

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between the

NEW JERSEY TRANSIT,

"Public Employer,"

and

FRATERNAL ORDER OF POLICE,
LODGE NO. 37 (SUPERIORS),

"Union."

INTEREST
ARBITRATION
DECISION & AWARD

Docket No. IA-2016-002

Before
Robert C. Gifford, Esq.
Arbitrator

Appearances:

For the Employer:

John J. Peirano, Esq.

David Alberts, Esq.

McElroy Deutsch Mulvaney & Carpenter

For the Union:

Matthew D. Areman, Esq.

Markowitz & Richman

On September 16, 2015, FOP Lodge 37 (Superiors) ["FOP" or "Union"] filed a Petition to Initiate Compulsory Interest Arbitration. On October 6, 2015, I was appointed through random selection from PERC's Special Panel of Interest Arbitrators to serve as interest arbitrator. The law requires that I issue an Award within 90 days of my appointment.

I conducted mediation sessions with the parties on October 15, October 21 and November 2, 2015, but they did not result in a settlement. Formal proceedings took place on November 24 and December 4, 2015, at which time the parties were afforded the opportunity to argue orally, examine and cross-examine witnesses and submit documentary evidence into the record. A stenographic record of the formal proceedings was taken. The parties provided post-hearing briefs on or before December 18, 2015, whereupon the record was declared closed.

FINAL OFFERS OF THE PARTIES

The FOP's Final Offer

1. Term of Agreement: Seven (7) Years – Effective July 1, 2010 through June 30, 2017.
2. **Article VIII (Wages):**

Modify Section 1 Wage Rate increases as follows:

Effective and Retroactive to July 1, 2010 – 0%
Effective and Retroactive to July 1, 2011 – 2.5%
Effective and Retroactive to July 1, 2012 – 2.5%
Effective and Retroactive to July 1, 2013 – 2.5%
Effective and Retroactive to July 1, 2014 – 2.5%
Effective and Retroactive to July 1, 2015 – 2.5%
Effective and Retroactive to July 1, 2016 – 2.5%

The base annual salary for Superior Officers covered by this agreement shall increase on the dates and at the same percentage listed above. (i.e., July 1, 2010 – 2.5%; July 1, 2011 – 2.5%, etc.)

Modify Section 2 as follows:

Effective January 1, 2016, the following wage progression shall be adopted and implemented.

Months of Service as Police Officers at NJ Transit	% of Base Pay
Training	65%
0-12	75%
13-24	85%
25-36	90%
36-48	95%
49-60	100%
61-72	101%
73-84	102%
85-96	103%
97-108	104%
109-156	105%

157-216	106%
217-276	107%
277+	108%

3. **Article XXIV (Vacation):**

Modify Section 2 as follows:

Length of Service with NJT	Vacation Allowance
After completion of 5 years	120 Hours
After completion of 10 years	160 Hours
After completion of 15 years	200 Hours
After completion of 20 years	240 Hours

Modify Section 3 as follows:

Length of Service with NJT	Vacation Allowance
After completion of 5 years	120 Hours
After completion of 10 years	160 Hours
After completion of 15 years	200 Hours
After completion of 20 years	240 Hours

4. **Article XXXI (Insurance Benefits):**

Modify Section 2 as follows:

Effective January 1, 2016, all unit employees shall contribute toward the cost of health insurance premiums as follows:

Horizon PPO Family Coverage: \$210 per month
Horizon PPO Spousal Coverage: \$179 per month
Horizon PPO Parent Child Coverage: \$101 per month
Horizon PPO Single Coverage: \$46 per month
Horizon HMO Family Coverage: \$188 per month
Horizon HMO Spousal Coverage: \$159 per month
Horizon HMO Parent Child Coverage: \$89 per month
Horizon HMO Single Coverage: \$41 per month

New Jersey Transit's Final Offer

ARTICLE VIII – WAGES

SECTION 1: The wage rates at each rank and step of the salary guide shall be increased as follows:

- ~~Effective July 1, 2006~~ ~~3.75%~~
- ~~Effective July 1, 2007~~ ~~3.75%~~
- ~~Effective July 1, 2008~~ ~~4.00%~~
- ~~Effective July 1, 2009~~ ~~3.90%~~

- Effective July 1, 2011 – 1%
- Effective July 1, 2012 – 1.25%
- Effective July 1, 2013 – 1.5%
- Effective July 1, 2014 – 1.5%
- Effective July 1, 2015 – 1.75%

The base annual salary for Superior Officers covered by this agreement shall be as follows:

~~Effective July 1, 2006:~~

~~———— Sergeant ——— \$82,795~~
~~———— Lieutenant ——— \$91,074~~

~~Effective July 1, 2007:~~

~~———— Sergeant ——— \$85,899~~
~~———— Lieutenant ——— \$94,489~~

~~Effective July 1, 2008:~~

~~———— Sergeant ——— \$89,335~~
~~———— Lieutenant ——— \$98,269~~

~~Effective July 1, 2009:~~

~~———— Sergeant ——— \$93,621~~
~~———— Lieutenant ——— \$102,981~~

~~Effective July 1, 2010:~~

~~———— Sergeant ——— \$97,272~~
~~———— Lieutenant ——— \$106,997~~

Effective July 1, 2011:

Sergeant \$98,245
Lieutenant \$108,067

Effective July 1, 2012:

Sergeant \$99,473
Lieutenant \$109,418

Effective July 1, 2013:

Sergeant \$100,965
Lieutenant \$111,059

Effective July 1, 2014:

Sergeant \$102,479
Lieutenant \$112,725

Effective July 1, 2015:

Sergeant \$104,273
Lieutenant \$114,698

SECTION 2: Effective January 1, 2001 the following wage progression shall be adopted and implemented.

Months of Service as Police Officers – At NJ Transit	% of Base Pay
Training	65%
0-12	75%
13-24	85%
25-36	90%
36-48	95%
49-60	100%
61-72	101%
73-84	102%
85-96	103%
97-108	104%
109-120	105%

ARTICLE XVIII – SICK LEAVE

Delete Section 6:

~~**SECTION 6.** If the SO sustains any job-related injury which is recognized as such and covered by Worker's Compensation Insurance, NJT shall insure payment of full salary for a period of up to one and one-half (1-1/2) years, or until such time SO is placed on disability or retirement, whichever first occurs. Any such~~

~~payments made by NJT shall be reduced by all benefits received or which could have been received if proper applications were made in connection with such job-related injury. SO's understand and agree that they may be required to make reimbursement to NJT and/or its insurance carrier in the event of a third party action recovery of such lost wages and that any such reimbursement will be in addition to the obligation to pay over to NJT all such benefits. There shall be no charge to any SO's sick leave in the event of any bona fide job-related injury. The Employer shall have the right to require periodic medical examinations of SO's on leave due to job-related injuries, at the expense of the employer.~~

ARTICLE XXXI – INSURANCE BENEFITS

SECTION 1: New Jersey Transit will provide the Blue Select Plan, including dental and prescription benefits to active eligible employees covered by this Agreement. New Jersey Transit will also offer the HMO Blue Option if it is made available to other employees of New Jersey Transit. No other plans will be offered under this Agreement. If an SO elects to enroll in any plan offered by NJ Transit other than the blue Selection Plan, the SO will be responsible for the difference in cost between the Blue Select Plan and such other plan, in addition to the employee contributions set forth in Section 2 below.

~~The Blue Select Plan, as shown in Attachment A, including dental and prescription benefits and the HMO Blue option, as proposed by New Jersey Transit, will replace the traditional indemnity plan. Such replacement shall not occur prior to July 1, 2000 in order to afford a full opportunity for review of options by affected employees. If an SO elects to enroll in any other HMO, NJ Transit funding obligation will be limited to its cost for Blue Select.~~

SECTION 2.

- a. Effective upon the date of Award, or as soon thereafter as NJ Transit completes the necessary administrative actions for collections, all SOs shall contribute, through withholding of the contribution from the pay, salary, or other compensation of the SO, toward the cost of health care benefits coverage for the employee and any dependent in an amount that shall be determined in accordance with Section 39 of P.L. 2011, c.78.
- b. An employee on leave who is eligible to receive health and prescription benefits provided by NJ Transit shall be required to pay the above-outlined contributions and shall be billed by NJ Transit for these contributions. Health and prescription benefit coverage will cease if the employee fails to make timely payment of these contributions.
- c. All contributions will be by deductions from pay.

~~Effective January 1, 2009, all unit employees shall contribute \$40.00 per month toward the cost of health insurance premiums.~~

SECTION 3. (b) Eye Care Package

1. It is agreed that NJT will provide an Eye Care Program during the term of this agreement. The coverage shall provide for a \$25.00 payment for regular prescription eyeglasses or contact lenses or a \$30.00 payment for bifocal glasses or more complex prescriptions. Include are all eligible full-time employees and their dependents. The extension of benefits to dependents shall be effective only after the new employee has been continuously employed for a minimum of sixty (60) days.

2. Full-time employees and eligible dependents as defined above shall be eligible for a maximum payment of \$25.00 or the cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.

3. Each eligible employee and dependent may receive only one (1) payment for glasses and one (1) payment for examinations every two years while the program is in effect. Proper affidavit and submission of receipts are required of the employee in order to receive payments. This Program ends June 30, 2016.

ARTICLE XXXII – RIDERSHIP PASSES

~~NJT shall provide each SO a pass entitling him/her only to ride on commuter lines in the NJT system. The pass shall be issued annually and shall be valid only during the year in which issued. The pass will not be transferrable.~~

ARTICLE XVIII – SICK LEAVE

Add new Section 8:

SECTION 8: If a SO calls out sick that SO will be ineligible for voluntary overtime for a period of seven calendar days following the last day sick leave was issued. A SO ineligible for voluntary overtime may be required to work overtime by NJT during any such period of ineligibility.

BACKGROUND

New Jersey Transit ["NJT"] is New Jersey's public transportation corporation that employs over 11,000 employees. NJT's website summarizes the agency's mission, coverage area, and operations:

Its mission is to provide safe, reliable, convenient and cost-effective transit service with a skilled team of employees, dedicated to our customers' needs and committed to excellence. Covering a service area of 5,325 square miles, NJ TRANSIT is the nation's third largest provider of bus, rail and light rail transit, linking major points in New Jersey, New York and Philadelphia. The agency operates a fleet of 2,027 buses, 711 trains and 45 light rail vehicles. On 236 bus routes and 12 rail lines statewide, NJ TRANSIT provides nearly 223 million passenger trips each year.

New Jersey Transit Superior Officers Association, FOP Lodge 37 (NJ FOP Labor Council) represents NJT's Sergeants and Lieutenants. There are approximately fifty-two (52) bargaining unit members. The parties' prior Agreement was effective from July 1, 2006 through June 30, 2010. [Exhibit U-5].

I have thoroughly reviewed the evidence that was presented during the proceedings. Rather than providing a general summary herein, I have extracted significant portions of the legal arguments after careful analysis.

The FOP's Position¹

STIPULATIONS OF THE PARTIES²

The parties to this proceeding reached two (2) stipulations that independently have an impact on the outcome of this case. First, the parties have stipulated that inasmuch as the most recently expired collective negotiations agreement between the FOP and Transit [UX5] had an effective date of July 1, 2006 through June 30, 2010, the statutory limitations on arbitration awards made effective January 1, 2011 by the passage of P.L. 2010, Ch. 105 (*i.e.*, the so-called "2% cap"), are inapplicable in the present matter [Tr. 4-5]. Moreover, the parties have stipulated that P.L. 2011, Chapter 78, signed into law effective June 28, 2011, relating to State-administered health benefits programs and employee "premium-sharing," is also inapplicable to employees of Transit [Tr. 4-5]. Accordingly, the arbitrator is not bound by these provisions in rendering a conventional interest arbitration award pursuant to N.J.S.A. 34:13A-16(d).

The parties reached no other procedural or substantive stipulations in this matter which would otherwise impact the outcome of this proceeding.

DISCUSSION

A. Overview of Proposals

¹ The FOP's position was taken from pages 24-65 of its Brief. Footnotes 2-23 herein are actually numbered 6-27 in the FOP's Brief.

² Tr. 4-5.

On the one hand, this interest arbitration is not unique in that the parties' dispute comes, largely, down to the financial terms to be included in the successor collective negotiations agreement. On the other hand, this proceeding is unique in that Transit, unlike other employers in the State of New Jersey, clearly has sufficient assets and reserves to fund the FOP's proposals. The FOP has proposed a final offer that seeks nothing more than to compensate officers for the exceptional job they have performed and to pay them commensurate with their colleagues both within Transit and in comparable law enforcement employment, while acknowledging a reality where healthcare premium sharing *at a reasonable* level must be addressed.

The Employer's proposals, on the other hand, are patently unreasonable, unjustified, and in practical terms will punish officers by, literally, taking money out of the pockets of each and every bargaining unit member. More specifically, under Transit's proposal, during the term of the proposed agreement, many FOP members would experience a net loss in pay due to statutorily mandated increases pension contributions and the proposed increases in healthcare contributions. This, of course, does not even consider the other financial "givebacks" sought by Transit (e.g., ridership passes, paid injury leave, eye care, etc.). In addition to inflicting great pain upon the members of the FOP's bargaining unit, it appears quite clear that Transit has proposed these harsh terms upon its smallest bargaining unit so that it may later use the precedent to inflict similarly draconian terms and conditions upon other

represented and non-represented employees, some of whom are currently in negotiations. This is the epitome of "the tail wagging the dog," and it is not only unfair to the FOP, it is unfair to the other employees of Transit and unfair to this Arbitrator.

Based on the foregoing and as discussed more completely below, it is clear that the FOP's proposals are reasonable, affordable, and benefit both the Employer and the employees, and thus, should be adopted by the Arbitrator.

B. The Statutory Criteria Considered by an Interest Arbitrator in Making an Award

The Police and Fire Public Interest Arbitration Reform Act ("Reform Act") went into effect on January 1, 1996, and was subsequently amended in 2010 and again in 2014. Under these procedures, the arbitrator must resolve an impasse by considering the nine (9) criteria set forth in N.J.S.A. 34:13A-16(g). These criteria are as follows:

1. The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 *et seq.*).
2. Comparison of the wages, salaries, compensation, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, salaries, compensation, 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.³
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.*).⁴
6. The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62 (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 or services for which public moneys have been designated by the governing body in a proposed local budget.
7. The cost of living.
8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or

³ The parties' stipulations are set forth, *supra* [see also, Tr. 4-5].

⁴ As discussed below, these provisions, in an interest arbitration, relate to the application of the Local Budget Law or "Cap Law," for municipal and county governments. Transit is not governed by this statutory provision, and is not limited by the Cap Law calculations. Moreover, no evidence was presented which otherwise suggests that the FOP's proposals fall outside the lawful authority of the Employer. N.J.S.A. 40A:4-45.45; see also, *New Jersey Transit and PBA Local 304*, P.E.R.C. Dkt. No. IA-2007-029, pp. 71-72 (Weisblatt).

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).⁸
See N.J.S.A. 34:13A-16(g)(1)-(9).

These criteria, if relevant, must be applied and afforded "due weight" by the arbitrator in resolving each issue in dispute. *Id.* While the arbitrator is obliged to consider each of the criteria in his analysis, no one factor is dispositive, nor are certain criteria even relevant to the determination of every issue. See *Hillsdale PBA Local 207 v. Borough of Hillsdale*, 137 N.J. 71, 80 (1994). "An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important in arriving at the award, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award." *County of Union*, 29 NJPER 75, PERC No. 2003-87 (2003), citing N.J.S.A. 34:13A-16g, N.J.A.C. 19:16-5.9 and *Borough of Lodi*, PERC No. 99-28, 24 NJPER 466 (¶29214 1998).

It should also be noted that it has been traditionally held in interest arbitration proceedings that the party seeking to change a term and/or condition of employment bears the burden to prove the basis for such modifications. See e.g., *City of Patterson and Paterson PBA, Local 1 and Paterson SOA*, PERC Dkt. No. IA-2004-111 (Mastriani); *Hanover Twp. and Hanover PBA, Local 128*, PERC Dkt. No. IA-2004-081 (Glasson). Throughout this

proceeding, the Employer has failed to meet its burden of demonstrating the need for, or justification of, its extreme proposals.

Accordingly, with an eye toward the aforementioned arbitral principles, and further applying the statutory criteria to the instant case, it is apparent that the Arbitrator should adopt the FOP's proposals.

C. Applying The Statutory Criteria, The FOP's Proposals Must be Awarded

1. FOP's Wage Proposal

The FOP's wage proposals and the individual components therein, are largely self-explanatory. The FOP has proposed: a 0% wage increase for 2010 (July 1, 2010) and 2.5% base wage increases effective and retroactive to each July 1 of 2011, 2012, 2013, 2014, 2015 and 2016. In addition, the FOP has proposed to increase the progression scale to further incentivize stability among superior officer ranks, specifically by affording a 1% increase in pay after an officer reaches thirteen (13) years, eighteen (18) years, and twenty-three (23) years of service. As discussed more completely in this section, it is clear that the FOP proposals should be adopted by the Arbitrator as reasonable, affordable and meeting the statutory criteria.

a. Interest and Welfare of the Public

By all accounts, New Jersey Transit is in the midst of a heightened security status based largely upon its accessibility and iconic value for those who wish to inflict harm in terms of terrorism and other crime. As this threat level persists, it is

the job of the men and women of the Transit Police Department to maintain order and protect the public. Without the protection and order that the highly skilled police department provides to the citizens and employees who utilize the system, Transit will likely see a reduction in its standing, both within the State of New Jersey and beyond, except for potential "bad actors" who will see Transit as a more appealing target.

Thus, Transit and its customers have a strong interest in their superior officers receiving a fair contract with equitable wage increases. It is without dispute that these officers have an extremely difficult job to do on a daily basis. Indeed, Transit's largest presence is in the historically more dangerous and crime-ridden municipalities in New Jersey, including Newark, Trenton, Camden and Atlantic City. The officers' efforts to protect the public from crime are hindered when their morale is reduced by low wage increases, such as those proposed by the Employer in this case. This is particularly so where, as here, Transit has prospered financially during the past six years that the members of the FOP bargaining unit have gone without a contract. Considering the foregoing, and coupled with the fact that the officers represented by the FOP face difficult challenges during the course of each and every day, including substantial manpower shortages that require officers to work mandatory overtime assignments and come in on their regular day off, it is a testament to the professionalism of the officers that they are able to continue to perform their job at such high levels of competence.

It would be fair to assume that NJT superior officers do not elect to work for the Transit because it offers a relaxed, low-crime, bucolic environment. Consequently, when the wage increases offered by the Employer would cause officers' pay to sink below the pay rates offered by comparable jurisdictions and transit agencies, and behind the percentage increases afforded to others within Transit, morale is negatively impacted. Moreover, if the wage discrepancy between Transit superiors and the superior officers employed by other departments, colleagues that the Transit superiors interact with on a daily basis, is allowed to increase further, the Transit's officers will feel unwanted and take jobs in higher paying and/or lower stress jurisdictions. The result would also mean additional turnover in the rank-and-file unit, because officers in that unit would fail to see a career path within the police department. This would further exacerbate the manpower shortages which plague the superior unit. This, of course, directly harms the interest and welfare of the customers, employees and businesses who rely upon Transit for their well-being, as their level of safety would decline in proportion to the strength and experience level of the police force.

The FOP proposal also includes a modest increase in the progression for superior officers with tenure in their position. As FOP State Delegate, Sgt. Damato ("Damato") testified, the rationale behind such a provision is to "reward experience," since that experience can be passed along to other officers [Tr. 82-83]. Of course, the public interest supports having experienced supervisors

working in the Transit department, particularly when one considers the scope and breadth of the job performed by these officers.

Absent these critical wage components, it is likely that Transit will have difficulty filling the unoccupied positions within the superiors unit and will experience higher levels of turnover in the coming years. It is commonly accepted within New Jersey Interest Arbitration jurisprudence that high turnover produces a continuing spiral of recruitment and training resulting in a significant number of inexperienced officers to perform the duties of a police department. See e.g., *Hunterdon County Sheriff's Office and FOP Lodge No. 94*, IA-2009-103 (Glasson). The interest and welfare of the public criterion favors a low turnover rate with a stable workforce. *Id.* This is important in all work environments, but it is particularly important in a police agency given the inherent dangers of the job and the need to maintain the highest levels of safety and supervision. Highly trained and experienced police officers are the keys to maintaining these high standards. *Id.* Of course, in addition to a lower standard of police services, high attrition rates also result in increased costs to the Employer in terms of training, uniforms, etc. These tangible costs do not even take into account the costs associated with the increased stress on the remaining police officers who are overworked and understaffed.

By offering such a small wage proposal, Transit has done nothing to stem the morale issue in the FOP bargaining unit. On the contrary, the proposal will widen the gap between Transit superiors and those officers employed by

similar/surrounding jurisdictions. This is particularly offensive where the interaction between the NJT superior officers and their counterparts in the surrounding jurisdictions is so customary. The result, in the event that Transit's wage proposals awarded, would be continued declines in morale and increased difficulty in retaining and hiring qualified officers. Superior officers will continue to question whether they are receiving the support they deserve from the Employer, and will take positions with employers that offer higher wages and better benefits.

The public, therefore, has a strong interest in Transit superiors receiving a fair contract with equitable wage and benefit increases, as proposed by the FOP.

b. Comparison of Wages, Salaries and Other Conditions of Employment

The second statutory criterion calls for a comparison of the wages, salaries and other terms and conditions of employment of the employees involved in the arbitration proceedings with those received by "employees performing the same or similar services and with other employees generally" in three areas: 1) In public employment in general; 2) In private employment in general; and 3) In public employment in the same or comparable jurisdictions;. See N.J.S.A. 34:13A-16(g)(2). Applying these comparability guidelines, it is apparent that the wages and conditions of employment of Transit superiors lag behind similarly situated law enforcement personnel. This gap would only be expanded under the Employer's meager proposals. By contrast, under the FOP's proposal, the officers' wages and conditions of employment would more closely resemble

those received by their law enforcement colleagues in comparable employment.

Generally, the percentage wage increase received by police and firefighters in New Jersey through interest arbitration are comparable to those proposed by the FOP in the present matter. In 2010, the average salary increase attained through an interest arbitration award was 2.88%, and the increase attained through voluntary settlement was 2.65% [UX34]. In 2011 those figures were 2.05% and 1.87%; in 2012, 1.98% and 1.82%; in 2013, 1.89% and 1.96%; in 2014, 1.69% and 1.61% [*Id.*].⁵ The average award for this period is 2.098%. The FOP's proposal of 0% for 2010 and 2.5% each remaining year of the agreement, results in an average of 2.14%, which certainly comports with the average award and settlement for the last several years. In contrast, the Employer's proposal of 0% in 2010, followed by a 1.0% in 2011; 1.25% in 2012; 1.5% in 2013; 1.5% in 2014 and 1.75% in 2015, averaging 1.16% per year, falls far short of the average award for the same time period, and would place police officers at near one half of the state average for this time period.

The negative impact of Transit's proposal is magnified when one considers the costs to the FOP unit in terms of healthcare and pension contributions. While healthcare contributions are discussed more completely, *infra.*, even under the FOP's proposal, employees will contribute a greater share of their salary toward

⁵ Notably, the figures for 2011-2014 awards will be skewed downward due to the limitations placed on interest arbitration awards by virtue of P.L. 2010, Ch. 105. Those limitations are not applicable in the present matter.

healthcare. In terms of costs, the FOP unit stands to incur, even under its own proposals, an increase in costs ranging from \$12 to \$2,040 per year depending on the level and type of coverage – a figure that unreasonably jumps to between \$1,966 and \$9,108 per year under the Employer's proposal. Thus, commensurate salary increases will be necessary to maintain current levels of disposable income to the members.

Likewise, recently enacted legislation has also increased the police pension contribution to 10.0% of their pensionable base salaries towards pensions. Previously the officers contributed 8.5% of their pensionable salaries. Commencing with the first payroll check on or after October 21, 2011, the Employer has been required to collect the 10.0% from the officers' pensionable salary and remit it to the State. The increased pension contributions further diminishes the disposable income of each FOP unit member.

While required by the statute, comparisons of wages paid in the private sector with wages paid to police officers are of limited value in interest arbitration proceedings. As FOP witness Frenzel cogently explained:

I'm not necessarily sure that a private employee does the same job that I do. I mean, I work – I'm in a 24/7 business. So a security guard of this building is off on Thanksgiving. I would be asked to come to work as my regular day to work on Thanksgiving. Some days I come in at 4:00 in the morning because the job is unable to fill. So I don't think it's fair to compare me to a private employee.

[Tr. 72-73].

Unlike employees in the private sector, law enforcement officers have obligations both on and off the job. A police officer operates under a statutorily created public franchise of law enforcement during on-duty hours as well as off-duty hours. These are unique responsibilities not found in the private sector. Additionally, there is no portability of pension in the law enforcement community. Police officers may not take their skills and market them in other states as one may market one's own personal skills in the private sector. A machinist or an engineer may travel anywhere in the country to relocate and market their skills. This is not possible for a police officer. Finally, the certification for a police officer is only valid locally, a barrier not often seen in the private sector.

Arbitrator Carl Kurtzman articulated the difficulty of comparing the working conditions of law enforcement officers to the private sector:

As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight.

See Borough of River Edge, PERC Docket No. IA-97-20, at p. 30.

Arbitrator William Weinberg reached a similar conclusion in his decision in *Village of Ridgewood*, PERC Docket No. IA-94-141, reasoning that the factor of comparable private employment is:

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

The weight given to the standard for comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Id. at pp. 29-31.

Notwithstanding the limited relevance of wage comparisons in the private sector, the most recent data from the Public Employment Relations Commission shows that New Jersey saw a 1.6% increase in average annual wages from 2012 to 2013.⁶ The Employer has offered a 1.25% and 1.5% wage increase for this period – not taking into consideration the significant givebacks in terms of healthcare premium contributions and other benefits. While the FOP submits

⁶ http://www.state.nj.us/perc/Private_Sector_Wage_Report_2014.pdf

that the private sector wage comparison should be afforded little, if any, weight, to the extent it is considered by the Arbitrator, the data certainly demonstrates that the Employer's proposal is simply out of line with the economic realities that exist within the State.

An analysis of the proposed wage increases for FOP officers in relation to law enforcement officers in comparable employment will provide the greatest insight into the appropriateness of the FOP's wage proposals. The FOP included in its presentation a CD with comparable superior officer contracts that will form the basis of this analysis [UX13]. The CD includes contracts for police officers in municipal jurisdictions within what has commonly been referred to in Transit as the "hub cities," consisting of Atlantic City, Camden, Newark, Trenton, Hoboken and Union Township. See, e.g., *New Jersey Transit and PBA Local 304*, P.E.R.C. Dkt. No. IA-2007-029, pp. 51, 55, 67 (Weisblatt). In *PBA Local 304*, Transit placed substantial emphasis on comparisons to these "hub cities." *Id.* at 28. Arbitrator Weisblatt found Transit's comparison to "hub cities" to be "particularly relevant" because of these are settings where public transportation is significant. *Id.* at 67.⁷

The following is comparison of superior officer wages for Transit and the comparable "hub cities," discussed above:

⁷ In *NJ Transit and PBA, Local 304*, PERC Dkt. IA-1997-136 (Mastriani), Arbitrator Mastriani suggested that the best comparators for Transit police officers were municipal police officers, police officers at other transit agencies, and settlements within Transit. [*Id.* at 62].

	100% Rate 2009	100% Rate 2010	100% Rate 2011	100% Rate 2012	100% Rate 2013	100% Rate 2014	100% Rate 2015	100% Rate 2016
Sergeants (FOP Proposal)	\$97,272	\$97,272	\$99,704	\$102,196	\$104,751	\$107,370	\$110,054	\$112,806
Sergeants (NJT Proposal)	\$97,272	\$97,272	\$98,245	\$99,473	\$100,965	\$102,479	\$104,273	N/A
Atlantic City	\$96,450	\$100,308	\$104,320	\$108,493	N/A	N/A	N/A	N/A
Camden Metro	N/A	N/A	N/A	N/A	N/A	\$92,540	\$94,390	\$96,278
Hoboken	\$100,083	\$102,085	\$104,126	\$106,157	\$108,146	N/A	N/A	N/A
Newark	\$93,673	\$96,015	\$98,656	\$101,615	N/A	N/A	N/A	N/A
Trenton	\$90,351	\$93,739	\$97,020	\$100,415	\$100,415	\$100,415	\$113,468	\$114,887
Union Twp.	N/A	N/A	N/A	N/A	\$115,297	\$116,450	\$118,779	N/A

	100% Rate 2009	100% Rate 2010	100% Rate 2011	100% Rate 2012	100% Rate 2013	100% Rate 2014	100% Rate 2015	100% Rate 2016
Lieutenants (FOP Proposal)	\$106,997	\$106,997	\$109,672	\$112,414	\$115,224	\$118,105	\$121,057	\$124,084
Lieutenants (NJT Proposal)	\$106,997	\$106,997	\$108,067	\$109,418	\$111,059	\$112,725	\$114,698	N/A
Atlantic City	\$105,244	\$109,454	\$113,832	\$118,385	N/A	N/A	N/A	N/A
Camden Metro ⁸	N/A	N/A	N/A	N/A	N/A	\$110,651	\$112,774	\$114,939
Hoboken	\$113,888	\$116,166	\$118,489	\$120,799	\$123,155	N/A	N/A	N/A
Newark	\$103,556	\$106,145	\$109,034	\$112,336	N/A	N/A	N/A	N/A
Trenton	\$103,906	\$107,903	\$111,576	\$115,482	\$115,482	\$115,482	\$130,494	\$132,125
Union Twp.	N/A	N/A	N/A	N/A	\$123,711	\$124,949	\$127,448	N/A

For 2010, the FOP's proposed top salary for Transit Sergeants is \$97,272, which is on par with most of the hub cities to which they are most comparable. It is when one looks further down the guide, in 2012, 2013 and beyond that

⁸ Includes a \$4,500 stipend received by every Lieutenant.

Transit Sergeants, even under the FOP's proposal will lose substantial ground relative to wages in these comparable jurisdictions. In fact, in 2012, Transit Sergeants make less than their counterparts in Atlantic City, Hoboken, and Union Township. In 2015, Transit Sergeants will also make less than Trenton Sergeants and Union Township Sergeants, and only slightly more than Atlantic City and Hoboken made in 2012 and 2013, respectively. The experience is similar, if not worse, for Transit Lieutenants. For Lieutenants in 2009, wages are certainly comparable with the "hub cities," but in 2010 and beyond, Transit's standing among these jurisdictions falls to the point where it is the second lowest paid of the group. Indeed, the only way that the FOP can come close to maintaining its standing among these comparable departments is if FOP's proposals are awarded.

Obviously, the contrast is even more glaring when one considers what the Employer has proposed. Under the Employer's meager proposals, Transit superiors' standing amongst these comparable jurisdiction would plummet as early as 2012. The top Sergeant rate at the end of Transit's proposed agreement (i.e., \$104,273) is not only second lowest among the group, behind all other departments other than Camden Metro, but it is approximately \$4,000 less than Atlantic City and Hoboken in 2012 and 2013, respectively. As for the Lieutenants under Transit's proposal, they would drop to the bottom slot in 2010, and would never recover its standing among the group, finding itself some \$13,000 lower

than Union Twp., and \$16,000 lower than Trenton – a unit with a lower top salary in 2009.

The negative impact of the Employer's proposals is further exacerbated by the fact that it has proposed a contract expiration of June 30, 2016 – thus, requiring the parties to immediately return to the bargaining table, this time, under the constraints of the 2% interest arbitration restriction.⁹ In practical terms, adoption of the Employer's wage proposals and contract term in this proceeding would result in Transit superiors experiencing the creation of a negative salary gap, when compared to other jurisdictions, for the period from 2010 through 2015, and then a second and perhaps more dramatic expansion of that negative salary gap for the term of a successor agreement, since the FOP will be governed by the 2% restrictions. Were such a scenario to play out, it could be years before Transit superiors could begin to make up that difference.

In terms of comparisons with other bargaining units within Transit, it must be noted that on October 26, 2015, Arbitrator Jack Tillem issued an award granting bus employees 12% over the time period from July 1, 2010 through June 30, 2017. This is compared to Transit's proposal in the present matter of a mere 7% from July 1, 2010 through June 30, 2016. Similarly, the Presidential Emergency Board No. 248, on August 14, 2015, issued its recommendations for a resolution of the rail operations negotiations impasse which included general wage increases

⁹ In addition to the financial consideration, in this regard, Castellano also testified to the fact that tensions between the parties are high as a result of the protracted negotiations, and morale amongst the employees is low for the same reason, and therefore it would behoove the parties to have a contract that give both sides some "breathing room," [Tr. 10].

over a term of July 1, 2011 to January 1, 2018 of 17% (18.38% compounded), with the average annual wage increase of 2.6% [UX30]. While the bus and rail operations involve different jobs, with different salary structures, the internal comparisons to the wage increase percentages cannot be ignored.

Based upon Transit's presentation at the hearing in this matter, it is anticipated that it will attempt to rely upon comparisons with various State law enforcement units [See EX8 - EX16]. The Employer's comparisons are flawed on a number of levels, and as a result, must be largely discounted in this proceeding. Initially, it should be noted that in *New Jersey Transit and PBA Local 304*, P.E.R.C. Dkt. No. IA-2007-029, pp. 66 (Weisblatt) Arbitrator Weisblatt expressly discounted the correlation between statewide units and Transit police officers, finding, "there is nothing in the record to indicate, or even suggest, that there is any history of direct correlation between patterns of bargaining at the State of New Jersey with the unions representing its employees and the bargaining at NJ Transit," [Id. at 66].

In addition, perhaps by error, or perhaps to "guild the lily," Transit's comparison to State employees is skewed inasmuch as it attempts to compare the salary proposals for Transit Lieutenants with the salaries of lower ranking State law enforcement officers [EX8 - EX16]. More specifically, EX8 compares Transit's salary proposal for Lieutenants to those of rank-and-file officers represented by PBA, Local 105. This is like comparing apples to oranges. One cannot reasonably expect that the salary of a rank-and-file officer would be

comparable to that of a Lieutenant. Similarly, EX9 compares rank-and-file investigators to Transit Lieutenants. EX10 is a legitimate comparison, to the extent Transit Lieutenants are comparable to State Trooper in the Lieutenants rank, and notably, the salary for a top step State Trooper Lieutenant in 2012 is still \$3,000 more than Transit's proposal for its Lieutenants in 2015 [EX10]. EX11 highlights the salaries of first level supervisors, or Sergeants, in the State law enforcement unit. Here, the proper comparison is not to Lieutenants, as Transit would suggest, but to Transit Sergeants. When such a comparison is made, the record reveals that Transit Sergeants, under Transit's proposal, will make \$3,000 less in 2015 than these State supervisors made in 2011 [EX11]. EX12 focuses on State law enforcement Captains, and because Captains are not part of the FOP bargaining unit, the comparison, again, offers little value, other than to show that the State law enforcement Captains earned \$12,000 more in 2011 than Lieutenants would in 2015 under Transit's proposal [EX12]. Finally, in EX13, Transit has compared State Lieutenants to Transit Lieutenants, and the comparison demonstrates again that Transit Lieutenants are underpaid by approximately \$4,000 at the top step in 2015 [EX13]. EX14 and EX15 are, again, attempts to compare the salaries of rank-and-file officers to those of Lieutenants -- a comparison that offers little in terms of value in the interest arbitration process. EX16 demonstrates little more than the fact that a NJ State Trooper Sergeant made \$1,000 more in 2012 than a Transit Sergeant would make in 2015 under Transit's proposal [EX16].

Based upon the foregoing, the FOP has clearly demonstrated that the FOP's wage proposal is more in line with the salaries of similarly situated employees, and therefore must be granted.

c. The Financial Impact on the Employer

Typically, a discussion on the financial impact of a union's proposal, for purposes of an interest arbitration, revolves around the employer's ability to afford said proposal. With its \$2.1 billion budget, Transit certainly will have no difficulty affording the FOP's modest proposals. As set forth in the FOP Expert Financial Report [UX32], the total FOP proposal represents a total increase of \$1,052,104 over the seven (7) year term of the proposed agreement, averaging 2.63% annually, prior to any reductions for healthcare premium sharing.¹⁰ To put things in perspective, the increase proposed by the FOP is a mere 0.05% of Transit's \$2.1 billion total annual operating budget. Moreover, Transit's wage proposal would cost \$409,869, over the term [UX32 at 10]. This means that the difference between the two wage proposals is a mere \$642,235, which constitutes a differential of less than \$100,000 per year -- approximately 0.005% of the annual operating budget. This is the proverbial "drop in the bucket."

Indeed, these monies could easily be made up in a variety of ways. For example, despite the fact that the Police Department budget increased nine

¹⁰ Transit estimated the FOP proposal as costing \$5,159,562 over the seven year term, but that is ludicrous since such a figure constitutes an almost 100% increase in the total salaries paid to FOP bargaining unit members in 2009 (i.e., \$5,715,182) [See UX 32 at pg. 1]. It is unclear how Transit can take a 2.5% salary increase proposal for six of seven years and translate that into a 100% increase of total salaries.

percent (9%) annually from 2009 through 2015, from \$36.3 million to \$56.8 million, the share allocated to labor decreased from 51.5% to 47.5%. Within the "labor share," the amount budgeted for "Police Agreement Regular Time" declined significantly from 71% of budgeted labor to 65.7%. When Non-Agreement officers are included, the decline is even more dramatic. Budgeted regular time police agreement labor costs represented 90.7% of labor costs in 2009 and 79.5% in 2015, a savings of 11% that could easily be used to fund the FOP's proposals.

Additional budgetary savings over the past several years were experienced where budget resources allocated to police officers for "Regular Time" salaries based upon collectively negotiated agreements exceeded the amount spent in each of the respective fiscal years since the contract expired, thereby generating resources for use elsewhere. The amount of unused, budgeted regular time labor costs exceeded \$4 million since the expiration of the parties' collective negotiations agreement. When "non-agreement" personnel are factored in, this excess of budgeted resources exceeds \$7 million for the same period. In short, in no year since the expiration of the CNA has the budgeted amount based on regular time been exceeded. It is clear that the significant resources which have been saved within the police department budget can easily be used to subsidize the FOP's wage proposals without any significant impact upon Transit.

It is hard to fathom Transit having any difficulty affording the FOP's proposals when one considers the minimal cost in the greater context of the Employer's regular annual budget and expenditures. Indeed, it is difficult to understand why the Employer would choose not to make such a relatively small investment in its police department, when such an investment would pay great dividends in the form of increased morale, better retention rates, and a more experienced workforce.

d. The Cost of Living¹¹

The cost of living, or inflation, is never constant, and changes throughout the year. That inflation has dropped in recent years due to the low interest rate environment is recognized, but it must also be recognized that such low inflation is not sustainable. The average inflation figure for 2010 through October 2015 is 1.8%.¹² Indeed, the historical trend in inflation since 2009 reflects an upward movement.¹³ It is also notable that the Social Security COLA has averaged 1.41% since 2011.¹⁴

Leaving aside any arguments regarding the reliability of the CPI as a measure, particularly at the present time where a historically low index is caused mainly by lower housing costs, thus masking the increases in other day-to-day items like gasoline, the FOP's proposals are certainly in line with the CPI

¹¹ In lieu of repeating the FOP's position regarding the CPI and its questionable reliability as a measure for the FOP's proposals, the FOP respectfully submits that the analysis contained in this section should apply for all of the FOP's proposals.

¹² <http://www.usinflationcalculator.com/inflation/historical-inflation-rates/>

¹³ <http://www.usinflationcalculator.com/inflation/historical-inflation-rates/>

¹⁴ <https://www.ssa.gov/news/cola/facts/>

averages, particularly where the FOP's healthcare premium sharing proposals are considered. The Employer's proposal is inconsistent with the CPI, flawed as that figure may be, particularly when one considers the enormous cut in pay that would result from implementation of the Employer's healthcare proposals.

Consequently, Transit's proposal will continue to cause the unit of superior officers' wages to decline in terms of purchasing power by keeping overall wages behind the historical CPI. Application of this factor, therefore, clearly favors the adoption of the FOP's proposal.

e. The Lawful Authority of the Employer¹⁵

Pursuant to N.J.S.A. 34:13A-16(g)(5) and (9), the Arbitrator must consider the lawful spending limitations (if any) imposed upon the employer. In an interest arbitration, these provisions relate to the application of the Local Budget Law or "Cap Law," for municipal and county governments.

P.L. 1976, c. 68 imposed limitations on increases in municipal appropriations subject to various exceptions. On August 20, 1990, the Governor signed into law P.L. 1190, c.89, which revised and made permanent the "Cap Law." Since its inception, the "Cap Law" has been amended and modified several times, most recently on July 13, 2010. Among other things, the Cap Law, imposes a two percent (2%) cap on the tax levy that municipalities, counties, fire districts and solid waste collection districts may impose, with very limited exceptions and subject to certain adjustments.

¹⁵ In lieu of repeating the FOP's position regarding the lawful authority of the Employer, the FOP respectfully submits that the analysis contained in this section should apply for all of the FOP's proposals.

By its terms, the Cap Law does not apply to Transit, and therefore the parties are not limited by any Cap Law limitations. *N.J.S.A. 40A:4-45.45*; see also, *New Jersey Transit and PBA Local 304*, P.E.R.C. Dkt. No. IA-2007-029, pp. 71-72 (Weisblatt). Moreover, Transit presented no evidence which would otherwise suggest that the FOP's salary proposals constitute a request to exceed its "lawful authority." Because the "lawful authority of the employer" in no way limits Transit's ability to effectuate the FOP's proposals, this statutory factor is not implicated in this arbitration.

f. The Continuity and Stability of Employment in the FOP Unit

In large part, this factor has been addressed in the FOP's earlier discussions. The point cannot, however, be overstated. Transit will experience a high level of turnover in its police department, and a reversal of its success if faced with the low wages offered by the Employer, which will continue to exacerbate the discrepancy between the wages of FOP members and other police officers in comparable law enforcement agencies.

In sum, to the extent that Transit superiors are awarded a salary that reflects the work they perform, through this interest arbitration process, it is guaranteed that better morale and lower turnover will result.

2. FOP's Vacation Proposal

The FOP has proposed to expedite the time it takes to earn additional vacation hours, and to increase the maximum number of vacation hours afforded Transit superiors from 200 to 240, *i.e.*, from 20 days to 24 days. As discussed more completely in this section, it is clear that the FOP proposal should

be adopted by the Arbitrator as reasonable, affordable and meeting the statutory criteria.

a. Interest and Welfare of the Public

The modern police officer has enormous responsibilities managing the different circumstances she/he encounters every day. To make matters worse, Transit superiors face additional stresses due to the Employer's refusal to address the significant manpower issue that continually haunts the FOP bargaining unit. Castellano offered uncontroverted testimony that lack of manpower within the superior ranks affirmatively makes the job more difficult, stating:

[The] Department does not hire, and...[officers are] getting ordered for 16 hours every weekend. They're tired, you know, 'cause when there's no one coming in, you have to stay...And transit refuses to give us extra manpower. They removed five sergeants. They just put the lieutenants out there, so lieutenants have to do both sergeants work and lieutenants work. And it places additional work on the sergeants in the field because now they don't have that buffer of the sergeants out there.

[Tr. 25-26].

Damato also testified that:

The rationale behind this proposals was it was an inordinate amount of time for officers to get extra weeks of vacation when you were promoted as a Sergeant, and we've had circumstances where a Sergeant was promoted with less than five years, they would get a third week, [and] they would not get another vacation week for another nine years, to year 14. We thought that was just too long to wait. With the stress of the job, I think you know giving peoples more time off would be beneficial.

[Tr. 83].

Obviously, having police officers on the job who are, better rested, less stressed and able to more completely focus on their job benefits the Employer and the public at large. Thus, by awarding the FOP's vacation proposal, the interests of the public are certainly served.

b. Comparison of Wages, Salaries and Other Conditions of Employment

Currently, Transit superiors are tied with the newly formed Camden Metro division officers for the least amount of vacation amongst police agencies in the "hub cities."

	Maximum Vacation Days
Atlantic City	22 Days - Sgts. 23 Days - Lts.
Camden Metro	200 Hours
Hoboken	40 Days - Sgts. 43 Days - Lts.
Newark	26 Days - Sgts. 27 Days - Lts.
Trenton	26 Days - Sgts. ¹⁶ 27 Days - Lts.
Union Twp.	40 Days
NY/NJ Port Authority	28 Days

When considered in the context of all of the other jurisdictions described above, the FOP proposal is reasonable.

¹⁶ For those supervisors working an administrative shift.

c. The Financial Impact on the Employer

Assuming an average FOP salary of \$106,000, the cost of the FOP's proposal is approximately \$2,000 per unit member, or about \$110,000 per year. This is but a fraction of the Employer's operating budget (approximately 0.005%). The trade off, of course, is that by having well-rested and happier employees, it is anticipated that efficiencies will be experienced and there is a likelihood that fewer sick days will be utilized as a result.

Given the Employer's strong financial condition, as recited above, the cost of the FOP's proposal is certainly affordable and should be awarded, particularly when balanced with the anticipated indirect benefits that are anticipated.

3. FOP's Healthcare Proposal

By virtue of the parties' expired agreement, Transit superiors currently contribute \$40.00 per month toward the cost of healthcare premiums, or \$480.00 on an annual basis [UX5 at pg. 36]. In recognition of the fact that employees are contributing more toward their share of healthcare premiums, the FOP has offered a reasonable proposal that significantly increases the Transit superiors' contribution, but does so in a way that is consistent with other employees at Transit and with employees at other transit agencies. Specifically, the FOP proposed:

- o Effective January 1, 2016, all unit employees shall contribute toward the cost of health insurance premiums as follows:
 - Horizon PPO Family Coverage: \$210 per month
 - Horizon PPO Spousal Coverage: \$179 per month
 - Horizon PPO Parent Child Coverage: \$101 per month
 - Horizon PPO Single Coverage: \$46 per month

- Horizon HMO Family Coverage: \$188 per month
- Horizon HMO Spousal Coverage: \$159 per month
- Horizon HMO Parent Child Coverage: \$89 per month
- Horizon HMO Single Coverage: \$41 per month

The Employer, on the other hand, despite its acknowledgement that P.L. 2011, Chapter 78, relating to State-administered health benefits programs and employee "premium sharing," does not apply to Transit, seeks to apply only the most onerous components of the statute to the superiors unit. In other words, Transit seeks to charge its superior officers between \$2,416 and \$9,558 per year for healthcare, depending on the plan and level of coverage selected [UX32].

In light of the fact that the Employer has offered no justification for why it requires such an extreme proposal, and further considering that the FOP's proposal represents a significant "giveback" that is certainly more in line with other Transit employees, it is respectfully submitted that the FOP's proposal must be adopted.

i. Interest and Welfare of the Public and Financial Impact on the Employer

While the interest and welfare of the public, and the financial impact on the employer are, pursuant to the statute, two separate criteria that must be considered, for purposes of this particular controversy, and these particular proposals, the two criteria are inextricably intertwined. This is because the issue is purely a financial benefit to the Employer. Under both sets of proposals, Transit will experience a reduction in its healthcare premium costs and FOP unit

members will experience an increase. The question really is: at what level should those cost reductions/increases be fixed?¹⁷

A comparison of the costs of the two healthcare proposals is set forth below:

Health Benefit Wage Loss Comparisons
PPO Cost Outs NJT Proposal v. FOP Proposal

	Family	Spouse	Child	Single
NJT PPO Premium	\$27,307	\$24,155	\$16,150	\$9,845
NJT Proposed PPO Co-pay	\$9,558	\$8,454	\$5,652	\$3,446
Increase	\$9,108	\$8,004	\$5,202	\$2,996
Average sergeant loss of pay	8.50%	7.47%	4.85%	2.80%
Average lieutenant loss of pay	7.72%	6.78%	4.41%	2.54%
FOP PPO Co-pay	\$2,520	\$2,148	\$1,212	\$552
Increase	\$2,040	\$1,668	\$732	\$72
Average sergeant loss of pay	1.90%	1.56%	0.68%	0.07%
Average lieutenant loss of pay	1.73%	1.41%	0.62%	0.06%

HMO Cost Outs NJT Proposal v. FOP Proposal

	Family	Spouse	Child	Single
NJT HMO Premium	\$19,043	\$16,937	\$11,057	\$6,902
NJT Proposed HMO Co-pay	\$6,665	\$5,928	\$3,870	\$2,416
Increase	\$6,215	\$5,478	\$3,420	\$1,966
Average sergeant loss of pay	5.80%	5.11%	3.19%	1.83%

¹⁷ Obviously, one must review the respective proposals in context with the accompanying wage proposals. As the FOP will demonstrate, the combination of low wage and outrageous increases in premium sharing proposed by Transit will result in reductions in pay for many officers.

Average lieutenant loss of pay	5.27%	4.64%	2.90%	1.67%
FOP HMO Co-pay	\$2,256	\$1,908	\$1,068	\$492
Increase	\$1,776	\$1,428	\$588	\$12
Average sergeant loss of pay	1.66%	1.33%	0.55%	0.01%
Average lieutenant loss of pay	1.50%	1.21%	0.50%	0.01%

As the chart sets forth, under the Transit proposal, the majority of senior superior officers with PPO coverage will lose between 4.4% and 8.5% of the salaries proposed by Transit. The FOP proposal results in a reduction of between 0.65% and 2.0% of its wage proposals. Similarly, under the Transit proposal, the majority of senior superior officers with HMO coverage will lose between 3% and 5.8% of their salaries proposed by Transit, while the FOP results in a 0.5% to 1.7% reduction relative to the FOP's wage offer.

Under the FOP's proposal, premium costs are increased as follows:

PPO Coverage Percent Increase Over Status Quo

Single	15% Increase
Child	153% Increase
Spouse	348% Increase
Family	425% Increase

HMO Coverage Percent Increase Over Status Quo

Single	2.5% Increase
Child	123% Increase
Spouse	298% Increase

Family	370% Increase
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Under Transit's proposal, premium costs increase dramatically more, as follows:

PPO Coverage	Percent Increase Over Status Quo
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Single	618% Increase
Child	1,084% Increase
Spouse	1,668% Increase
Family	1,898% Increase

HMO Coverage	Percent Increase Over Status Quo
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Single	410% Increase
Child	713% Increase
Spouse	1,141% Increase
Family	1,276% Increase

Transit seeks to charge employees upwards of 35% of the premium for healthcare coverage for employees who currently pay between 1.7% and 4.7% of premiums (at \$40.00 per month) [EX22]. Notably, even under the FOP's proposal, employees would contribute more, as follows:

PPO Coverage	Percent of Premium (FY2015 Rates from UX23)
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Single	5.6% of Premium
Child	7.5% of Premium
Spouse	8.9% of Premium
Family	9.2% of Premium

HMO Coverage Percent of Premium (FY2015 Rates from UX23)

Single	7.1% of Premium
Child	9.7% of Premium
Spouse	11.3% of Premium
Family	11.8% of Premium

What all of the foregoing demonstrates is that under either proposal, Transit experiences a very significant increase in savings in terms of healthcare premium costs. Transit's proposal constitutes such a dramatic increase in the costs to employees, however, that the morale and staffing issues within the FOP bargaining, described above, will only be exacerbated due to the increased negative impact such a proposal will have on wages. As the chart set forth below demonstrates, under Transit's proposals, some superior officers would, in 2016, experience salary cuts that would knock them back to levels below where they were when the prior collective negotiations agreement expired in 2010, while others would experience increases so meager as to almost be offensive.

**Co-Pay Increases by Types of Coverage and Starting and Ending Gross Salaries
(with progression): Sergeants**

PPO Family	Starting salary	Ending salary	Gross increase	Co-Pay Increase	Net after co-pay	Cumulative % net	Annual % Net
Sergeant >5	\$97,272	\$109,486	\$12,214	\$9,108	\$3,107	3.19%	0.53%
Sergeant 8	\$100,190	\$109,486	\$9,296	\$9,108	\$189	0.19%	0.03%
Sergeant 10+	\$102,136	\$109,486	\$7,350	\$9,108	\$1,757	(-1.72%)	(-0.29%)
PPO Spouse	Starting salary	Ending salary	Gross increase	Co-Pay Increase	Net after co-pay	Cumulative % net	Annual % Net
Sergeant >5	\$97,272	\$109,486	\$12,214	\$8,004	\$4,210	4.33%	0.72%
Sergeant 8	\$100,190	\$109,486	\$9,296	\$8,004	\$1,292	1.29%	0.21%

Sergeant 10+	\$102,136	\$109,486	\$7,350	\$8,004	\$654	(-0.64%)	(-0.11%)
PPO Child	Starting salary	Ending salary	Gross increase	Co-Pay Increase	Net after co-pay	Cumulative % net	Annual % Net
Sergeant >5	\$97,272	\$109,486	\$12,214	\$5,202	\$7,012	7.21%	1.20%
Sergeant 8	\$100,190	\$109,486	\$9,296	\$5,202	\$4,094	4.09%	0.68%
Sergeant 10+	\$102,136	\$109,486	\$7,350	\$5,202	\$2,148	2.10%	0.35%
PPO Single	Starting salary	Ending salary	Gross increase	Co-Pay Increase	Net	Cumulative % net	Annual % Net
Sergeant >5	\$97,272	\$109,486	\$12,214	\$2,996	\$9,219	9.48%	1.58%
Sergeant 8	\$100,190	\$109,486	\$9,296	\$2,996	\$6,301	6.29%	1.05%
Sergeant 10+	\$102,136	\$109,486	\$7,350	\$2,996	\$4,355	4.26%	0.71%

Co-Pay Increases by Types of Coverage & Starting and Ending Gross Salaries (with progression): Lieutenants

PPO Family	Starting salary	Ending salary	Gross increase	Co-Pay Increase	Net after co-pay	Cumulative % net	Annual % Net
Lieutenant 8th	\$110,207	\$120,433	\$10,226	\$9,108	\$1,118	1.01%	0.17%
Lieutenant 9th	\$111,277	\$120,433	\$9,156	\$9,108	\$48	0.04%	0.01%
Lieutenant 10th Yr +	\$112,347	\$120,433	\$8,086	\$9,108	(-\$1,022)	(-0.91%)	(-0.15%)
PPO Spouse	Starting salary	Ending salary	Gross increase	Co-Pay Increase	Net after co-pay	Cumulative % net	Annual % Net
Lieutenant 8th	\$110,207	\$120,433	\$10,226	\$8,004	\$2,222	2.02%	0.34%
Lieutenant 9th	\$111,277	\$120,433	\$9,156	\$8,004	\$1,152	1.03%	0.17%
Lieutenant 10th Yr +	\$112,347	\$120,433	\$8,086	\$8,004	\$82	0.07%	0.01%
PPO Child	Starting salary	Ending salary	Gross increase	Co-Pay Increase	Net after co-pay	Cumulative % net	Annual % Net
Lieutenant 8th	\$110,207	\$120,433	\$10,226	\$5,202	\$5,024	4.56%	0.76%
Lieutenant 9th	\$111,277	\$120,433	\$9,156	\$5,202	\$3,954	3.55%	0.59%
Lieutenant 10th Yr +	\$112,347	\$120,433	\$8,086	\$5,202	\$2,884	2.57%	0.43%
PPO Single	Starting salary	Ending salary	Gross increase	Co-Pay Increase	Net after co-pay	Cumulative % net	Annual % Net
Lieutenant 8th	\$110,207	\$120,433	\$10,226	\$2,996	\$7,230	6.56%	1.09%
Lieutenant 9th	\$111,277	\$120,433	\$9,156	\$2,996	\$6,160	5.54%	0.92%
Lieutenant 10th Yr +	\$112,347	\$120,433	\$8,086	\$2,996	\$5,090	4.53%	0.76%

These negative impacts compel a rejection of the Employer's healthcare proposal, particularly where, as here, the Employer has failed to articulate a single reason/rationale as to why it needs such a drastic reduction in healthcare costs. Indeed, not a single moment of the Employer's testimonial evidence focused on why Transit needs such a significant reduction.

In light of the foregoing, the FOP would suggest that its healthcare proposal strikes a more equitable balance between the interests of the public, the Employer and the superior officers. Therefore, its proposal must be adopted over the Employer's.

ii. Comparison with Other Employees

Notwithstanding the fact that Transit admits that P.L. 111, Chapter 78 does not apply to Transit employees, it argues that Transit superiors should be compared to State employees for which the legislation specifically applies. The FOP suggests that that comparison is improper.

Relying on the legal principle of *expressio unius est exclusio alterius*, which holds that when one or more things of a class are expressly mentioned others of the same class are excluded, one might reasonably conclude that the Legislature, by not specifically including Transit employees under the umbrella of its legislation, expressly and specifically intended to exclude those employees from its coverage. Thus, applying the provisions of Chapter 78 in the manner in which Transit suggests may in fact run counter to the intent of the Legislature.

It must also be recognized that despite Transit's proposal that superior officers will contribute toward the cost of healthcare coverage, "in accordance with section 39 of P.L. 2001, c. 78," it really seeks application of only the most extreme provisions of the law. For example, Transit's proposal does include the "phase-in" component of the law, which gradually, over a four (4) year period, increases employee contributions to the maximum level. Instead, Transit

simply seeks to immediately implement the highest contribution levels. Notably, under the FOP's proposal, most superior officers would contribute more toward healthcare premiums than they would under the first year of Chapter 78's "phase-in." In addition, there is no evidence that the level of benefits afforded employees who are governed by Chapter 78, typically the State Health Benefits Plan, is comparable to the plan afforded Transit superiors. It would be exceptionally unfair for Transit superiors to be forced to contribute at such high levels for inferior benefits. Finally, and most strikingly, unlike those employees who are covered by Chapter 78, Transit superiors have no entitlement to employer-provided healthcare benefits in retirement.¹⁸ Thus, employees covered by Chapter 78 are contributing toward their healthcare at levels which provide for active and retired coverage – Transit superiors, under the Employer's plan, would unfairly pay similar amounts for the benefit of coverage only while actively employed.

In addition to the foregoing, and as discussed above, several tribunals addressing Transit employees have specifically found that the State is not a good comparator. For example, in *New Jersey Transit and PBA Local 304*, P.E.R.C. Dkt. No. IA-2007-029, pp. 66 (Weisblatt) Arbitrator Weisblatt expressly discounted the correlation between statewide units and Transit police officers, finding, "there is nothing in the record to indicate, or even suggest, that there is any history of direct correlation between patterns of bargaining at the State of

¹⁸ Indeed, even some Transit employees, including non-bargaining unit employees within the police department, receive employer-provided post-retirement healthcare benefits [UX26].

New Jersey with the unions representing its employees and the bargaining at NJ Transit," [Id. at 66]. Similarly, the Presidential Emergency Board No. 248 expressly rejected a comparison between Transit employees and those employees covered by Chapter 78, stating:

The Carrier contends that the Board should look to the other New Jersey State collective agreements to find a reasonable recommendation for the contributions to be made by the Coalition's [Union's] membership. In particular the Carrier looks to New Jersey P.L. 2011, Chapter 78, which removed the right of State employees to negotiate over pension plans and health insurance contributions, while at the same time legislating mandatory health insurance premium contributions by those employees. However, NJ Transit bus and rail employees are not included under Chapter 78 and, as discussed above, we do not find that the State agreements provide a valid comparator.

[UX 30 at pg. 29].

These same tribunals appear to give greater weight to internal Transit comparisons in addressing the relative merits of healthcare proposals [UX30 at 30-32]. See, e.g., *New Jersey Transit and PBA Local 304*, P.E.R.C. Dkt. No. IA-2007-029, pp. 78 (Weisblatt) (Arbitrator accorded substantial weight to internal comparators with respect to the universal existence of some form of contribution, though found comparisons to the actual level of contributions less meaningful). In this regard, it may come as little surprise that the FOP's proposals for healthcare contribution levels are not made up out of thin air. On the contrary, the FOP's proposal exactly mirrors the contribution levels required by non-bargaining unit employees working in the police department [See UX26].

Notably, these contribution levels exceed the levels currently paid by the rank-and-file police officer unit (currently at \$40.00 per month), and are commensurate with that which was recommended by the Presidential Emergency Board No. 248, which are 2.5% of base salary starting in 2017 [UX30 at 33].¹⁹ It is also recognized that employees of Transit's bus operations contribute 15% of their healthcare premiums, which is far less than that which is proposed by Transit [UX28]. In fact, should Transit's healthcare proposals be awarded, Transit superiors will contribute more toward healthcare than any other employee at Transit. Externally, the FOP's proposal also be can be compared to that of employees in other rail systems, cited in UX30 (pg. 32), and the NY/NJ Port Authority²⁰ which contributes nothing toward healthcare premiums [UX36 – Port Authority Agreement, pg. 11].

In addition to the foregoing, another factor that the Arbitrator is urged to consider is that that this proceeding is the first of at least three contract settlements that will take place in the near future, as the rail contract and likely the rank-and-file police officer agreements will likely follow shortly hereafter. Because an award in this proceeding will likely have a significant impact on other collective bargaining units, namely the UTU and the PBA, the Arbitrator is urged to limit any provision which may be used to negatively impact employees who are not a party herein.

¹⁹ The Board extolled the virtues of linking the contribution rate to salary, resulting in a proportional impact on wages, rather than a regressive one [UX30 at 33]. Similarly, in the FOP's proposal of fixed contribution levels, dependent on the nature of the coverage selected, has a similar proportional effect.

²⁰ Arbitrator Weisblatt in *New Jersey Transit and PBA Local 304*, P.E.R.C. Dkt. No. IA-2007-029, pp. 68 (Weisblatt) found comparisons with NY/NJ Port Authority particularly relevant.

Considering the context in which the two proposals must be evaluated, it is clear that the FOP's proposals more appropriately reflect what exists for comparable employees. Accordingly, the Arbitrator is urged to accept the FOP's proposals over Transit's.

4. The Employer's Other Proposals Must Be Rejected

In addition to its meager wage proposal, and its draconian healthcare proposals, the Employer has proposed additional diminutions in pay and benefits for the FOP unit. The FOP respectfully urges the Arbitrator to reject these Employer proposals as their necessity is neither supported by the record, nor justified on their own.

a. Employer's Proposal to Eliminate Article XVIII, Section 6 (Injury On Duty Pay)

The expired collective negotiations agreement between the parties provides, at Article XVIII, Section 6, as follows:

If the SO sustains any job-related injury which is recognized as such as covered by Worker's Compensation Insurance, NJT shall insure payment of full salary for a period of up to one and one-half (1-1/2) years, or until such SO is placed on disability or retirement, whichever first occurs. Any such payments made by NJT shall be reduced by all benefits received or which could have been received if proper applications were made in connection with such job-related injury. SO's understand and agree that they may be required to make reimbursement to NJT and/or its insurance carrier in the event of a third party action recovery of such lost wages and that any such reimbursement will be in addition to the obligation to pay over to NJT all such benefits. There shall be no charge to any SO's sick leave in the event of any bona fide job-related injury. The Employer shall have the right to

require periodic medical examinations of SO's on leave due to job-related injuries, at the expense of the employer.

[UX5 at pg. 16-17].

The provision, quite obviously, responds to the fact that police officers, unlike other professions, are not only asked, but required, to engage in a physically demanding job, to put themselves in harm's way, to deal with unpleasant if not dangerous members of the public, and to sacrifice their personal well-being for the safety and protection of the employees and customers of New Jersey Transit. The rationale behind the provision, is to offer some financial protection to the officer who is injured while engaged in the aforementioned actions.

Absent the protections of this provision, a superior officer who is injured as a result of the performance of her/his job will only be eligible for worker's compensation benefits. This means that the officer will have to wait the statutory one-week waiting period, with no compensation, and if approved, will be entitled to no more than 70% of pay, up to a maximum of \$871 per week.

In practical terms, a Transit superior who finds himself or herself in such a situation would instantly see a reduction in pay of more than 50% (*i.e.*, maximum annual benefit is \$45,292). It is beyond *chutzpa* for Transit to suggest that an officer, whose job it is to go into harm's way, should have her/his income cut by more than fifty percent simply because that officer was injured performing the dangerous job. To quote Damato:

Officers are engaged in violent arrests on a daily basis. We've had officers injured. We've had officers sent -- that have operations. And for that [contractual provision] to be stricken and not getting a full wage would just destroy a family, would absolutely destroy a family....for getting hurt while in the performance of your duties.
[Tr. 93].

To propose such a callous and cruel change to the existing agreement, one might guess that Transit would have a good reason. It does not, however. Transit offered no evidence as to the number of officers who utilized injury sick leave, and expressly stated that "it does not cost New Jersey Transit that much," [Tr. 195]. In presenting this proposal, which incidentally continues to be enjoyed by the rank-and-file bargaining unit, transit offered a single justification: *to wit*, it's one of the Governor's priorities [Tr. 159, 194]. It is unclear to the FOP which of the statutory criteria this justification meets.

In further support of its position in injured sick leave, Transit offered that State employees lack sick leave injury by virtue of legislation [Tr. 194-195; EX29-EX31]. What Transit failed to recognize is that the legislation does not apply to Transit.²¹ What Transit also failed to recognize is that the legislation also does not apply to the thousands of municipal and county employees throughout the State. Indeed, each of the "hub cities" cited above, as well as the NY/NJ Port Authority, have some form of injured sick leave, with the policies of Hoboken and Newark including a temporally unlimited benefit.

²¹ Again, relying on the legal principle of *expressio unius est exclusio alterius*, which holds that when one or more things of a class are expressly mentioned others of the same class are excluded, one might conclude that the legislature, by not specifically mentioning NJT in its legislation, expressly intended to exclude transit employees from its coverage.

Based upon the foregoing, it is clear that Transit has failed to meet its burden of demonstrating the necessity of its heartless proposal. On the contrary, Transit's focus on this provision only demonstrates its importance and prevalence in the law enforcement setting.

b. The Employer's Eye Care Proposal

The record reflects that all NJT employees, receive an eye care benefit [Tr. 54, 91-92; UX36]. The FOP bargaining unit receives the benefit as follows:

1. It is agreed that NJT will provide an Eye Care Program during the term of this agreement. The coverage shall provide for a \$25.00 payment for regular prescription eyeglasses or contact lenses or a \$30.00 payment for bifocal glasses or more complex prescriptions. Include are all eligible full-time employees and their dependents. The extension of benefits to dependents shall be effective only after the new employee has been continuously employed for a minimum of sixty (60) days.
2. Full-time employees and eligible dependents as defined above shall be eligible for a maximum payment of \$25.00 or the cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.
3. Each eligible employee and dependent may receive only one (1) payment for glasses and one (1) payment for examinations every two years while the program is in effect. Proper affidavit and submission of receipts are required of the employee in order to receive payments.

[UX5].

Transit seeks to eliminate this benefit. Absent a thorough review of its proposals in this proceeding, however, one would never know that Transit is seeking to eliminate the benefit because neither in its testimonial or documentary evidence presented at the hearing, did Transit even mention the

eye care benefit other than to suggest that its elimination would save a whopping \$450.00 total in fiscal year 2017 [Tr. 164; EX18].

It is outrageous that with a \$2.1 billion operating budget, Transit is seeking to save \$450.00 (0.00002% of the budget) for no particular reason.

Under these circumstances, Transit has utterly failed to demonstrate its need to eliminate this benefit which, while insignificant for Transit, will considerably impact those officers who use it. This is particularly so where the benefit is, in the meantime, enjoyed by every other employee of Transit.

Accordingly, this proposal must be rejected.

c. The Employer's Ridership Pass Proposal

The parties' expired agreement contains a provision which provides:

NJT shall provide each SO a pass entitling him/her only to ride on commuter lines in the NJT system. The pass shall be issued annually and shall be valid only during the year in which issued. The pass will not be transferrable.

[UX5]

The rationale for the provision is that Transit benefits from having its employees, particularly its law enforcement personnel, travelling on its system. Because Transit superiors are active law enforcement twenty-four hours per day, seven days per week, while riding on the Transit system, they provide an additional level of safety and security due to their training and expertise even when not actually on-duty. The benefit to Transit is even greater where an officer is commuting on the system in uniform, because that officer also provides

a level of visibility, again without any cost to Transit. Indeed, the beauty of the provision is that it truly costs Transit nothing in terms of additional costs. In practical terms, however, from the officer's point of view, the *quid pro quo* for the benefit conferred upon Transit, is the monetary value of a ridership pass. Depending on the commuter line, the maximum monthly rider passes range from \$302 to \$480 [UX35]. That translates to a potential cost savings to officers of approximately \$3,600 to \$5,700 per year.²²

Despite the seemingly perfect bargain struck in this regard, Transit has proposed to eliminate ridership passes for the FOP bargaining unit. The justification, if it can be characterized as such, offered by Transit for the elimination of this contractual provision is, once again, that it is one of "the Governor's priorities," [Tr. 157-190-191]. Then, in a *post hoc* attempt to further justify its position, Transit offered that the ridership passes had been eliminated for non-bargaining unit employees, citing a memo from 2012 [Tr. 190-191; EX35].

What Transit ultimately acknowledged, however, is that all Transit employees, including non-bargaining unit employees, actually receive ridership passes. Indeed, as recently as October 26, 2015, an interest arbitrator decided to maintain ridership privileges for the 5,800 bus operations employees [UX28]. Similarly, the Presidential Emergency Board No. 248 rejected a proposal to eliminate ridership passes for the 4,500 employees on the rail side of the operation [UX30]. There are even groups of employees, outside Transit, who

²² For the average officer in the FOP unit, making about \$106,000, elimination of this provision would result in a salary reduction of 3.4% to 5.4%.

receive ridership passes, including military personnel, newly released prisoners, Metro-North employees (with I.D.), Amtrak employees (with I.D.), Metropolitan Transportation Authority employees (with I.D.), and any police officer or firefighter in uniform [Tr. 58-59; UX27].

What's more, in the wake of the Paris terror attacks, Transit issued a memo, dated November 16, 2015, reinstating the ridership pass program for all non-bargaining unit employees – the very employees Transit cited to justify its proposal in this proceeding [UX29]. The rationale, of course, is that by having employees on the system, there will be broader security monitoring and an increased presence to detect and deter crime/terrorism [UX29]. Indeed, Transit admitted that even if it is successful in having this provision removed from the agreement, it may still afford the officers the ridership passes in light of the November 16, 2015 memo [Tr. 157].

Thus, in one of Transit's loftiest attempts at logical gymnastics, it essentially argues that the Arbitrator should eliminate this provision from the parties' agreement, despite the fact that the program will continue for the foreseeable future. Under these circumstances, and in light of the fact that all other employees at Transit receive ridership passes, there is clearly no justification for the Employer's proposal. On the contrary, the record strongly supports the continuation of the provision in the parties' agreement.

d. The Employer's Sick Leave/Overtime Proposal

Transit seeks to add new language to the collective negotiations agreement as follows:

If a SO calls out sick that SO will be ineligible for voluntary overtime for a period of seven calendar days following the last day sick leave was issued. A SO ineligible for voluntary overtime may be required to work overtime by NJT during any such period of ineligibility.

[UX4].

According to Deputy Chief Amberg, the intent of this proposal is to address excessive use of sick time [Tr. 221]. Chief Amberg could not, however, articulate the number of sick days used by FOP bargaining unit members, what constitutes excessive sick time, or provide the number of instances where it was determined an FOP unit member utilized an "excessive" amount of sick time. Indeed, the only evidence provided by Transit to support its proposal, in this regard, is the self-serving, and unsupported claims by Amberg that the FOP has "a problem with excessive sick time," [Tr. 212] and a two page chart which indicates instances when an officer used sick time and incurred overtime in the same week (i.e., pay period) [EX33].²³ Amberg also could not explain why it was

²³ Notably, the Employer Exhibit 33 does not indicate when an overtime assignment was mandatory or voluntary. As the record reflects, due to a significant manpower shortage, employees are constantly being mandated to work overtime. Therefore, it is not surprising that employees often work overtime in the same week she/he may have called out sick. Absent a distinction between voluntary and mandatory overtime assignments, one cannot conclude that there is any evidence of malfeasance or gamesmanship on the part of the officers, as the overtime assignment may have, in fact, been foisted upon the officer.

necessary to impose such a broad policy when it would negatively impact individuals who admittedly do not utilize "excessive" sick leave

What makes this proposal even more offensive is the fact that the Employer has other means for addressing what it perceives as a problem with sick leave usage. That is, to discipline employees who the Employer believes are misusing or abusing sick leave. Amberg testified, however, that the current Chief of Police simply prefers not to pursue discipline against officers for this purpose [Tr. 216-217]. Instead, it would appear that in Amberg's view, the entire bargaining unit should be penalized based upon the Employer's perception that a few officers are abusing the system.

The fact that Transit was unable to articulate the rationale for this proposal, or even a factual justification for it, suggests that perhaps it is simply an attempt, in a time where manpower shortages require a great deal of overtime assignments, to make an end run toward reducing the costs associated with overtime by reducing the number of weeks in which overtime could be earned by the officers mandated to do the work. The fact that no other bargaining unit at Transit has a similar provision casts further doubt on transit's motivations for this proposal.

Once again, it is quite clear that Transit has failed to demonstrate a need to penalize the entire bargaining unit for what it perceives is a problem among a few officers, particularly where it has other means to address the issue. Accordingly, the Arbitrator is urged to reject this proposal

CONCLUSION

For all of the aforementioned reasons, the Arbitrator should adopt and award the proposals of the FOP in this matter.

New Jersey Transit's Position²⁴

LEGAL ARGUMENT

POINT I

**AN ANALYSIS OF THE RELEVANT
STATUTORY FACTORS COMMANDS THAT
NJT'S FINAL OFFER MUST BE ADOPTED.**

N.J.S.A. 34:13A-16g requires that an arbitrator consider the following factors deemed to be relevant, and provide an analysis of the evidence on each relevant factor:

- (1) The interests and welfare of the public . . .;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees 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 . . .;
 - (b) in public employment in general . . .;
 - (c) in public employment in the same or comparable jurisdictions;
- (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 . . .;

²⁴ NJT's position was taken from pages 4-26 of its Brief. Footnotes 25-36 herein are actually numbered 1-12 in NJT's Brief.

(6) The financial impact on the governing unit, its residents and taxpayers . . .;

(7) The cost of living;

(8) The continuity and stability of employment including seniority rights. . .; and

(9) Statutory restrictions imposed on the employer. ...

N.J.S.A. 34:13A-16g. See State of New Jersey, P.E.R.C. No. 2016-11, 2015 NJ PERC LEXIS 83 (2015) (New Jersey law "requires that an [interest] arbitrator state in the award which of the [statutory] factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor").

Here, consideration of the relevant factors demonstrates that NJT's proposal should be adopted in its entirety.

(1) Interests and Welfare of the Public

The public interest is a critical factor in interest arbitration proceedings. See South Plainfield Bd. of Educ., 25 NJPER ¶ 30085 (App. Div. 1999) ("[W]hen crafting the terms of a contract, the public interest, including fiscal impact, will be most significant."). "[T]he public is a silent party to the [interest arbitration] process," Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82-83 (1994), and thus any award must account for "the interests and welfare of the public at large, both in the area affected and in general," Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 188 (App.Div. 1993), rev'd on other grounds, 137 N.J. 71 (1994). The public interest factor relies "in part on the

priority to be given to the wages and monetary benefits of public employees within a [public employer's] budget and plans." Id.

Here, the public interest would be advanced by the adoption of NJT's proposal because the company has found ways to fund its proposal within its budget and plans. NJT's Deputy CFO, Jaibala Patel, testified that 2% was budgeted for FOP wage increases in each of Fiscal Years 2015 and 2016. (Dec. 4 Tr., 159:24-160:8). Although NJT's Final Offer contains wage increases (7% over 6 years) that slightly exceed what was budgeted, NJT has reasonably determined it will be able to cover the added costs, some of which will be offset by savings NJT expects to experience as a result of its other proposals (for example, health insurance contribution increases).

The FOP's wage proposal (15% over 7 years), on the other hand, far exceeds what was budgeted and planned, and thus would offend, and be contrary to, the public interest. The FOP has presented no evidence that an identifiable source of funding exists to pay for such a generous economic package. Deputy CFO Patel testified extensively, and without contradiction, that balancing the Fiscal Year 2016 budget (which began with a \$120 million deficit) was a challenge, and required implementation of several cost-cutting and revenue-enhancing initiatives, including a 9% fare increase for NJT's customers across all systems, service cuts, reductions in overtime for certain non-police employees, and renegotiation of several of vendor contracts.(Dec. 4 Tr., 145:2-146:2). In other words, everyone has been making financial sacrifices due

to the hardened economic times. The public is paying more to ride the same trains and buses; non-police employees are receiving fewer overtime hours; and vendors are agreeing to provide their services and products for less. A rich economic award in favor of the FOP would be fundamentally unfair to all other NJT employees, customers, and vendors who have been forced to make these financial sacrifices.

The interests and welfare of the public further demand that wasteful spending of public funds be curtailed wherever possible. Here, NJT has identified what can only be described as a wasteful spending practice. FOP employees are currently entitled to overtime compensation in certain instances where they do not actually work more than 40 hours in a given pay week. (Dec. 4 Tr., 211:19-212:4). Under the expired contract, sick time counts towards the 40-hour overtime threshold, meaning an FOP employee can call out sick, return to work that same week, and earn overtime for any shifts he/she works outside his/her normal schedule. For instance, an FOP member scheduled to work Monday through Thursday can call out Monday and Tuesday, receive sick leave pay for those days, work Wednesday through Saturday, and be paid overtime for the Friday and Saturday shifts (since the Monday and Tuesday sick days count towards the 40 hour computation).

This creates an unacceptable incentive to abuse sick leave. Rather than work a normal week (and be paid straight time), any FOP employee with remaining sick leave would be better off financially by exhausting his/her

remaining sick leave (whether or not the officer is actually sick), returning to work a full week during any pay period in which the officer calls out, and collecting overtime premiums for whatever shifts were not on his/her normal schedule. And, because overtime opportunities are so numerous within the NJ Transit Police Department ("Department") due to frequent call-outs and minimum staffing requirements (Dec. 4 Tr., 212:8-214:23), an officer never has to be concerned about missing the opportunity to earn premium pay. This is likely a contributing reason as to why the FOP uses more sick leave than any other group within the Department. (Dec. 4 Tr., 221:16-18). This contract provision further explains, at least partially, why there have been more than 100 instances in each of the past three years of FOP bargaining unit members using sick leave and working overtime in the same pay period. (Company Ex. 33). This is about two instances every single week. Clearly, the system must be fixed.

The resulting financial backlash of this abuse is also substantial. Any time an FOP member calls out sick and works overtime in the same week, NJT is forced to assume essentially three added costs: (1) the cost of paying the sick employee not to work;²⁵ (2) the cost of paying a replacement employee an overtime premium to fill in for the sick employee; and (3) the cost of having to pay the sick employee an overtime premium if he/she returns to work and picks

²⁵ It should be noted that NJT understands the importance of providing sick leave to police officers who are too sick to report for duty. However, a sick leave policy can be abused in many more ways than simply exceeding the number of days to which a unit member is contractually entitled. For example, an employee may not feel 100%. In such a circumstance, most employees may not take a sick day simply because they feel slightly "under the weather." But the system, as it currently exists, invites an individual to utilize a sick day in such a circumstance and still seize the opportunity to work overtime in the same week.

up one or more additional shifts. (Dec. 4 Tr., 212:8-214:23). This is a patently wasteful use of public funds, and should be stopped.

The FOP has suggested that sick leave abuse can be, and should be, policed through the NJT disciplinary procedure. (Nov. 24 Tr., 96:2-96:14; Dec. 4 Tr., 131:1-132:10; Dec. 4 Tr., 216:2-216:7). This argument is flawed for three reasons. First, regardless of abuse, the current contract encourages wasteful overtime spending which, as a matter of public policy, should be eliminated. Second, as indicated by Deputy Chief Amberg, excessive disciplinary charges foster negative morale within the Department. (Dec. 4 Tr., 216:8-217:19). The Chief has determined it would be preferable to prophylactically address sick leave abuse through overtime disincentives, rather than crippling morale by attempting to bring disciplinary charges against every suspected abuse of sick leave. (Dec. 4 Tr., 216:8-217:19). Third, and finally, attempting to corroborate sick leave through disciplinary action is highly burdensome and time consuming, and sustaining charges against employees suspected of sick leave abuse is difficult (it cannot seriously be doubted that it is not the most difficult thing to obtain a doctor's note to excuse the absence). Perhaps the most compelling evidence of this was testimony from the FOP's own President, who testified that FOP bargaining unit members have used sick leave excessively during times of "poor morale" caused by protracted contract negotiations. (Nov. 24 Tr., 10:17-11:4) ("[T]he morale, morale suffers [during protracted negotiations].... They feel they deserve a contract after, you know, five and a half years out of a contract,

and it affects morale department-wide....**People use sick time more.**"). None of these "poor morale" call-outs – which is exactly the type of sick leave abuse that NJT is seeking to eliminate (use of sick leave by perfectly healthy employees) – were detected and/or prosecuted through the disciplinary procedure. The overtime disincentive proposed by NJT would correct this problem.

(2) Comparative Evidence

In accordance with the mandate under the Police and Fire Interest Arbitration statute, NJT has provided comparative evidence for employees in (a) private employment, (b) public employment generally, and (c) public employment for similar police forces. NJT provided data from the United States Department of Labor, Bureau of Labor Statistics ("BLS") concerning a variety of public and private employment populations. NJT has also presented evidence concerning the nine other State police units that have labor contracts.²⁶ NJT was comprehensive in presentation, and provided the Arbitrator with all necessary information to make the statutorily-required comparisons.

The FOP's comparative presentation, by contrast, was deficient. The FOP limited its comparator pool to NJT's non-unionized workforce (but only for certain benefits that the FOP wants to obtain) and a handful (out of hundreds)

²⁶ NJT has provided all available recent collective bargaining agreements for the State police forces. This includes agreements for bargaining units that are not direct rank comparators for the FOP members, such as police officers or captains. However, NJT has provided these agreements in the interest of full disclosure.

of municipal police forces in the State.²⁷ The FOP completely ignored the other State police units, the thousands of unionized bus and rail employees at NJT, and all data concerning public and private employment generally (both nationwide and Statewide).

The FOP even admitted during the hearing that it was purposely discriminatory in selecting its comparators. Sergeant Frenzel very candidly testified that the FOP chose its comparators based upon certain isolated benefits that the FOP wanted in its own contract (while ignoring other provisions that it did not want):

Q. Just a couple more questions, Sergeant. You said that we can't compare you to private employees. Do you wish to be compared to non-agreement managerial employees?

A. It depends on the circumstance.

Q. Given the circumstances under which you do wish to be compared to them?

A. Yes.

Q. Under what circumstances?

A. Well, medical, under the medical circumstance.

Q. Okay. You mean health insurance?

A. Health insurance.

Q. Okay. Anything else?

²⁷ The FOP purportedly chose their municipal comparators on the basis that they are the cities where NJT has command centers. While this may be true for some of the comparators, it is not true for all of them. NJT does not have a command center in Union Township (one of the comparators the FOP selected). It does, however, have a command center in Secaucus (which was excluded by the FOP as a comparator).

- A. Wages.
- Q. Pardon me?
- A. I'm sure wages.
- Q. Anything else?
- A. Not that I can think of.
- Q. Did you compare your wages to the wages of nonagreement managerial employees?
- A. No.
- Q. Okay. Do you know whether or not nonagreement managerial employees receive overtime pay for work over 40?
- A. I'm not aware of that.
- Q. Either way?
- A. Either way.
- Q. If they are not eligible for overtime, would you want to be compared to them in that respect?
- A. Obviously not.

(Nov. 24 Tr., 73:16-74:23).

Selectively parsing ("cherry picking") and choosing benefits from various comparators that supposedly favor the FOP's position, while ignoring the dozens of other terms and conditions of employment that are not as allegedly beneficial, is plainly inappropriate. Moreover, the use of municipal police comparators in an arbitration involving a State police unit is contrary to the long-standing practice of relying upon State police comparators in interest

arbitrations involving State-employed police. See In re Interest Arbitration between State of New Jersey and NJLESA, Docket No. IA-2014-003(2014) (using State police as comparators in interest arbitration involving State police unit); In re Interest Arbitration between State of New Jersey (Corrections) and NJLECOA, Docket No. IA-2011-13 (2011) (same); In re Interest Arbitration between State of New Jersey and State Troopers Fraternal Ass'n, Docket Nos. 2009-39, 2010-40, 2010-41 (2010) (same).

In assessing the comparative evidence presented by the parties, the inescapable conclusion is that the FOP's members are well-paid and will continue to be well-paid if NJT's Final Offer is awarded. Further, NJT's insurance, sick leave injury, and free transportation proposals are all reasonable, and in line with what other comparable units have received. Conversely, the evidence clearly demonstrates that the FOP's final offer in these proceedings is unreasonable, inconsistent with other comparative labor agreements, and thus must be rejected.

a. Wages

As stated above, NJT has proposed a 7% increase over 6 years (1.13% per year), while the FOP has proposed a 15% increase over 7 years (2.14% per year) with additional longevity increases applicable to the entire 7-year period. Deputy CFO Patel testified that the average salary for FOP members in this unit is approximately \$104,000.(Dec. 4 Tr. 156:1-156:5).²⁸ According to the BLS, the FOP

²⁸ Based upon an average salary of \$102,000 for Sergeants and \$112,000 for Lieutenants.

members' average salary is more than double that of the average worker in the United States and almost twice the wages of the average worker in New Jersey:

<u>Area</u>	<u>Total Annual Wages</u>
United States, Total	\$51,365
New Jersey, Total	\$60,597

(Company Ex. 3, Average 2014 Earnings of Total Workers).

FOP members have similarly higher wages compared to private workers in the United States and in New Jersey.

<u>Area</u>	<u>Total Annual Wages</u>
United States, Total	\$51,296
New Jersey, Total	\$60,171

(Company Ex. 4, Average 2014 Earnings of Private Workers).

BLS statistics also reveal that the FOP's wages are also nearly double what the average State government worker earns nationwide, and over 50% more than what the average State government worker earns in New Jersey:

<u>Area</u>	<u>Total Annual Wages</u>
United States, Total	\$54,179
New Jersey	\$67,460

(Company Ex. 5, Average 2014 Earnings of State Government Employees).

The BLS data concerning police protection employees and transit police, both nationwide and Statewide, reveals, again, that the FOP bargaining unit is very well-compensated in comparison to its peers. (Company Ex. 6-7).

With regard to the specific comparators who share the greatest commonality of employment with the FOP's bargaining unit members (other police employed by the State), a comparison of their wages demonstrates that the FOP's members are very fairly paid. Of the nine police units, all but three earn less than FOP lieutenants at the top step.(Company Exhibits 8-16).²⁹ Moreover, at each of the steps in the FOP's longevity progression, the FOP either meets or outpaces a majority of the other State police units – including those units containing sergeants and lieutenants. (Company Ex. 8-16).³⁰ Viewing the State police contracts in the collective, there are no officers employed by the State of New Jersey making substantially more than FOP bargaining unit members (other than units containing higher-ranking officers like captains), and there are no police officers employed by the State of New Jersey making substantially less than FOP bargaining unit members (other than units containing only lower-ranking officers). Thus, there is substantial parity when comparing FOP unit members to other State police units in New Jersey.

²⁹ For the most part, we have used the top step of the highest paid position in each unit to compare wages. For the FOP, that is the 10th step of the Lieutenant's longevity scale. Similar comparisons can be drawn by looking at other steps and other job titles. For simplicity and brevity purposes, we have not drawn each of those comparisons in this brief (we did so in our exhibits), but had we done so the conclusion would not change. At all steps, and in all titles, FOP bargaining members measure up very well with the other State police units.

³⁰ The FOP attempted to argue during the hearing that it would be inappropriate to compare its members to units that do not contain sergeants and lieutenants. This argument fails, however, because not all law enforcement supervisors carry these same titles. Weights and measures supervisors of the NJSOLEA, for example, perform similar functions to sergeants and lieutenants (directing subordinate officers), yet do not have the sergeant or lieutenant title. (Company Appendix L).It would be illogical to exclude this comparison, notwithstanding job function symmetry, simply because of a title discrepancy.

As for wage growth, an analysis of these comparators clearly supports NJT's Final Offer. All four of the State police contracts which currently extend beyond 2011³¹ have an average annual across-the-board wage increase of less than 1% per year. (Company Ex. 17). The three State trooper contracts which expired in 2011 provide for an average annual across-the-board wage increase of 1.125% in 2010 and 2011 (the first two years of the proposed contract between NJT and FOP). (Company Ex. 17). The remaining two State police contracts (NJLESA and NJLECOA), which expired in 2011, provide for across-the-board wage increases of 2% in 2010 and 2011. (Company Ex. 17). Here, NJT is offering the FOP an average of 1.16% per year – a more generous increase than 7 of the 9 State units have received during the relevant period. (Company Ex. 17). The FOP's proposal – which calls for an average of 2.14% in across-the-board increases per year (plus further longevity increases), is nearly double what a vast majority of other State-employed police officers have received over this same time period, and is more generous than what any other State police unit has received.

The wage surveys published by PERC further demonstrate the reasonableness of NJT's Final Offer. These surveys show that average wage growth from 2010-2013 (the most recent data available) has been less than 2% per year for all workers, and 1.3% per year for all State government workers. Again, NJT's proposal is in line with this data, whereas the FOP's proposal is not.

³¹ Five of the nine State police contracts expired in 2011 and remain unsettled.

Similarly, the interest arbitration data published by PERC for the years 2010-2014 support NJT's Final Offer. For those contracts to which the 2% cap did not apply (as here), awarded wage increases averaged 2.88% (2010), 2.05% (2011), 1.74% (2012), 1.16% (2013), and 1.59% (2014). NJT's proposal is in line with these figures, in particular the recent awards, which are far more relevant than the earlier awards because they involved contracts that expired closer in time to the NJT/FOP Agreement (an arbitration award in 2010 would generally involve an agreement that expired several years earlier).³²

A review of the contracts settled by the largest units of State employees (including the CWA, which represents more than 40,000 State workers) is also instructive, and, again, supports NJT's Final Offer. These employees voluntarily settled their contracts for 0% (2011), 0% (2012), 1% (2013) and 1.75% (2014). (Company Appendix P). This amounts to an annual average across-the-board wage increase of 0.6875% -- half of what NJT is proposing in these proceedings.

Finally, it is worth noting that the FOP's closest internal comparator -- the non-represented managerial employees who, like the FOP's members, are highly-paid supervisors -- have not received a wage increase since 2008. (Dec. 4 Tr., 160:20-160:23).

³² In what can only be described as a transparent effort to distort the relevant data concerning interest arbitration awards during the term of the proposed contract, the FOP's economic expert included in his report a chart that summarized awards from 2009-2013. He omitted the awards from 2014 (which on average provided for salary increases that were lower than the FOP's proposal) and included awards from 2009 (which were issued a year before the proposed contract will begin, and involved contracts that expired much earlier than that).

All of this evidence demonstrates that the wage increases proposed by NJT are fair and reasonable, and the wage increases proposed by the FOP are not.

b. Health and Prescription Drug Contribution

NJT has proposed that the FOP members' health and prescription drug insurance contributions be increased to Chapter 78 grid levels. The FOP has proposed increasing its members' contributions to a flat amount which would mean that as healthcare costs increase by an average of 8% every year, the plan will cost NJ Transit more and more every year. (Dec. 4 Tr. 143:8-143:9).

As a threshold matter, it bears mentioning that the FOP's current premium contribution is astonishingly low. FOP members pay \$480 per year towards health and prescription drug insurance, regardless of coverage. This equals 4.7% contributions of the premium for single coverage, 2.9% of premium for employee/spouse coverage, 2.9% of premium for employee/child coverage, and 1.7% of premium for family coverage.³³ (Company Ex. 22). As a percentage of salary, this amounts to .036% of the top sergeant's salary, and .033% of the top lieutenant's salary (and .05% and .046% of the lowest sergeant and lieutenant salaries, respectively). For State employees who contribute pursuant to Chapter 78, the only individuals contributing at these levels for single, employee/spouse, and employee/child coverage, are employees

³³ By percentage of premium, NJT is referring to the percentage of the pseudo premiums reflected in Union Exhibit 23. NJT is self-insured, and thus there is technically no "premium" associated with its insurance. Nonetheless, NJT routinely calculates a pseudo premium in order to determine what a variety of employees and former employees must contribute towards insurance. Those premium rates are set forth in Union Exhibit 23.

earning less than \$25,000 per year (FOP bargaining unit members, of course, earn several times that amount). (Company Ex. 21). No State employees contribute less than 3.5% towards family coverage under Chapter 78, and no State employee may contribute less than 1.5% of their salary toward health benefits. (Company Ex. 21).

The FOP will argue that Chapter 78 does not apply to NJT, and therefore the contribution levels established by the statute should not apply to this unit. That argument misses the mark. As a matter of fairness, there is no legitimate reason why State workers (and State-employed police) should contribute at the Chapter 78 levels, while FOP represented employees do not. The fact that NJT has a different insurance plan than the State is irrelevant because the quality of the insurance is reflected in the total premium cost. If NJT's plan is inferior to the State's plan, it will cost less. Further, the fact that the State offers health benefits in retirement has no bearing upon what NJT employees should contribute **during their employment**. Relative contribution amounts during employment is an apples to apples comparison, and should not take into account whatever additional benefits each party separately receives (while State employees may receive health in retirement, FOP members receive other benefits that may be superior to State workers). Health in retirement is not an issue before the Arbitrator in these proceedings, and should not be a factor in the analysis for health contributions for active employees.

For comparative purposes, it is noteworthy that all nine of the other State police units currently contribute towards the cost of health and prescription drug insurance in accordance with Chapter 78. Moreover, many (if not all) of the municipal comparators identified by the FOP are enrolled in the State Health Benefits Plan, and therefore contribute towards the cost of health and prescription drug coverage in accordance with Chapter 78.³⁴ Internally, more than half of NJT's workforce (the ATU-represented bus employees) contribute **in excess** of the amounts required by Chapter 78, (Dec. 4 Tr., 189:20-190:6), and another substantial percentage of the workforce is presently involved in contract resolution proceedings in which NJT is seeking a contribution similarly in excess of the Chapter 78 grid (Dec. 4. Tr., 206:7-206:12). There is simply no comparative basis to award anything but the Chapter 78 contribution rates for the FOP's members.

The FOP characterizes its own proposal on insurance contributions as an effort to be reasonable, (Nov. 24 Tr., 85:5-85:8), and to help defray the costs of the very generous salary increases it has requested, (Nov. 24 Tr., 79:23-80:2). What it fails to mention, however, is that the FOP's proposed contributions are significantly less what every other State police officer (and every bus employee) is currently contributing towards health coverage. The FOP also fails to mention that its proposed health contribution increases will not even come close to

³⁴ It is difficult to tell from the Union's exhibits whether all of the municipal police units are enrolled in the State Health Benefits Plan. It is clear that some, such as the FOP Superior Officers of Camden are, however.

covering the costs of its proposed wage increases. The proposed health contribution amounts, at most, to an additional 2.5% of salary. The FOP, however, has requested 15% in wage increases over the course of the proposed contract. The increased health contribution would offset only one of the six 2.5% wage increases proposed by the FOP.

The BLS data presented by NJT during the hearing further demonstrates how poorly the FOP's proposed contributions compare with national and statewide averages. As of March 2015, State and local government workers nationwide contributed, on average, 29% towards the premium cost of family coverage. (Company Ex. 24). The average contribution for all civilian workers was even higher (31% of premium for family coverage). (Company Ex. 24). NJT's proposal is in line with these figures, while the FOP's proposal is far from the mark.

While NJT is seeking a significant³⁵ increase in the FOP's insurance contribution, the change is warranted. Every other relevant comparator is contributing at a level substantially in excess of what the FOP's members are currently paying. The FOP should be contributing at these levels as well.

c. Sick Leave Injury

Sick leave injury pay is additional compensation for employees who are injured on the job. The expired Collective Negotiations Agreement requires NJT to pay FOP members who are injured on the job full salary for up to one and a

³⁵ It is significant not because FOP unit members will pay more than all other legitimate comparator, but rather, because the FOP has been paying so little for so long.

half years, which is a substantial augmentation of the workers' compensation benefit (of \$855 weekly maximum) established by the Legislature. Comparatively, none of the other nine State police units receive this benefit. All of these other units are entitled only to the Legislatively-established workers' compensation benefit for job-related injuries. NJT has presented evidence that in 2010, the Legislature specifically eliminated sick leave injury from all Civil Service employment (with limited exception), on the grounds that the cost of such benefits outweighed any minimal harm that employees would realize from its elimination:

Proposals to end the sick leave injury program are sound and ...employees will generally not be disadvantaged by this change because workers' compensation benefits will continue to be available. In addition, the State will realize savings in the form of reduced employee benefit costs.

(Company Ex. 30) (O'Toole and Buono Statement) (quoting Recommendation 38 of the Joint Legislative Committee on Public Employee Benefits Reform (Company Ex. 31)).

So too here, the potential costs of the sick leave injury benefit are substantial, and employees will generally not be disadvantaged by the loss of the benefit given the availability of workers' compensation. Rather, they will be treated the same as almost all other persons in the State. Sick leave injury should be eliminated, as proposed by NJT.

d. Free Ridership

None of the outside comparators identified either by NJT or the FOP are contractually entitled to free ridership on NJT's systems (or any other transit system). The only NJT employees who are contractually entitled to that benefit are unionized bus employees (who maintained the benefit in a recent arbitration award) (Dec. 4 Tr., 191:20-191:21); unionized rail employees (who, as stated, are in the midst of contract resolution proceedings in which NJT is seeking to eliminate the free ridership benefit) (Dec. 4 Tr., 191:14-191:18); and one other police union (whose contract expired in 2010, and from whom NJT is seeking to eliminate free ridership as part of contract negotiations).

The fact that bus employees recently retained their ridership passes is of minimal relevance here. The bus employees actually operate the system that they ride for free. More importantly, bus employees earn, on average, approximately half of what the FOP's bargaining unit members earn. Thus, the cost of a transportation pass for bus employees is far more impactful than for the FOP's members. As Deputy CFO Patel testified, the employees at NJT most similarly situated to the FOP's members (the highly-paid non-union management employees) surrendered their transportation passes in accordance with a Board resolution that was passed in 2013. (Dec. 4 Tr., 157:4-10). If those employees were required to give up their passes as a matter of fairness and cost-savings, there is no reason why the FOP's employees should not have to do the same.

The FOP will likely argue that free ridership was recently returned to non-union employees as part of a company-wide public safety initiative in the wake of the Paris attacks. Of course, the FOP's members would likewise be entitled to any such temporary ridership privileges extended to non-union employees, whether or not their contract separately provided for these benefits. (Dec. 4 Tr., 157:11-158:2).

(3) Overall Compensation

A critical factor that must be included in the Arbitrator's analysis of the appropriate award is the FOP bargaining unit members' total compensation – in other words, compensation beyond base wages. NJT has presented evidence that in 2014, FOP bargaining unit members earned an additional 30% of their base salary in overtime compensation. (Company Ex. 2). Additionally, Deputy CFO Patel testified that the value of all benefits received by FOP bargaining unit members **in addition to base pay and overtime** (uniform allowances; employer contributions towards insurance, pension and retirement benefits; tuition reimbursement and comp time) is approximately \$60,000 per member. (Dec. 4 Tr., 170:3-173:4). Thus, the total value of FOP bargaining unit members' full salary and benefits is a very healthy \$192,753. (Company Ex. 2). FOP bargaining unit members are extremely well compensated employees, and they are, of course, public employees.

(4) Stipulations of the Parties

The parties have no stipulations.

(5) Lawful Authority of the Employer

Neither party's proposals call for NJ Transit to exceed its lawful authority.

(6) Financial Impact on the Governing Unit, Residents and Taxpayers

Financial impact is a critical factor in this case. The evidence presented during the hearing clearly established that NJT's financial position is strained. Deputy CFO Patel testified that NJT's State subsidy has dropped precipitously (from more than \$200 million to slightly more than \$30 million) over the last five years. (Dec. 4 Tr., 144:2-144:5). She further testified that although the State has identified some temporary measures to compensate for the drop in direct State operating assistance, the main source of replacement funds (a contract between NJT and the New Jersey Turnpike Authority) is scheduled to expire on June 30, 2016. (Dec. 4 Tr., 205:2-205:15). A new source of replacement funds has not been identified and the record here contains no evidence whatsoever that a new source will be identified.

Deputy CFO Patel further testified that funding has been so strained at NJT, that the Fiscal Year 2016 operating budget began with a \$120 million deficit. (Dec. 4 Tr., 144:11-144:13). In other words, NJT had \$120 million less in budgeted revenues than it needed to cover its expected operating expenses. NJT was forced to take several measures to correct this deficiency. It sought and obtained from the State a net increase of \$22 million in funding (through Clean Energy Funding). (Dec. 4 Tr. 144:25-145:6). It also implemented a variety of internal efficiencies including a reduction in overtime for certain rail

employees, locked in fuel costs, and renegotiated several vendor contracts. (Dec. 4 Tr., 145:7-146:22). These internal efficiencies saved the company approximately \$42 million. To close the remaining gap, NJT implemented a 9% fare increase across all systems (increasing the total amount of fare increases it imposed on its customers in the past five years to 31% – an extraordinary burden upon the citizens of New Jersey), and cut some of its service routes. (Dec. 4 Tr., 146:25-147:23).

The wage increase proposed by NJT in these proceedings is affordable. Though it exceeds what NJT has budgeted for FOP members (as stated, NJT budgeted 2% for FOP wage increases in each Fiscal Year 2015 and Fiscal 2016), it is within a few percentage points and NJT has determined that it can reasonably make up the difference. The FOP's offer, by contrast, is far in excess of what NJT can reasonably afford (8.5% more than was budgeted, plus additional longevity increases and retroactivity payments).

The cost-outs of the parties' respective proposals further demonstrate the reasonableness of NJT's proposal, and the unreasonableness of the FOP's proposal. NJT's proposal is expected to cost NJT, in the aggregate, \$895,053 over the life of the contract (or \$16,575 per employee). (Company Ex. 18). The FOP's proposal is expected to cost, in the aggregate, nearly six times that amount – \$5,366,145 (\$99,373 per employee). (Company Ex. 19). By comparison, the interest arbitration award recently issued in connection with NJT's bus operators is expected to cost the agency approximately \$30,000 per

employee. While this number is somewhat higher than NJT's proposal (and significantly lower than the FOP's proposal), that is to be expected given that bus employees entered negotiations paying substantially more for health insurance (15%) than FOP members.

The FOP presented virtually no evidence on ability to pay. Its economic expert performed a perfunctory analysis of NJT's financial statements, and concluded that because NJT's "has resources exceeding \$2 billion on an annual basis," it clearly has the ability to pay for a new contract resulting in added costs of only several million dollars. (Union Ex. 32). This is pure sophistry. If every component part of NJT's aggregated operating budgeted could be parsed and separately analyzed in comparison to NJT's total budget, no cost increase would ever seem significant or unaffordable. It is the collective impact of all costs which causes budget deficits and shortfalls. If NJT were truly able to cover every multi-million dollar cost increase with the ease that the FOP suggests, the recent service cuts (which only saved the company approximately \$2 million) would have been unnecessary. The more relevant point is that NJT has indisputably reached the threshold of what it can afford in Fiscal Year 2016, and was forced to implement a variety of cost-cutting measures and revenue enhancements just to balance its Fiscal Year 2016 budget. With respect to any future costs, the record before the Arbitrator contains no evidence of any identifiable source of revenue to cover those costs.

The FOP's expert also incorrectly indicated that NJT's police department typically operates at a deficit, and thus can cover the cost of any deficit caused by the FOP's proposal. (Union Ex. 32). The "deficits" that the expert was referring to, however, are actually not deficits at all. They are pre-approved overtime expenses that are authorized and paid for by Department of Homeland Security grants received by NJT from the federal government. NJT does not budget the receipt of these grants, nor does it budget for the added costs that are authorized as a result of the grants. These overtime costs are budget neutral because they are only incurred if a grant is received to support them. The FOP's proposal is not supported by any grant or other source of identifiable funding.

(7) Cost of Living

The most recent data from BLS indicates that from 2010-2015, the consumer price index has fluctuated between 0% and 3%. In most months, it has been between 1.5% and 2.5%. The CPI factor should be considered here, but given little weight since it will have minimal impact upon the increases proposed by the parties, both of which fall within the range of CPI over the relevant time period. See Mercer Cnty. Prosecutors, IA No. 2014-079 (2015) (Gifford) (considering, but giving little weight to, CPI factor because it would have minimal impact on the wage increases proposed by the parties).

(8) The Continuity and Stability of Employment

The continuity and stability of employment factor is more probative in this case than it might be in others. Here, the record reflects that notwithstanding the myriad of complaints offered by the FOP's witnesses during the hearing (about the parties' contract, the inadequacy of the benefits they receive, the insufficiency of their pay, the difficulties of their job, the poor morale throughout the bargaining unit, etc.), not a single FOP bargaining unit member has voluntarily left his employment in the past 10 years. (Nov. 24 Tr., 43:4-43:7; Dec. 4. Tr., 210:10-210:16). Not one. Bargaining unit employees have retired, been fired, and accepted promotions, but no one has left the bargaining unit for a better job somewhere else. This evidence is extraordinarily telling of the true perception of the labor contract within the bargaining unit. These FOP members negotiated a great deal, and they know it. A few concessions – like the ones proposed by NJT on the issues of health insurance, sick leave overtime, free transportation, and sick leave overtime – will not detract from what is obviously perceived as an otherwise very favorable agreement, and is unlikely to destabilize the workforce in any material way.

(9) Statutory Restrictions Upon the Employer

NJT stipulates that neither party's proposals invoke statutory restrictions upon New Jersey Transit.

POINT II

THE FOP'S PROPOSAL FOR ENHANCED VACATION BENEFITS SHOULD BE REJECTED

The FOP's economic and insurance proposals are addressed in Point I, *supra*. There is, however, one additional proposal in the FOP's Final Offer that must be addressed. The FOP is seeking to amend the Vacation Article to (a) accelerate the time it takes for officers to achieve certain amounts of vacation; and (b) increase the maximum amount of vacation time available to the most senior officers. No legitimate evidentiary basis has been provided for this proposed change. Nothing has been presented to suggest that the FOP's current vacation benefits are unfair or deficient in any way. In fact, their vacation benefits are generally consistent with what non-unionized NJT employees receive.³⁶ The FOP's current vacation package is also consistent with the other State police contracts, and with most of the municipal units identified by the FOP as comparators.

As for the accelerated accrual of additional vacation time, the only evidence presented in support of this proposal was Sergeant Damato's testimony that in his view it took "too long" between the various accrual steps. (Nov. 24 Tr., 83:21). He admitted, however, that he was not comparing the time to any other group of employees, but was simply voicing his opinion. (Dec. 4 Tr.,

³⁶ As a matter of policy, NJT submits that the higher ranking non-agreement police officers should have a more generous vacation package than FOP members because such additional benefits provide an incentive for promotion to higher ranks.

121:12-121:18). Sergeant Damato's personal opinion is insufficient to carry the FOP's burden to justify a contract change.

CONCLUSION

For the reasons set forth above, NJT respectfully requests that the Arbitrator adopt its offer in its entirety

DISCUSSION

I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria set forth in N.J.S.A. 34:13A-16(g). The statutory criteria are as follows:

1. The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
2. Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - a. In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - b. In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995., c. 425 (C. 34:13A-16.2); provided, however 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 the P.L. 1976 c. 68 (C.40A:4-45 et seq.).
6. The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c.62 (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 on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
7. The cost of living.
8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and

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

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

All of the statutory factors are relevant, but they are not necessarily entitled to equal weight. The party seeking a change to an existing term or condition of employment bears the burden of justifying the proposed change. I considered my decision to award or deny the individual issues in dispute as part of a total package for the terms of the entire award.

Interests and Welfare of the Public

As I expressed in recent interest arbitration awards, Arbitrators have recognized that "[t]he interests and welfare of the public [N.J.S.A. N.J.S.A. 34:13A-16g(1)] is paramount because it is a criterion that embraces many of the other factors and recognizes their relationships." Mercer Cty. Prosecutor & PBA Local 339 (Detectives/Investigators), PERC Dkt. No. IA-2014-079 (August 2015); Borough of Oakland & PBA Local 164, PERC Dkt. No. IA-2014-044 (May 2015), citing Washington Tp. & PBA Local 301, IA-2009-053 (Mastriani 2012); see Borough of Roselle Park & PBA Local 27/(SOA), IA-2012-024, IA-2012-026 (Osborn 2012). Having considered the entire record, the lack of adverse impact, the interests

and welfare of the public, and public sector comparability were given greater weight than other factors such as the cost of living and private sector comparability. I now review the interests and welfare criterion through the other statutory factors addressed below.

Lawful Authority of the Employer/Statutory Restrictions Imposed on the Employer

N.J.S.A. 34:12A-16g(5) and (9) refer to the lawful authority of the employer and the statutory restrictions imposed on the employer. NJT acknowledged in its brief that “neither party’s proposals call for NJ Transit to exceed its lawful authority.” [NJT Brief, p. 21]. As to the statutory restrictions, the parties stipulated that there are none in this proceeding. [See also NJT Brief at 25].

Financial Impact on the Governing Unit, Its Residents and Taxpayers

N.J.S.A. 34:12A-16g(6) requires consideration to be given to the financial impact of the award.³⁷ The evidence addressing this criterion included, but was not limited to, testimony from NJT Deputy CFO Jaibala Patel, and a financial analysis report from Raphael J. Caprio, Ph.D.³⁸ [See T2:133-207 & Ex. U-32]. Patel testified that NJT’s budget for fiscal year 2016 includes an operating budget of

³⁷ Given that NJT does not have residents, I considered the impact of the Award on NJT’s passengers.

³⁸ Dr. Caprio’s report included his curriculum vitae. He has testified in over 100 interest arbitration proceedings.

\$2.1 billion and a capital budget of \$2.1 billion. With respect to the operating budget, there are three (3) sources of revenue: fares, federal grants (and other programs), and state funding. Patel testified that NJT is required to have a balanced budget (revenues must equal expenses). She indicated that the budget for fiscal year 2016 started with a deficit of \$120 million due to increases in expenses (i.e. wages, health benefits, toll increases) and a decrease in state appropriations. Patel testified that NJT took measures to close the gap: NJT applied and received \$29 million in clean energy funding, corrected internal efficiencies in the amount of \$42 million (i.e. locked in lower fuel rates, reduced overtime), and for the remaining \$56 million NJT increased the fare rates by nine percent (9%) and made service adjustments to bus and rail routes. The service adjustments did not require layoffs.

Dr. Caprio's report includes an extensive analysis of the annual budgets and actual expenditures for fiscal years 2009-2014 (estimated for 2015) for the major budget unit for the Chief of Police (management center FSAA), as well as the parties' salary and health care proposals. Caprio concluded that NJT's "ability to pay is not a factor as it relates to this unit". [Ex. U-32, p. 3].

I initially note that the FOP's proposal amounts to 15% over seven (7) years, an average of 2.14%, while NJT's proposal amounts to 7% over six (6) years, an average of 1.17%. This Award yields 10.0%, or an average of 1.43% over seven

(7) years. The difference between the awarded amounts and NJT's proposal is 0.26% per year. The modest difference must be viewed in the context of the modifications to other economic terms such as health insurance and sick leave which serve as offsets to the financial impact of the wage increases. Moreover, the terms of this Award are more consistent with all of the statutory criteria. Additionally, the awarding of no wage increase in 2010 lessens the overall financial impact of the award due to there being lesser cumulative costs.

This Award provides for wage increases, substantial upward adjustments in employee health insurance premium contributions, and cost-containment modifications that have taken all of the relevant evidence into consideration. I conclude that this Award will not have an adverse impact upon NJT, its passengers or taxpayers. Further, this Award serves the interests and welfare of the public through a thorough weighing of the statutory criteria.

Comparability

Private Employment

Given the unique nature of law enforcement jobs, the comparison to private employment has not been allotted significant weight in previous interest

arbitration awards. There continues to be an absence of evidence to support a deviation from giving greater weight to public sector comparisons.

Public Employment in General/In the Same or Similar Jurisdictions

With respect to public employment, the FOP compared this bargaining unit to law enforcement units for superior officers at the New York and New Jersey Port Authority as well as in the "hub cities" of Atlantic City, Camden (Camden Metro), Hoboken, Newark, Trenton, and Union Township. [Ex. U-36, FOP Brief, pp. 37-38, 47-48]. It also referenced recent developments affecting NJT's bus employees and rail operators. [Exs. U-28, U-30, & U-36]. NJT presented comparisons of this bargaining unit to law enforcement units at the State level. [See Exs. S-8 through S-17]. It also drew comparisons to the average wage statistics provided in the U.S. Bureau of Labor Statistics for such groups as police protection employees, and transit and railroad police. [See Exs. S-3 through S-7]. In sum, the external and internal public sector comparisons are deserving of greater weight than any private sector comparisons. [See generally NJT & PBA Local 304, PERC Dkt. No. IA-97-136 (Mastriani, December 1999), pp. 62-66; NJT & PBA Local 304, PERC Dkt. No. IA-2007-29 (Weisblatt, October 2008), pp. 50-77].

The most recent salary increase analysis for interest arbitration on PERC's website shows that the average increase for awards that were not subject to

the 2% annual base salary increase cap was 2.88% in 2010, 2.05% in 2011, 1.59% in 2012, 1.16% in 2013, and 1.74% in 2014.³⁹ Over the same time periods, reported voluntary settlements in cases that were not subject to the cap was 2.65% in 2010, 1.87% in 2011, 1.98% in 2012, 1.89% in 2013, and 1.69% in 2014. I considered this information in rendering the final award.

I have reviewed the parties' internal and external comparisons. I conclude that the economic benefits for this bargaining unit, when considered in their totality, will remain within the internal structure of NJT and reasonably compare to those received by other law enforcement units. These comparisons were considered and weighed along with all of the other statutory factors.

Overall Compensation

The evidence in this matter, as demonstrated by the parties' exhibits and the comparisons provided, shows that the overall compensation received by the bargaining unit members is fair, reasonable and competitive. I conclude that the modifications in this Award will serve the interests and welfare of the public because they reasonably take into consideration all of the relevant

³⁹ The average increases for awards and voluntary settlements in 2012, 2013 and 2014 only include the petitions that were filed after December 31, 2010 and not subject to the 2% annual base salary increase cap. For a complete analysis for awards and voluntary settlements from January 1, 2012 through December 31, 2014, please refer to PERC's website:
<http://www.state.nj.us/perc/1A%20NEW%20FORMAT%20SALARY%20ANALYSIS.pdf>

statutory factors, including the more recent trends pertaining to wages and health insurance.

Stipulations of the Parties

The parties stipulated to the following for the purposes of this proceeding:

1. The parties' Agreement expired on June 30, 2010 and, therefore, the 2% annual base salary cap does not apply.
2. The employee contribution amounts towards health insurance established in Chapter 78, P.L. 2011 does not apply to this bargaining unit.

[T:4-5].

The Cost of Living

The most recent statistics from the U.S. Bureau of Labor Statistics' website show the following CPI for All Urban Consumers:

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	HALF1	HALF2
2005	3.0	3.0	3.1	3.5	2.8	2.5	3.2	3.6	4.7	4.3	3.5	3.4	3.0	3.8
2006	4.0	3.6	3.4	3.5	4.2	4.3	4.1	3.8	2.1	1.3	2.0	2.5	3.8	2.6
2007	2.1	2.4	2.8	2.6	2.7	2.7	2.4	2.0	2.8	3.5	4.3	4.1	2.5	3.1
2008	4.3	4.0	4.0	3.9	4.2	5.0	5.6	5.4	4.9	3.7	1.1	0.1	4.2	3.4
2009	0.0	0.2	-0.4	-0.7	-1.3	-1.4	-2.1	-1.5	-1.3	-0.2	1.8	2.7	-0.6	-0.1
2010	2.6	2.1	2.3	2.2	2.0	1.1	1.2	1.1	1.1	1.2	1.1	1.5	2.1	1.2
2011	1.6	2.1	2.7	3.2	3.6	3.6	3.6	3.8	3.9	3.5	3.4	3.0	2.8	3.5
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7	2.3	1.8
2013	1.6	2.0	1.5	1.1	1.4	1.8	2.0	1.5	1.2	1.0	1.2	1.5	1.5	1.4
2014	1.6	1.1	1.5	2.0	2.1	2.1	2.0	1.7	1.7	1.7	1.3	0.8	1.7	1.5
2015	-0.1	0.0	-0.1	-0.2	0.0	0.1	0.2	0.2	0.0	0.2	0.5		-0.1	

I considered this criterion but give it little weight. The data does not support an awarding of either party's proposals in full. The data is also generally consistent with the terms of the Award.

Continuity and Stability of Employment

This criterion was considered in my review. The evidence shows that turnover is not an issue within this bargaining unit. I conclude that the modifications awarded herein take into account the current economic conditions, are reasonable under the circumstances presented, and will maintain the continuity and stability of employment.

Having addressed all of the statutory criteria I now turn to the modifications/proposals that I award.

Awarded Modifications/Proposals

Term of Agreement

The FOP proposes a term of seven (7) years effective from July 1, 2010 through June 30, 2017. NJT proposes a term of six (6) years effective from July 1, 2010 through June 30, 2016. NJT's proposal will place the parties back at the bargaining table almost immediately. The FOP's proposal extends this requirement by one (1) year. I conclude that a term of seven (7) years – July 1, 2010 through June 30, 2017 is the more reasonable proposal on contract duration. The interests and welfare of the public will be served by providing labor-management stability to the parties whose contract expired more than five (5) years ago.

Base Salary & Wage Progression

Article VIII of the expired Agreement includes annual wage increases and a wage progression scale. Section 1 provides that effective as of July 1, 2009 that the base annual salary was \$97,272 for Sergeant and \$106,997 for Lieutenant. Section 2 includes the wage progression scale that was implemented effective January 1, 2001:

Months of Service as Police Officers –

At NJ Transit	% of Base Pay
Training	65%
0-12	75%
13-24	85%
25-36	90%
36-48	95%
49-60	100%
61-72	101%
73-84	102%
85-96	103%
97-108	104%
109-120	105%

Based upon the progression scale above, the salary for a Sergeant with 25-36 months of service as a police officer with NJT is \$87,545 (90% of \$97,272) and \$102,136 (105% of \$97,272) with 109-120 months of service. For a Sergeant with similar service time, the salary is \$96,297 and \$112,347 respectively.

Having considered all of the statutory criteria, the base annual salary shall be adjusted by ten percent (10%) over the course of the seven (7) year term as follows:

Effective July 1, 2010 – 0.0%;
 Effective July 1, 2011 – increase of 1.5%
 Effective July 1, 2012 – increase of 1.6%
 Effective July 1, 2013 – increase of 1.7%
 Effective July 1, 2014 – increase of 1.7%
 Effective July 1, 2015 – increase of 1.75%
 Effective July 1, 2016 – increase of 1.75%

All compensation is effective and fully retroactive to July 1, 2011. With respect to the wage progression scale, the evidence shows that NJT has been able to retain its officers at the ranks of Sergeant and Lieutenant beyond the term of the expired Agreement. I conclude that the evidence does not support an upward adjustment of the wage progression scale at this time. I therefore reject the FOP's proposal pertaining to the wage progression scale.

Sick Leave – Article XVIII, Section 6

As indicated above, the evidence demonstrates a need for the implementation of cost containment measures. Article XVIII, Section 6 is an area where the impact of the elimination of the benefit will be lessened by the fact that bargaining unit members can avail themselves of workers' compensation if they were to sustain a job-related injury. The provision set forth in Article XVIII, Section 6 shall be eliminated effective as of June 30, 2016.

Insurance Benefits – Article XXXI

Bargaining unit members are not subject to the provisions of Chapter 78, P.L. 2011, but this does not immune them from NJT's need for enhanced cost containment measures or the fact that the cost of health insurance continues to

climb.⁴⁰ At the same time, NJT's budgetary concerns do not compel full implementation of its proposals. The evidence as a whole supports an increase in employee contributions on a percentage basis so that the parties, moving forward, will share in the cost burden on a more equitable basis than their current arrangement. Effective January 1, 2016, or as soon as is practicable, employees will be responsible for paying fifteen (15%) of the insurance premiums.⁴¹ The evidence also supports the elimination of the eye care program as June 30, 2016. Article XXXI, Sections 1 through 3 shall be modified as follows:

ARTICLE XXXI – INSURANCE BENEFITS

SECTION 1: New Jersey Transit will provide the Blue Select Plan, including dental and prescription benefits to active eligible employees covered by this Agreement. New Jersey Transit will also offer the HMO Blue Option if it is made available to other employees of New Jersey Transit. No other plans will be offered under this Agreement. If an SO elects to enroll in any plan offered by NJ Transit other than the blue Selection Plan, the SO will be responsible for the difference in cost between the Blue Select Plan and such other plan, in addition to the employee contributions set forth in Section 2 below.

~~The Blue Select Plan, as shown in Attachment A, including dental and prescription benefits and the HMO Blue option, as proposed by New Jersey Transit, will replace the traditional indemnity plan. Such replacement shall not occur prior to July 1, 2000 in order to afford a full opportunity for review of options by affected employees. If an SO elects to enroll in any other HMO, NJ Transit funding obligation will be limited to its cost for Blue Select.~~

⁴⁰ As Deputy CFO Patel testified, NJT's employees may contribute towards their health insurance premiums, but they do not contribute in accordance with Chapter 78. [T2:184-190]. The FOP recognizes NJT's need to shift a portion of the financial burden over to bargaining unit members but not at the levels NJT desires.

⁴¹ The "Cadillac Tax" under the Affordable Care Act was recently postponed to 2020.

SECTION 2.

- a. Effective January 1, 2016, or as soon thereafter as NJ Transit completes the necessary administrative actions for collections, all SOs shall contribute, through withholding of the contribution from the pay, salary, or other compensation of the SO, toward the cost of health care benefits coverage for the employee and any dependent in an amount of fifteen percent (15%) of premium.
- b. An employee on leave who is eligible to receive health and prescription benefits provided by NJ Transit shall be required to pay the above-outlined contributions and shall be billed by NJ Transit for these contributions. Health and prescription benefit coverage will cease if the employee fails to make timely payment of these contributions.
- c. All contributions will be by deductions from pay.
~~Effective January 1, 2009, all unit employees shall contribute \$40.00 per month toward the cost of health insurance premiums.~~

SECTION 3. (b) Eye Care Package

1. It is agreed that NJT will provide an Eye Care Program during the term of this agreement. The coverage shall provide for a \$25.00 payment for regular prescription eyeglasses or contact lenses or a \$30.00 payment for bifocal glasses or more complex prescriptions. Include are all eligible full-time employees and their dependents. The extension of benefits to dependents shall be effective only after the new employee has been continuously employed for a minimum of sixty (60) days.

2. Full-time employees and eligible dependents as defined above shall be eligible for a maximum payment of \$25.00 or the cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.

3. Each eligible employee and dependent may receive only one (1) payment for glasses and one (1) payment for examinations every two years while the program is in effect. Proper affidavit and submission of receipts are required of the employee in order to receive payments. This Program ends June 30, 2016.

Modifications/Proposals Not Awarded

I now turn to the modifications/proposals that I do not award.

Sick Leave – Article XVIII, New Section 8

Deputy Chief Amberg testified to his concerns about the negative impact that sick leave utilization has upon overtime costs and the agency's operations. [See T2:211-226]. Amberg's interest in curtailing potential abuse has merit, but the evidence shows that there are mechanisms in place (*i.e.* Article XVIII – Sick Leave) that NJT has not fully utilized in recent years. The record simply does not support the awarding of NJT's proposal at this time. I therefore reject NJT's proposal.

Vacation - Article XXIV

The evidence shows that the current level of paid vacation does not need improvement at this time. I reject the FOP's proposal.

Ridership Passes – Article XXXII

As outlined above, cost containment measures have been implemented that will enable NJT to improve its ability to address its budgetary concerns. The evidence simply does not require the elimination of the ridership passes for these law enforcement officers, particularly in light of recent world-wide events that serve as potential threats to the safety and security of the public. I reject NJT's proposal.

CONCLUSION

I have given due weight to the statutory criteria set forth in N.J.S.A. 34:13A-16(g), and I conclude that the terms of this Award represent a reasonable determination of the issues.

AWARD

Term of Agreement

Seven (7) years – July 1, 2010 through June 30, 2017.

Base Salary & Wage Progression – Article VIII

The base annual salary shall be modified as follows:

Effective July 1, 2010 – 0.0%;
Effective July 1, 2011 – increase of 1.5%
Effective July 1, 2012 – increase of 1.6%
Effective July 1, 2013 – increase of 1.7%
Effective July 1, 2014 – increase of 1.7%
Effective July 1, 2015 – increase of 1.75%
Effective July 1, 2016 – increase of 1.75%

All compensation is effective and fully retroactive to July 1, 2011. The wage progression scale shall not be modified.

Sick Leave – Article XVIII, Section 6

The provision set forth in Article XVIII, Section 6 shall be eliminated effective as of June 30, 2016.

Insurance Benefits – Article XXXI

Article XXXI, Sections 1 through 3 shall be modified as follows:

ARTICLE XXXI – INSURANCE BENEFITS

SECTION 1: New Jersey Transit will provide the Blue Select Plan, including dental and prescription benefits to active eligible employees covered by this Agreement. New Jersey Transit will also offer the HMO Blue Option if it is made available to other employees of New Jersey Transit. No other plans will be offered under this Agreement. If an SO elects to enroll in any plan offered by NJ Transit other than the blue Selection Plan, the SO will be responsible for the difference in cost between the Blue Select Plan and such other plan, in addition to the employee contributions set forth in Section 2 below.

~~The Blue Select Plan, as shown in Attachment A, including dental and prescription benefits and the HMO Blue option, as proposed by New Jersey Transit, will replace the traditional indemnity plan. Such replacement shall not occur prior to July 1, 2000 in order to afford a full opportunity for review of options by affected employees. If an SO elects to enroll in any other HMO, NJ Transit funding obligation will be limited to its cost for Blue Select.~~

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b. An employee on leave who is eligible to receive health and prescription benefits provided by NJ Transit shall be required to pay the above-outlined contributions and shall be billed by NJ Transit for these contributions. Health and prescription benefit coverage will cease if the employee fails to make timely payment of these contributions.

c. All contributions will be by deductions from pay.

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2. Full-time employees and eligible dependents as defined above shall be eligible for a maximum payment of \$25.00 or the cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.

3. Each eligible employee and dependent may receive only one (1) payment for glasses and one (1) payment for examinations every two years while the program is in effect. Proper affidavit and submission of receipts are required of the employee in order to receive payments. This Program ends June 30, 2016.

All Other Proposals. All other proposals of NJT and FOP are denied.

Dated:

Sea Girt, New Jersey

Robert C. Gifford

State of New Jersey }
County of Monmouth }ss:

On this day of , 2016, before me personally came and appeared Robert C. Gifford to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.
