

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

BOROUGH OF BLOOMINGDALE

“Public Employer,”

- and -

PBA LOCAL 354

“PBA.”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2011-045

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Borough:

David J. Gittines, Esq.

Mark J. Semeraro, Esq.

McManimon & Scotland, LLC

For the PBA:

Richard D. Loccke, Esq.

Loccke, Correia, Schlager,

Linsky & Bukosky

A petition to initiate interest arbitration was filed by PBA Local 354 [the "PBA"] on February 16, 2011 after declaration of impasse in negotiations between the PBA and the Borough of Bloomingdale [the "Borough"]. Thereafter, on February 23, 2011, I was appointed to serve as interest arbitrator by random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This law requires that an award be issued by 45 days after appointment with no provision for a mutually agreed upon extension. The law also subjects an interest arbitrator to a \$1,000 per day fine for each day an award does not issue after the 45th day from the date of appointment.¹

On February 23, 2011, by letter, I scheduled an interest arbitration hearing on March 16, 2011. In accordance with N.J.S.A. 34:13A-16(f)(1), each party was directed to submit a final offer no later than March 7, 2011. Upon request of the Borough, that date was extended to March 14, 2011. Each final offer was received by close of business March 14, 2011.

At the March 16, 2011 hearing, the Borough and the PBA argued orally, submitted substantial documentary evidence and examined and cross-examined witnesses. Testimony was received from Sergeant Steven Caputo and the Borough's Chief Financial Auditor, Dieter P. Lerch, CPA, RMA, PSA (Lerch, Vinci and Higgins, LLP). A transcript of the proceeding was taken but, because of the statutory time limits, was not available prior to the issue of this Award. In accordance with the February 23, 2011 letter to the parties, post-hearing briefs

¹ In this matter, the Award was executed on April 11, 2011 since the 45th day fell on the weekend before.

were to be submitted by March 23, 2011. They were received on March 24, 2011 after a one day extension was granted at the request of the Borough. The Borough filed a response to the PBA's brief on March 29, 2011 and the PBA, on April 6, 2011, sought to strike the response in the absence of an agreement to file responses. I have accepted the Borough's response.

At the March 16, 2011 hearing, the PBA filed a motion to limit the issues set forth in the Borough's final offer because it had not filed a response to its petition. The Borough objected to the motion and sought its dismissal. The PBA's motion was based upon Section 3 of P.L. 1977, c. 85 as amended by P.L. 2010, c. 105. This Section includes language requiring a non-petitioning party to notify PERC of all issues in dispute within five (5) days of receipt of the petition. This new statutory language parallels a pre-existing rule, N.J.A.C. 19:16-5.5(a) and (b). That rule provided for the similar filing of a response within seven (7) days of receipt of a petition. I applied the new statutory language to the circumstances of this case and sustained the PBA's motion with respect to the Borough's health insurance proposal. In doing so, I noted the new statutory language requiring a response within five (5) days of receipt of the petition also states that "the filing of the written response shall not delay, in any manner, the interest arbitration process." I issued a written decision reflecting this ruling to the parties on March 17, 2011. It is attached to this Award. The Borough filed a Motion for Reconsideration of that decision on March 23, 2011. On March 25, 2011, I declined to reconsider the decision to exclude the Borough's proposal.

At the March 16, 2011 hearing, the Borough also voiced objection to the PERC interpretation that the statutory language, N.J.S.A. 34:13A-16.7(a) and (b), that includes a 2% cap on base salaries (as defined by the new law) as the cap on the amount of increase that an arbitrator can award, does not apply to this proceeding. The Borough's reference was to N.J.S.A. 34:13A-16.9² which provides an effective date for the implementation of certain provisions in the new law. More specifically, the Borough questioned whether a contract with an expiration date of December 31, 2010 effectively expires on January 1, 2011. In the Borough's view, the January 1, 2011 date is the actual date that this agreement expires because the Agreement states that it is effective up to and including December 31, 2010. I denied the Borough's objection on the basis that the effective date of when the cap on the amount of increase that an arbitrator can award under the new law had been determined by PERC and therefore, was beyond my jurisdiction and authority under this appointment. The Borough filed a Special Permission to Appeal this decision on March 24, 2011 and this motion was denied by PERC on March 31, 2011. [See P.E.R.C. No. 2011-70].

The final offers considered in this proceeding reflect the following:

² N.J. Stat § 34:13A-16.9 (2011), Effective date

This act shall take effect January 1, 2011; provided however, section 2 [C.34:13A-6.7] shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to a negotiated agreement expiring on that effective date or any date thereafter until April 1, 2014, whereupon the provisions of section 2 shall become inoperative for all parties except those whose collective negotiations agreements expired prior to April 1, 2014 but for whom a final settlement has not been reached. When final settlement between the parties in all such negotiations is reached, the provisions of section 2 of this act shall expire. In the case of a party that entered into a contract that expires on the effective date of this act or any date thereafter until April 1, 2014, and where the terms of that contract otherwise meet the criteria set forth in section 2 of this act, that party shall not be subject to the provisions of section 2 when negotiating a future contract.

The PBA

1. Duration

The PBA proposes a four (4) year agreement, effective January 1, 2011 through December 31, 2014.

2. Wages

The PBA proposes salary increases of 3.5% at each step and rank shall of the salary schedule, effective January 1 of each year of the new Agreement:

The Borough

1. Compensation

A. Salary

1. For employees hired before January 1, 2011:

Schedule A Hired Before 12/31/2010

	Existing Base Pay 7/1/10	1/1/2011 0%	1/1/2012 1%	1/1/2013 1%
Rank				
Academy	\$38,387	\$38,387	\$38,771	\$39,159
<u>Patrolmen</u>				
Post-Academy	44,850	44,850	45,229	45,752
1 st Year	53,791	53,791	54,329	54,872
2 nd Year	56,268	56,268	56,831	57,399
3 rd Year	61,712	61,712	62,329	62,952
4 th Year	67,691	67,691	68,368	69,052
5 th Year	74,261	74,261	75,004	75,754
6 th Year	81,482	81,482	82,297	83,120
7 th Year	89,482	89,482	90,377	91,281
8 th Year (Max)	98,134	98,134	99,115	100,106
Sergeant	104,081	104,081	105,112	106,173
Lieutenant	110,259	110,259	111,362	112,476
Captain	116,809	116,809	117,977	119,157

2. Employees hired after January 1, 2011:

Schedule B Hired After 1/1/2011				
Rank	Existing Base Pay 7/1/10	1/1/2011 New	1/1/2012 1%	1/1/2013 1%
Academy <u>Patrolmen</u>	\$38,387	\$35,000	\$35,350	\$35,704
Post-Academy	44,850	40,000	40,400	40,804
1 st Year	53,791	45,000	45,450	45,905
2 nd Year	56,268	50,000	50,500	51,005
3 rd Year	61,712	55,500	56,055	56,616
4 th Year	67,691	61,605	62,221	62,843
5 th Year	74,261	68,382	69,065	69,756
6 th Year	81,482	77,271	78,044	78,824
7 th Year	89,482	87,316	88,190	89,071
8 th Year (Max)	98,134	98,134	99,115	100,106
Sergeant	104,081	104,081	105,112	106,173
Lieutenant	110,259	110,259	111,362	112,476
Captain	116,809	116,809	117,977	119,157

3. Both schedules hold flat for a 0% increase for calendar year 2011 and have 1% increases for both calendar years 2012 and 2013.

B. Longevity

1. No longevity for new hires after January 1, 2011.
2. Longevity frozen without any increases through the term of the new Collective Bargaining Agreement for all current employees.

C. Vacation Days/Comp Days/Sick Days/Personal Days all must be adjusted to accommodate the Pitman Schedule.

2. **Term.**

The contract term shall be 3 years. January 1, 2011 through December 1, 2013.

BACKGROUND

The Borough is located in Passaic County. It has a total area of 9.2 square miles and a population of approximately 7,610 residents. PBA Local 354 represents all sworn members of the police department excluding the Chief of Police and Special Police. At time of hearing, there were fifteen (15) employees in the bargaining unit, including one (1) Captain, six (6) Sergeants and eight (8) police officers. The eight (8) police officers include four (4) who are at the eight-year top step of the salary schedule, two (2) who are in the fifth year, one (1) in the third year and one (1) in the second year. The existing staffing level represents a decrease from recent prior years when the staffing level consisted of seventeen employees excluding the Chief due to the retirement of one police officer on December 31, 2009 and another on December 31, 2010.

The prior Agreement between the parties commenced on January 1, 2006 and expired on December 31, 2010. During calendar year 2010, that Agreement provided for two salary increases. The first increase was to be effective January 1, 2010 and the second was to be effective on July 1, 2010. During the hearing, testimony was received concerning a mutual agreement the parties that the parties had made that deferred the January 1, 2010 increase to July 1, 2010 and deferred the July 1, 2010 increase until December 10, 2010. The PBA objected to this testimony based upon an alleged understanding between the parties that the deferral would not be considered to be a factor that would impact on future negotiations. I accepted this testimony based mainly upon the fact that the

Borough's cost calculations for the new contract made reference to the deferral and included calculations of what the deferred increases would cost the Borough in 2011 and beyond based upon the flow-through costs of having the 2010 salary increases deferred into the 2011 budget year. Due to the requirement that these calculations be reviewed, I ruled that this testimony and the documents reflecting budgetary impact are admissible in this proceeding.

The parties have submitted substantial evidence in support of their respective positions. I summarize their submissions here while noting that all have been reviewed and considered including those which may not appear in this summary.

The PBA presents evidence and arguments in support of its 3.5% salary proposal. It contends that the interests and welfare of the public are well served by the police department as shown by the increased productivity of staff despite declining levels of manpower. The PBA notes that one police officer retired in 2009 and another in 2010, thus reducing the number of sworn personnel (excluding the Chief) from seventeen (17) to fifteen (15). The PBA also points out that police officers in Bloomingdale work a chart producing 2,080 annual hours of work compared to other municipalities such as Ringwood whose chart generates 1,946 hours of work. Referring to Annual Bloomingdale Police Department Statistical Reports from 2006 to 2010, the PBA submits a chart

showing increases in police activity during the term (2006 to 2010) of the last labor agreement:

Increase in Police Activity During Term of Last Contract

Reporting Category	Change 2006 to 2010
Calls for Service	+25.3%
Suspicious Incident	+12.4%
Domestic Dispute	+1-.7%
Criminal Mischief	+5.1%
Domestic Violence 2C:33-4	+25%
Harassment 2C:33-4	+28%
Identify Theft	+37.5%
CDS Arrests	+25%
DWI Arrests	+17.6%

The PBA also points to the increase in the number of summonses issued as evidence of increased productivity:

2007 – 4,363

2008 – 4,873

2009 – 5,052

2010 – 5,550

The PBA notes that over one-half million dollars in court revenue in 2010 has been derived from fines attributable to police work. It claims no share of this revenue but observes that it is evidence of productivity and effectiveness in support of the public safety.

Turning to comparisons, the PBA submits evidence relating to law enforcement comparability in municipalities it deems comparable and evidence relating to labor agreements that the Borough has negotiated with its other

employee groups. The PBA views external comparability as encompassing Passaic County municipalities such as Wayne, Riverdale, Ringwood, West Milford and Little Falls, western Bergen County municipalities such as Oakland and eastern Morris County municipalities such as Boonton Township and Butler. The PBA submits a chart supporting its claim that base pay rate in Bloomingdale is below average:

**Base Wage (Top Step) Comparisons
Based on Contracts In Evidence**

	2010 Base (Top Step)
Hawthorne	\$100,774
Oakland	\$109,227
Pompton Lakes	\$101,938
Lincoln Park	\$108,639
Ringwood	\$106,244
Mahwah	\$121,638
Riverdale	\$91,270
Passaic	\$91,717
Wayne	\$118,232
West Milford	\$98,744
Woodland Park	\$95,495
Pequannock	\$98,224
Wanaque	\$91,496
Butler	\$92,703
Little Falls	\$93,050
Average Top Base	\$101,293
Bloomingdale Top Step	\$98,134
Bloomingdale Compared to Average	(\$3,159) (3.21%)

In support of its proposal for annual increases of 3.5%, the PBA submits a comparison of negotiated increases in various municipalities that it deems comparable during the contract years at issue:

**Comparison of Base Rate Changes
Based on Contracts In Evidence**

	2011	2012	2013	2014
Ringwood	3.25			
Lincoln Park	4	4		
Paramus	4			
Riverdale	3	11.7		
West Milford	4			
Woodland Park	3	3	3	3
Pompton Lakes		2	2	
Boonton Township	3.75			
Butler	1.75	1.75	2	
Pequannock	4	4		
Wanaque	3.3	3.8	3.8	3.8
Little Falls	3	3		
Averages	3.368%	4.156%	2.7%	3.4%

The PBA further contends that the Borough's offer is inconsistent with the labor agreements that it has entered into with its other employee organizations. One such agreement is between the Borough and the Communications Workers of America, AFL-CIO, Local 1032 (White Collar Unit) that includes the following increases:

2007 – 3%
2008 – 3%
2009 – 4% (2% in January and 2% in July)
2010 – 4% (2% in January and 2% in July)
2011 – 6% (3% in January and 3% in July)
2012 – 6% (3% in January and 3% in July)

Another agreement is between Borough and the Communications Workers of America, AFL-CIO, Local 1032 (Blue Collar Unit) that includes the following increases:

2011 – 3% (2% in January and 1% in July)
2012 – 3% (2% in January and 1% in July)
2013 – 3% (2% in January and 1% in July)
2014 – 3% (2% in January and 1% in July)
2015 – 3% (2% in January and 1% in July)

In addition to the above, the PBA submits a contract between the Borough and its Administrator that contains annual increases of 3% between 2010 and 2015. The PBA further notes that none of the employees affected by the above increases are paying 1.5% of base salary for medical insurance as are the police officers and none of the employees were subject to a reduction in their longevity benefits in contrast to the Borough's proposal seeking to freeze longevity for existing employees and to eliminate this benefit for new hires.

The PBA seeks that little weight be given to the Borough's submissions regarding private sector wages and rate changes asserting that such data is of small value due to the many distinctions and differentiations between police officers and private employees. Among these include different standards under

the Federal Fair Labor Standards Act, statutory provisions and rules and regulations governing police personnel, State of New Jersey residency requirements, age maximums, the inherent dangers in law enforcement work and the requirement that police officers act as law enforcement officers at all times of the day, whether on duty or not. On this latter point, the PBA cites N.J.S.A. 40A:14-152.1 which states that police officers "have full power of arrest for any crime committed in said Officer's presence and committed anywhere within the territorial limits of the State of New Jersey." For these and other reasons not cited herein, the PBA argues that the best field of comparison is with other law enforcement employees.

In regard to finances, the PBA contends that its salary proposal of 3.5% annually, if awarded, would have no negative impact on the governing body, its residents and taxpayers nor would it contravene the Borough's statutory obligations under the appropriate spending and tax levy caps. The PBA submits calculations as to the cost of its salary proposal. It calculates the cost of 1% to be \$15,263. It arrives at this figure based upon the following calculation:

Bargaining Unit Base Rate Cost

(A) Rank	(B) Census	(C) Base Per (J-1)	(D) Col. (B) x Col. (C)
Captain	1	\$116,809	\$116,809
Lieutenant	0	\$110,259	--
Sergeant	6	\$104,081	\$624,486
Patrolman	8	\$98,134	\$785,072
Total	15		\$1,526,367
			1% = \$15,263

For the purposes of this calculation, the PBA assumes all eight (8) patrolmen to be at top step of the salary schedule.

In calculating the annual cost of its proposal, the PBA subtracts the 1.5% that bargaining unit members contribute towards health insurance as a result of legislation and asserts that the net impact of its proposal lessens to 2%. It then goes on to calculate the costs for each year of the contract at 2% annually, yielding the following amounts:

2011 - \$30,526

2012 - \$31,136

2013 - \$31,759

2014 - \$32,394

The PBA emphasizes that the salary and wages line for the cost of funding police officer salaries has been substantially reduced due to the retirement of a patrol officer effective December 31, 2010, the last day of the last agreement. The PBA calculates the annualized cost of this police officer, including compensation and benefits, as approximately \$125,000. Based upon this, the PBA argues that:

The single personnel transaction of a non-replaced retiree pays for the entire Last offer Position of the PBA and effectively pays for the entire term of a four (4) year contract. There is no cost to the Borough here. The Borough is saving by not replacing Officer DePascale and having remaining officers pick up the slack and perform increased work with decreased workforce of sworn officers. The Borough is also receiving the windfall benefit of 1.5% from the passage of the so-called "medical payment" obligation of these Officers. There is no cost of the PBA position here.

In addition to the cost savings to the Borough by the recent reduction in staffing caused by the retirement of two police officers, the PBA asserts that the budgetary posture of the Borough is far stronger than the Borough argues. In support of this view, the PBA points to the Borough's bond rating of "Aaa," its low Net Debt of Equalized Valuation Basis of .92% (compared to the legal debt limit of 3.5%) and the tax collection percentage that has exceeded 99% during the last five years. It points out that the municipal portion of the total tax levy is only 26%.

Because at time of hearing there was no 2011 budget, the PBA refers to the 2010 budget for the purpose of reviewing the budget in relation to the appropriation and tax levy caps. The PBA points out that the actual amount appropriated for municipal purposes subject to the appropriations cap in 2010 was \$6,349,225, although the total amount of allowable appropriations by law was \$7,035,363. In addition to being well under the 2010 appropriation cap, the PBA points to the amount to be raised by taxation as \$6,899,400, a figure that is below the maximum allowable amount to be raised by taxation pursuant to the tax levy cap which was \$6,909,017. The PBA acknowledges the testimony of the Borough's budgetary expert, Deiter Lerch, but emphasizes that at the time of hearing, there was no 2011 municipal budget had been introduced and there was no certification as to any calculation under the tax levy cap. The PBA stresses that Lerch acknowledged that his projections as to what these documents would

be had not been finalized and were subject to changes and adjustments by the governing body that could alter the projections that he made during his testimony.

Based upon all of the above, the PBA contends that it has met its burden to prove that its wage proposal is reasonable, supported by the statutory criteria and should be awarded in this proceeding. In contrast, it claims that the Borough has not met its burden for its wage proposal and that the other changes the Borough has sought must be dismissed based upon the absence of sufficient evidence to support them.

The Borough commences its argument by asserting that the PBA's salary proposal should be denied because it did not present evidence justifying its final offer as reasonable, provide any financial certification justifying the requested salary increases with the current economic crisis and failed to address the Borough's shortfall in revenue, its reduced State Aid, or its depleted surplus. The Borough views its proposal as being more reasonable due to the 2.0% hard tax cap levy in 2011, the fiscal/economic crisis of the State of New Jersey, increases to medical benefits and pension contributions on behalf of its police officers, decreases in State Aid and the lack of a surplus to rely upon.

The Borough submits that if law enforcement comparability is to be weighed, the Passaic County municipalities of Little Falls, Pompton Lakes,

Wanaque and Ringwood are more comparable to Bloomingdale as well as the Morris County municipality of Butler which shares a border with Bloomingdale. The Borough submits that its population of 7,610 residents is more in line with the average populations of its comparison municipalities which is 8,435. It reaches this same conclusion with respect to average household income and the size of its police force. In contrast, the Borough submits that the PBA's use of the municipalities of Hawthorne, Lincoln Park, Oakland, Passaic, Riverdale, West Milford and Wayne yield averages in all of these categories which are not comparable to Bloomingdale. The Borough observes that its maximum salaries are at or above the average for all of the municipalities it deems comparable according to the following chart:³

Patrol Officer Maximum Step Salaries

Town	2011	2012	2013
Bloomingdale	98,134	99,115	100,106
Butler	94,325	95,976	97,895
Little Falls	91,550	94,297	97,126
Pompton Lakes	103,977	106,057	108,178
Ringwood	109,697	N/A	N/A
Wanaque	94,515	98,107	101,835
Average	98,699	98,710	101,028

The Borough further notes that certain benefits (holidays, vacation, call in time, court time minimum and bereavement) enjoyed by the Bloomingdale police

³ The chart is based upon acceptance of the Borough's final offer. I have revised the 2013 salary level in Bloomingdale as well as the 2013 average due to a typographical error in the Borough's chart which showed the Bloomingdale top step at \$101,106 rather than the \$100,106. This latter figure is the accurate figure which would be caused by a 1% increase in top step pay between 2012 and 2013.

officers exceed the average in the municipalities it claims to be more comparable as shown by the following charts:

Paid Holidays

Town	Holidays
Bloomingtondale	13
Butler	15
Little Falls	13
Pompton Lakes	14
Wanaque	12.5
Average	13.5

Vacation

Town	5 Years	10 Years	15 Years	20 Years
Bloomingtondale	15 days	20 days	25 days	28 days
Butler	12 days	12 days	15 days	15 days
Little Falls	14 days	21 days	25 days	34 days
Pompton Lakes	15 days	18 days	20 days	21 days
Ringwood	15 days	22 days	25 days	25 days
Wanaque	15 days	20 days	25 days	30 days
Average	14.34 days	18.84 days	22.5 days	25.5 days

Cal In Time Minimum

Town	Call In
Bloomingtondale	3 hours
Butler	3 hours
Little Falls	0 hours
Pompton Lakes	2 hours
Ringwood	4 hours
Wanaque	2 hours
Average	2 hours

Court Time Minimum

Town	Court Time
Bloomingtondale	3 hours
Butler	2 hours
Little Falls	0 hours
Pompton Lakes	2 hours
Ringwood	2 hours
Wanaque	1 hour
Average	1.7 hours

Bereavement Days

Town	Days
Bloomingtondale	3 days
Butler	3 days
Little Falls	3 days
Pompton Lakes	5 days
Ringwood	0 days
Wanaque	3 days
Average	2.84 days

The Borough contends that its final offer is the more reasonable proposal given the fiscal problems the Borough faces. The Borough relies heavily on the testimony and calculations of its Financial Auditor, Deiter Lerch. According to the Borough and the testimony of Lerch, its diminished financial posture has been caused by increases in health care costs, increases in pension contributions and reductions in state aid. These are said to have caused increases in the Borough's operating budget causing the Borough to draw down on its surplus funds as a source of revenue in order to comply with the tax cap levy which has

been reduced from 4% to 2% effective January 1, 2011 as a result of N.J.S.A. 40A:4-45.45. According to Lerch, the Borough's pension contributions have increased since 2008 at rates set forth in the following chart:

**Borough of Bloomingdale
Pension Contributions**

<u>Year</u>	<u>PERS</u>	<u>PFRS</u>	<u>Total</u>	<u>% Increase</u>
2007	\$79,933	\$210,616	\$290,549	N/A
2008	135,064	323,722	458,786	58%
2009	102,773	174,359	277,132	-40%
2010 (Unaudited)	207,991	338,602	546,593	97%
2011 Projected	276,086	406,920	683,006	25%

In addition to the increase in pension contributions, Lerch testified to the following increases in the Borough's health benefit costs.

**Borough of Bloomingdale
Health Benefit Costs - Actual**

<u>Year</u>	<u>Amount</u>	<u>Annual \$ Increase/Decrease</u>	<u>Annual % Increase/Decrease</u>
2007	\$527,087	N/A	N/A
2008	534,610	\$7,523	1.4%
2009	499,533	(35,077)	-6.6%
2010 (Unaudited)	628,937	129,404	25.9%

The Borough contends that as a result of increases in its operating budget since 2007, coupled with reductions in state aid, its surplus funds have severely decreased. Lerch testified that its operating budget has increased from \$8,243,708 in 2007 to \$9,231,063 in 2010, an increase of \$987,455 or 10.7% over the four years. At the same time, state aid, which was \$1,253,415 in 2007, was reduced to \$827,576 in 2008, \$695,674 in 2009 and to \$558,343 in 2010. In total, the reductions amount to 55.4% over this time period. The combination of

all of these factors is claimed to have severely diminished the Borough's surplus or fund balance as depicted in the following chart:

**Borough of Bloomingdale
Analysis of Unappropriated Surplus
(Balance)**

<u>Year Ending Dec. 31,</u>	<u>Fund Balance</u>	<u>Amount Budgeted Subsequent Year</u>	<u>Remaining Fund Balance</u>
2007	\$981,062	\$(850,000)	\$131,062
2008	406,085	(350,000)	56,085
2009	180,736	(160,000)	20,736
2010 (Unaudited)	179,753	(170,000)	9,753

At hearing, Lerch offered testimony projecting that the Borough will exceed the 2% tax levy cap by \$153,500 even if the salary schedule for 2011 were, with the exception of step increases, to remain the same in 2011 as they were in 2010. Lerch's testimony was challenged by the PBA who, on cross-examination caused Lerch to acknowledge that his projections were subject to change due to the fact that there was no municipal budget or official tax levy calculations at the time of the March 16, 2011 hearing.

The Borough, as well as the PBA, engaged in cost calculations comparing the parties' final offers. According to the Borough, its proposal for a zero increase in 2010 still remains costly due to step increases, increased longevity payments and the assumption of wage costs due to the deferral of salaries in 2010 which are in the amount of \$71,024 in 2011. The total of these factors would cost the Borough 7.41%. The Borough goes on to make a three-year calculation based upon its salary proposal of zero in 2011, 1% in 2012 and 1% in

2013. It asserts that its proposal would result in overall percentage increases of 7.41%, 3.12% and 3.04% respectively. Based upon its calculations, the Borough produces the following chart reflecting the costs of the Borough's proposal.

Exhibit C
Base and Longevity (with Longevity Increase)

PBA	Actual 2010	Borough Proposal		
		2011	2012	2013
Base Salary	\$1,308,248	\$1,308,248	\$1,414,599	\$1,455,438
Longevity	55,683	64,716	70,310	72,636
Step Increase	-	21,061	25,861	28,549
Increase Due to Deferral	-	71,024	-	-
	<u>\$1,363,931</u>	<u>\$1,465,049</u>	<u>\$1,510,770</u>	<u>\$1,556,623</u>
\$ Increase		<u>\$101,118</u>	<u>\$45,721</u>	<u>\$45,853</u>
% Increase		<u>7.41%</u>	<u>3.12%</u>	<u>3.04%</u>

In contrast with the above, the Borough calculates the cost of the PBA's proposal of 3.5% annually for 2011, 2012 and 2013. It does not engage in a calculation of the PBA's 2014 proposal. Its calculations produce the following chart reflecting its calculation of the costs of the PBA's proposal:

Exhibit K
Base and Longevity

PBA	Actual 2010	PBA Proposal		
		2011	2012	2013
Base Salary	\$1,308,248	\$1,357,259	\$1,501,915	\$1,584,350
Longevity	55,683	66,983	74,574	78,951
Step Increase	-	21,061	25,861	28,549
Increase Due to Deferral	-	71,024	-	-
	<u>\$1,363,931</u>	<u>\$1,516,327</u>	<u>\$1,602,350</u>	<u>\$1,691,850</u>
\$ Increase		<u>\$152,396</u>	<u>\$86,023</u>	<u>\$89,500</u>
% Increase		<u>11.17%</u>	<u>5.67%</u>	<u>5.59%</u>

In addition to the above, the Borough contends that its final offer is more reasonable in light of cost of living data, more recent interest arbitration awards and settlements achieved prior to the effective dates of the amendments to the interest arbitration law which show dramatic declines, and in light of the continuity and stability of employment for the Borough's police officers who have not been subject to layoff. For all of the above reasons, the Borough urges that its final offer be adopted in its entirety.

DISCUSSION

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

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

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

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

My consideration of the parties' proposals is governed by N.J.S.A. 34:13A-16g. In arriving at this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. In addition, I note that N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying it the proposed change. Another consideration is that any decision to award or deny any individual issue in dispute, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award.

Duration

The duration of the contract is in dispute. The PBA requests a four (4) year contract term beginning on January 1, 2011 and expiring on December 31,

2014 while the Borough proposes a three (3) year contract term beginning January 1, 2011 and expiring on December 31, 2013.

In my review of the parties' respective proposals on duration, I am persuaded that the PBA's proposal for an agreement with a December 31, 2014 expiration date is the more reasonable proposal. I note the record evidence that shows that the Borough has, more recently, negotiated agreements with CWA, Local 1032, the blue collar unit and with the Borough Administrator for contract years 2010 or 2011 through 2015. Without commenting on the terms of those agreements, the fact that the Borough has engaged in a commitment for agreements that extend through December 31, 2015 with these other Borough employees supports a contract duration here that contains a December 31, 2014 expiration date. By doing so, the Borough will, as with the other groups, have certainty as to personnel costs as it establishes its budget for most of its employees, at least for contract years 2011, 2012, 2013 and 2014. The time and expense associated with renewed negotiations is also a consideration that warrants a contract extending through December 31, 2014. Given the Borough's policy decision to voluntarily negotiate contracts extending through 2015, its proposal to limit the contract duration here to 2013 is not reasonable and gives no weight to the criterion concerning internal comparisons which I rely upon. The contract term shall be January 1, 2011 through December 31, 2013.

Although the Borough's health insurance proposal has not been considered in this proceeding for reasons set forth in Appendix A, the portion of its proposal concerning the codification of employee health insurance contributions is a matter of law and, as such, should be incorporated into the collective negotiations agreement. As is commonly known, the law states the following:

Commencing on the effective date of P.L. 2010, c.2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date, the amount of the contribution required pursuant to paragraph (1) of this subsection by State employees and employees of an independent State authority, board, commission, corporation, agency, or organization for whom there is a majority representative for collective negotiations purposes shall be 1.5% of base salary, notwithstanding any other amount that may be required additionally pursuant to this paragraph by means of a binding collective negotiations agreement.⁴

The record shows that unit members have been making contributions consistent with the law and this issue, as a term and condition of employment, should be reflected in the Agreement. Accordingly, I award the following:

Commencing on May 21, 2010, the effective date of P.L. 2010, c.2., the amount of contributions by unit employees for health insurance coverage shall be 1.5% of base salary. This level of employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an employee's requirement to make contributions toward the payment of health insurance.

I next turn to the issue of salary. As is typical in disputes concerning salary, the Borough and the PBA have presented substantial evidence in support

⁴ The legislation would not nullify a lesser contractual arrangement included in an executed contract prior to May 21, 2010 but, in such instance, the legislation would apply upon contract expiration.

of their respective salary proposals. Each submits comprehensive arguments asserting that its own salary proposal is more consistent with the application of the statutory criteria than the other party's. In rendering a reasonable determination of the salary issue, I have found all of the statutory criteria to be relevant, although not all are entitled to equal weight. As is commonly understood, no single factor can be isolated and be dispositive of the terms of an entire award. The interests and welfare of the public must be given the most weight because it is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. It requires consideration of the financial impact of an award on the governing body and taxpayers [see N.J.S.A. 34:13A-16g(6)] as well as the Borough's statutory limitations on appropriations and increases in the tax levy [see also N.J.S.A. 34:13A-16g(5) and N.J.S.A. 34:13A-16g(9)]. It also recognizes the fact that the budgetary expense of operating a police department, whose officers who perform essential and dangerous functions for the purpose of protecting the public, is a significant portion of any municipal budget. The public interest is furthered by productivity, efficiency and high morale as evidenced by the increasing number of summonses issued and the revenue derived from law enforcement work. The evidence on internal and external comparability is also relevant and must be considered but such evidence [see also N.J.S.A. 34:13A-16g(2)(a), (b), (c)] must be balanced by the financial evidence and the remaining criteria including cost of living, continuity and stability of employment and the overall terms and conditions of employment presently being received under the terms of the existing contract.

For the reasons that follow I have concluded that a reasonable determination of the salary issue warrants the adoption of the Borough's proposed format (but not the amounts) for a new salary schedule A and B scheme, reductions in the salary levels at steps from Academy through the 7th step for new hires as reflected in Schedule B, the freezing of the Academy through 7th year steps for Schedules A and B in 2011, increases to the eighth year max step and for superior officer ranks in 2011 of 2.5% followed by increases at all steps and ranks of 2.25% in 2012, 2.0% in 2013 and 1.75% in 2014 coupled with the deferring of these wage increases for all employees from January 1 to July 1 in each of the four years.

The PBA Agreement is one of four agreements that involve the Borough in the setting of wages during the relevant time frame. The PBA cannot be viewed in total isolation from what the Borough has agreed to with the others. While the wage determination for the PBA cannot be made without due regard for the Borough's financial abilities, the Borough's other labor agreements cannot be deemed irrelevant as they would be if the Borough's proposal for 0%, 1% and 1% for 2011 through 2013 were to be adopted.

The internal settlements with the Borough's two other units, blue collar and white collar, have been considered and are relevant under N.J.S.A. 34:13A-16g(2)(c). While relevant, less weight can be given to the CWA Local 1032 white

collar agreement from 2007 through 2012. The terms of that agreement commenced on January 1, 2007. As previously noted, it provided for substantial increases, especially in 2011 and 2012 where 6% increases (split raises of 3% in each of these two years) were negotiated. But its applicability here cannot serve to support the 3.5% annual increases that the PBA has proposed. The timing of that agreement, beginning in 2007, occurred well before the declines in the cost of living, the sharp increases in unemployment within New Jersey and the United States, and the onset of the financial and economic developments that have negatively impacted on the Borough and the private sector and public sector generally, commencing in late 2008 and extending thereafter. The terms of the PBA contract must reflect the financial and economic changes that have trended downward subsequent to the negotiated agreement with the white collar unit. The Agreements with the blue collar unit (CWA Local 1032) and the Borough Administrator are entitled to greater weight given the fact that they were entered into by the Borough within a financial and economic climate more akin to that which exists in the present environment. Nevertheless, they provided for annual increases of 3% extending through 2015.

The pattern of settlement principle, as recognized in prior case law,⁵ must be considered as relevant here. But even if such pattern were found to exist, a determination under that case law must be made as to whether there are considerations which warrant deviation from that pattern. Again, while the

⁵ See In the Matter of Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008). See also County of Union v. Union County Corrections Officers, PBA Local 999, PERC No. 2003-33 and PERC No. 2003-87.

existence of these terms weigh against the awarding of the Borough's final offer, there is also record evidence that diminishes the weight to be given to the blue collar and Borough administrator settlements as applied to the PBA. One such fact is the statutory change made to the tax levy cap law. Section 10 of P.L. 2007, c. 62, codified at N.J.S.A. 40A:4-45.45 and as amended by P.L. 2010, c. 44 reduced the allowable tax levy increase from 4% to 2% effective January 1, 2011. This law decreases the amount the Borough can raise through taxation. The Borough, at the same time, must also contend with the fact that its surplus in 2010 was reduced to a very low level due to consistent annual increases in its operating budget that were funded by drawing down on its surplus.

The terms that I have awarded have given some weight to the internal and external law enforcement comparisons⁶ by the setting of increases beyond what the Borough has proposed but in a manner that gives more significant weight to the financial impact on the governing body, its residents and taxpayers and the lawful authority of the Borough. One such element of the award is to grant the Borough's proposed revision to the existing salary schedules to achieve cost savings for employees hired after January 1, 2011. While the Borough may not realize instant savings from this proposal, it will provide significant cost savings in the future. In the expired agreement, there are Schedules A and B. Schedule A is for officers hired before January 1, 2006 and Schedule B is for officers hired after January 1, 2006. Schedules A and B both culminate in the same top step,

⁶ The external comparisons are well above the Borough's proposal regardless of which field of comparisons are used. But they show decreasing levels of increased compensation over the years covered by this Award.

or maximum pay, at Step 8. Schedule B provides for lesser amounts between the Academy Step and the 7th year step. Because of the existing scattergram that has 4 officers at Step 8 (on Schedule A) and 4 officers on the lower steps, the Borough's proposal, in essence, abolishes the old Schedule A, re-titles the old Schedule B as the new Schedule A creates a new Schedule B for new hires. This part of the Borough's proposal is ministerial and without impact on the eight (8) existing police officers all of whom merge without consequence into the new Schedule A. The Borough then proposes to include a new Schedule B for new hires. This schedule reduces the salary amounts from the old Schedule B at each step between the Academy Step and the 7th year step but retains the same top step, or maximum pay, set forth in the new Schedule A. In simple terms, a new hire would receive lesser amounts at every step except top step but would still achieve top pay after progressing through the years to top step. The savings for new hires are substantial and range from over \$2,000 at the 7th year step to over \$8,000 at the 1st year step. Cumulatively, there would be approximately \$42,000 in savings per each new officer over that officer's first seven years of employment. This proposed salary structure is reasonable. It will provide savings to the Borough over the course of an officer's career but yet maintain consistency in salary levels at maximum pay for officers who choose to maintain a career with the department. Accordingly, the structure proposed by the Borough is awarded with the precise salary levels within that structure subject to the salary portion of the Award.

The calculation of the total net annual economic change provided by the Award results from the method of calculation that is utilized. The Borough attributes a \$71,024 increase in cost due solely to the voluntary agreement between the Borough and the PBA to have two six month deferrals of previously negotiated increases in the expired agreement. The PBA does not calculate this amount in its cost estimates while the Borough does. Clearly, there is a cost associated with paying an amount in one year which has not been paid in the preceding year. Yes these costs flow from an obligation for 2010, but were unpaid in that year due to the PBA's willingness to forego a previously negotiated increase. These costs are beyond the costs attributable to either party's salary proposals as contained in their final offers. The cost of negotiated, but unpaid, salaries from a prior agreement does not fall within the meaning of total net annual economic change [See N.J.S.A. 34:13A-16(d)] created by the terms of this Award. Notwithstanding this, it can be assumed that the parties' agreement to defer the previously negotiated increase was for budgetary reasons and the impact of the assumption of these costs in 2011 is nevertheless relevant to the fashioning of the terms of the Award. The freezing of the guide from the Academy step through Step 7 in 2011, coupled with the delay in the effective date of salary increases for six months in all four years of the agreement represent a reasonable offset to the assumption of the 2010 negotiated costs in 2011.

The 2.5% increase at top step and ranks, effective July 1, 2011, will cost approximately \$20,000 in 2011 with a like amount flowing into the 2012 contract year. In 2012, the 2.25% increase, effective July 1, 2012, will cost approximately \$18,000 in 2012 with a like amount flowing into the 2013 contract year. In 2013, the 2.0% increase, effective July 1, 2013 will cost approximately \$16,000 with a like amount flowing into 2014. In 2014, the 1.75% increase, effective July 1, 2014, will cost approximately \$14,500 with a like amount flowing into 2015. The cost impact in 2015 will be a relevant cost factor in negotiations for that year. Additionally, as a function of step progression towards the negotiated maximum as set forth in the salary schedule, there are four officers eligible for movement in 2011, 2012 and 2013 and two in 2014. The estimated costs are \$21,000 in 2011, \$22,000 in 2012, \$24,000 in 2013 and \$17,500 in 2014.

The record clearly reflects that the costs of the award can be funded without adverse impact on the governing body, its residents and taxpayers. The PBA has shown that approximately \$120,000 in salaries that was expended in 2010 will not be expended on salaries in 2011 due to the retirement of a senior officer. While this amount does not represent "PBA" money to which it is entitled, the personnel costs for police services in the Borough's budget, even with the economic changes caused by the award, will be at a reasonable level in 2011 compared with 2010.

I have also reviewed the budgetary evidence that existed at the time of hearing. At that time, the Borough had not introduced its budget nor completed a worksheet calculation of its municipal budget levy cap calculation for submission to the Division of Local Government Services. The absence of these documents was not due to unpreparedness on the Borough's part who did produce the expert testimony of Auditor Lerch. It rather can be attributed to the strict and unyielding statutory requirement that this proceeding be completed within 45 days of the arbitrator's appointment without regard to whether such documents were capable of being produced. This required testimony that, by necessity, was limited to "projections" which may or may not directly connect to budgetary determinations which eventually must be made by the governing body. Lerch candidly acknowledged that his own professional projections of the budget, total expenditures and the allowable amounts that would fall under the tax cap levy cap were subject to alteration. The fact that the 2010 budget fell more than \$600,000 below the appropriation cap lends toward a reasonable conclusion that the costs of the award would not conflict with the Borough's lawful authority under the appropriation cap in 2011.

In the absence of a budget nor a tax cap levy calculation at time of hearing, it cannot be determined precisely how the costs of the award would factor into the Borough's final tax cap levy calculation. This depends upon budgetary considerations of the governing body that had not been made at time of hearing. One police officer's salary at over \$100,000 was removed from the

2011 salary line item and it is not known whether he will be replaced. The costs of the award fall within the amounts expended in 2010. The Borough's worksheet calculation to be certified to the Division of Local Government Services was not available at time of hearing. The actual calculations that will eventually be made, as well as the governing body's policy decisions on expenditures are not in the record. This includes, and is not limited to, the amounts of tax increase that are allowable based upon the complex formula of inclusions and exclusions, including increases in debt service and capital expenditures, declared emergencies such as the December 26 and December 27 snowstorm, pension contributions in excess of two percent and health benefit cost increases in excess of 2%. Based upon the record before me, I have taken the local cap levy into account in making this award to the extent that is possible.

Under the Borough's compensation proposal, it has proposed that there be no longevity for new hires after January 1, 2011 and that all current employees have their longevity frozen without any increases through the term of the new Agreement. The PBA did not propose an increase to the longevity schedule and seeks rejection of the Borough's longevity proposals.

I am not persuaded by the record evidence that the longevity proposals of the Borough have been supported by sufficient justification that would warrant that they be awarded. As a component of overall compensation, the existing longevity schedule in Bloomingdale falls well below that which exists in the

Passaic County municipalities that even the Borough has deemed to be comparable. An examination of the contracts for those municipalities in evidence reflects the following comparisons:

Comparison of Maximum Longevity Benefit

	Maximum Benefit	2010 Maximum Value
Bloomingtondale	7.5% @ 24 years	\$7,360
Little Falls	12% @ 24 years	\$11,166
Pompton Lakes	10% @ 20 years	\$10,193
Ringwood	10% @ 14 years	\$10,624
Wanaque	10% @ 20 years	\$9,149
Average Max. Longevity		\$9,698
Bloomingtondale Longevity Compared to Average		(\$2,338)

According to the Borough, the longevity freeze would reduce its current obligations by \$3,383 in 2011, \$8,468 in 2012 and \$10,178 in 2013. While any reduction in an existing benefit would save money, the Borough's proposal for existing employees and new hires would adversely alter the relative compensation levels between Bloomingtondale and the municipalities that the Borough has deemed comparable. As the above chart demonstrates, the existing longevity benefits in Bloomingtondale are significantly below the comparables and the Borough's proposals would deepen those relative compensation levels. Unlike the Borough's salary schedule proposals that would save money but yet allow all officers to eventually receive the same compensation levels, this proposal would eventually cause a 7.5% negative

differential in overall compensation between officers based upon date of hire. Accordingly, I do not award these proposals.

I also do not award the Borough's proposal to adjust existing vacation days/comp days/sick days/personal days to accommodate the Pitman Schedule. The record simply does not contain sufficient evidence, perhaps due to the requirement that the Borough was required to adhere to the strict statutory time limits, to warrant an award of the Borough's proposal. There is no evidence concerning the implementation of the Pitman Schedule, whether the parties ever addressed the matter of conversion of time off, whether such agreement on this work schedule was permanent or experimental and what the impact, if any, the implementation of the schedule has had on paid time off and on the overall operations of the police department, including economic impact.

In arriving at the terms of the Award, I have set forth my evaluation of the factors that have played into my determination. Most weight has been given to the interests and welfare of the public, internal and external comparability, financial impact and the lawful authority of the employer. The remaining factors are also relevant and have been considered in my analysis but given less weight. The overall levels of compensation and benefits enjoyed by the PBA fall within reasonable levels enjoyed by those comparably situated and will remain so as impacted by the terms of the Award. The parties' final offers, as they relate to the cost of living, show the PBA's salary proposal exceeds the CPI while the

Borough's salary proposal falls below the CPI. The terms of the Award are more consistent with the CPI data as that data is applied to changes in the salary schedules. In addition, the continuity and stability of employment for the Borough's police officers will be maintained by the terms of the Award and there is no record evidence that an adoption of either party's final offer would be more consistent with maintaining the continuity and stability of employment.

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

AWARD

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

2. **Duration**

There shall be a four-year agreement effective January 1, 2011 through December 31, 2014.

3. **Health Insurance**

Commencing on May 21, 2010, the effective date of P.L. 2010, c.2., the amount of contributions by unit employees for health insurance coverage shall be 1.5% of base salary. This level of employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an employee's requirement to make contributions toward the payment of health insurance.

4. **Salary**

All officers eligible for step movement shall receive steps pursuant to existing contract terms.

Schedule A Hired Before 1/1/11

Rank	7/1/2011	7/1/2012	7/1/2013	7/1/2014
	2.5%*	2.25%	2.0%	1.75%
Academy	\$38,387	\$39,251	\$40,036	\$40,736
<u>Patrolmen</u>				
Post-Academy	\$44,850	\$45,859	\$46,776	\$47,595
1 st Year	\$53,791	\$55,001	\$56,101	\$57,083
2 nd Year	\$56,268	\$57,534	\$58,685	\$59,712
3 rd Year	\$61,712	\$63,101	\$64,363	\$65,489
4 th Year	\$67,691	\$69,214	\$70,598	\$71,834
5 th Year	\$74,261	\$75,932	\$77,451	\$78,806
6 th Year	\$81,482	\$83,315	\$84,982	\$86,469
7 th Year	\$89,482	\$91,495	\$93,325	\$94,958
8 th Year (Max)	\$100,587	\$102,850	\$104,907	\$106,744
Sergeant	\$106,683	\$109,083	\$111,265	\$113,212
Lieutenant	\$113,015	\$115,558	\$117,869	\$119,932
Captain	\$119,729	\$122,423	\$124,872	\$127,057

*At Step 8 (Max) and at each Rank.

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

BOROUGH OF BLOOMINGDALE

"Public Employer,"

- and -

PBA LOCAL 354

"PBA."

**ARBITRATOR'S DECISION
ON MOTION**

Docket No. IA-2011-045

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Borough:

Mark J. Semeraro, Esq.
McManimon & Scotland, LLC

For the PBA:

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

I was appointed by PERC to serve as interest arbitrator on February 23, 2011 in this matter captioned as IA-2011-045 involving the Borough of Bloomingdale [the "Borough"] and PBA Local 354 [the "PBA"]. The appointment was made pursuant to P.L. 2010 c. 105 which recently amended N.J.S.A. 34:14A-16. The petition to initiate interest arbitration was filed by the PBA on February 16, 2011. Issues listed on the petition included compensation, vacations, holidays, personal days, legal defense, off duty rate and just cause language modification. The petition indicated that negotiations sessions had taken place on October 12 and November 23, 2010.

On February 18, 2011, PERC faxed a letter referring the Borough to some of the requirements of the new statute. Among other things, PERC stated that:

... please file your response to the attached petition in order that this matter comply with the law as stated in the amendments to Section 3 of P.L. 1977, c. 85 as set forth in P.L. 2010, c. 105 (Assembly Bill A3393 – page 4, lines 38 to 42) which states as follows:

"The non-petitioning party, within five days of receipt of the petition, shall separately notify the commission in writing of all issues in dispute. The filing of the written response shall not delay, in any manner, the interest arbitration process."

PERC further noted that:

N.J.A.C. 19:16-5.5 further provides that if a party fails to file a timely response, "it shall be deemed to have agreed to the request for the

initiation of compulsory interest arbitration as submitted by the filing party.”

On February 25, 2011, I scheduled that an interest arbitration hearing to be held on March 16, 2011. In that letter, I set a March 7, 2011 date for submission of last offers. At the request of the Borough, I extended that date to March 14, 2011. In its submission of its last offer, the Borough made proposals regarding health or medical insurance. According to the PBA, this was the first time that it was noticed on this issue. Upon opening the record at hearing, the PBA filed a Motion to limit proposals that were not contained in its petition nor responded to by the Borough. That Motion is now limited to the issue of medical insurance.

The Borough seeks to have the Motion dismissed for reasons it cited on the record. They include the fact that the Borough replaced its counsel on or about March 4, 2011, thereby preventing its current counsel from filing a timely response. It seeks a relaxation of the rule “in the interests of justice.” The PBA supports its motion by pointing to prior case law where PERC, on appeals of arbitrators’ rulings supporting similar motions to the one the PBA has made here, had rejected the appeals. [See Middlesex County, P.E.R.C. No. 98-46, Borough of Allendale, P.E.R.C. No. 98-27, Borough of Bogota, P.E.R.C. No. 98-104 and Borough of Paramus, P.E.R.C. No. 2009-28]. In these decisions PERC relied upon N.J.A.C. 19:16-5.5 (a) and (b). PERC, however, in dismissing the appeals, indicated that an arbitrator could exercise discretion to allow for consideration of

a party's proposal if no response had been filed, so long as that discretion was not abused.

After review of the totality of the circumstances of this particular case, I am persuaded that the medical insurance proposed by the Borough cannot be considered in this interest arbitration proceeding based upon the application of PERC's rules, prior case law and the language of the new statute. I reach this conclusion for the following reasons.

First, it appears that this issue has not been the subject of any prior negotiations prior to the arbitration proceeding. While there is no evidence nor any suggestion that the Borough has attempted to abuse the process by the inclusion of the issue in its final offer, the existing Commission rule on this issue, coupled with new statutory language must be read to bar consideration of the Borough's proposal.

Prior PERC decisions on this issue were based upon its application of N.J.A.C. 19:16-5.5 (a) and (b). The statute under which the rule was written did not address the issue of a response. Instead, the subject was governed by this rule providing for a response by the non-petitioning party with seven (7) days of receipt of a petition. The recently amended statute, in contrast, specifically addresses the issue of a response by a non-petitioning party and has reduced the time period for a response from the seven (7) days provided for in the

Commission rule to five (5) days. Moreover, it states that “the filing of the written response shall not delay, in any manner, the interest arbitration process.” While the above-cited rule is still in effect, I am governed by the language of the statute as well as the Commission rule which parallels the language in the amended statute.

The statutory language actually decreases the time for the filing of a response, a change that, more than likely, was in harmony with the requirement that the arbitration process must be completed within 45 days of the appointment of the arbitrator. This timeline underscores the merit of the PBA’s objection that it would be prejudiced by the acceptance of the Borough’s proposal advanced in immediate proximity to the arbitration proceeding. The PBA argues that it is unable to provide a proper defense to the proposal, including the presentation of witnesses and an analysis of the details and costs associated with the Borough’s proposals. Even assuming that the amended statute, by silence, contemplates the exercise of discretion, I do not find a proper basis to exercise that discretion. Given the time restraints by law, an extension of time for additional hearings and a briefing schedule, now set for March 23, 2011 upon close of hearing on March 16, 2011, would place this proceeding beyond the date that I am statutorily required to issue an award.


Based upon all of the foregoing, as I have done on the record of this proceeding on March 16, 2011, I sustain the PBA's motion and direct the Borough to remove the health insurance issue from this proceeding.

Dated: March 17, 2011
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

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


Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 04/30/2014

Schedule B
Hired After 1/1/2011

	1/1/2011	7/1/2011	7/1/2012	7/1/2013	7/1/2014
Rank		2.5%*	2.25%	2.0%	1.75%
Academy	\$35,000	\$35,000	\$35,788	\$36,503	\$37,142
<u>Patrolmen</u>					
Post-Academy	\$40,000	\$40,000	\$40,900	\$41,718	\$42,448
1 st Year	\$45,000	\$45,000	\$46,013	\$46,933	\$47,754
2 nd Year	\$50,000	\$50,000	\$51,125	\$52,148	\$53,060
3 rd Year	\$55,500	\$55,500	\$56,749	\$57,884	\$58,897
4 th Year	\$61,605	\$61,605	\$62,991	\$64,251	\$65,375
5 th Year	\$68,382	\$68,382	\$69,921	\$71,319	\$72,567
6 th Year	\$77,271	\$77,271	\$79,010	\$80,590	\$82,000
7 th Year	\$87,316	\$87,316	\$89,281	\$91,066	\$92,660
8 th Year (Max)	\$98,134	\$100,587	\$102,850	\$104,907	\$106,744
Sergeant	\$106,683	\$106,683	\$109,083	\$111,265	\$113,212
Lieutenant	\$113,015	\$113,015	\$115,558	\$117,869	\$119,932
Captain	\$119,729	\$119,729	\$122,423	\$124,872	\$127,057

*At Step 8 (Max) and at each Rank.

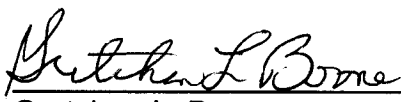
Dated: April 11, 2011
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 11th day of April, 2011, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

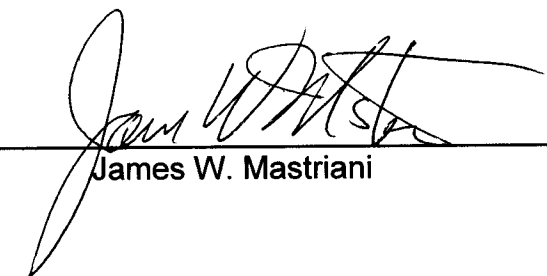


Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2014

April 11, 2011

ARBITRATOR'S REPORT

Pursuant to N.J.S.A. 34:13A-16(f), this will certify that I have taken "the statutory limitation imposed on the local levy cap into account in making the award." The terms of the Decision and Award executed on April 11, 2011 includes an explanation of how each of the statutory criteria "played into the arbitrator's determination of the final award."



James W. Mastriani