

In the Matter of Arbitration Between:

TOWNSHIP OF OCEAN,

“Public Employer,”

- and -

**PBA LOCAL NO. 57 AND
SUPERIOR OFFICERS ASSOCIATION**

“Union.”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket Nos. IA-2008-038 & IA-2008-039

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Town:

Mark S. Ruderman, Esq.
Ruderman & Glickman, PC

For the PBA:

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

I was appointed to serve as interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in matters involving the Township of Ocean [the “Township”] and PBA Local No. 57 and Superior Officers Association [the “PBA, the “SOA” or the “Unions”]. Each employee organization had filed separate petitions seeking to initiate interest arbitration. Due to the commonalities of the issues, and for the purposes of economy and efficiency, the parties agreed to consolidate the proceedings. It was also agreed that a single decision would issue covering both units.

Pre-interest arbitration mediations were held on April 28 and July 14, 2008. Because the impasses could not be resolved, formal interest arbitration hearings were held on February 3 and May 13, 2009¹. At the hearings, the parties examined and cross-examined witnesses and introduced documentary evidence into the record. Post-hearing briefs were filed on or about August 15, 2009.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

PBA LOCAL 57 AND SOA

1. Wage Increase

- A. The Associations propose an across-the-board increase of five (5%) percent on the first of January in each of five (5) years for a new five (5) year contract.

¹ Between the first and second day of hearings, the PBA and SOA changed labor counsel.

B. The Associations propose an increase in the Police Differential (PBA Contract Article XIII, Section 3/SOA Contract Article X, Section 4) as follows:

2008	-	\$2,000.00
2009	-	\$2,200.00
2010	-	\$2,400.00
2011	-	\$2,600.00
2012	-	\$2,800.00

2. The SOA proposes a modification of the SOA contract at Article XVIII (page 29) Section 1 by deleting the second and third sentences.

Township

1. **Duration**. January 1, 2008 through December 31, 2011 (PBA & SOA)

2. **Article XIII – Salary**

January 1, 2008 – 3.0% (PBA & SOA)

January 1, 2009 – 2.0% (PBA & SOA)

January 1, 2010 – 0.0% (PBA & SOA)

January 1, 2011 – 1.0% (PBA & SOA)

The Township proposes to freeze the probationary salary at the 2007 level of \$28,000 for the four-year contract term effective July 1, 2009. The Township also proposes to add two steps to the salary guide, effective July 1, 2009. (PBA)

3. **Article XIV – Longevity**

The Township proposes to modify longevity benefits by deleting any reference to percentage and freeze the dollar scale longevity as it was in place on January 1, 2007. Under the Township's proposal, officers will receive flat dollar longevity at 2007 rates, depending on the number of years of completed service. (PBA & SOA)

4. **Vacations** (Article XX – PBA Contract) (Article XIII – SOA Contract)

1 to 5 years – 10 days*

6 to 10 years – 12 days

11 to 15 years – 15 days

16 to 20 years – 18 days
21 to 25 years – 20 days
26+ years – 23 days

*(1 day equals 8 hours)

5. **Article XXI – Personal Days.** (PBA & SOA) Add language that requires personal days to be used only for an entire shift and not on an hourly basis.
6. **Article XXII.1.a.iii – Sick Leave.** (PBA & SOA) In the event a male employee having a newborn child that employee is entitled to five consecutive days off taken as sick leave inclusive of any scheduled days off. Any additional time off shall be in accordance with paid time off provisions other than sick leave or FMLA.

Section 5 – Maternity Leave (PBA & SOA)

- A. Female Police Officers shall advise the Employer of a pregnancy. The right of a police officer shall include but not be limited to the following provisions.
 1. The female police officer shall be permitted to work her normal duties so long as such work is permitted by a doctor's note. The doctor shall be a physician of the female Police Officer's own choosing.
 2. In addition to the other provisions of this Article, the female Police Officer shall be permitted to use accumulated sick time, compensatory time off and any other accumulated time benefits which she may have during the time period of her pregnancy and the period following childbirth.
 3. Upon returning from maternity leave the officer shall be returned to work without loss of seniority or benefits.
 - B. Both male and female Police Officers shall be permitted such time and such terms and conditions as are provided under the Federal Family Leave Act and the New Jersey Temporary Disability Benefits Law.
7. **Article XXV – Health Insurance** (PBA & SOA)
 - A. Effective upon signing of the collective bargaining agreement, all employees will have as their base level of coverage the State Health Benefits Program's least cost non-HMO plan or pay the

difference between the plan selected and the State Health Benefits Program's least cost non-HMO plan. Additionally, all employees will be required to pay three percent (3%) of the cost of the premium in effect for the State Health Benefits Program's least cost non-HMO plan.

- B. Effective January 1, 2010, all employees shall continue to have their base level of cost non-HMO plan or pay the difference between the plan selected and the State Health Benefits Program's least cost non-HMO plan. Additionally, all employees will be required to pay six (6%) percent of the cost of the premium in effect for the State Health Benefits Program's least cost non-HMO plan.
- C. Effective January 1, 2011, all employees shall continue to have their base level of coverage the State Health Benefits Program's least cost non-HMO plan or pay the difference between the plan selected and the State Health Benefits Program's least cost non-HMO plan. Additionally, all employees will be required to pay nine (9%) percent of the cost of the premium in effect for the State Health Benefits Program's least cost non-HMO plan.
- D. Any premium for prescription coverage will be considered part of the cost of the State Health Benefits Program's least cost non-HMO plan and will be included in the calculation to determine the employee's contribution. (prescription coverage is currently included in the premium, but it is anticipated that prescription coverage will eventually be broken out as a separate premium, which would result in a reduced premium for the least cost non-HMO plan – The Township need to insure that the 3%, 6% and 9% contribution applies to both premiums).

BACKGROUND

Ocean Township is a central Monmouth County municipality with a population approaching 28,000. It ranks eighth in population out of the County's 53 municipalities. The police department employs 62 officers, making it the tenth largest department in the County. As of 2010, there were 43 Police Officers in the PBA unit and 12 Sergeants, 2 Captains and 5 Lieutenants in the SOA unit. The base salaries paid to these personnel amounted to \$4,709,591 in 2007. The

officers patrol an 11.1 square mile area which includes State Highways Route 18, 35 and 66. The Township contains many subsections commonly referred to as Oakhurst, Wayside, Wanamassa, West Allenhurst, Deal Park, Colonial Terrace, Shadow Lawn Manor and West Deal. While primarily residential in nature, there is substantial commercial and industrial activity within the Township. Monmouth University lies partially within the Township and student activity in residential areas creates many calls for services. PBA testimony offered a detailed account of the Township's profile. The testimony also provided an overview of departmental activities, caseload and specialization by function. The Department also provides police services on a fee basis (\$156,000 per year) for the municipality of Loch Arbour, a community that only contains 275 residents.

The issues in dispute are primarily economic. The issue of employee contributions towards health insurance was a major source of the impasse. A brief history of this issue helps place it in proper context. Going into negotiations for the agreement that would be effective on January 1, 2008, the rank and file Local No. 57 police officer unit was provided medical insurance through enrollment in the New Jersey State Health Benefits Program for employees and their families with full premium costs borne by the Township. In contrast, the members of the SOA unit were subject to contract language that offered full premium payment for the employee but only required the Township to fully pay dependent premiums up to a maximum of the rates that were in effect through April 30, 1987. The language went on to state that any increase in rates thereafter (beyond April 30, 1987) for dependent coverage would be shared by

the employee and the Township on a 50%/50% basis. The applicable language², which the SOA now proposes to delete, sets forth the following:

The Township shall continue to provide enrollment in the New Jersey State Health Benefits Program for all employees and their families as defined by the insurance carrier. Dependent premiums will be paid by the Township up to a maximum of the rates in effect through 30 April 1987. Any increase in this rate will be paid fifty percent (50%) by the insured employee and fifty percent (50%) by the Township.*

Although the above language was included in the SOA Agreement in or around 1987, it was not implemented until more than twenty years later because it was not consistent with law due to the presence of a footnote to Article XVIII, Section 1 that stated:

*This provision of co-pay shall not be in force so long as it is in conflict with any State of New Jersey law, rule or obligation.

Because the substantive provision in Article XVIII, Section 1 conflicted with law³, the premium co-pay language was not implemented (at least since 1990) but the Township, based upon more recent revisions to applicable⁴ law, announced that, commencing January 11, 2008, it would begin deducting monies

² See Article XVIII, Section 1 of the SOA Agreement.

³ The applicable law at the time did not allow for co-payments unless the co-payment plan was uniform within the public employer's units.

⁴ The applicable law preventing the implementation of the premium co-pay language in Article XVIII, Section 1 is set forth in N.J.A.C. 52:14-17.38 and N.J.A.C. 17:9-5.4(b) (now 17:9-5.3). The Legislature amended N.J.A.C. 52:14-17.38 in April 2007 to allow municipalities to negotiate premium sharing with each separate unit.

based upon the formula contained in the co-pay provision in Section 1. Prior to that announcement and during negotiations for this Agreement, the Township and the SOA engaged in discussions towards resolution of the health insurance language going forward but no agreement was reached. The SOA challenged the legality of the Township's announcement asserting that the contract language in Section 1 did not permit the co-pay deduction and that the Township's announcement in November of 2007 that it would implement the co-pay in January of 2008 was an act of retaliation against the SOA because an agreement could not be reached. The SOA sought interim relief from the New Jersey Public Employment Relations Commission ("PERC") but its application was denied.⁵ The practical effect of this denial was that the Township was able to continue to deduct the co-pays pursuant to the formula in Section 1. This carried the parties' disagreement on health insurance co-pays over into negotiations and ultimately this interest arbitration proceeding.

The Township, simultaneously with the SOA negotiations, also sought to obtain health insurance co-pays from the PBA and to make the co-pays consistent between the two units. The PBA did not agree to make co-pays. It entered negotiations and these interest arbitration proceedings with a proposal to maintain the existing health insurance scheme that provided for no employee contributions towards health insurance. Put another way, the PBA rejects the Township's proposal. The SOA, who was subject to the employee contributions set forth in Article XVIII, Section 1, proposed to delete the second and third

⁵ See PERC I.R. No. 2008-5.

sentences in Section 1. This would result in the termination of employee contributions that were being made pursuant to Section 1 and would not allow for employee contributions going forward. In the meantime, the Legislature enacted law, effective May 21, 2010, requiring the payment of at least 1.5% of salary towards health insurance for employees in the absence of any other contractual arrangement. Prior to the enactment of this legislation, employee contributions for those employed in the SOA unit pursuant to Section 1 amounted to a payroll deduction, as of January 31, 2009, of between \$131 and \$158 per bi-weekly payroll deduction depending upon choice of the health insurance plan. These contributions exceed the amount required by a 1.5% of salary contribution. For those employed in the PBA unit, because of the legislation, they are subject to the 1.5% of salary deduction which, at top step pay, amounts to approximately \$1,300 on an annual basis or \$50 per bi-weekly paycheck, a sum far less than what an officer in the SOA unit now contributes.

The Township proposes to change the scheme for co-payment of health insurance premiums for both units and to make contributions pursuant to a common formula. The proposals for each unit are identical except for the language concerning the phase in or commencement date for implementation. In short, all employees would be required to pay 3% of the cost of the premium in effect for the State Health Benefits Program's least cost non-HMO plan effective during 2009 followed by an increase in the co-payment to 6% of such cost effective January 1, 2010, with an additional increase to 9% of such cost effective

January 1, 2011. The Township further proposes to include premiums for prescription coverage as part of the cost of the State Health Benefit Program's least cost non-HMO program and include such premiums in the calculation of the 3%, 6% and 9% contribution as part of an employee's overall contribution. The purpose of this last proposal is to allow for premium payments in the event that the Township splits off prescription coverage from the SHBP to a separate carrier.

According to the Township, SOA members contributed \$35,138 towards health insurance costs in 2008. Because these amounts exceed what the Township has proposed with respect to the SOA, the SOA contributions, under the Township's proposal, would decrease by \$27,003.60 to \$8,569 effective January 1, 2009. The PBA contributions in 2009 would go from zero to \$29,008 because no contributions had been required under the prior contract. When combined, the Township would net only an additional \$2,004.48 as a result of the contributions amounting to 3% of premium cost in 2009. When using calculations based on current premium costs, the Township's proposal increasing contributions from 3% to 6% in 2010 would amount to \$75,156.24 in 2010, and provide an additional savings of \$37,578.12. Under the Township's proposal, contributions would increase to 9% of premiums in 2011 and the contributions for both units, or savings to the Township, would equal \$112,734.

The Township asserts that its health insurance proposals are reasonable and should be awarded. It points to comparisons between the PBA/SOA and its other two bargaining units. One is Teamsters Local 177 who represents sanitation workers. The other is and Teamsters Local 701 who represents mechanics and buildings and grounds workers. Pursuant to a March 19, 2008 agreement, the Teamsters Local 701 members contribute towards health insurance premiums under the same terms and formula the Township has proposed for the PBA and the SOA. Teamsters Local 177 does not contribute to health insurance premiums (except as now may be required by law) but has agreed to pay in the amounts required in the event that there are changes in the health insurance programs negotiated or awarded in the other bargaining units. The Township has implemented its proposal with its non-unionized workforce. According to the Township, its goal is to provide consistent and uniform policy on premium contributions to all of its employees.

The Township further submits that existing trends in both the private and public sectors reflect substantial increases in the cost of health insurance premiums and that an increasing number of employees employed in both private and public entities not only contribute towards health insurance coverage but do so in increasing amounts. Citing numerous articles and studies, the Township argues that its proposal for contributions in the amount of 3%, 6% and 9% of premium costs is reasonable because it falls below national averages. In addition, the Township submits evidence that, prior to the enactment of

legislation requiring the health insurance co-payments, at least 16 municipalities in Monmouth County had already required contributions towards premiums in their respective police departments. Among these are Avon, Brielle, Colts Neck, Fair Haven, Freehold Boro, Hazlet, Highlands, Interlaken, Keyport, Long Branch, Manalapan, Marlboro, Neptune City, Spring Lake and Tinton Falls. The Township submits additional evidence reflecting the existence of employee contributions in police departments outside of those in Monmouth County.

In response, the PBA and SOA submit that the Township's health insurance proposal is "draconian" and cannot, as a matter of law, be awarded. In relevant part, the PBA argues:

A key element in this case is the Employer's attempt to increase the contributions for premium health care. In years past the SOA had voluntarily agreed to accept a certain premium formula which is set forth in the SOA contract (J-2) at Article XVIII, Section 1 (page 29). This voluntary agreement provided for the acceptance of uncalculated and incalculable premium increases in future years. There is no way to calculate the impact of this type of formula as time passes. Anything over a twenty-two (22) year old stated date is to be paid by the Employees. What may have been a small amount projected, is now an enormous expenditure worth several percent of base wages.

It is the position of the parties in this case that while such an agreement as was voluntarily entered into by the SOA back in 1987 may be negotiable, it is not arbitrable. The position of the Employer in this case cannot be calculated nor reduced to any arithmetic progression with any reliability. The Employer now, as the SOA had voluntarily agreed twenty-two (22) years ago, wants a percentage of costs paid by the Employees but the base costs are not known and cannot be accurately calculated. Not only is the Employer position in this proceeding unawardable, but in fact the SOA contribution formula under Article XVIII, Section 1 of its contract cannot be awarded either. The only way for the parties to enter into the type of contribution formula set forth in the SOA

contract is to do so voluntarily. It cannot be imposed under the Interest Arbitration Act because it cannot be calculated and is not susceptible to any form of accurate projection. Simply stated, an Arbitrator cannot complete the statutorily mandated cost analysis without numbers that are not and will not be available until future years. The Employer's position in this case is to apply this type of speculative future burden on Employees without any known impact or calculable impact at this time.

In short, the Unions assert that the contributions as proposed by the Township cannot be calculated going forward and no evidence has been presented from which any accurate calculations can be made. The PBA and SOA further note that the current deductions paid by the SOA are among the highest found in any public employee contract in the record. The Unions complain that they cannot compare the Township's proposal changing the premiums over to a percentage premium cost sharing arrangement with the contributions that the SOA is currently making. The Unions point out that there is no way of knowing what the future premiums will be and therefore comparisons cannot be made nor can the arbitrator possibly judge the amounts that would be required as part of calculating net annual economic change. The Unions further submit that the Township's wage proposal of 3%, 2%, 0% and 1%, coupled with the health insurance proposal would, cumulatively, result in a forfeiture of existing levels of compensation rather than in an improvement. In addition, the Unions submit a chart reflecting that, among 24 bargaining units that it has submitted for comparability purposes, the majority do not contribute to health care premiums and those that do provide contributions far less than what the Township has

proposed. For all of these reasons, the Unions seek a rejection of the Township's proposals on health insurance contributions.

An additional issue that is a major source for the impasse is salary. On this issue, the Township and the Unions have submitted voluminous data and argument rooted mainly in areas of comparability, budgetary impact and economic trends. The Unions base their wage proposal of 5% increases annually from 2008 through 2012 on several factors including comparisons with other law enforcement units, its assertion that the Township has sufficient financial vitality to pay the costs associated with the salary proposals, the complexities and dangers of serving as a police officer in the Township of Ocean and the exceptional professionalism and productivity of the police department. The statutory criteria highlighted by the Unions include the interest and welfare of the public, law enforcement comparability and evidence supporting their view that there would be no adverse financial impact on the Township caused by an awarding of their proposals.

Turning first to comparability, the PBA and SOA offer many labor agreements into evidence from which they calculate charts showing comparisons of maximum police officer rates in the year 2007 as well as base rate increases among these labor agreements for years 2008 through 2012. Based upon these charts, depicted below, the Unions claim that a police officer in Ocean Township receives less in salary (\$2,681) on average and that the Township's wage

proposals, being well below the average base rate increases in those communities, run afoul of comparability.

Chart No. 1
Comparison of 2007 Maximum Police Officer
Rates Based on PBA/SOA Exhibits

	2007 Patrolman Max
Freehold Township	\$90,910
Manchester	\$90,658
Lakewood	\$85,643
Holmdel	\$83,405
Aberdeen	\$78,355
Bradley Beach	\$80,330
Highland Park	\$87,008
Manasquan	\$82,819
Monmouth Prosecutor's Office	\$113,087
Neptune City	\$79,994
Neptune Township	\$87,422
Point Pleasant Borough	\$87,205
Point Pleasant Beach	\$83,204
Spotswood	\$83,740
Woodbridge	\$86,083
Sea Girt	\$89,669
Spring Lake	\$88,577
Spring Lake Heights	\$84,037
Brick Township	\$98,239
Howell	\$90,619
Long Branch	\$85,363
Average	\$87,445
Ocean Township Police Officer	\$84,764
Ocean Township Police Officer	(\$2,681)
Compared to Average	(3.16%)

Chart No. 2
Base Rate Increases

	2008	2009	2010	2011	2012
Bradley Beach	4.3	4.5			
Holmdel	4.5	4.5			
Lakewood	4				
Manasquan	4.25	4.25			
Neptune Township	4.5				
Highland Park	3.6	3.8	3.9	3.9	
Milltown	4	4			
Monmouth Prosecutor's	3.75				
Monroe	4.25	4.25	4.25		
Neptune City	4	4			
Point Pleasant Borough	4	4			
Point Pleasant Beach	4	4			
Seaside Park	3.9	3.9	4	4	
South Amboy	4				
Spotswood	4	4	4		
Woodbridge	4	3.9	3.25	3.5	
Ewing	3.5	4	4	4	4
Sea Girt	3.9	3.9			
Spring Lake	3.8				
Spring Lake Heights	3.9	3.9	3.9		
Brick Township	4				
Howell	3.95	3.95			
Long Branch	4.25	4.25	4.25	4.25	4.25
Averages	4.026%	4.079%	3.95%	3.93%	4.125%

The Unions contend that the Township's salary proposal, when coupled with benefit reduction proposals, cannot be awarded based upon the evidence that exists in the record. The PBA submits the following argument on this point:

The Employer's position is not sustainable based on the evidence in the record. The Employer wage position set forth in its position statement simply are numbers that do not exist anywhere. There is no way the evidence in the record supports the Employer's position. The Employer in almost a cavalier fashion has just thrown these issues on the table in front of the Arbitrator hoping that the Arbitrator will err in some way and grant such a forfeiture. With due respect to the Arbitrator, the Award on such areas must be supported by a preponderance of credible evidence in the record. Here there is no evidence in the record at all. Presuming that the Employer used its best efforts to cull evidence and submit such documents as it could before this hearing, the failure of the Employer's proofs is all the more obvious. For Patrol Officers the Employer seeks "Freeze Probationary Salary and add Two Steps to the Guide Effective July 1, 2009 with a Ten (10) Step Guide." The fact is that there are seven (7) steps and even the Employer acknowledges same in its own Chart (Three Ring Binder, Section 1, Sub Tab 7). The Employer's own calculations at said chart is that the average in the County is between seven (7) and eight (8) Steps. Where does the Employer come up with the idea of Ten (10) Steps? The Employer cannot even document its own Proposal. The same goes for Longevity. For both the PBA and SOA the Employer is seeking to diminish the longevity value. The longevity is a longstanding benefit which has been modified upward with wage increase percentages over the many years. Now the Employer throws this issue on the desk in front of the Arbitrator seeking to make what is already one of the worst longevity systems even lower in value. The same goes with respect to Vacation Days, not a single question or response in testimony, regarding vacations. This issue is presented to the Arbitrator in a vacuum. The same is true on Personal Days. One can only wonder where such Proposals come from. The Employer's ideas on Sick Leave are equally bizarre. For some reason the Employer has given a different type of benefit proposal, actually a reduction in benefit proposal, to the PBA as compared to the SOA. Reading Employer Proposal (T-7) at Paragraph No. 6 we learn that additional day "May be approved by the Township Manager in cases involving cesarean deliveries." For the SOA proposal (T-6) we note that the Township Manager is not even given an opportunity to give

additional days off for cesarean deliveries. While it is certainly not suggested that there is any rational basis for these types of bizarre Proposals, the point established is that these are just ideas thrown against the wall to see what sticks.

The Unions go on to make an analysis of the Township's financial condition based upon review of documents that include annual financial statements, reports of audit, municipal budgets, data concerning the Township's general tax rate, net valuation taxable and calculations concerning the Township's appropriation and revenue caps. In general, the Unions submit that the Township is in excellent financial health. The Unions point out that the Township, at 1.674 (general tax rate per \$100) ranks 36th out of 53 Monmouth County municipalities and ranks second in net valuation taxable only behind Middletown Township. The Unions note that the documents show that the Township has the ability to generate revenues and to regenerate surplus as evidenced by the figures in 2007 and 2008 showing more than \$4 million realized beyond revenues anticipated for those years and results of operations exceeding \$6 million in those years. Citing the Report of Audit, the Unions point to the Township's ability to maintain fund balances of over \$10 million in years 2006, 2007 and 2008 while using over 60% of the balance to reduce the tax levy. It further points out that the municipal portion of the total tax levy remained essentially flat for the consecutive years of 2005, 2006 and 2007, hovering around 0.30. Further evidence of financial health is the tax collection rates which have approximated 99% and the increase in property value ratables by \$127,000 between years 2005 and 2008. The Unions submit that the budget documents

reflect that the Township has been beneath the appropriations and revenue caps as set by law. The PBA and SOA emphasize that in the 2009 budget year, the police salary and wage appropriation reflected a reserve balance for 2008 of \$468,000. The Unions argue that these funds can be applied to the salary increases without any impact on the tax levy.

In addition to their salary proposal, the PBA and the SOA propose to increase the police differential set forth in Article XIII, Section 3. During the course of the prior Agreement, officers covered by both the PBA and the SOA units received the following police differential payments:

2004 - \$1,253/year
2005 - \$1,442/year
2006 - \$1,637/year
2007 - \$1,841/year

The Agreement authorizes the police differential "in recognition of rotating schedules, weekend work, specialized duties including but not limited to detective assignments, crime prevention assignments, traffic assignments and other unique responsibilities." The PBA and the SOA propose that the police differential be increased according to the following schedule:

2008 - \$2,000
2009 - \$2,200
2010 - \$2,400
2011 - \$2,600
2012 - \$2,800

According to the PBA and SOA, the proven increases in productivity and the expansion of police services rendered to the community justifies the increases they seek in the police differential.

The Township disagrees with the Unions on the state of its finances. The Township does not dispute that there was a growth in surplus funds from 2006 to 2008 but, because of a variety of factors, it submits that its anticipated surplus will drop to \$8,374,293.89 by the end of 2009 and to \$6,357,856.05 by the end of 2011. This reduction in surplus is said to cut into the Township's ability to regenerate the amount of surplus it was able to do in the past for each succeeding year going forward and create the need for increased revenue sources as a substitute or to cut expenditures. The Township further submits that State aid decreased by 10.2% in 2008 from its 2009 level and it anticipates a further reduction in 2010. According to the Township, the tax levy cap⁶ limits its ability to raise more than \$938,937 through its property tax levy. The Township asserts that it has limited budget flexibility to pay for salary increases due for many reasons. One such reason was an increase from 2008 to 2009 in its pension contributions under PFRS and PERS. These contributions increased by \$286,175 and \$119,378 respectively, for a total increase of \$405,553. While the Township is uncertain over future increases, it points to an Alert received from the New Jersey State League of Municipalities projecting additional increases

⁶ As legislated in 2007.

going forward of 9.5% and 12.7% respectively. The Township also notes the existence of 349 tax appeals, 300 of which were filed in 2009. It points out that any refunds for tax appeals beyond that which have been reserved for tax appeals must be paid from surplus funds. The Township anticipates \$460,000 in tax appeal refunds using the 2008 tax rate. The Township argues that when the costs of awarding the PBA's wage proposals are weighed against its revenues and other cost obligations, the interests and welfare of the public including the taxpayers of the Township would suffer.

The Township also contends that a comparison analysis supports its wage proposal over that of the Unions. Citing private sector wage studies, the Township points to contracts reached in the private sector through June 30, 2008 as reflecting median first year increases of 3.2% and second and third year increases averaging 3.3%. Notwithstanding this data, the Township draws attention to the impact that the recession has had on private sector wages and benefits which have resulted in wage freezes, cuts in employee bonuses and/or reduction in work hours with reductions in pay. Citing data with respect to state and local government bargaining, the Township notes a year end study in 2008 showing average increase of 3.2% during the preceding twelve month period and, as the recession evolved, declining negotiated increases in various jurisdictions, increased contributions towards health insurance premiums, layoffs and furloughs. The Township also points to more recently settled contracts providing wage increases in 2009 and 2010 of between 2.5% and 3.0% and in

particular, an agreement between the Township of Montclair and the FMBA that provided for a 1% increase in 2009, two 1.5% increases in 2010 and a 3.5% in 2011. That agreement also eliminated longevity for new hires. The Township accuses the PBA and SOA of relying on settlements and awards that were issued prior to the economic downturn. Such awards or settlements are claimed to not provide reliable guidance or precedent in this matter. The Township further contends that its police officers are already well compensated receiving a base salary exceeding the Monmouth County average by 2.73% in 2006.

The Township further claims that its proposal is in greater harmony with the results of negotiations within the Township. Its negotiations with Teamsters Local 701 produced results showing a 3.5% wage increase in 2008, well below what the PBA and SOA have proposed in that year. The Township notes that this increase was negotiated prior to the recession. It also points out that non-union employees received a 2.0% increase in 2009. The Township argues that the consumer price index (CPI) reflects the reasonableness of the Township's proposals compared to those of the Unions. On this point, it submits the following argument:

The consumer price index has been at its lowest level in years. See U.S. Department of Labor, Bureau of Labor Statistics, CPI-U from 1913 to the Present attached as Exhibit 11. According to the Labor Relations Reporter, statistics show that inflation slowed to its lowest rate in 54 years. The inflation rate for 2008 to 0.1% from 4.1% in 2007. In December 2008, the CPI declined 0.9%, on top of a 1.7% decline in November 2008. The 0.1% increase represented to smallest increase since 1954, when prices declined 0.7%. See T-5, Section 5. November 2008's 1.7% decline represented the

steepest drop in sixty years, dating back to February 1947. As one article dated January 20, 2009 observed, these statistics raise concerns about deflation, "a destructive loop in which falling prices slow economic growth, leading to lower wages, lost jobs and more stagnation." See T-5, Section 5.

Over the last fourteen years, since 1995, the Ocean PBA and SOA received increases that significantly exceeded the CPI. PBA percentage increases average 4.2% per year, while increases in the CPI average 2.62%. On average, PBA salaries increased 1.58% more per year than the CPI. PBA maximum salary in 1994 equaled \$49,419. If maximum salary increased at the rate of CPI since 1994, maximum patrol officer salary in 2007 would have been \$69,181, not \$84,764. The difference, \$15,582 represents the police officers increase in purchasing power from 1994 to 2007. Over the years, superior officers averaged slightly higher increases than the PBA. More specifically, SOA increases average 4.4% per year from 1995 through 2007. Lieutenant salary in 1994 equaled \$57,571. If lieutenant salary increased at the rate of CPI since 1994, lieutenant salary in 2007 would have been \$80,594 in 2007, instead of \$101,717. The difference, \$21,123, represents a lieutenant's increase in purchasing power from 1994 to 2007. The PBA/SOA's demand of 5.0% per year dramatically exceeds the increases in the CPI and fails to consider the current state of the economy.

In addition to the salary and health insurance issues, the Township has proposed several modifications to existing contract terms and benefits. One is to freeze the probationary salary at the 2007 level of \$28,000 over the life of the Agreement. The Township further also seeks to add two steps to the salary schedule for new hires. The Township seeks to modify the longevity benefits by deleting any reference to percentages to freeze the dollar scale longevity as it was on January 1, 2007. The Township would also institute a modified vacation schedule for new hires which would decrease the number of vacation days to a range of 10 to 23 days from the current schedule of 12 to 26 days. The personal days provisions would be modified to require personal days to be used only for

an entire shift and not on an hourly basis. The Township also proposes to add language expanding the definition of sick leave to allow officers having a newborn child to use sick leave for a limited period. The Township would add new language entitled "maternity leave" to clarify the obligations and responsibilities for both the Township and the police officer utilizing maternity leave. With the exception of the modifications to sick leave and the maternity leave language, the Township concludes that it would derive cost savings as a result of the modifications that would allow for more budget flexibility in the future.

DISCUSSION

The Township, the PBA and the SOA have submitted substantial documentary evidence, testimony and oral and written argument in support of their respective last offers. All submissions have been thoroughly reviewed and considered.

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

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration

proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

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

year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

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

In interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. When both parties propose a change on an identical issue, the proposed change must be evaluated in light of the evidence presented and as to why there should be a modification to the status quo. I have applied these principles to my analysis of the issues in dispute. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the manner in which an

individual issue is decided can reasonably impact upon the resolution of other issues. In other words, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be required after assessing the merits of any individual issue within the context of an overall award. These principles are in harmony with the statutory requirement that total net annual economic change be calculated with the obvious legislative intent that the overall economic impact of all terms of an award be consistent with making a reasonable determination of all issues.

The parties disagree on the length of the contract. The Township proposes a four year Agreement expiring on December 31, 2011 while the PBA and SOA propose a contract with a five year duration expiring on December 31, 2012. I find that the contract term proposed by the Township to be the more reasonable proposal based upon the record before me. The evidence shows that the Township has historically had fiscal stability but that, in the recent past, there have been fluctuations due to a slowing of revenues, state aid reductions and greater use of surplus. While there is no evidence of instability, I conclude that the parties, in the interests and welfare of the public, would be better served by the negotiations for the 2012 year being held under the facts and circumstances that are present at that time. Accordingly, I award a contract term commencing January 2, 2008 through December 31, 2011.

The issues in this dispute on which the parties have placed the greatest emphasis center on health insurance and salary. They are interrelated because these issues have the most financial implications on the Township and unit personnel.

I first address the health insurance issue. The Township's proposal does not reduce the level of health insurance benefits but instead would require contributions towards premium cost. The issue of employee contributions has arisen in a unique context. Employees in the PBA unit have not been subject to employee contributions in the past. At the same time, officers in the SOA unit, at least since 2008, were subject to a contractual provision requiring a 50% employee contribution towards dependent premiums for costs exceeding 1987 levels. That provision was to be effective on April 30, 1987 but no contributions were made due to applicable law that did not allow for co-payments unless the co-payment plan was uniform within the Township's units. For this reason, neither the PBA (who had no provision for cost sharing) nor the SOA made any contributions until January of 2008, at which time, due to a change in the law, the twenty-year-old provision for the SOA became operative. Thus, the SOA began to make contributions according to the aforementioned formula while PBA unit members continued to receive fully funded health insurance without a contribution. As negotiations for the new Agreements, to exceed the ones that expired on December 31, 2007, the Township has proposed consistent and uniform co-payments for health insurance premiums for both units commencing

at 3% of the cost of the premium in effect for the State Health Benefits Programs' least cost non-HMO plan, increasing to 6% in 2010 and eventually reaching 9% in 2011.

The proposal has greater impact on the PBA because PBA unit members made no contributions while in 2008, the SOA unit members began making substantial contributions. By way of example, under the Township's proposal, in 2009, contributions for the SOA unit would actually decrease from \$35,138 to \$8,569 while the PBA contributions would go from zero to \$29,008. The obvious reason for this is that the Township's 3% proposal would require less contributions from the SOA from the amount it was already making commencing 2008 while the PBA would begin to make contributions compared to not having made any contributions. The Township is looking for consistency in its approach for both of these units. The Township's proposal also allows for consistency with an agreement it made with Teamsters Local 701 whose members, pursuant to a March 19, 2008 Agreement, contribute towards health insurance premiums under the same terms and formula the Township proposes for the PBA and the SOA. The proposal also seeks consistency with the policy the Township implemented for its non-unionized workforce. Teamsters Local 177 does not contribute to health insurance premiums (except as now may be required by law) but has agreed to pay in the amounts required in the event that there are changes in the health insurance programs negotiated or awarded in the other bargaining units.

The PBA and the SOA have both urged that the Township's proposals be rejected. They note that the contract provision that the Township implemented on the SOA was over twenty years old without previously having been enforced. Due to the passage of time, the amount of contributions that the SOA had to assume in 2008 is said to be unreasonable. A major point the Union makes is that in the absence of having made contributions for such a long time, the immediate assumption of the burden in 2008 involved a sum of money that cannot be viewed as valid because there had been no negotiations on the issue for more than twenty years which potentially could have resulted in changes in the formula for contributions. The Unions claim the current contributions caused by the 1987 formula are now onerous because of the large increase in premiums over the course of the twenty years. The consistency sought by the PBA and the SOA is to have the SOA contributions removed so that both the PBA and the SOA could proceed with a health insurance plan fully funded by the Township without any contributions. The Unions' position is not persuasive due to record evidence showing the existence of premium sharing in a large number of law enforcement units, including in Monmouth County. Thus, even in the presence of legislation requiring public employees to contribute 1.5% of salary towards health insurance premiums effective May 21, 2010, there is a basis for the awarding of premium sharing because of internal and external comparability and the fact that the SOA is already making such a contribution. It is reasonable under the circumstances to require the PBA unit to begin making premiums despite its efforts to avoid making them in the absence of such legislation. Under the

Township's proposal, employees would pay 6% of the cost of the premiums in 2010 and 9% of the cost of the premiums in 2011 and there would be no linkage between the level of each officer's salary and the level of contribution because the contribution would be linked to the cost of the premium in effect at upon each effective date.⁷

Another objection of the Unions is that the premiums to be paid by the employees under the Township's proposal are not calculable. This is due to the fact that the premium levels going forward are not certain and, because of this, the basis upon which to calculate the cost of the percentage towards the premium is unknown. According to the Unions, this would not allow for calculations as to total net annual net economic change thus rendering an award on the Township's proposal that is unawardable. In support of this argument, the Unions cite In the Matter of Borough of Pompton Lakes and Pompton Lakes PBA Local No. 161, P.E.R.C. No. 2008-58, Docket No. IA-2007-055 (April 24, 2008).

I am persuaded, under all of the relevant circumstances, including the total overall financial relationship between this issue and the modifications to compensation that I have awarded below, that the Township's proposal is reasonable and should be awarded. The contribution levels are consistent with the levels that are being made by the Township's non-unionized employees, its unit of employees represented by Teamsters Local 701 and what the terms of the

⁷ This conclusion would not be accurate in the event that the co-pays towards the cost of premiums under the Township's proposal were to be less than 1.5% of salary because the legislation requires payments to be made at the minimum level of 1.5% of salary.

collective bargaining agreement between the Township and Teamsters Local 177 contemplates in Article XI of their collective bargaining agreement. These facts do not dictate the same formula being awarded for the PBA and SOA units, but there is a strong presumption, under the interests and welfare of the public and internal comparability criteria, that a consistent approach within the Township is a reasonable determination of the issue. It is also a fact that the lower salaries generally among the employees represented in the Township's other bargaining units will result in the PBA and SOA paying a lower percentage of their salaries towards health insurance given the fact that the contribution formula is linked to premiums rather than to salaries.

Co-payments towards health insurance premiums among Monmouth County municipalities is not uncommon. The awarding of employee contributions in this instance does not cause the Township of Ocean to be out of step within Monmouth County. The labor agreements in evidence reflect that approximately 50% of the municipalities have some formula requiring a contribution towards health insurance premiums. The structure of the contributions vary. Some require dollar contributions while others require percentage contributions. Notwithstanding the wide variety of co-pay structures, the recently enacted legislation provides for the common thread that the contributions must rise to the level of at least 1.5% of salary. Within the scope of all of these schemes, the Township's proposal is not unreasonable and is consistent with the internal policy within the Township. The record also contains evidence that is so substantial in

nature concerning employee contributions in the private sector, the federal sector and in public employment in general, that a conclusion must be reached that the Township's proposal falls within the scope of existing contribution levels on a state and national basis.

I am unable to credit the PBA/SOA argument that the Township's proposal is unavoidable due to the uncertainty of what the actual dollar amounts of contributions will be in future years. Such contributions, of course, are linked to the cost of the premiums. Under 2009 rates in evidence, NJ Direct #15 monthly rates ranged from \$469 for single coverage to \$1,173 for family coverage. Aon, the State's consulting firm, recommended rate increases of 20% for Direct 15 in 2010 and another increase of 12.2% in 2011. There is uncertainty in the precise figures going forward but there is no bar, under existing case law, to the award of premium sharing simply because the rate of premium increases subject to fluctuation.

Based upon all of the above, I award the Township's proposal with respect to health insurance contributions but with some modifications due mostly to the May 2010 legislation. I do not award any change in the PBA and SOA health insurance provisions through the commencement of the mandatory levels of contributions that were required by law as of May 21, 2010. Between May 21, 2010 and September 30, 2010, the contribution level for the PBA shall be consistent with the contribution level required by law and the SOA contribution

formula shall remain as is required by Article XVIII, Section 1. Effective October 1, 2010 the contribution levels for both the PBA and the SOA shall be consistent with the Township's proposal to require all employees to pay 6% of the cost of the premium in effect for the State Health Benefits Program's least cost non-HMO based upon each employee's scope of coverage. Effective January 1, 2011, the contribution levels for both the PBA and the SOA shall be consistent with the Township's proposal to require all employees to pay 9% of the cost of the premium in effect for the State Health Benefits Program's least cost non-HMO based upon each employee's scope of coverage.⁸

The Township has proposed to modify longevity benefits by deleting any reference to percentage and to freeze the dollar scale longevity as it was in place on January 1, 2007. The existing longevity programs (see Article XIV in the PBA Agreement and Article XI in the SOA Agreement) contain agreed upon language providing for the receipt of dollar amounts of longevity based on 1% of the maximum patrolman's salary beginning in the sixth year with 1% increased for each additional three years of service capped at 7% upon completion of 24 years. Based upon this formula, dollar amounts are received in the amounts (based upon 2007 salaries) ranging from \$848 upon completion of six years of service to \$5,933 based upon completion of 24 years of service. The PBA and SOA urge rejection of this proposal asserting that the Township has not submitted evidence supporting its proposal and that the flat dollar longevity plan, when compared with many other municipalities shown in the Township's exhibit

⁸ The Township has also proposed language that would extend premium co-payments in anticipation of future changes it might make in the insurance carrier for prescription coverage. Given the absence of any evidence covering the specifics of an anticipatory change, I decline to award this portion of the Township's proposal.

on longevity, reflects that Ocean Township's police officers rank below average on longevity within the towns listed in the Township's comparables. After review of the record on this issue, I conclude that the Township's proposal has not been supported by a sufficient level of credible evidence that would support changing the status quo set forth in the existing provisions contained in each collective negotiations agreement. For this reason, this proposal is not awarded.

The Township has also proposed that there be a reduction in the existing vacation schedules for new hires in both the PBA and SOA units. The modified vacation schedule would be limited to new hires. The existing Agreements have six tiers of vacation benefits. The first tier is from year 1 to 5 and the last tier is the 26th year and beyond. There is a schedule for employees hired before January 1, 1988 and one for employees hired after January 1, 1988. This latter schedule provides for a tier of benefits ranging between 12 days and 26 days, a range lower than the schedule for employees hired before January 1, 1988. The Township's proposal would reduce this range to between 10 days and 23 days. The PBA and SOA also urge rejection of this proposal asserting that the Township has not submitted evidence supporting its proposal. The Unions note that the Township has not shown that the existing vacation schedule for Ocean Township's police officers is unreasonable when compared to all relevant comparables or in need of revision for any other legitimate reason. After consideration of the Township's proposal and the record on this issue, I conclude

that the Township's proposal has not been justified. Accordingly, I do not award the Township's vacation proposal.

The Township has proposed to add language to Article XXI of the PBA and SOA Agreements to require that personal days be used only for an entire shift and not on an hourly basis. Currently, officers are entitled to two personal days per year. The Township acknowledges that the proposal will not result in cost savings but contends that it will facilitate bookkeeping. Notwithstanding the Township's contention that its proposal will facilitate bookkeeping, there is no evidence detailing how personal leave is currently being taken, whether departmental operations have been adversely affected by the use of personal leave, nor whether the Township has experienced difficulty in maintaining records on this issue. Accordingly, the proposal is not awarded.

The Township proposes two changes to Article XXII, Sick Leave. Its first proposal is to add language (1.a.iii.) stating that "In the event a male employee having a newborn child that employee is entitled to five consecutive days off taken as sick leave inclusive of any scheduled days off. Any additional time off shall be in accordance with paid time off provisions other than sick leave or FMLA." The language proposed would permit officers to use sick leave for a limited period of time after having a newborn child. The PBA has not offered an objection to this proposal and it is awarded.

The Township has also proposed to add new language providing for maternity leave. As proposed, the language states the following:

- A. Female Police Officers shall advise the Employer of a pregnancy. The right of a police officer shall include but not be limited to the following provisions.
 - 1. The female police officer shall be permitted to work her normal duties so long as such work is permitted by a doctor's note. The doctor shall be a physician of the female Police Officer's own choosing.
 - 2. In addition to the other provisions of this Article, the female Police Officer shall be permitted to use accumulated sick time, compensatory time off and any other accumulated time benefits which she may have during the time period of her pregnancy and the period following childbirth.
 - 3. Upon returning from maternity leave the officer shall be returned to work without loss of seniority or benefits.
- B. Both male and female Police Officers shall be permitted such time and such terms and conditions as are provided under the Federal Family Leave Act and the New Jersey Temporary Disability Benefits Law.

The Agreement currently does not provide a maternity leave provision. The proposal would clarify the obligations and responsibilities of the Township and the officer. The proposed language also recognizes the rights of both male and female police officers under the Federal Family Leave Act and the New Jersey Temporary Disability Benefits Law. For these reasons, the proposal is awarded.

I next turn to the salary issue. Salaries are set forth in Article XIII of the PBA Agreement and Article X of the SOA Agreement. The proposals are as follows:

<u>Year</u>	<u>Township</u>	<u>Unions</u>
2008	3%	5%
2009	2%	5%
2010	0%	5%
2011	1%	5%
2012	--	5%

In addition to these salary proposals, the Township proposes to freeze the probationary salary at the 2007 level of \$28,000 for the four-year contract term effective July 1, 2009. The Township also proposes to add two steps to the salary guide, effective July 1, 2009. Each salary provision also contains a section (Section 2 in the PBA Agreement and Section 4 in the SOA Agreement) providing for a Police Differential. The Differential provides for flat dollar amounts identical for each unit "In recognition of rotating schedules, weekend work, specialized duties including but not limited to detective assignments, crime prevention assignments, traffic assignments and other unique responsibilities." The existing differential is as follows:

2004 - \$1,253/year
2005 - \$1,442/year
2006 - \$1,637/year
2007 - \$1,841/year

The PBA and SOA propose that the Differentials be increased to the following levels during the respective years of the Agreement while the Township proposes that they remain unchanged at the 2007 levels.

2008 - \$2,000.00

2009 - \$2,200.00

2010 - \$2,400.00

2011 - \$2,600.00

2012 - \$2,800.00

My review of these proposals includes each party's presentations arguing, based upon record evidence, that the statutory criteria must be applied in a manner that supports each respective competing position. My review compels the conclusion that all of the criteria are relevant for my consideration, that some must be given greater weight than others and that no single criterion is controlling or dispositive when rendering a reasonable determination of the issues in dispute.

The interests and welfare of the public criterion is a substantial factor because it recognizes the public's need to maintain a productive and efficient police department of high morale in order to maintain the safety and security of Township property, the roadways, its citizens and their residences and the extensive commercial interests that reside in the Township. As the record shows, this responsibility is costly to the Township, resulting in a base pay payroll of \$4,709,591 in 2007. The costs of a four year labor agreement will require

additional costs as the parties both recognize as evidenced by their respective offers and their respective cost calculations. This factor also embraces the principle that the increased costs must be borne in a fashion that considers the Township's budgetary needs and the public's ability to meet the revenue impacts required to fund the labor agreement. Included within the public interest criterion includes the governing body's obligation to meet a spending cap on the appropriate side and a tax levy cap on the revenue side other criteria are implicated and interrelated.

The statute also requires that consideration be given to comparability with law enforcement units in jurisdictions that are reasonably comparable to the Township of Ocean, to other units who negotiate within the Township, to public employees in general and to those employed in the private sector. The comparability criteria are also implicated and interrelated with other criteria. The evaluation of the comparability evidence requires review of the overall compensation and benefit package in order to assess whether an award on a major economic proposal may fall in relation to contractual levels elsewhere. The continuity and stability of employment is implicated in the comparison analysis because it provides an ability to assess whether a proposed or awarded change to an existing term could reasonably affect employment levels in the Township or the Township's ability to hire and maintain a competent workforce. The cost of living data is relevant because it allows for review of the parties' positions in a broader context that includes consideration of state and national

economic trends. The record on these points is voluminous and cannot be fully summarized but the evidence and arguments offered have been reviewed and considered in their totality.

Starting with the final offers of the parties, I find that there is insufficient justification to award either proposal in its totality. The 5% increases sought by the PBA and SOA are well above the internal and external comparables offered by both parties, substantially above the CPI data and could potentially have adverse financial impact on the budget and the taxpayers. Even assuming that the costs of awarding the Unions' proposals, as calculated in detail by the Township, could be expended within the Township's legal limitations, the increases would constrain the Township's ability to accommodate its additional financial responsibilities in areas of the budget that extend beyond the police department. On the other hand, the Township's proposals are well below law enforcement comparisons, more consistent with internal comparisons (although the data on internal comparisons is more limited) and the CPI. But the Township has not shown, with respect to the financial criteria, that its financial abilities are incapable of absorbing some additional costs towards salaries in order to avoid a sharp erosion in relative compensation between the Township and comparable municipalities. The financial data also shows that the statutory limits of the budget and tax levy caps do not require an award confined to the Township's proposed increases.

The record shows that the cumulative differences in the parties' salary proposals affecting both units are \$86,313 in 2008, \$259,396 in 2009, \$550,467 in 2010 and \$818,765 in 2011. The cumulative effect of these differences results in a projected payroll difference of \$1,714,941 in 2011. These figures are based upon a gross payroll cost of \$4,709,591 at the end of 2007, reflecting the cost of 1% approximating \$47,095. They also include, for both parties, the costs of movement within the salary schedule for the PBA, a cost not present in the SOA calculations because superior officers occupy a single step or rate of pay.

A comparison of the salaries and salary schedules under the parties' respective proposals shows the substantial differences that appear in the annual salaries at each rank and step:

	2007	2008		2009		2010		2011	
SOA		Township	SOA	Township	SOA	Township	SOA	Township	SOA
Captain	\$110,193	\$113,499	\$115,703	\$115,769	\$121,488	\$115,769	\$127,562	\$116,927	\$133,940
Lieutenant	\$101,717	\$104,769	\$106,803	\$106,864	\$112,143	\$106,864	\$117,750	\$107,933	\$123,638
Sergeant	\$93,240	\$96,037	\$97,902	\$97,958	\$102,797	\$97,958	\$107,937	\$98,938	\$113,334
PBA			PBA		PBA		PBA		PBA
V – 61+ months	\$84,764	\$87,307	\$89,002	\$89,053	\$93,452	\$89,053	\$98,125	\$89,944	\$103,031
IV – 49-60 months	\$74,785	\$77,029	\$78,524	\$78,570	\$82,450	\$78,570	\$86,573	\$79,356	\$90,502
IV – 49-60 months before 11/04	\$74,969	\$77,218	\$78,717	\$78,762	\$82,653	\$78,762	\$86,786	\$79,550	\$81,125
III – 37-48 months	\$64,807	\$66,751	\$68,047	\$68,066	\$71,449	\$68,066	\$75,021	\$68,767	\$78,772
III – 37-48 months before 11/04	\$65,173	\$67,128	\$68,432	\$68,471	\$71,854	\$68,471	\$75,447	\$69,156	\$79,219
II – 25-36 months	\$54,828	\$56,473	\$57,569	\$57,602	\$60,447	\$57,602	\$63,469	\$58,178	\$66,542
I – 13-24 months	\$44,849	\$46,194	\$47,091	\$47,118	\$49,446	\$47,118	\$51,918	\$47,589	\$54,514
Prob B – 7-12 months	\$34,871	\$35,917	\$36,615	\$36,635	\$38,446	\$36,635	\$40,368	\$37,001	\$42,386
Prob A – 0-6 months	\$28,000	\$29,417	\$29,400	\$29,417	\$30,870	\$29,417	\$32,414	\$29,711	\$34,035

In contrast to the sharp differences reflected above, after thorough review of the record and after applying the statutory criteria, I have reached a reasonable determination of the salary issue that substantially narrows the cost differences of the parties that are outlined above. Under the terms of the Award, the salary schedules will increase by 3.0% in 2008, 2.75% in 2009, 2.5% in 2010 and 2.25% in 2011.

Under the terms of the award, the salaries at each rank and at each step of the salary schedule in comparison to the Township's offer are reflected as follows:

	2007	2008		2009		2010		2011	
SOA		Township	Award	Township	Award	Township	Award	Township	Award
Captain	\$110,193	\$113,499	\$113,499	\$115,769	\$116,620	\$115,769	\$119,535	\$116,927	\$122,225
Lieutenant	\$101,717	\$104,769	\$104,769	\$106,864	\$107,650	\$106,864	\$110,341	\$107,933	\$112,823
Sergeant	\$93,240	\$96,037	\$96,037	\$97,958	\$98,678	\$97,958	\$101,144	\$98,938	\$103,419
PBA		Township	Award	Township	Award	Township	Award	Township	Award
V – 61+ months	\$84,764	\$87,307	\$87,307	\$89,053	\$89,708	\$89,053	\$91,951	\$89,944	94,020
IV – 49-60 months	\$74,785	\$77,029	\$77,029	\$78,570	\$79,147	\$78,570	\$81,126	\$79,356	82,951
IV – 49-60 months before 11/04	\$74,969	\$77,218	\$77,218	\$78,762	\$79,342	\$78,762	\$81,325	\$79,550	83,155
III – 37-48 months	\$64,807	\$66,751	\$66,751	\$68,066	\$68,587	\$68,066	\$70,302	\$68,767	71,883
III – 37-48 months before 11/04	\$65,173	\$67,128	\$67,128	\$68,471	\$68,974	\$68,471	\$70,699	\$69,156	72,290
II – 25-36 months	\$54,828	\$56,473	\$56,473	\$57,602	\$58,026	\$57,602	\$59,477	\$58,178	60,815
I – 13-24 months	\$44,849	\$46,194	\$46,194	\$47,118	\$47,465	\$47,118	\$48,651	\$47,589	49,745
Prob B – 7-12 months	\$34,871	\$35,917	\$35,917	\$36,635	\$36,905	\$36,635	\$37,827	\$37,001	38,678
Prob A – 0-6 months	\$28,000	\$29,417	\$28,840	\$29,417	\$29,633	\$29,417	\$30,374	\$29,711	31,057

I have calculated the cost differences between the Township's proposal and the terms of the award. They are, on a cumulative basis, zero for all ranks and steps in 2008 due to the Award's acceptance of the Township's 3% proposal for 2008. For the rank of Captain, the difference is \$1,702 in 2009, \$7,532 in 2010 and \$10,598 in 2011. For the rank of Lieutenant, the difference is \$3,930 in 2009, \$17,385 in 2010 and \$24,455 in 2011. For the rank of Sergeant, the difference is \$7,200 in 2009, \$31,860 in 2010 and \$44,820 in 2011. For police officers the difference is approximately \$32,000 in 2009, \$135,000 in 2010 and \$175,000 in 2011.⁸

If the evidence on external comparability were to be dispositive of the salary terms, greater costs would be yielded. But this evidence must be balanced by several other relevant factors. One is the cost of living data (CPI) reflecting downward trends over the length of the contract. This influences the terms of the Award but the CPI data, as well as the external comparability data, cannot be the definitive factor. Another consideration is that relevant economic indicators show rising unemployment, increases in tax appeals, declines in the cost of living, and declines in the awards and settlements achieved in 2010⁹ for contract year 2010, and decreases in the Township's surplus and state aid. The record shows that the Township has consistently regenerated a large surplus but

⁸ The calculation of costs for police officers cannot be as precise because of the potential for turnover and changes in step guide movement.

⁹ I take official notice of the PERC Salary Increase Analysis through June 30, 2010 showing awards at 2.43% and settlements at 2.8%.

that declines have occurred since 2008. State aid has also declined from 2007 levels. In addition, the Township has had to absorb sharp increases in pension contributions from 2008 and 2009 and increases in health insurance premiums. These, among other indicators, weigh against the PBA/SOA proposals that rely heavily on external comparability. These economic indicia support declining increases over the term of the contract.

Internally, the Township has negotiated a 2008 increase of 3.5% for one Teamsters unit and it has not provided a wage increase in 2009 for non-union employees. These limited facts also weigh against the PBA/SOA proposals but do not dictate the adoption of the four year proposal of the Township because, in the absence of record evidence requiring the adoption of its proposed wage freeze and 1% increases, little or no meaning had been given by the Township to evidence on law enforcement comparisons and its proposal would cause the relative compensation of the Township's police officers to erode over the contract duration 2008 through 2011. A comparison of the overall compensation and benefit levels for the PBA/SOA does not reflect a need to remedy or correct existing levels of compensation by sharply diminishing these relative compensation levels. The costs of the Award will also be eased by the health insurance contributions required by all employees in both units. In short, the terms of the award must reflect a reasonable balance between the public interest criterion (inclusive of financial impact and statutory limitations), external and internal comparisons and the financial impact on the Township. The evidence

concerning the Township's finances support my conclusion that the terms of the Award can be funded without adverse financial impact on the governing body, its residents and taxpayers. The budget, despite recent developments such as a decline in state aid and tax appeal increases that could impact upon revenues, remains in good health as evidenced by the Township's continued ability to regenerate surplus, realize revenues beyond what the Township has anticipated, to maintain a high ratable base, low debt service and strong reserve balances in the police salary and wage appropriations. Moreover, the awarded terms will not cause the Township to exceed its spending or taxing levy caps. The continuity and stability of employment will be maintained by reasonable increases that will raise top step police officer pay from \$84,764 to \$94,020 over the term of the Agreement.

I do not award the Township's proposal to freeze the salary levels for probationary police officers. This would require the continuation of starting salaries at \$28,000 without any further increase through 2011. A comparison of starting salaries shows that the existing salary of \$28,000 does not rank high within the County which might otherwise dictate the freezing of starting pay as proposed by the Township. Further, the awarding of the proposed freeze, in conjunction with the health insurance co-pay would cause starting pay levels to deteriorate and potentially undermine the Township's ability to hire competent officers. Accordingly, the Township's proposal is not awarded.

The Township has also proposed the addition of two (2) salary steps for new hires. The Township relies on comparables asserting that the existing structure of the salary schedule causes more rapid movement towards maximum pay than most others. The evidence on this point is mixed but the increase in salaries over this four year term does support a lengthening of the time required to reach top step pay. The award of one (1) additional step for new hires is reasonable and is awarded effective upon issuance of this Award. This will require the top step pay to be reached at 73 months and the salary steps between 13 and 24 months to be set in equidistant amounts.

As a final issue, I consider the PBA/SOA proposal to increase the Police Differential. This proposal would increase the amount presently being received by \$159 in 2008, an additional \$200 in 2009, an additional \$200 in 2010 and by an additional \$200 in 2011 for a total increase of \$759 over the course of the Agreement. This represents a similar level of increases achieved in the last agreement between 2004 and 2007. The record does show that the parties have historically agreed to an annual increase in these amounts. Under present circumstances, the costs of doing so at the past levels of increase cannot be justified due to the cost impacts that would occur over and above the across-the-board increases. However, a modest increase in the Police Differential, consistent with what the parties' have done in prior agreements, can be awarded within the Township's financial abilities at an additional \$50 per contract year. The cost of this portion of the award would be \$3,100 in 2008 and an additional

\$3,100 in each succeeding year with a cumulative impact of \$12,400 or 0.02% over the life of the Agreement.

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

AWARD

1. All proposals by the Township and the Unions not awarded herein are denied and dismissed. All provisions of the existing agreements shall be carried forward except for those which have been modified by the terms of this Award or by mutual agreement of the parties.

2. **Duration**

There shall be a four-year agreement effective January 1, 2008 through December 31, 2011.

3. **Article XXV – Health Insurance** (PBA & SOA)

Between May 21, 2010 and September 30, 2010, the contribution level for the PBA shall be, consistent with the contribution level required by law and the SOA contribution formula shall remain as is required by Article XVIII, Section 1. Effective October 1, 2010 the contribution levels for both the PBA and the SOA shall be consistent with the Township's proposal to require all employees to pay 6% of the cost of the premium in effect for the State Health Benefits Program's least cost non-HMO based upon each employee's scope of coverage. Effective January 1, 2011, the contribution levels for both the PBA and the SOA shall be consistent with the Township's proposal to require all employees to pay 9% of the cost of the premium in effect for the State Health Benefits Program's least cost non-HMO based upon each employee's scope of coverage.

In the event that any employee's contribution, based upon the percentage cost of premiums, is less than the 1.5% of salary that the statute requires, the contribution shall be adjusted to the statutory requirement. The payments towards the cost of premiums shall be inclusive of, and not in addition to, any payments that are required by law.

4. **Article XXII, Sick Leave** (PBA & SOA)

Effective as of the date of this Award:

In the event a male employee having a newborn child, that employee is entitled to five consecutive days off taken as sick leave inclusive of any scheduled days off. Any additional time off shall be in accordance with paid time off provisions other than sick leave or FMLA.

Section 5 – Maternity Leave (PBA & SOA)

- A. Female Police Officers shall advise the Employer of a pregnancy. The right of a police officer shall include but not be limited to the following provisions.
1. The female police officer shall be permitted to work her normal duties so long as such work is permitted by a doctor's note. The doctor shall be a physician of the female Police Officer's own choosing.
 2. In addition to the other provisions of this Article, the female Police Officer shall be permitted to use accumulated sick time, compensatory time off and any other accumulated time benefits which she may have during the time period of her pregnancy and the period following childbirth.
 3. Upon returning from maternity leave the officer shall be returned to work without loss of seniority or benefits.
- B. Both male and female Police Officers shall be permitted such time and such terms and conditions as are provided under the Federal Family Leave Act and the New Jersey Temporary Disability Benefits Law.

5. Salary

Retroactive to each effective date, each step of the salary schedule shall be increased by 3.0% effective January 1, 2008, 2.75% effective January 1, 2009, 2.5% effective January 1, 2010 and 2.25% effective January 1, 2011. The schedule shall read as follows:

SOA	2008	2009	2010	2011
Captain	\$113,499	\$116,620	\$119,535	\$122,225
Lieutenant	\$104,769	\$107,650	\$110,341	\$112,823
Sergeant	\$96,037	\$98,678	\$101,144	\$103,419
PBA				
V – 61+ months	\$87,307	\$89,708	\$91,951	94,020
IV – 49-60 months	\$77,029	\$79,147	\$81,126	82,951
IV – 49-60 months before 11/04	\$77,218	\$79,342	\$81,325	83,155
III – 37-48 months	\$66,751	\$68,587	\$70,302	71,883

III – 37-48 months before 11/04	\$67,128	\$68,974	\$70,699	72,290
II – 25-36 months	\$56,473	\$58,026	\$59,477	60,815
I – 13-24 months	\$46,194	\$47,465	\$48,651	49,745
Prob B – 7-12 months	\$35,917	\$36,905	\$37,827	38,678
Prob A – 0-6 months	\$28,840	\$29,633	\$30,374	31,057

Effective with the date of the Award, an additional step shall be added to the salary schedule. The Probationary A & B steps, the 13-24 month step and the top step shall read consistent with the above salary schedule. The steps in between shall be set in equidistant dollar amounts.

6. **Police Differential**

Retroactive to the effective dates, the Police Differential for both the PBA and SOA shall read as follows:

2008 - \$1,891
2009 - \$1,941
2010 - \$1,991
2011 - \$2,041

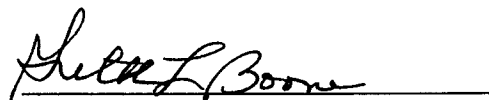
Dated: August 30, 2010
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 30th day of August, 2010, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2014