the Award and still be able to have money to transfer fees for other municipal purposes. An award of the PBA position in this case will result in a reduction in cost as has been experienced by this town up to the date of the term of this contract. Increased costs do not occur here. There can be no Appropriation Cap argument nor can there be any logical argument on a Levy Cap. [PBA's post-hearing brief, page 36].

The PBA next observes that the Borough is in the exceptional position of having one of the highest ratable-base in Bergen County coupled with one of the lowest tax rates. The PBA introduced the 2010 "Abstract of Ratables" for the County of Bergen showing a "Taxable Value of Land and Improvements" of 3.42 billion dollars. In relative terms, the Borough is very close to the top of the County of Bergen listing of seventy municipalities. Of the seventy towns comprising Bergen County, Englewood Cliffs has the second lowest tax rate, .795 (the rural town of Alpine has a tax rate of .670). In contrast, adjacent City of Englewood has a 2.02 tax rate; Fort Lee, 1.95; Tenafly, 2.75; and Teaneck, 2.28.

After studying the Report of Audit (Exhibit P14) and the most recent Annual Financial Statement (Exhibit P13), the PBA notes that the tax collection rate was 98.75% in 2008 and 2009; and 98.65% in 2010. According to the PBA, such unusually high rates of current collection implicitly indicate a lack of a tax burden on the public. The PBA claims that the following factors are also indicative of the fiscal health of the Borough:

- Debt Statement - .44% in comparison to a statutory limit of 3.5%
- The 2010 Appropriations Cap - \$11,733,772.00 allowable and \$9,270,645.0 actually appropriated (\$2,463,127.00 under the Appropriation Cap).
- 2010 Levy Cap - \$11,127,071.00 “maximum allowable to be raised by taxation” and \$10,527,903.00 -- “amount to be raised by taxation for municipal purposes” or \$599,168.00 under cap.
- Total base rate for the bargaining unit of \$2,410,445.00 (represents only 8.7% of the total Levy of \$27,444,338.00 or \$522.00 annually for every \$6,000.00 in taxes paid, i.e., approximately \$1.40 per day). A 3.5% increase to the bargaining unit will cost the taxpayer in the above example an additional 4 cents per day.

The PBA also responds in detail to the Certification submitted by Steven Wielkocz on April 12, 2011. In summary fashion, the PBA challenges the Certification in the following areas:

- The Regeneration of Funds Balance merely shows that the amount to be utilized is a judgment made on a year-to-year basis and resulting amounts have ebbed and flowed over the years.
- The Certification fails to note that during the period sampled there was a revaluation within the Borough of Englewood Cliffs -- which offers the base for the calculation.
- Although the tax levy may have increased over a four-year period, the tax rate has remained very low, approximately 1/3 of the rate of surrounding municipalities.
- The comparison of the increases in tax levy to the percentage change in CPI is not a valid comparison for purposes of statutory analysis under the Interest Arbitration Law.
- With respect to Paragraph 19 -- increasing pension costs -- the PBA notes that public employers failed to pay into the pension system for four years and later had to start making back payments on an incremental basis. The PBA directs the Arbitrator’s attention to Exhibit P19, the history of nonpayment into the pension fund and the resulting savings by the municipality. The PBA observes a savings of \$13,627.00 in 1998 and

\$79,390.00 in 2000, as revised to \$105,916.00 – all “sums of money which the Borough of Englewood Cliffs, as well as other public employers in varying degrees, have enjoyed the use of for numerous years in the recent past. To claim that the cost of contributions have gone up because they have to start paying again after the holiday is, at best, disingenuous.” [Id., pages 44-45].

The PBA asserts that the net value of its salary proposal, if awarded, presents no significant concern under either the appropriations or the levy cap.

5. Other Items.

The PBA objects to the Borough’s attempt to eliminate numerous longstanding fringe benefits. Whereas the PBA claims it is seeking only an increase in wage, the “[E]mployer seems to be taking the position of throwing everything up against the wall to see what sticks. That is not the standard that is acceptable under the Public Employment Relations Commission rules and case law.” By virtue of the long-standing past practice concerning the remaining open benefits, the PBA asserts that it was incumbent upon the Borough to demonstrate sufficient reason to change the *status quo*. It has not: “the Employer has offered no proofs, no costing-out, not even a justification or supportive argument. As such, and with all due respect to the Arbitrator, they are not statutorily awardable.” [Id., page 48].

Based on the foregoing, the PBA asks the Arbitrator to rule in favor of the salary increase that it seeks and to continue existing benefits.

FACTUAL BACKGROUND

The Borough has a population of approximately 5,281 residents and an area of 3.4 square miles. The Borough is located approximately one mile north of the George

Washington Bridge. The Borough intersects or is in close proximity to Route 4, Interstate 95, Route 9W and the Palisades Interstate Parkway. The Borough is also home to approximately 839 businesses.

The majority of the Borough is comprised of family households. There are approximately 1,807 housing units within the Borough, 73% with mortgages of \$2,000 or more. The median household income is \$112,292. The average assessed value of a home in the Borough was approximately one million dollars as of 2010. Next only to Alpine, Borough residents enjoy the lowest tax rate in Bergen County (.795 per \$100.00 assessed levy).

An Englewood Cliffs mile marker posted at Exit 1 of the Palisade Avenue Parkway boasts: "HOME OF THE TRILLION DOLLAR MILE." The sign is a reflection of pride in the fact that the Borough is home to esteemed corporations such as CNBC, iVillage, NBC Digital Media, Bauer Publishing, Unilever, Citibank, LG Electronics, IBM and Whole Foods, etc. The financial criteria evidence admitted pertains to the period 2004-2010. From 2007-2010, the municipal tax levy increased 14%, specifically, from \$9,226,776 to \$10,527,903, or 3.5% annually, on average. The 2010 municipal budget reflected appropriations for SFY 2010 of \$12,681,578. Appropriations within the cap were \$9,270,645.

P.L. 2010, C. 44 passed on July 13, 2010. It lowered the permitted annual increase of local purpose property taxes from 4% to 2%, effective January 1, 2011. The Borough's 2011 budget (not submitted in evidence) incorporated the 2% levy cap. For 2009 and 2010, the 4% levy cap applied to the Borough's budgeting considerations. The

2010 budget raised taxes from \$10,059,901 (in 2009) to 10,527,903. Pursuant to N.J.S.A. 40A:2-1 et. seq., a municipality may borrow no more than 3.5% of the equalized evaluation of real property as published by the Director of the Division of Taxation of the Department of the Treasury on October 1 of each year. The Borough had a respectable debt ratio of 0.44% in relation to an equalized realty value of \$3,356,785,373.67 (2007-2009); and 0.49% in relation to an equalized realty value of \$3,384,375,089.00 (2008-2010).

In 2004, the Borough's fund balance was \$1,530,767. The Borough used \$1,100,000 to fund the 2005 budget. In 2005, the fund balance was \$1,723,345. The Borough carried forward \$1,400,000 for 2006. The 2006 fund balance was \$1,382,718; and the Borough carried \$1,100,000 into 2007. In 2007, the fund balance reached \$1,713,796 and the Borough used \$1,534,000 for 2008. The fund balance dropped to \$839,274 in 2008, the same year as a property tax revaluation occurred. The Borough used \$668,000 for 2009. In 2009, the Borough's fund balance revealed \$731,467, with \$604,000 carried forward into 2010. The 2010 fund balance increased to \$1,137,924.

With respect to the Police Department, in 2009, the Borough appropriated \$3,854,757 for police salaries and \$251,350 for police expenses. The Borough also appropriated a reserve for police salaries of \$14,466.00. In 2010, the Borough budgeted \$3,578,302.00 for police salaries and wages and \$179,800.00 for police expenses -- with a year-ending reserve for police salaries and wages of \$43,466.17.

The existing police salary guide is comprised of nine steps for patrol and one level for each superior officer:

STEP	2008
Patrolman 1	\$32.654
Patrolman 2	\$41.194
Patrolman 3	\$48.311
Patrolman 4	\$58.532
Patrolman 5	\$68.751
Patrolman 6	\$78.972
Patrolman 7	\$89.192
Patrolman 8	\$103.608
Patrolman 9	\$110.909
Sergeant	\$119.782
Lieutenant	\$129.364
Captain	\$139.713

The Borough adheres to a bi-weekly pay schedule. Longevity, holiday, and education incentive pay are included in the base. A percentage increase in base pay results in a derivative increase in longevity and holiday pay. Conversely, the education incentive benefit, \$25.00 per credit, is not dependent on an increase in base pay.

Since 1978, the police work schedule involves an 8-hour day with a weekly shift rotation. The schedule follows a 4/3 (3:00 p.m. to 11:00 p.m.), 4/2 (7:00 a.m. to 3:00 p.m.), and 4/2 (7:00 a.m. to 3:00 p.m.) schematic. The New Jersey Uniform Crime Report for 2009 gives Englewood Cliffs a non-violent crime rate of 86.0 per 1000 and a violent crime rate ranking of 4.0. The bulk of the nonviolent crime occurred in the larceny category. In addition, as testified to by Scott Mura, the PBA's Chairman, New Jersey State Department of Transportation (DOT) traffic statistics reveal that traffic control is a major obligation of Borough police officers:

Q. The next graphic is daily traffic pattern. And, this relates back to some of those roadways earlier discussed. There is an indication that there are 2.9 miles of 9W within the Borough?

A. Yes.

Q. Please explain what 505 is?

A. 505 is the county road. It's Hudson Terrace to Palisade Avenue that runs through Fort Lee into Englewood Cliffs.

Q. Is that the road just out this window here?

A. Yes, it is, directly behind us.

Q. And Sylvan Avenue?

A. Is Route 9W.

Q. So, within the Borough, 9W is designated as Sylvan Avenue but it's the same road?

A. Yes. Correct.

Q. There's information supplied at two locations on that roadway just north and just south of Palisade Avenue both showing close to 25,000 vehicles per day going through that intersection.

Q. What is the source of that information?

A. The source is New Jersey DOT.

Q. And, below, the lower portion of the page, Bergen County 505, that's Hudson Terrace, the road identified as just behind the building here.

A. And Palisades Avenue.

Q. And Palisades Avenue?

A. Yes.

Q. And, that indicates 17,345 vehicles per day?

A. That's on the Palisade Avenue route.

Q. Now, all of these vehicles, that are traveling through the intersections, that are traveling through the roads in the town, are all vehicles which require police services, safety traffic monitoring, legal speed limit enforcement, etcetera. Isn't that correct?

A. That is correct.

Q. And, you also indicated the number of people who come to work in the town each day?

A. Yes.

Q. So, the workload of the Englewood Cliffs Police Department is largely determined then by people who come here to work during the day and people who travel through the town on a regular basis?

A. Yes, it is.

Q. And, those numbers are the cumulative of the various data presented.

A. Yes.

Q. So to say that there's only a 5,000 or close to 6,000 population is only a fractional part of your obligation?

A. Yes, it is.

From 2002 to 2010, the issuance of traffic summons increased by 58.8% Municipal Court fines (revenues) over the same timeframe increased 37%.

The PBA also illustrated other areas of police responsibility, including, the following:

- Active Shooter Training
- Click-It or Ticket
- DARE
- Car Seat Installation Program
- Emergency Medical Technicians
- Detective Bureau Increase
- Bicycle Unit
- Motorcycle Unit
- Honor Guard
- Fatal Accident Reconstruction
- Over the Limit - Under Arrest
- Homeland Security/Counter Terrorism
- Crime Prevention Bureau
- Traffic Enforcement Bureau
- Juvenile Bureau
- Emergency Response Team
- Paramedic
- Junior Police Academy
- Senior Citizen Liaison
- Senior Mission Training
- Gang Task Force
- Prosecutor's Screening
- OEM
- Domestic Violence Task Force
- TAC Coordinator

As of the date of the arbitration hearing, the Borough employed 23 police officers. Since 2004, however, the table of organization had dwindled from 28 to 23 police officers. Effective May 2, 2011, the police table of organization shows 22 police officers; specifically, a chief of police, a deputy police chief, no captain, 2 lieutenants, 5 sergeants and 14 patrolmen. The governing body, as it then existed, remained divided on the issue of new hires and promotions. The Chief of Police urges that both new hires and promotions are necessary to the efficient provision of law enforcement services to Borough residents.

I. INTRODUCTION & SUMMARY OF AWARD

Generally, the current political-economic climate in New Jersey is not favorable to the significant expansion of police salaries and fringe benefits. Many New Jersey taxpayers have experienced first-hand the harsh economic realities of the private sector job market. In conjunction with substantial reductions in state aid in 2010, New Jersey residents witnessed work furloughs and layoffs at all levels of government, the State passed health and pension benefits reforms, reduced the levy cap from 4% to 2%, and imposed a 2% arbitration-salary cap (not directly applicable to the within bargaining unit until January 1, 2014). The goal underlying the aforementioned measures is to achieve property tax relief for New Jersey residents by compelling municipalities to “trim the fat”, if any exists, with the assistance of legislatively imposed health and pension benefits concessions from public sector employees. The State has essentially charged interest arbitrators with an overriding duty of sensitivity to the foregoing realities as we address police and fire impasse disputes under N.J.S.A. 34:13A-16g(1-9).

Having said this, I observe that the impact of the public and private sector economic situations does vary amongst New Jersey municipalities. For those unfamiliar with Bergen County, a review of median real estate values and median income levels clearly show that Englewood Cliffs is a relatively fortunate municipality characterized by a substantial corporate base, a low tax rate, and no history of serious financial distress, as may be witnessed in the State's urban cities or in less stable suburban communities.¹ In this atmosphere, by all accounts, the police department and the community have enjoyed a positive relationship over the years.

Indeed, prior to 2011, there was never a clamor, let alone a request, that the parties reduce the terms and conditions of police employment to a singular document. Rather, in contrast to every other Bergen County municipality, terms and conditions of employment existed by virtue of salary ordinances, memoranda, orders, and unwritten practices. In fact, no evidence showed that the public ever placed scrutiny upon the Borough to change this informal relationship. The instant impasse is also novel.

Specifically, in November of 2010, a divided governing body and a chief of police were entrenched in a battle over the size, structure, and cost of the police department. Both sides of the aisle earnestly believed that their respective positions best served the public interest. Regardless of the political landscape, the two sides of the public interest criterion remain of paramount concern to all interested and affected parties. The award is

¹ For example, in rejecting the Employer's reliance on Arbitrator Mason's Award in *Spotswood*, I observe little, if any, similarity between the Borough of Englewood Cliffs and the Borough of Spotswood. The median income in Englewood Cliffs is approximately \$45,000.00 greater than the median income in Spotswood. More relevant, the median home value in Englewood Cliffs is approximately \$650,000 greater than the median home value in Spotswood! (See, www.city-data.com).

structured by concerns over the substantial period of retroactivity in relation to the 2011 budget, but with due regard for the morale of the bargaining unit. Accordingly, as I fashioned an award in this matter, the dual principles embodied by the interest and welfare of the public criterion remained at the forefront of my thought process.

In summary, after carefully considering the statutory criteria and the characteristics unique to this particular impasse-resolution proceeding, I will increase the current police salary guide over the course of a five-year term, as follows: 1% in 2009; 1.5% in 2010; 2% in 2011; 2.5% in 2012; and 2.5% in 2013. The Borough is directed to provide retroactive compensation to the bargaining unit and those members no longer on the payroll (on a pro rata basis) within 30 days from the date hereof. I will award the PBA's proposal concerning limitations on compensation for performing the work of the higher rank. I do not award the Borough's requests for further expansion of the existing nine-step patrol salary guide or for reduction in fringe benefits regarding the current bargaining unit. However, I will significantly modify longevity and education incentive compensation for new hires, effective January 1, 2012. Lastly, I will bring closure to the *status quo* open.

I will explain the foregoing summary findings in greater detail below.

II. APPLICATION OF THE STATUTORY CRITERIA

In Town Of Kearny, Appellant, and Kearny Firemen's Mutual Benevolent Association, Local No. 18, 36 NJPER ¶ 160, the Commission reasoned: "Arriving at an economic award is not a precise mathematical process. Given that the statute sets forth general criteria rather than a formula, the treatment of the parties' proposals involves

judgment and discretion, and an arbitrator will rarely be able to demonstrate that an award is the only correct one. See, Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶ 29214 1998).” I am required to resolve this dispute based on a reasonable determination of the issues, giving due weight to those statutory factors set forth in N.J.S.A. 34:13A-16g deemed relevant, and to explain the weight I accord, if any, to each criterion. I do so on the basis of “conventional authority,” N.J.S.A. 34:13A-16d(2). Under conventional authority, an arbitrator’s award is in no way limited by either party’s last offer. The arbitrator has the power to select from either party’s last offer or, alternatively, the arbitrator may use his or her judgment and grant an award that he or she feels is more reasonable than any offers made by the parties. See e.g., Hudson County Prosecutor and PBA Local 232, P.E.R.C. NO. 98-88, 24 NJPER (¶29043 1997) (Arbitrator did not err by establishing third year salary for county prosecutor investigators which was lower than the employer’s offer).

The parties must provide evidence to the arbitrator. The arbitrator ordinarily takes the record as he finds it and is not responsible for gaps in the record. County of Middlesex, P.E.R.C. No. 97-63, 22 NJPER 17 (¶28016 1996), aff’d, 23 NJPER 595, 598 (¶ 28293 1997).

The nine statutory factors are as follows:

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

(2) Comparisons of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and

conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, C. 425 (C:34:13A-16.2); provided, however that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax Levy pursuant to section 10 of P.L. 2007, C. 62² (C. 40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of 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 a proposed local budget.

² In July 2010, N.J.S.A. 40A:4-45.45 was amended by L. 2010, c. 44.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

The Interest and Welfare of the Public, N.J.S.A. 34:13A-16g(1); The Lawful Authority of the Employer, N.J.S.A. 34:13A-16g(5); The Financial Impact on the Governing Unit, Its Residence, The Limitations Imposed Upon the Local Unit's Property Tax Levy, and Taxpayers, N.J.S.A. 34:13A-16g(6); and Other Restrictions Imposed on the Employer, N.J.S.A. 34:13A-16g(9).

As a group, I deem most relevant the interest and welfare of the public and financial impact criteria (N.J.S.A. 34:13A-16g 1, 5, 6 and 9). N.J.S.A. 34:13A-16g 5, 6 and 9 require consideration of the employer's lawful authority, the financial impact of an economic award on taxpayers (in light of the appropriations and levy caps) and the impact of an award on other programs or services maintained within the same operating budget. The percentage change in salary levels awarded to the bargaining unit must be reasonable under each component of the statutory criteria with emphasis placed on the appropriations cap, N.J.S.A. 40A:4-45.1 (2.5%) and the levy cap, N.J.S.A. 40A:45.45 (2.0%). The levy cap, which dropped from 4.0% to 2.0%, effective January 1, 2011, will typically place the most pressure on a municipality.

Relatively speaking, in difficult fiscal times, the Borough of Englewood Cliffs is positively impacted by a substantial ratable basis (\$3,456,848,156 in 2009 (Exhibit P17)

and \$3,428,644,542 in 2010 (Exhibit P18)). The PBA correctly notes that Englewood Cliffs “net value taxables” rank among the highest in Bergen County. Meanwhile, the tax rate of .751 in 2009 and .794 in 2010 rank second lowest (only to Alpine, New Jersey). The PBA also adequately demonstrated the substantial corporate development and activity within the borders of Englewood Cliffs that undoubtedly has contributed to keeping the tax rate low.

The Borough has maintained an impressive tax collection rate of 98.23% in 2009 (based on the overall tax levy) and 98.65% in 2010. In 2010, the Borough budgeted \$13,270,049.00 and realized \$13,607,577.56 in revenues for municipal purposes, or an excess of \$337,528.56. (Exhibits P13 and P17). In 2008 and 2009, the Borough had an unusually low fund balance at year-end (2008 - \$839,274 and 2009 - \$731,467). A review of the Certification of Steven Wielkocz, the Borough’s financial expert, reveals an average fund balance or surplus of approximately \$1.6 million from 2004 through 2007. In 2010, the Borough’s fund balance made a significant comeback from \$731,467.00 in 2009 to \$1,137,923.59 in 2010. A healthy fund balance assists a municipality to continue operations or respond to exigencies without having to borrow funds on a short-term basis and incur debt charges.

For purposes of the 2009 and 2010 budget, the Borough did not obtain an appropriations cap waiver, instead using the statutory 2.5% cap. In terms of the levy cap, in 2009, the Borough could have raised \$10,114,167 through taxation. The Borough was slightly under cap (\$10,059,901). However, in 2010, the Borough balanced its budget by, among other revenues, \$10,527,903 in municipal taxes against a maximum allowable

taxation of \$11,127,071 (\$599,168 below the levy cap). In terms of the appropriations cap for 2010, the maximum allowable appropriations to fulfill the obligations in the municipal budget were set at \$11,733,772. The Borough's actual appropriations for the 2010 budget were \$10,035,153. Importantly, even with a compliment of 27 police officers, the Borough has been able to stay significantly within the then existing appropriations and levy caps. This situation will only improve with the reductions in the size of the police department from 27 to 21.

Having said this, however, it is clear that the Borough could not continue increasing taxes 3.5% on average (2007-2010) in the face of a 2% levy cap, effective for the 2011 budget. Due to the predicament of the delay associated with multiple changes in the Borough's negotiating committee in tandem with the onerous task of piecing together (from various sources) the "*status quo* closed", the reality is that the 2009-2011 increases awarded herein will be funded by the 2011 budget. Fortunately, as will be explained in greater detail below, in 2011, the Borough realized significant operational savings due to ongoing attrition and 2010 health benefits legislation.

The PBA submitted a cost-out based on increases to base salary. The PBA included within its calculation, 14 patrol officers (placing each at top-step, \$110,908.00), 5 sergeants (\$119,781.00), and 2 lieutenants (\$129,364.00). According to the PBA, the total cost of base salary for the bargaining unit in 2008 is \$2,410,345.00, 1% of which equates to \$24,103.00. The PBA's cost-out of its proposed 3.5% increase from 2009 to 2013 is set forth below next to the Borough's proposal of 0%-0%-2%-2% and the Arbitrator's awarded percentage increases of 1%-1.5%-2%-2.5%-2.5%.

The Arbitrator's calculations are taken from the source data provided by the Borough's revised cost-out, as adjusted to reflect the inclusion of only bargaining unit members and an accurate measure of attrition, where necessary. The Arbitrator's (and Borough's) calculation of base pay heading into 2009 is \$2,640,303.00 (based on 24 bargaining unit members). The costs are adjusted in subsequent years to adequately reflect the decreasing table of organization. On the other hand, the PBA's base salary cost-out uses 21 officers throughout. It is understated and, therefore, an adjustment is noted. Throughout the first four years of the contract, the average bargaining unit size consisted of approximately 22.5 officers. With a fifth year added, the average is reduced to 22. The cost differential among the proposals and the awarded increases is as follows:

Cost-Out of Base Salary Alone

<u>Year</u>	<u>PBA</u>	<u>Borough</u>	<u>Awarded</u>
2009	\$84,360	0	\$26,403
2010	\$87,313	0	\$36,640
2011	\$90,369	\$46,683	\$49,341
2012	\$93,531	\$44,767	\$60,373
2013	\$96,805	n/a	\$61,882
Total 2009-2012	\$355,573 \$380,971 n=22.5	\$91,450	\$172,757

Cost-Out of Base Salary with Rollover³

<u>Year</u>	<u>PBA</u>	<u>Borough</u>	<u>Awarded</u>
2009	\$95,073	0	\$29,756
2010	\$98,402	0	\$41,293
2011	\$101,846	\$52,612	\$55,607
2012	\$105,409	\$50,452	\$68,040
2013	\$109,099	n/a	\$69,741
Total 2009-2012	\$400,730 \$429,353 n=22.5	\$116,686	\$194,696

The difference in cost between the Borough's 2011 proposal and that awarded by the Arbitrator is a less than \$3,000.00, or \$150.00 per officer. At the end of the 2010 Budget Year, the AFS (Exhibit P13), sheet 3a reports a reserve for police salaries of \$43,466.17, or approximately \$9,000.00 less than the cost of the Borough's total proposal for 2009-2011. The difference in 2012 is less than \$18,000.00 (or \$857.00 per officer). The Borough has ample time to plan for the 2013 total salary/rollover increase of \$69,741. In that year, total base payroll will be \$2,475,305.61 or, put differently, \$164,997.00 less than the starting 2009 total base payroll of \$2,640,303.00.

The above dynamic reflects only the cost savings due to attrition. Exhibit P1, page 36, shows that since January 1, 2009, two captains and a police lieutenant have retired

³ In 2009, total base salary amounted to \$2,640,303.00. Total holiday costs amounted to \$132,015.15, or .050 of base. Total longevity amounted to \$203,299.22, or .077 of base. The two items which typically increase with a percentage increase in base pay yield a combined multiplier of .127, which is used as a uniform measure of the value added to the base salary cost-out above.

without replacement. Each captain earned \$139,713.00. The police lieutenant earned \$129,364.00. Thus, the total reduction in annual base salary amounts to \$408,790.00. In response to the Arbitrator's post-hearing request, the PBA submitted a revised cost-out of the savings associated with the 2011 retirements of Sergeants Rice and Ershadi and the resignation of Patrolman Ford (who resigned and accepted police employment elsewhere). Each sergeant earned \$119,781.00 and retired on April 1, 2011. Ford earned \$110,908.00 as of calendar year ending 2008. Factoring in the costs of longevity, holiday, 24% pension contributions, and clothing allowance, the PBA calculates a total annual savings of \$176,500.00 for each Sergeant and \$148,990.00 for Patrolman Ford, or an additional \$501,990.00.

In addition to the cost savings associated with attrition, the Borough's budget has benefitted (and will continue to benefit) from legislatively imposed health benefits concessions. In May of 2010, pursuant to legislation, police officers began contributing 1.5% of base salary toward the monthly premiums associated with healthcare coverage. The item was a full concession for the bargaining unit because the payment did not exist previously. For example, under the 2010 law, a police officer with a base salary of 100,000.00 would be obligated to contribute \$1,500.00 annually (1.5% of \$100,000.00). If one were to deduct the 1.5% contribution from the cost of the award, the net percentage increases awarded are .5% (2011), 1.0% (2012), and 1.0% (2013).

With importance to the 2012-2013 years of operation, New Jersey passed additional pension and health benefits reform measures on June 28, 2011 (Chapter 78, P.L. 2011). In comparison to the 1.5% of salary contribution, under the new law,

Borough police officers will be required to contribute as much as 32% of the monthly premium. Under the 2011 law, the 1.5% base salary contribution becomes the floor. Employees then contribute according to a percentage of the premium that escalates as a function of income level with a four-year phase-in of $\frac{1}{4}$, $\frac{1}{2}$, $\frac{3}{4}$, and then 100%. By 2013, the aforementioned hypothetical officer under the 2010 law will now contribute 22% of the family plan premium, or approximately \$1,760.00 annually (based on an annual costing \$16,000.00 family plan). In 2015, when the legislation expires, the same officer will contribute \$3,520.00 (100% of the phase in), or \$2,395.00 more per year as compared to the 2010 legislation. Thus, the Borough will continue to realize proportionately greater health benefits savings while officers will realize proportionately less of their total compensation over the term of the successor agreement and beyond.

In my judgment, the aforementioned areas of substantial reductions in the police department budget combined with the Borough's historical ability to stay within the applicable caps and maintain an adequate fund balance, support the comparatively low cost of the salary increases awarded for 2011-2013. As such, I am satisfied that the 2011-2013 awarded increases are reasonable under the interest and welfare of the public and financial criteria. (N.J.S.A. 34:13A-16g 1, 5, 6 and 9).

The more interesting argument raised by the Borough has to do with the retroactive portion of the Award, i.e., 2009-2010. In City of Asbury Park, 36 NJPER 323 (¶ 126 2010), the Commission acknowledged its understanding of the situation currently facing the parties here, i.e., the need to structure a longer-term award due to the purposely diminished increases during a substantial period of retroactivity:

The collective negotiations process contemplates labor and management sitting down and negotiating terms and conditions of employment for one, two, three or more future years. Parties enter into collective negotiations agreements even though no one can predict with any assurance the exact budget circumstances a public employer will face in future years. For police and fire departments, when the parties cannot reach a voluntary agreement, either party may invoke the interest arbitration process by which a neutral third party sets terms and conditions of employment based on the evidence presented and in light of the nine statutory factors. N.J.S.A. 34:13A-16b(2). As an extension of the collective negotiations process, an arbitrator will also award multi-year contracts. And because of the delays in the interest arbitration process, arbitration awards will often also set terms and conditions of employment retroactively thereby requiring adjustments to the public employer's budgets. Retroactive salary adjustments and future salary increases are inherent in both the collective negotiations process and interest arbitration.

Town of Kearny, Appellant, and Kearny Firemen's Mutual Benevolent Association,

Local No. 18, 36 NJPER ¶ 160 reminds us that, “arriving at an economic award is not a precise mathematical process”, but rather an exercise of judgment based on a statutory formula. Since the Borough has proposed 0% for 2009 and 2010, by comparison, the Arbitrator’s 1% and 1.5% salary awards in 2009 and 2010 result in a retroactive cost to the Borough of approximately \$71,000.00. To put this figure in perspective it is 1.9% of the \$3,578,302.00 police salary budget for 2010. Even if the only surplus regenerated during 2011 is the \$55,456 cited by the Borough at year-end 2010, even this atypically low amount in the Borough’s financial history covers 80% of the costs of retroactive increases relative to 2009 and 2010. However, the Borough’s history of surplus generation and regeneration, in combination with the aforementioned attrition and health

benefit concessions fully in place during the 2011 calendar year, presents a far brighter picture in terms of the ability of the Borough to absorb the 1% and 1.5% retroactive increases awarded.

As stated above, I have structured the within award with sensitivity to the substantial period of retroactivity and, hence, the relatively lower percentage increases. More fundamentally, in light of the historical budgetary and negotiation's trends, I believe that the Borough had a responsibility to the taxpayers and its police officers to anticipate within the 2011 budget a reasonable award in police salary increases for 2009-2010. All parties were fully aware of the unduly protracted negotiations, mediation and subsequent interest arbitration proceeding. If the Borough did not fairly or prudently budget for the realistic potential for 2009 and 2010 salary increases significantly below even the 2.0% mark, then it may have to resort to line item transfers and/or even incur a negligible, short-term debt in order to implement the Award.⁴ Since the 2011 budget is not before me, consistent with Town of Kearny, I base my findings concerning retroactive pay on the Borough's history of responsible budgeting discussed previously, the cost savings in 2011 from attrition and health benefit concessions, and the reasonableness of the awarded increases for 2009 and 2010.

Turning my attention next to the flip side of the public interest coin, I find that the Borough's 0%-0% proposals for 2009 and 2010 are patently inconsistent with the interest

⁴ Pursuant to N.J.S.A. 40A:2-1 et. seq., a municipality may borrow no more than 3.5% (after statutory deductions) of the equalized evaluation of real property as published by the Director of the Division of Taxation of the Department of the Treasury on October 1 of each year. The Borough had an impressive debt ratio of 0.44% in relation to an equalized realty value of \$3,356,785,373.67 (2007-2009); and 0.49%, \$16,574,763 total net debt, in relation to an equalized realty value of \$3,384,375,089.00 (2008-2010). I note that even if the Borough borrowed the entire \$78,000, its debt ratio would only increase to 0.49470%.

and welfare of the public criterion, N.J.S.A. 34:13A-16g(1). With significantly reduced staffing levels, the likelihood of expanded responsibilities is now greater. Meanwhile, the members are subject to a promotional freeze, contrary to the protests raised by their police chief. They will further experience a greater share of their salaries transferred to the costs of their healthcare coverage (as discussed above) and toward pension contributions (8.5% to 10%). Further, they face an all-inclusive 2.0% salary cap in 2014, which, as applied to police employment, is the functional equivalent of a 0% increase. In light of the foregoing, I find that the other side of the public interest coin militates against the Borough's 0% proposals for 2009 and 2010 and in favor of the Arbitrator's 1%-1.5% award. Over the term of the award, I find and conclude that the awarded 1%-1.5%-2%-2.5%-2.5% increases (less than 2.0%, on average) are more consistent with the financial impact and dual components of the interest and welfare of the public criteria, N.J.S.A. 34:13A-16g 1, 5, 6 and 9 than either the Borough's or the PBA's proposals.

I will next address the comparability criteria, N.J.S.A. 34:13A-16g(2):

Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable

jurisdictions, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

The comparability criterion may be broken down into external and internal comparability. External comparability entails comparisons between the group subject to the petition and other public safety employees in similar jurisdictions, other public employees, generally, and private sector comparisons. Internal comparability can be broken down into two general categories consisting of uniformed and non-uniformed employees within the same jurisdiction.

The PBA presented an external comparability summary of salary increases negotiated or awarded to police officers in certain Bergen County municipalities, as follows.

**CHART NO. 2
AVERAGE BASE RATE INCREASES BASED ON
PBA EXHIBITS**

	2010	2011	2012	2013
East Rutherford	4 (2/2)	4 (2/2)	4 (2/2)	5 (2/3)
Allendale	4.1	4		
Closter	4	4		
Cresskill	3.95	3.95		
Demarest	10.1	3.75	3.75	
Edgewater	3.65	3.75	3.75	3.75
Elmwood Park	3.95	3.95		
Fort Lee	8.5 (7.511)	3 (2.5/1)		
Garfield	4 (2/2)	4	4	
Glen Rock	4			
Harrington Park	4.2	3.5	3.5	3.5
Haworth	4.4	4.4	4.4	

Lodi	3.75	3.75		
Mahwah	6			
Midland Park		2.9	3.1	
Moonachie	4 (2/2)	4 (2/2)		
Oakland	4.2			
Paramus	3	3	3	3
Ridgefield	3.65	3.75	3.75	3.75
Ridgewood	4.1 (2/2.1)	4.1 (2/2.1)	4.1 (2/2.1)	
Rutherford	2.75	3 (1.5/1.5)	3 (1.5/1.5)	
Saddle Brook	4	4		
Tenafly	4.88	3.75	3.75	
Wallington	3.8	3.9	4	
Woodcliff Lake	3.2	2.75	2.75	
Wood-Ridge	4 (2/2)	4 (2/2)	4.5 (2.25/2.25)	4.5 (2.25/2.25)
AVERAGES	4.407%	3.74%	3.70%	3.92%

The Borough asks the Arbitrator to reject the PBA's data because the PBA did not satisfy the threshold showing of comparability under the statute and implementing regulation, N.J.A.C. 19:16-5.14. Alternatively, the Borough argues that comparability is not a significant factor in light of the Borough's financial limitations. The Borough does not offer external police comparability data of its own.

In weighing salary statistics introduced by a party, I observe that the Commission has promulgated guidelines that may be broken down into the following five general categories:

1. Geographic comparability, contiguous jurisdiction or nearby, size of jurisdiction, and nature of employing entity;
2. Socioeconomic considerations, basically a comparison of the type of statistics found in the New Jersey Municipal Data Book and the UCR, such as population density, cost of living, crime rate, violent crime rate, fire incident and crime rate, etc.;

3. Financial considerations, such as the tax collection rate, state aid, budget surplus, surplus history, ratios of tax revenue to total revenue, etc.;
4. Compensation/benefits provided to employees of the comparison group; and
5. Any other comparability considerations deemed relevant by the arbitrator.

After reviewing the Bergen County contracts introduced by the PBA as Volumes P2-P9, I find that the evidence produced, though relevant, is limited in terms of its weight. The PBA's summary I skewed by a fold-in of holiday pay in Borough of Fort Lee. I also calculate split-year increases differently than the PBA. For example, the PBA values a 2/2 split as a 4% increase. I find that 3.02% is the actual realized percentage increase during the operative calendar year. Further, the PBA's data includes many contracts signed prior to the 2010 levy cap legislation (reducing the cap from 4% to 2%). For example, I observe that the most contiguous jurisdictions surveyed by the PBA, Tenafly and Fort Lee, each reached agreements (or received an Award) before the passage of the 2% levy cap. For all these reasons, other than to note that the increases reported by the PBA are in line with the then existing 4% levy cap, I cannot place significant weight on the PBA's external comparability data.⁵

⁵ For more contemporaneously derived data, see, Borough of Englewood, NJPERC Docket IA-2011-57; Township of Teaneck and PBA Local No. 215 and SOA, NJPERC Docket IA-2008-46; Borough of Bergenfield and PBA Local 309, NJPERC Docket IA-2009-11; Borough of New Milford and PBA Local No. 83, NJPERC Docket IA-2008-70; Washington Township and PBA Local 206, NJPERC Docket IA-2007-73; Borough of Hasbrouck Heights and PBA Local 102, NJPERC Docket IA-2010-53; and Borough of Waldwick and PBA Local 217, NJPERC Docket IA-2011-49 (2011-2013). Collectively, the more recent Bergen County Awards are more reflective of the 2.0% levy cap.

With respect to police and fire salary increases, in general, the Commission has promulgated (and posted on its website) a statewide study of interest arbitration awards and mediated settlements. In 2009, the average salary increase awarded is 3.75% (16 Awards) and the average settlement reported is 3.60% (45 settlements); in 2010, the average salary increase awarded is 2.88% (16 Awards) and the average salary increase due to a settlement is reported at 2.65% (45 settlements). In 2011 (up to and including October 12, 2011), the average salary increase awarded was 2.29% (23 Awards) and the average settlement was reported as 1.96% (28 settlements). As can be observed, both the Borough's 0%-0%-2% and the PBA's 3.5%-3.5%-3.5% proposals for 2009-2011 deviate significantly from the norm established in New Jersey police municipalities. The Arbitrator's awarded 1%-1.5%-2% increases (2009-2011) are lower than the reported increases and settlements for 2009-2010, but in line with the 2011 increases. As discussed previously, the fact that the Borough must fund the 2009 and 2010 increases out of the 2011 budget helps explain the lower percentages awarded in 2009 and 2010 to the bargaining unit in relation to the comparison group.

With respect to internal comparability, the Borough introduced the mediated Memorandum of Agreement ("MOA") between it and IBT Local 97, which governs employees of the Borough's Department of Public Works (Exhibit B3). The Borough correctly notes that the DPW bargaining unit agreed to freeze the existing salary guides for Driver/Laborer and Mechanic at 2009 rates, and expand each guide from 10 steps to 13 steps. The bargaining unit agreed to what appears to be a terminal leave reduction from 180 to 90 days. Concessions in the form of the quantity of vacation carryover and

the rate of payment (based on salary at time originally earned) also appear from a reading of the document. I observe that the Borough has made analogous fringe benefit proposals in the present matter.

Having said this, however, I ultimately accord little weight to the internal comparison with the DPW bargaining unit. I observe an obvious nature of the employment distinction between the two groups, advantages in the DPW MOA, insofar as it reveals an across-the-board 4% salary increase in 2009 (compared to the 3.5% awarded to the police bargaining unit for 2009 and 2010 combined) and significant unanswered questions concerning the application of the MOA. Specifically, two of the three steps added to the salary guides are actually increases in the cost of the guide. In 2010, Step 11 of the Driver/Laborer Guide reveals a salary of \$59,713.97; and Step 12 reveals a salary of \$61,213.97. The Borough did not articulate how many of the total Driver/Laborer employees advanced to these higher steps or otherwise state the net economic effect of such movement. The same holds true for the position of Mechanic. In 2010, Step 11 shows a salary of \$73,885.00; and Step 12 depicts a salary of \$75,385.00. Unlike the patrol guide, where up to 50% of the officers are at the top step, the Borough did not reveal the actual application of the new higher step DPW guide. The record before me on this point is, therefore, incomplete. For all these reasons, I cannot accord significant weight to the DPW MOA introduced by the Borough.

In terms of private sector comparisons, the PBA correctly argues the difficulties inherent in such comparisons. Nonetheless, the Arbitrator is required to address the criterion based on the evidence presented. See, Borough of Bogota and Bogota PBA

Local 86, P.E.R.C. NO. 98-104 (January 28, 1998). With respect to private sector comparisons, the Borough acknowledges that few private sector jobs are analogous to that of a police officer. However, the Borough points out that even the U.S. Department of Labor Reports delineate several private sector occupations as involving more dangers than police officer, e.g., convenience store clerk, urban taxi driver, steeplejack and coal miner.

The difference, I note, is that none of the private sector jobs referred to require the confrontation of a potentially fatal situation as an essential job function. A taxi driver can choose whom to pick up. A convenience store clerk can hand the register over the counter. Neither a steeplejack nor a coal miner is required to work when structural conditions become unstable. Unlike the private sector occupations cited by the Borough, police work involves an obligation to risk one's life to rescue or protect others from harm. Accordingly, while I have considered the Borough's evidence, I cannot grant it significance in connection with the ultimate outcome of this proceeding.

Lastly, I note that the Commission's private sector wage study reflects that, from 2008 to 2009, the average increase in the salary or wage level of a government job was 2.2%, whereas the private sector received a decrease of .7%. In this matter, I have awarded a 1% increase in 2009 – which falls in the middle of the government and private sector increases reported. Accordingly, while I accord less weight to private (as compared to law enforcement) employment statistics, I find that my awarded increases are consistent with the Commission's reported study for 2009.

Having fully addressed the comparability evidence presented by the parties, I will next address N.J.S.A. 34:13A-16g(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.

The bargaining unit enjoys a relatively fair compensation package including longevity and holiday pay, education incentive and paid leave, including terminal leave. However, unlike some Bergen County counterparts with five-figure police salaries reached after five or six years of employment, in 1999, the Borough and PBA expanded the patrol salary guide to nine steps, the first six of which start at \$32,000 and increase to \$79,000 at six years of employment. Longevity ranges from 2%, after four years to 12%, after twenty-four years. Longevity then increases in 2% increments for each two years of additional employment with a maximum 18% benefit after thirty-six (36) years of employment. The bargaining unit receives an educational incentive of \$25.00 per credit included within the base, but without affecting longevity. Vacations range from fifteen days (after five years of service) to thirty days from the 21st through 25th years of service. In light of the 2011 health and pension benefits legislation, Borough police officers will contribute to the costs of premiums on an escalating basis until 2015, at which time the legislatively achieved inroads will become the *status quo* for the purpose of future negotiations.

In this case, I observe that the parties derived the existing compensation package over many years of their relationship without a formal contract. In the aggregate, the

undersigned's awarded salary increases of less than 2.0%, on average, is reflective of the basic adequacy of the existing compensation and benefits package received by this bargaining unit, with due regard for the negative operational and economic changes which they will experience over the term of the award.

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

I agree with the PBA that Exhibit J1, the "*status quo* closed" is an important stipulation. It is, in effect, the agreed upon predecessor collective negotiations agreement. I so acknowledge the stipulation in this proceeding.

I next address the **Cost-Of-Living** criterion, N.J.S.A. 34:13A-16g(7). Cost of living data tends to have a neutralized impact. This is so because employees and employer alike suffer from increases in CPI. It is a measure of both how the economy takes a piece of a pay increase (employee and taxpayer alike) and how it adds to the cost of doing business. New Jersey Department of Labor and BNA Publications maintain CPI statistics. Introduced by the Borough as Exhibit B12, CPI significantly exceeds the Borough's proposal with respect to 2009-2011. In 2009, CPI was 1.5%. The Borough proposes 0%. In 2010, CPI was 2.4%. The Borough proposes 0%. As of the time of the hearing, CPI was 1.5%. The Borough proposes 2% for 2011. Thus, CPI totals 5.4% from 2009-2011 whereas the Borough's proposal totals 2% over the same term. The PBA's proposal (totaling 10.5%) is nearly double the 5.4% aggregate increase in CPI. In its post-hearing brief, the Borough urged the Arbitrator to refrain from awarding salary increases to the bargaining unit in excess of the CPI. As it turns out, I stayed within those

parameters. The awarded salary increases for 2009-2011 total 4.5% (.09% less than CPI).

Lastly, I will address the continuity and stability of employment criterion, N.J.S.A. 34:13A-16g(8), to which I accord significant weight in this proceeding.

The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective bargaining between the parties in the public service and in private employment.

N.J.S.A. 34:13A-16g(8) directs a consideration of the continuity and stability of employment, including seniority rights and other factors ordinarily and traditionally considered in determining wages and employment conditions in public and private sector negotiations. It incorporates three concepts, some of which I discussed previously. The first is the desirability of providing for a competitive compensation package that will prevent excessive turnover, thus maintaining "continuity and stability in employment." The second is the concept of the "relative standing" of a negotiations unit with respect to other units of similar employees. Finally, the continuity and stability of employment also implicates the importance of considering internal settlements, since unwarranted deviation from such settlements can undermine morale, discourage future settlements, and affect labor relations stability within a jurisdiction.

Applying these concepts to the record in this case, I first point out that, in the past, most police officers hired by the Borough retired with the Borough. Of course, the future remains to be determined; specifically, will the job continue to be as coveted by professional-minded and educated individuals? The reduction in the table of organization

from 26 to 21 officers since 2009, a freeze on promotions, an existing expanded salary step guide, an impending, all-inclusive 2% salary cap, and substantial health and pension benefits reforms collectively are bound to have an appreciable, negative impact on the overall future attractiveness of the employment setting in question. Under such circumstances, the Arbitrator's awarded increases in salary, as limited by the financial criteria discussed previously, can only marginally honor this relevant criterion.

As to the second consideration, the PBA did introduce numerous Bergen County police contracts (Volumes P2-P9). However, neither party extrapolated from the voluminous data presented the relative standing of this bargaining unit in Bergen County. In light of the 2.0% levy cap and the consistent more recent interest arbitration awards noted previously, I may infer that the bargaining unit's relative ranking will remain intact.

Finally, although the awarded increases for 2009 and 2010 combined are less than those negotiated between the Borough and IBT Local 97 for 2009, it is unlikely that this circumstance will have a significant impact on labor relations stability. The two units are on different negotiations cycles and there is no evidence that the two employee groups have traditionally received the same increases. Most importantly, this award takes place in a negotiations environment dramatically different from that which existed when the Borough and Local 97 agreed upon 4% annual increases for 2006-2009.

In sum, the awarded increases will not jeopardize the continuity of stability of employment. At the same time, I have also determined that increases at the level sought

by the Borough could jeopardize the morale of this dedicated police force, especially in the light of the negative variables that I have outlined, above.

In light of the foregoing analysis, I will issue the following interest arbitration award to the parties:

III. AWARD

A. Economic

1. Duration.

I am satisfied that a five-year contract term, effective January 1, 2009 through December 31, 2013, best serves the interests of the public.

The Borough proposed a four-year contract term. The PBA had proposed a six-year contract term. My decision is based on the fact that the parties understandably spent a substantial amount of time assembling and agreeing upon the “*status quo* closed”, Exhibit J1, including setbacks due to repetitive changes in legal counsel/chief negotiator for the Borough. Because of these events, the parties now find themselves close to three years into the term of a successor labor agreement. Under the Borough’s proposal, the parties would be negotiating again in less than one year. The PBA’s proposed six-year duration would present more of a challenge for the Arbitrator to apply the statutory criteria with respect to the terms of employment of police officers for 2014. Perhaps by then, the Borough will lift the promotional freeze and hire additional officers. Therefore, in order to promote labor stability under the totality of the circumstances presented, I will Award a five-year contract term, effective January 1, 2009 through December 31, 2013.

2. Salaries.

The Borough proposed a 4% increase over the term of a four-year contract, 0% for 2009, 0% for 2010, 2% for 2011 and 2% for 2012. The Borough made no offer for 2014. The PBA proposes a 3.5% across-the-board increase for the term of the contract (now five years). The following salary guide which includes a 1% increase effective January 1, 2009, a 1.5% increase effective January 1, 2010, a 2% increase effective January 1, 2011, a 2.5% increase effective January 1, 2012, and a 2.5% increase effective January 1, 2013 is hereby established and awarded.

STEP	2008	2009	2010	2011	2012	2013
		1%	1.5%	2%	2.5%	2.5%
P1	32.654	32.981	33.476	34.145	34.999	35.874
P2	41.194	41.606	42.230	43.075	44.152	45.255
P3	48.311	48.794	49.526	50.516	51.779	53.074
P4	58.532	59.117	60.004	61.204	62.734	64.302
P5	68.751	69.439	70.481	71.890	73.687	75.530
P6	78.972	79.762	80.958	82.578	84.642	86.758
P7	89.192	90.084	91.435	93.264	95.596	97.985
P8	103.608	104.644	106.214	108.338	111.046	113.823
P9	110.909	112.018	113.698	115.972	118.872	121.843
Sgt.	119.782	120.980	122.795	125.250	128.382	131.592
Lt.	129.364	130.658	132.618	135.270	138.652	142.118
Cpt.	139.713	141.111	143.227	146.091	149.744	153.487

Within 30 days of the date hereof, the Borough is directed to provide all due retroactive compensation to the bargaining unit for calendar years 2009-2011 (to date).

3. Article XVII - Out-of-Title Compensation.

The PBA proposes the following:

When an employee works in a higher rank than said Employee holds he shall receive the pay of that higher rank in which he is working and the Borough shall not defeat the intent of this clause by shifting two (2) or more employees to cover the higher rank in question. This clause shall not apply in cases of vacancies due to vacations.

The Borough proposes that the provision read:

Employees assigned to perform the duties of a high rank, i.e., Captain, etc. for thirty (30) consecutive working days or more shall receive the pay of that rank in which he is working. The Borough shall not defeat the content of this clause by shifting two (2) or more employees to cover the higher rank in question. This clause shall not apply in cases of the vacancies due to vacations.

Initially, I note that the Borough disputes the existence of higher rank pay as a past practice. The PBA believed that it had achieved agreement to its proposal during the mediation before Mr. Gwin. The Borough's salary ordinances and police department table of organization clearly recognize the establishment of annual salary in exchange for the performance of a unique core of police services embodied by each rank. The Borough has compensated sergeants, lieutenants, and captains based on the performance of a different set of core duties. Thus, the negotiated salary guide and job descriptions constitute the evidence needed to make out a claim for higher rank pay. If anything, the reason parties negotiate a specific higher rank compensation provision is either because of a falsely perceived need to have such a provision and/or to carve out limitations on the inherent entitlement. For all these reasons, I initially observe that I am addressing respective proposals regarding limitations on the applicability of an existing benefit.

The issue is timely and significant due to the reduction in the superior officer table of organization, i.e., no captains and the elimination of the position of inspector. While the Borough has the managerial right to determine that it can run its police department with sergeants and lieutenants, it does not have the right to, for example, direct a sergeant to perform the core duties of a lieutenant without commensurate pay. The same holds true with respect to the directing a patrolman to perform the core duties of a sergeant. In my opinion, the Borough's proposed 30 consecutive-day threshold to entitlement to pay in the higher rank is tantamount to no pay. The obligation is easily avoidable, to say the least. In the face of a current promotional freeze and other negative factors facing this bargaining unit, it is not acceptable. The PBA's proposal limits the right to receive the pay of the higher rank during periods whenever the Borough directs one patrolman or officer to cover a vacancy in a higher rank due to planned vacations. With that exception to the general rule in place, I will award the PBA's higher rank compensation proposal stated above.

4. Longevity.

The Borough proposes a substantial reduction in longevity for current members and the elimination of longevity for new hires. The historical purpose of longevity is to provide an additional reward to encourage police officers to stay within one municipality and avoid turnover and additional training costs. Conversely, the cost of the benefit – perhaps low originally – has dramatically increased as a function of base salary increases over time and impinged the cost-efficient operation of a police department. However, given the relative financial stability of this community in conjunction with the potential

negative impact on the continuity and stability of employment discussed previously, I will not change the benefit for existing employees, but will restructure (not eliminate) the longevity guide for new hires as follows:

5-10 years:	2%
11-15 years:	4%
16-20 years:	6%
21-25 years (and thereafter):	8%
[12%, 14%, 16%, and 18% eliminated].	

5. Education Incentive.

Under Article XVI, of the “*status quo* closed”, police officers receive as part of a salary (payable within bi-weekly pay) \$25.00 per credit for all courses completed consistent with prior Borough Ordinance. The Borough seeks to eliminate the educational incentive from base pay (in order to avoid the perpetual economic outlay). For the reasons stated under my longevity determination, above, I will reject the Borough’s proposal with respect to current police personnel and I will modify, but not eliminate, the education incentive for new hires on or after January 1, 2012. Such officers shall receive an education incentive of \$10.00 per credit, for each course approved by the Chief of Police in accordance with prior Borough Ordinance.

Consistent with the statutory criteria, I will not award any other economic modification in this proceeding.

B. Non-Economic: The Status Quo Open (Exhibit J2).

Article III - Association Recognition

The Borough proposed to exclude officers holding the rank of Police Captain or above from the bargaining unit. In the Petition, the PBA stated the scope of the bargaining unit as excluding Deputy Chiefs and the Chief of Police. However, in the PBA's February 16, 2011 revised proposal, the PBA seeks the inclusion of the Deputy Police Chief. I believe that both parties are barking up the wrong tree. Thus, I will leave the parties to the Commission's representation procedures to further their dispute, if necessary. See, New Jersey Turnpike Authority v. AFSCME Council 73, 150 N.J. 331 (1997), Bd. of Ed of West Orange v. Wilton, 57 N.J. 404 (1971). The scope of the unit identified in the Petition as that previously recognized unit includes all sworn police officers below the rank of deputy police chief. Accordingly, Article III "Association Recognition" will be adopted by the parties from the *status quo* open (Exhibit J2) with the exclusion of the positions of deputy police chief and chief of police.

Article IV – Exclusivity of Association Representation

The Borough agrees that it will not enter any Contract or Memorandum of Agreement with anyone but the recognized Association (PBA Local No. 45 Englewood Cliffs Unit) with regard to the categories of personnel covered by the said Memorandum of Agreement during the term of this Agreement.

Because I am satisfied that the PBA's concerns are adequately addressed by Article III "Association Recognition" and existing law, N.J.S.A. 34:13A-5.3, 5.4a1, 2 and 5, I will reject the PBA's proposal.

Article IX – Work Schedule, Tour Assignments and Overtime

The parties agreed to Paragraphs 2 through 6 of Article IX, but differ with one another over the following language of the first paragraph: “The current work schedule for all positions covered by this Agreement shall be maintained.” The PBA seeks inclusion of the work schedule since this is the first formal Collective Bargaining Agreement between the parties. The Borough proposes the deletion of Paragraph 1 because it does not want to rule out the possibility of making a change in the work schedule if necessary. Because the schedule has been intact since 1978 and given the core nature of the benefit in question, I will Award the PBA’s proposal. The Borough, of course, retains its managerial prerogatives under law.

Article XVIII – Vacations

In addition to the *status quo* closed (Exhibit J1), the Borough and PBA proposed the following:

Paragraph 3 (Borough): If an employee is on vacation and becomes sufficiently ill, he may have such period of illness charged against sick leave at his option provided that a doctor’s note is supplied.

Paragraph 3 (PBA): If an employee is on vacation and becomes sufficiently ill, he may have such period of illness charged against sick leave at his option.

I will Award the Borough’s proposal because verification is a reasonable precondition of permitting a police officer to convert a vacation day to a sick day.

Paragraph 4 (Borough): No employee who is on vacation shall be recalled except in the case of the emergent situation of the Department declared by the Chief of Police to meet a clear and present danger confronting the Borough.

Paragraph 4 (PBA): No employee who is on vacation shall be recalled except in the case of full mobilization of the Department declared by the Chief of Police to meet a clear and present danger confronting the Borough.

I will Award the Borough's proposal with the added language: "An officer on vacation will not be recalled from vacation if a police officer possessing the necessary qualifications is promptly available for the emergent assignment".

Paragraphs 6-7 (Borough): The Borough proposed changes to Paragraphs 6 and 7 of Article XVIII of the PBA proposed Memorandum of Understanding.

The notes of PBA Counsel and the undersigned Arbitrator reflect that the parties had agreed as part of the *status quo* closed (Exhibit J1) to Article XVIII, Paragraphs 1 through 7. Therefore, I will not consider the Borough's proposal.

Paragraph 11 (Borough): "If vacation time reaches sixty (60) days accumulation, the Mayor and Council may pay at their discretion. Employees shall take at least half of the vacation days within two (2) years going forward."

The PBA, by implication, opposes any further addition to the otherwise agreed upon language of Article XVIII. The Borough did not produce evidence of any operational difficulty regarding the existing schematic of vacation selection and accumulation. In the absence of such evidence, I must infer that the existing practices and procedures have adequately met the parties' interest. For this reason, I reject the Borough's additional proposal to Article XVIII.

Article XX – Sick Leave

Based on the same reasoning, I reject the Borough's proposed Paragraph 8 (requirement for doctor's certification after three days of illness) and Paragraph 11

(requiring a police officer to leave an address and telephone number and respond when called during his tour or otherwise inform the desk officer). Instead, the Borough may rely upon the rulemaking of the Chief of Police and/or its inherent managerial prerogatives under law, if necessary.

Article XXIV – Insurance

By way of Ordinance 88201-- an Ordinance providing for defense and indemnification of municipal officials and employees” the Borough has been providing police officers with protection against civil suits arising out of the performance of their duties including, but not limited to, false arrest, malicious prosecution, liable, slander, defamation of character, violation of the right of privacy, invasion of privacy, invasion of the right of privileged occupancy and the invasion of civil rights. The ordinance has been in effect since 1988. However, the Borough seeks to add the following language to the above provision, **“as per terms and conditions of the Borough’s insurance coverage, a copy of the policy shall be made available to the bargaining unit.”** In the absence of any evidence concerning a deficiency or prohibitive cost associated with the existing plan, I see no satisfactory reason to award the Borough’s proposed change.

Article XXVI – Medical, Prescription, Dental & Optical Benefits

The parties stipulated to the medical, prescription, dental and optical benefits contained in Article XXVI as part of the *status quo* closed on February 15, 2011. (Exhibit J1). For this reason, I must reject the Borough’s proposal. The Borough maintains its managerial prerogatives under the existing decisional law of the Commission.

Article XXVIII – Retention of Benefits

The PBA proposes the following language:

The Employer agrees that all benefits, terms and conditions of employment relating to the *status* of members of the Englewood Cliffs Police Department not covered by this Agreement, but included in the provisions of municipal ordinances or resolutions which are applicable to employees covered by this Agreement, shall remain in full force and effect, except as modified herein.

The Borough proposes the deletion of this provision.

I direct the parties' attention to Article VII, "Preservation of Rights", Paragraph 2 of the *status quo* closed (Exhibit J1) which, in my opinion, encompasses the PBA's concerns and has been mutually agreed upon. Accordingly, I will reject the duplicative provision proposed by the PBA.

Article XXVIII – Seniority

The PBA proposes:

Traditional principles of seniority shall apply to employees covered by this Agreement. Such principles shall apply to lay-off and recall, transfer and any other similar acts. Time in service by date of appointment shall apply. An employee's length of service shall not be reduced by time lost due to an absence from his employment for illness or injury certified by a physician or any period of military service. Such certification shall be subject to review by the Police Surgeon, if any, or any physician mutually acceptable to the parties.

The Borough proposes:

Traditional principles of seniority shall apply to lay-off and recall, transfer and any other similar acts. ~~Seniority is defined to mean the accumulated length of service with the Englewood Cliffs Police Department.~~ ***Time in service by date of appointment shall apply pursuant to New Jersey State law and can be waived if agreed upon by all parties. Rank and title shall supersede seniority in all circumstances except if contrary to law. Promotions shall not be controlled by this article.*** An Employee's length

of service shall no be reduced by time lost due to an absence fro his employment for illness or injury certified by a physician or any period of military service. Such certification shall be subject to review by the Police Surgeon, if any, or any physician mutually acceptable to the parties.

I will award the following modified language:

Traditional principles of seniority shall apply to employees covered by this Agreement. Such principles shall apply to layoff and recall, transfer and any other similar acts. Seniority and qualifications must be factored into promotional decisions in accordance with existing statutes and other precedent. For employment actions solely involving superior officers, time in rank will supersede departmental seniority. An employee's length of service shall not be reduced by time lost due to an absence from his employment for illness or injury certified by a physician or any period of military service. Such certification shall be subject to review by the Police Surgeon, if any, or any physician mutually acceptable to the parties.

Article XXXV – Personnel Files

The parties differ with respect to Paragraphs 1 and 3. They are in agreement with respect to Paragraphs 2 and 4, as contained within the PBA's proposed language.

Accordingly, I address Paragraphs 1 and 3 only.

1. A separate personnel history file shall be established and maintained for each employee covered by this Agreement. Personnel history files are confidential records and shall be maintained in the office of the Chief of Police.

The Borough proposes to delete "The Office of the Chief of Police" and supplement in "a secure location." No rationale explains why the *status quo* should change. As such, I will leave the language as proposed by the PBA above.

3. Whenever a written complaint concerning an officer or his actions is to be placed in his personnel file, a copy shall be made available to him and he shall be given the opportunity to rebut it if he so desires, and he shall be permitted to place said rebuttal in his file.

The Borough proposes the following add-on language: “this shall not apply to internal affairs.”

Initially, I note that the language does not address internal affairs files. Additionally, I believe that the Attorney General Guidelines governing the conduct of internal affairs should determine an officer’s accessibility to such files. Accordingly, I will reject the Borough’s proposal and leave the language as stated above.

Article XXXVII – Replacements

The PBA proposes the following:

1. No full time employee covered by this Agreement shall be replaced by any non-police, part-time or other personnel.
2. No post presently filled by a full-time employee covered by this Agreement shall be filled by any non-police, part-time or other personnel.

The Borough proposes the deletion of this Article in its entirety. The above contract language pertains to, among other scenarios, the civilianization of police function, a trend that has been ongoing for quite some time in New Jersey. I will award Paragraphs 1 and 2 of the PBA language, as modified each by the introductory phrase, “To the extent permitted by law”...

Article XLII – Emergency Medical Coverage

The parties have stipulated to the following language:

Employees rendering Emergency Medical Care shall be fully indemnified by the Borough for any and all claims, lawsuits, or other matters relating to Emergency Medical Care.

The parties agreed to the deletion “administrative actions.” Therefore, I need not address the Borough’s proposal to delete the terms “administrative actions”.

Article XLIII – Changes and Modifications

This proposal states:

In the event the appropriate State Pension Board or the Legislature make any modification to the present Pension Law, or Rules and Regulations relating thereto, which modifications would inure to the benefit of the Employees, the parties agree to reopen negotiations with respect to this Article. The Borough proposes to modify the third line to read: “modifications would inure to the benefit of the Employees or the Employer the parties agree to reopen negotiations with respect to this Article...”

In light of the dynamics of recent pension and health benefits reform, and the typically preemptive nature of such legislation, I will reject both parties’ proposals. Obviously, if a modification made by the State Pension Board or Legislature to the present Pension Law leaves open the possibility of a negotiable subject, e.g., the parties will be free to address the impact of the change, either at the time prescribed by the legislation, or during successor negotiations.

Article LI – Extension of Contract Protection

The PBA proposes the following language:

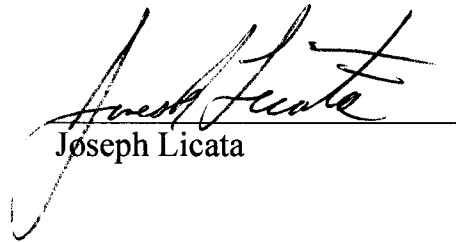
1. In the event that the Borough and the bargaining agent for the PBA have not, by December 31, 2013, agreed upon the terms and conditions of employment of the PBA for the contract period commencing January 1, 2014, then the terms and conditions of this contract of employment shall remain in full force and effect, without prejudice to either party, until the negotiation, consummation and execution of said later contract.
2. Nothing contained herein shall be deemed to supersede the provision of any law of the State of New Jersey, which may be applicable in appropriate cases. Therefore, the pay provisions of this Agreement shall become effective upon an adoption of an appropriate salary ordinance by the Borough of Englewood Cliffs.

I will grant the PBA's proposal, which merely reflects the protection of the *status quo* pending the completion of negotiations.

IV. CONCLUSION

The foregoing represents the terms and conditions of what will be a first formal Collective Negotiations Agreement between the Borough of Englewood Cliffs and the members of PBA Local 45, effective January 1, 2009 through December 31, 2013. I certify that the foregoing awarded economic and non-economic changes are consistent with the statutory criteria set forth by N.J.S.A. 34:13A-16g 1-9.

Respectfully submitted,



Joseph Licata

Dated: December 12, 2011

State of New Jersey)
):SS
County of Bergen)

On the 12th day of December, 2011, before me personally came and appeared Joseph Licata, to me known and known to me to be the person described herein who executed the foregoing instrument and he acknowledged to me that he executed the same.



Notary Public

TRACY MCKENNA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 26, 2014