

# **NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between the

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**TOWNSHIP OF MAHWAH,**

**"Public Employer,"**

**and**

**PBA LOCAL 143,**

**"Union."**

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**INTEREST  
ARBITRATION  
DECISION & AWARD**

Docket No. IA-2013-022

**Before  
Robert C. Gifford, Esq.  
Arbitrator**

## **Appearances:**

### **For the Employer:**

Raymond R. Wiss, Esq.  
Wiss & Bouregy

### **For the Union:**

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

On March 28, 2013, the Union filed a Petition to Initiate Compulsory Interest Arbitration. On April 11, 2013, I was appointed through random selection from PERC's Special Panel of Interest Arbitrators to serve as interest arbitrator. The law requires that I issue an Award within 45 days of my appointment.

On April 12, 2013, I notified the parties by letter that an interest arbitration hearing was scheduled for April 29, 2013. The parties submitted their final offers to me on or before April 25, 2013.

An interest arbitration hearing was held at the Township Municipal Building on April 29, 2013 at which time the parties argued orally, examined and cross-examined witnesses and submitted substantial documentary evidence into the record. Testimony was received from Patrolman and PBA President Gerald Falotico, Patrolman Rosario Zito, Township Business Administrator Brian Campion, Frank Covelli – Professional Insurance Associates and Frank J. Petrulla – Employee Benefits Consultant. The parties provided post-hearing briefs on May 6, 2013, whereupon the record was declared closed.

## **FINAL OFFERS OF THE PARTIES**

### **The PBA's Final Offer**

1. Two (2) year contract for the term January 1, 2013 through December 31, 2014.
2. Wage Increase – The PBA proposes an across-the-board wage increase of two percent (2%) effective on January 1 of each of the two (2) contract years.
3. Page 19 of the contract to be modified at paragraph E to delete antiquated language.
4. The Off Duty Work Rate paid by outside contractors will be changed from the current of Sixty Dollars per hour (\$60/hr) to the overtime rate of the Top Step Police Officer.

## The Township's Final Offer

### 1. **Salaries (Article V; Article VII):**

- (a) **2013** - In order to adhere to the requirements of N.J.S.A. 34:13A-16.9, and based upon the current financial status of the Township, as well as the criteria set forth in N.J.S.A. 34:13A-15(g), the Township proposes a salary rate freeze for 2013 (including no step movement for those employees still on the salary guide). Based upon the full year implementation (in 2013) of the July 1, 2012 salary increase contained in the recently expired collective bargaining agreement (for the term January 1, 2011 through December 31, 2012), the budgetary impact of such increase is a 1% increase in the "base salary" of unit members, as that term is defined in N.J.S.A. 34:13A-16.7.

The Township calculates the "base salary for members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement" to be \$5,941,232. The implementation of the July 1, 2012 salary increase, of itself, causes the base salary for 2013, absent any guide movement, to increase to \$6,000,453. Such increase of \$59,221 represents a 1% increase in unit member compensation from 2012 to 2013.

- (b) **2014** - Based upon the same criteria set forth above, for 2014, the Township proposes a 1.25% wage increase. This amount would increase overall unit member compensation from \$6,000,453 to \$6,075,459. The Township notes that step movement approximates \$155,545. Accordingly, the implementation of the 1.25% proposed wage increase would necessarily involve a step adjustment.

2. **Longevity (Article VIII):** The Township proposes the elimination of longevity on a prospective basis, i.e. commencing January 1, 2013.
3. **Medical, Dental and Optical Benefits (Article XXI):** At present, the Township is self-insured and costs associated with the existing program have significantly escalated. The Township proposes a shift in insurance coverage to an alternate program, the details of which have been previously shared with the PBA and which will be presented at the hearing.

#### **Non-Economic Issues**

1. Term of Agreement (Article I) – A 2 year agreement commencing on January 1, 2013 and expiring on December 31, 2014.

## **BACKGROUND**

The Township is a residential community located in the Northwest section of Bergen County. It is comprised of approximately 25.7 square miles and a population of 25,890 residents. Recent statistics indicate that the Township had a median household income of \$92,971, and a median family income of \$107,977. The Township's recently adopted Master Plan indicates that the median income is \$79,500.

PBA Local No. 143 is the exclusive bargaining agency for Patrolmen, Detectives, Sergeants, Detective Sergeants, Lieutenants and Detective Lieutenants. Captains and the Chief are excluded from the bargaining unit. The parties' prior Agreement was effective from January 1, 2011 through December 31, 2012. [Ex. J-1].

The Township's salary data spreadsheets indicate that as of December 31, 2012, there were 48 bargaining unit members – 1 Detective Lieutenant, 4 Lieutenants, 4 Sergeants, 2 Detectives and 37 Patrolmen. [Ex. T-45].

The parties submitted substantial evidence in support of their respective positions. I thoroughly reviewed that information. Because of the abundance of evidence admitted into the record and the strict time constraints under the

statute I have extracted significant portions of the legal arguments from the parties' briefs rather than providing a general summary herein.

### **The PBA's Position<sup>1</sup>**

The Mahwah PBA presented the following issues for the Arbitrator's consideration:

1. Two (2) year contract for the term January 1, 2013 through December 31, 2014
2. Wage Increase – The PBA proposes an across-the-board wage increase of two percent (2%) effective on January 1 of each of the two (2) contract years.
3. Page 19 of the contract to be modified at paragraph E to delete antiquated language.
4. The Off Duty Work Rate paid by outside contractors will be changed from the current of Sixty Dollars per hour (\$60/hr) to the overtime rate of the Top Step Police Officer.

The issues numbered 3 and 4 are intended to be non-economic and to have no negative impact on the Township. For example, Issue 4 references the rate paid for extra work performed for non-municipal services. This is where a contractor seeks public safety services through the Township, arranges it through the Township, schedules through the Township, and pays a fixed rate for the Police Officer's services. It is that rate which is the target of this Proposal and no Township money is involved. The public employer also submitted a Last Offer Position pre-hearing however the salary position is not clear. The PBA takes issue

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<sup>1</sup> The PBA's position was taken from pages 1-44 of its Brief.



with some of the component calculations of the offer and said differences will be discussed later in this Brief. The Township further seeks to take away, without offsetting compensation, the longstanding benefit of longevity for persons hired after January 1, 2013. Finally, the public employer wants a new medical plan although it never did specify the details of the plan. No Plan Document was presented. Only certain comparisons and selected items were referenced. The PBA has maintained throughout that the Employer's medical plan Proposal is neither awardable nor arbitrable as a matter of law. The problem with the plan is its lack of specificity and inability to be costed out. Certain rough approximations were provided but no details were presented at the hearing with respect to Employee cost. As such it cannot be costed out in each year of the contract as is required by statute.

Both parties have presented two (2) year program for the Arbitrator's consideration. One may consider this fact as a form of stipulation as to term for this arbitration proceeding, two (2) calendar years, 2013 and 2014.

### **REVISED STATUTORY CRITERIA**

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

2. Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - a. In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - b. In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995., c. 425 (C. 34:13A-16.2); provided, however that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
4. Stipulations of the parties.
5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq.).
6. The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take

into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

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

### **INTEREST AND WELFARE OF THE PUBLIC**

The Township of Mahwah is an affluent Bergen County Municipality lying in the northeast section of the County along the New York State border. Its key

geographic position is in large part due to the significant expansion of its residential population, twenty-five thousand eight hundred ninety (25,890), on a regular basis with commuters, commercial traffic and many persons from the entire metropolitan area who come to Mahwah as an end destination. The wealth and income levels of Mahwah were discussed at hearing and are specifically referenced in the Township of Mahwah Rating Agency Presentation, February 14, 2012, at that time referencing certain refunding bonds (P-3). Page 7 of *Exhibit P-3* illustrates Mahwah's relative position on the issues of "median household income, median family income" and "*per capita* income". In each of these categories the Township of Mahwah ranks highest among all County comparisons, State of New Jersey comparisons and United States comparisons.

Specific testimony was offered and exhibits were further introduced through the *Power Point* presentation (P-2) showing the many interstate, New Jersey State and County roads which pass through the Township. The sum total of the daily population change counting these motorists passing through the town on a regular basis is over two hundred sixty-two thousand (262,000) per day. One may note that the residential population, sometimes referred to as the "nighttime population", are largely people who are spending time in their homes, having dinner and sleeping the night hours while they are in town. This is not so with the two hundred sixty-two thousand (262,000) vehicular population moving through the town as they are all up, awake and moving. This is where

the accidents occur, first aid calls occur and as described high levels of activity are required in the Police Department. Even Route 287 which is a primary jurisdiction of the New Jersey State Police was described by the testifying witness for the PBA as requiring Mahwah to respond to its 5.2 miles within the Township on a primary call basis. The nature of the traffic and the demands were the subject of the numerous graphics in the *Power Point* presentation.

The high volume of traffic is not just persons moving through the municipality. The Township is an end destination for many persons who work in this large Township or who are commercial customers of the many stores, shopping centers and amenities. The Township, in land area, is approximately 2.5 times the next largest municipality in the County, Paramus. This available land and easy commuting location has brought many major corporations to the Township. The *Power Point* presentation identified many of these corporations and the numbers of employees working at said companies on a daily basis. Examples include, but are not limited to the following:

- Stryker Corporation – 2,000 Employees during the day and 1,500 at night
- Sharp Corporation – 500 Daily Employees
- United Parcel Service – 1,000 Daily Employees
- New York Stock Exchange Euronext

- Sheridan Crossroads – 46 Offices/1,000 Employees
- Seven (7) Banks
- Health Care Facilities – 184 Health Care Facilities within the Township
- Five (5) Auto Dealerships
- Numerous Restaurants and Retail Liquor Consumption Locations
- 3,900 Companies located within the Township.

These examples of daily business activities are not exclusive. There are many more, for example on the *Power Point* graphic “Daily Business Population” the additional companies added up to over six thousand (6,000) employees per day within the Township.

The commercial growth is continuing. The graphic showing the Ascena Project is a 38.5 Million Dollar global retailer plan. The Crossroads Development Plan would be for a six hundred thousand square foot (600,000 sq. ft.) shopping center and a two thousand thirty-five (2,035) seat movie theatre, both in the planning stage.

Other considerations requiring Police presence are the numerous critical areas which were identified in testimony.

There are numerous houses of worship bringing people in from the area as well as many educational facilities, listed in the *Power Point* presentation. The education population alone is very substantial. The Mahwah public school census was identified as was the census in the other educational programs, most importantly Ramapo College.

Ramapo College is a significant higher education institution within the Township ranked by the U.S. News and World Report as the sixth best Regional University North category for all public institutions. The many specialties taught at the college were listed in the graphic and the numbers of persons going to that school on a regular basis was identified. In addition to the very large commuter population of students there are also two thousand seven hundred seventy-one (2,771) resident students and a faculty of over one thousand (1,000). All of these are people up and moving in the Township and the responsibility of the Mahwah Police Department.

Due to the many corporate headquarters and key geographic location the Township is also host to eight (8) separate hotels. The average daily occupancy was shown to be eight hundred seventy-two (872) on average with

a maximum occupancy considerably higher. The Township is also host to the Bergen County Law and Public Safety Institute and the Bergen County Regional Public Safety Operation Center. Both key enforcement facilities increase the responsibilities of the Mahwah Police Department.

Commercial development and ongoing commercial projects are not the only changes in Mahwah. There are also substantial residential areas being developed and many were listed in the *Power Point* with a description. Unique among the citizens in Mahwah are the members of the Ramapough Lunaape Nation Indian Tribe. With respect to this unique resident group the Mahwah procedures for providing service were the subject of a statewide presentation by the New Jersey Attorney General's Office on interaction with Native Americans. Once again Mahwah took the lead.

Daily recreation opportunities also are presented in Mahwah unique among all area towns. Mahwah has within its borders significant areas of the Bergen County Park System and the New Jersey State Park System. Over two hundred nineteen thousand (219,000) persons were shown to have visited just the one park, Darlington County Park in 2011. Many other activities such as Campgaw Reservation provide marked trails, fishing, the County's only archery range, Disc Golf Course and picnicking. The Campgaw Ski Area, the only one in Bergen County, attracts many to its many runs and drops. All toll, the County



Park System is over four thousand (4,000) acres within the Township. The Township also has two (2) golf courses, the public County course (ninety-two thousand (92,000) golfers play per year) and the Private Apple Ridge Golf Course (eighteen thousand (18,000) golfers per year). All of these amenities and attractions, the many malls, supermarkets, retail stores of every nature, auto dealerships, etc., bring enormous numbers of people to the Township on a regular basis. All of these people are the responsibility of the Mahwah Police Department.

Described in detail was the increasing demand for Police services and the increasing complexity of those services delivered. No one could possibly question the high level of professionalism and performance exhibited by the Mahwah Police Officers. This is a fine law enforcement agency with exceptional *esprit de corps* and professionalism. PBA President Gerald Falotico testified at hearing regarding the respect shown to the public and the respect of the public enjoyed by the Police Officers. The pride in performance was clear from his testimony.

In response to the growing demands for Police services and in response to the many positive factors shown in the testimony and evidence, the Township of Mahwah has responded by permitting the Police Department to shrink through attrition. In 2006 there were fifty-five (55) sworn Police Officers. The *Power Point*

graphic shows the year by year change with only fifty-one (51) sworn Police Officers serving as of this date. Two (2) of the fifty-one (51) Officers presently on the staff have announced their retirement. The *Power Point* included a year by year analysis of change in the Department and assignments. The Administrative Sergeant's position was deleted. The Administrative Lieutenant's position was deleted. The Detective Sergeant (Juvenile Officer) position was deleted. While the number of Patrol Officers has remained fairly static, one must note that there are several impacts to those remaining Patrol Officers by virtue of the alteration of supervisory positions and their elimination through attrition. The work does not go away. The work is just downloaded. What had been done by a Sergeant is now downloaded to the Patrolman in the Sergeant's absence. The Lieutenant's work is now downloaded to the Sergeant, and so on. Further, the Township is saving significant monies by having less supervisory personnel and staffing the Department with less expensive Police Officers. Finally, the career path of the Police Officer is altered. The likelihood of spending a career without the opportunity for promotion is greater today than it has been in the past.

Notwithstanding this downshifting of workload, notwithstanding the less Officers to do work and notwithstanding the increased workload and further notwithstanding the reduced career path opportunities, the Mahwah Police Officers continue to perform professionally.

The Mahwah Police Department is a CALEA, nationally certified agency Police Department. The members of the Department serve on numerous County-wide special teams such as the following:

- TAC Coordinator
- Traffic Officer
- Detective Bureau
- County Computer Crimes Task Force
- County Fatal Accident Team
- County Arson Team
- County Prosecutor's Screening
- Office of Emergency Management
- County Domestic Violence Task Force
- Gang Task Force
- Regional Deployment Force (RDF)
- Regional Deployment Team (RDT)
- Homeland Security/Counter Terrorism Coordinator

There may be less Police Officers on the street but they remain highly trained and their service cannot be questioned.

#### **COMPARISON OF WAGES AND TERMS AND CONDITIONS OF EMPLOYMENT**

Notwithstanding the exceptional productivity of the Mahwah Police Department, in the face of less sworn people, less supervision, and reduced Employer costs, the Mahwah Police Officer is not highly paid. The public

employer attempted at hearing to establish that Mahwah Police are highly paid. The PBA is not denying that their pay is better than many however in the area of proper comparability the Mahwah Police Officer is paid in a relatively average base pay position.

A key point in comparability analysis is the establishment of a proper universe of comparison. The Mahwah PBA established its universe of comparison in sworn testimony at hearing. Area towns were identified and other Police Departments with whom these Officers regularly work were also identified. The Employer presented a block of information but many of it was unsubstantiated as to whether or not it was in the proper universe of comparison, whether or not there was any interaction with Mahwah and whether the comparisons were relevant at all. While one may identify a distant town as being in northern Bergen County, that does not mean the Mahwah Police work with them. The best evidence is the testimony introduced at hearing showing the area town with whom Mahwah works, with who their Detective Bureaus interact with, with their Juvenile Bureaus interacting, traffic issues and other public safety concerns. With due respect to the Arbitrator, the list of municipalities and their respective contracts introduced by the PBA at hearing are entitled to great weight. **Chart No. 1** below illustrates the relative position of Mahwah among those towns with respect to base pay.

### CHART NO. 1

#### **AVERAGE TOP STEP PAY RATES IN AREA TOWNS BASED ON PBA EXHIBITS**

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Bergen County Police	\$126,294
Allendale	\$116,079
Bergen County Prosecutor	\$132,076
Closter	\$122,785
Paramus	\$130,010
Ridgewood	\$130,245
Saddle River	\$146,538
Waldwick	\$122,868
Wood Ridge	\$125,335
Montvale	\$113,353
Wyckoff	\$117,281
<b>AVERAGE</b>	<b>\$125,715</b>

At first review it would appear that the Mahwah Police Officer is slightly above average. This in fact is not the case. The holidays are folded into the Mahwah's base pay compensation. Holidays are worth approximately five percent (5%). That alone would drop Mahwah down the list significantly. Municipalities within the PBA proofs that do not roll in holidays include neighboring Saddle River, Waldwick, neighboring Montvale, neighboring Upper Saddle River and nearby

Allendale. In those towns one would have to add an additional value for holidays in order to bring them up to Mahwah's base which includes holidays. Mahwah is in fact; if one does the holiday computation, paid below average in the area.

A commonly enjoyed benefit among Municipal Police Officers is longevity. Notwithstanding the Employer's overtures, the Mahwah longevity plan is one of the worst in the area. **Chart No. 2** on the following page shows the longevity formula maximum for area municipalities.

## CHART NO. 2

### **COMPARISON OF MAXIMUM LONGEVITY BENEFITS BASED ON PBA EXHIBITS**

(A) PBA Exhibit	(B) Maximum Longevity Benefit	(C) Longevity Formula
Allendale	\$11,607	10% Maximum @ 20 Years
Allendale	\$5,804	5% Maximum @ 20 Years (Hired After 01/12)
Oakland	\$13,979	12% @ 23 Years
Haworth	\$8,387	8% @ 24 Years
Paramus	\$13,000	10% @ 25 Years
Ridgewood	\$13,024	10% @ 20 Years
Closter	\$10,231	8.3% @ 25 Years

Hasbrouck Heights	\$11,646	10% @ 20 Years
Ringwood	\$11,412	10% @ 14 Years
Waldwick	\$12,286	10% @ 23 Years
Waldwick	\$6,143	5% @ 23 Years (Hired After 1/06)
Wood Ridge	\$11,710	12.5% @ 25 Years
Montvale	\$10,202	9% @ 23 Years
Wyckoff	\$9,382	8% @ 25 Years
<b>Average Maximum Longevity Benefit</b>	<b>\$10,630</b>	
<b>Mahwah Maximum Benefit at 25 Years</b>	<b>\$9,375</b>	
<b>Mahwah Benefit Compared to Average</b>	<b>(\$1,255)</b> <b>(13.4%)</b>	

Column (A) identifies the PBA Exhibit . Column (C) identifies the longevity formula at maximum, twenty-five (25) years and Column (B) shows the net effect of the longevity benefit at present base wages. Two (2) points are made. First, the average longevity exceeds the Mahwah longevity plan. Only Allendale for new Employees and Waldwick for new Employees have lesser longevity plans than Mahwah. The key point however is that the other plans are all percentage based. Mahwah is flat dollar based. Therefore these other longevity maximum values (Column (B) above) are not static numbers. They grow each year. The Mahwah plan is Three Hundred Seventy-Five Dollars per year (\$375/year), flat

dollars. There is no rollout from the base rate. Just fixed dollar values. One would see that in short order that only the few plans behind Mahwah will pass Mahwah in the near future because they are percentage generated and will continue to grow whereas Mahwah flat dollar plan will not. This is a significant area of shortfall showing lesser compensation in a key element which must be considered under the statute. The public employer's position on this is to take it away from their people. The public employer's position is without proofs in the record and cannot be substantiated. There are at present no new Employees in Mahwah since January 1 and therefore the Employer's Position with respect to cost is pure speculation. Speculative costs cannot be the basis of an arbitration award.

The poor relative positioning of the Mahwah Police Officers' base pay in comparison to other law enforcement agencies within the universe of comparison is not a static relationship. The other Departments are receiving increases. **Chart No. 3** on the following page illustrates average rates of base pay increases within the universe of comparison based on PBA exhibits.



### CHART NO. 3

#### **AVERAGE RATE OF BASE PAY INCREASES BASED ON PBA EXHIBITS**

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	2013	2014
Bergen County Prosecutor	3	
Allendale	2	2
Closter	2.25	2.25
Hasbrouck Heights	1.75	2
Haworth	2	2
Oakland	2.5	
Paramus	3	
Ridgewood PBA	3.25 (2/1.25)	3.25 (2/1.25)
Ridgewood SOA	3.25 (2/1.25)	3.25 (2/1.25)
Ringwood	2	2
Saddle River	3.75	
Wood Ridge	4.5 (2.25/2.25)	4.5 (2.25/2.25)
Montvale	3.25	3.5
Wyckoff	2.5	2.75
<b>AVERAGE</b>	<b>2.786%</b>	<b>2.75%</b>

**Chart No. 3** fully supports the PBA Position in this case. In fact, the PBA Position is well inside of the average already established. An award of the PBA Position in full will not change relative positioning to the betterment of the Mahwah Officer but rather will result in further fall back from average. The Employer's Position, however one may define it, is indefensible.

The Employer attempts to justify its position by references to private sector issues. With due respect to the Arbitrator, it is submitted that the best comparisons are those made with other law enforcement agencies.

Due to the unique statutory obligation and treatment of Police Officers under New Jersey Law, any comparison of said law as it applies to private sector employees as compared to Police Officers must result in a strong justification for significantly higher compensation to be paid to Police Officers. In a decision, well known Interest Arbitrator Carl Kurtzman considered this subject of private sector comparisons and wrote as follows:

As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight. (Borough of River Edge and PBA Local 201, PERC IA-97-20, pg. 30)

The PBA respectfully asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable

private sector job compared to that of a police officer. A Police Officer has obligations both on and off duty. This is most unusual in the private sector. A Police Officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. Certainly this is not seen in the private sector. The Police Officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Once again such public franchise and unique provision of statutory authority is not found in the private sector. There is no portability of pension in the law enforcement community after age thirty-five (35). Police Officers may not take their skills and market them in other states as one may market one's own personal skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market their skills. This is not possible for a Police Officer. The certification is valid locally only. The nature of Police work is inherently one of hazard and risk. This is not frequently seen in the private sector.

The following represents certain statutory and other precedential laws controlling the relationship of Police Officers to their employers. Specifically distinguished is the private sector employee from said employee's employer.

1. The Federal Fair Labor Standards Act, 29 U.S.C.A. §201, *et seq.* applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work

week and the 7 day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.

2. The New Jersey State Wage & Hour Law, N.J.S.A. 34:11-56a, et seq. does not apply to the employment relationship between a police officer and the officer's Public Employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, Perry v. Borough of Swedesboro, 214 N.J. Super. 488 (1986).
3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. N.J.S.A. 40A:14-118. There is no such statute covering private employment in New Jersey.
4. N.J.S.A. 40A:14-122 provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, N.J.S.A. 40A:14-122. No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under 40A:14-122.2. There are no such private sector limitations on promotion.

7. A police officer in New Jersey must be resident of the State of New Jersey, N.J.S.A. 40A:14-122.8. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute 40A:14-123.1a. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, 40A:14-127.1. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, N.J.S.A. 40A:14-127.3. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage N.J.S.A. 40A:14-131. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed 6 days in any one week, "except in cases of emergency". N.J.S.A. 40A:14-133. The Fair Labor Standards Act gives superior protection to private sector employees.
11. N.J.S.A. 40A:14-134 permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65 year maximum applies to private sector employees.

13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees' pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, N.J.S.A. 40A:14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

Perhaps the greatest differentiation between Police Officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to whether one is on duty status within the state or not. Police Officers are statutorily conferred with specific authority and "...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." N.J.S.A. 40A:14-152.1. A Police Officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector.

Police Officers are trained in the basic Police Academy and regularly retrain in such specialties as fire arms qualifications. This basic and follow up training schedule is a matter of New Jersey Statutory law and is controlled by the

Police Training Commission, a New Jersey Statutorily created agency. Such initial and follow up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of Police Officer certification and the Police Officer's job. This is rarely found in the private sector.

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one state to another, there is more of a global competition to be considered. The New Jersey private sector employee must consider the possibility that his industrial Employer might move that plant to a state or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The Employees must work locally and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other states, even in Mexico.

Local comparisons are more relevant with Police wages. These types of issues were considered in the recent decision issued by the well known Arbitrator William Weinberg in the Village of Ridgewood case.

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The

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

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

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entitles. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g.(2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct Employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such as



contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: 1A-94-141, pages 29 - 31)

For the reasons noted above it is respectfully argued that any time there is a comparison made between a Police Officer and a private employee generally, Police Officer's position must gain weight and be given greater support by such comparisons. The Police Officer lives and works within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility. The level of scrutiny, accountability and authority are unparalleled in employment generally. The Police Officer carries deadly force and is licensed to use said force within a great discretionary area. A Police Officer is charged with access to the most personal and private information of individuals and citizens generally. His highly specialized and highly trained environment puts great stress and demand on the individual. Private employment generally is an overly generalized category that includes virtually every type of employment. To be sure in such a wide array of titles as the nearly infinite number covered in the general category of "private employment" there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in police work. A Police Officer is a career committed twenty-five (25) year statutorily oriented specialist who is

given by law the highest authority and most important public franchise. The Police Officer should be considered on a higher wage plane than private employment generally.

### **STIPULATIONS OF THE PARTIES**

The stipulations between the parties were largely procedural in nature in this case and therefore are likely not to have any significant role in the ultimate determination of the issues presented. The one exception is the term. Both parties have proposed the Arbitrator's authority be for a two (2) year term. While not specifically stated as such, this may be considered a stipulation as there is no dispute on term. This Award will be for two (2) years, calendar year 2013 and 2014.

### **LAWFUL AUTHORITY OF THE EMPLOYER**

Consideration under this category considers analysis under criteria g5, g6 and g9 under the Act. The noted criteria referenced the New Jersey "CAP Laws" which are three (3) in number. The first enacted in time sequence was the Appropriation CAP which is a restriction on governmental spending. The statutory formula is set forth in the Budget document. The second in time sequence is the Levy CAP which is a prohibition on levying taxes upon a certain

formula. This formula is also set forth in the Budget document. The final and most recent CAP is the so-called "Hard CAP" which the Legislature has singled out Fire and Police for unique treatment among all titles in all public employment at every level in government.

There is absolutely no problem with the awarding the entire PBA Position either under the Appropriation CAP or Levy CAP formula. The Appropriation CAP formula appears in the Budget document for 2013 (P-48) at Sheet 3b. The sheet contains the formula analysis and on the right hand side of the page third line up from the bottom is the line entitled "Total Allowable 2013 Appropriations" with a stated amount of Twenty-Eight Million Six Hundred Seventy-Five Thousand Three Hundred Eighty Dollars (\$28,675,380.00). The next line below is the "Actual Total 2013 General Appropriations Within CAP" with a stated amount of Twenty-Six Million Three Hundred Ninety Thousand Seventy-Six Dollars (\$26,390,076.00). The third and final line on the right hand side of the page is entitled "Unappropriated CAP Allowance" and the stated amount is Two Million Two Hundred Eighty-Nine Thousand Three Hundred Three Dollars (\$2,289,303.00). The statutory formula permitted the use of an Appropriation amount of Twenty-Eight Million Six Hundred Seventy-Five Thousand Three Hundred Eighty Dollars (\$28,675,380.00). The Budget as adopted was inside of the allowable Appropriation amount in the total amount of Twenty-Six Million Three Hundred Ninety Thousand Seventy-Six Dollars (\$26,390,076.00). The "Unappropriated CAP

Allowance" is the difference between that which could have been appropriated under the statute and the amount actually utilized in the Budget as adopted in 2013. Thus, the Budget for Mahwah for 2013 is under the Appropriation Cap by Two Million Two Hundred Eighty-Nine Thousand Three Hundred Three Dollars (\$2,289,303.00). Two (2) points are made. First, there is absolutely no prohibition presented by the application of the Appropriation Cap Law to an award of the PBA Position in this proceeding. Second, the amount not utilized in a given year does not go away but rather goes forward into the subsequent years as a "CAP Bank. In fact, the middle of the right hand side of Sheet 3b of the Budget is referenced the 2011 and 2013 CAP Banks in the amounts of \$1.3 Million and \$1.06 Million respectively. Thus there is a history of CAP banking in this town and there is a trend. The last two (2) noted years 2011 and 2012 had just over a Million Dollars in CAP flexibility while the current has close to a \$2.3 Million in CAP flexibility which will carry forward as a future CAP Bank. There is likely to be no Appropriation CAP issue in future years in Mahwah. Since this is a two (2) year contract term there is little doubt that the Appropriation CAP will not be a factor in 2014.

The Appropriation CAP formula for Mahwah in 2013 as set forth in the Budget document (*P-48*) at Sheet 3b-1. On the right hand side of the page three (3) lines up from the bottom is a statement "Maximum Allowable Amount to be Raised by Taxation" with a stated amount of Twenty Million Six Hundred

Ninety Thousand Five Hundred Sixty-Six Dollars (\$20,690,566.00). The line below is entitled "Amount to be Raised by Taxation for Municipal Purposes" with a stated amount of Twenty Million Three Hundred Seventy-Six Thousand Six Hundred Fourteen Dollars (\$20,376,614.00). The final line on the right hand side of Sheet 3b-1 is entitled "Balance" in the amount of Three Hundred Thirteen Thousand Nine Hundred Fifty-One Dollars (\$313,951.00). This means that the Levy CAP formula permits the Twenty Million Six Hundred Ninety Thousand Five Hundred Sixty-Six (\$20,690,566.00) amount to be the subject of an increase in the Levy whereas the Budget as adopted only used a Levy total amount of Twenty Million Three Hundred Seventy-Six Thousand Six Hundred Fourteen Dollars (\$20,376,614.00). The "Balance" of Three Hundred Thirteen Thousand Nine Hundred Fifty-One Dollars (\$313,951.00) is the amount that this municipality is below the Levy CAP formula permitted ceiling for 2013. The Budget as adopted is close to one-third of Million Dollars under the Levy CAP. Once again, this significant amount shows that there is no prohibition to an award of the PBA Position and further that there is likely to be no problem with the Levy CAP next year as well.

The challenge in these proceedings of course is to identify the amount of dollars available to work with under the so-called "Hard CAP". The Hard CAP is a function of two percent (2%) being applied to certain applicable categories of compensation. The Employer has calculated what two percent (2%) would

be for each of the two (2) years at issue in this proceeding by applying a four percent (4%) formula and showing Six Million One Hundred Seventy-Eight Thousand Eight Hundred Eighty Dollars (\$6,178,880.00) (*Employer Exhibit T-49, p.1*). The question remains as to whether said amount is sufficient to account for step movement and a reasonable wage increase to the bargaining unit. The answer is in the affirmative.

The Employer's calculations of actual bargaining unit personnel are not accurate in that they project cost increases in percentages for such items as longevity and hazardous duty. Both of these sums are flat dollar amounts and do not vary year to year. Regardless of rank and regardless of term of service, the Hazardous Duty Pay is a fixed Fifty Dollars (\$50.00). It does not vary year to year and is not cumulative. Nonetheless, the Employer picks it up as part of its formula in calculating increases suggesting that said element would increase by the same percent as base pay. This is a clear misunderstanding. The same error also applies to the longevity calculation of the Employer which is also a flat dollar and therefore not appropriate to be considered as to float upward with base change percentage. The Employer's Charts in its book also include the full cost of step movement to be assigned each year for the full year. This is not accurate. Employees moving on steps only move for that part of the year prospective to the rate change.

In the Mahwah Police Department, at the time of hearing, there were eight (8) Police Officers who were in steps. They were identified in exhibits by the parties as Officers Iorio, Stewart, DiRenzo, Hayes, Birney, Lange, Letavish and Hill. It would be incorrect to assess the entire cost of 2013 step movement in its entirety. **Chart No. 4** on the following page identifies each of the named Officers who are in steps and illustrates both their step movement, date of step movement entitlement and net impact in 2013.

**CHART NO. 4**

**2013 STEP MOVEMENT COST (T-45)**

1	Iorio	6 <sup>th</sup> Year to Maximum	8/13	\$6,206
2	Stewart	Step 4 to Step 5	2/13	\$10,383
3	DiRenzo	Step 4 to Step 5	5/13	\$7,268
4	Hayes	Step 3 to Step 4	11/13	\$1,038
5	Birney	Step 3 to Step 4	2/13	\$10,383
6	Lange	Step 3 to Step 4	2/13	\$10,383
7	Letavish	Step 3 to Step 4	3/13	\$9,344
8	Hill	Step 3 to Step 4	8/13	\$4,153
			<b>TOTAL</b>	<b>\$59,158</b>

The cost of 2013 step movement for each Officer is identified based upon the preceding contract pay rates and the amount of year remaining post step

movement. The actual cost of step movement attributable to 2013 is Fifty-Nine Thousand One Hundred Fifty-Eight Dollars (\$59,158.00).

In order to assess the actual bargaining unit costs, and of course the amount of impact of a wage rate change one must consider the total bargaining unit Employee census. **Chart No. 5** on the following page identifies the covered titles within the bargaining unit and the census for Officers in each of the positions. With respect to Police Officer the thirty-seven (37) Police Officer positions are broken down as twenty-nine (29) Officers and maximum pay rate and the eight (8) earlier enumerated (See **Chart No. 4**) Officer who are in the steps. With respect to the Officers who are in the steps their step rate pre-step change in 2013 is added to the amount indicated on **Chart No. 4** as the cost of the step change. Officer Iorio for example reaches maximum pay rate in 2013 and there is no further step impact in 2014.

#### **CHART NO. 5**

##### **BARGAINING UNIT BASE FOR 2013 WITH ALL STEP MOVEMENT**

			<b>2013 BASE</b>
Detective Lieutenant	1	\$148,390	\$148,290
Lieutenant	4	\$144,272	\$577,088
Sergeant	4	\$136,036	\$544,144
Detective	2	\$131,918	\$263,836



Police (Max)	Officer	29	\$127,896	\$3,706,084
Iorio				\$115,383
Stewart				\$94,369
DiRenzo				\$91,524
Hayes				\$72,833
Birney				\$82,178
Lange				\$82,178
Letavish				\$81,139
Hill				\$75,948
			<b>TOTAL</b>	<b>\$5,935,364</b>

The total of all 2013 base rates for the entire bargaining unit, including the value of the step increase in 2013 is illustrated to be Five Million Nine Hundred Thirty-Five Thousand Three Hundred Sixty-Four Dollars (\$5,935,364.00). The Employer's calculations on its several Charts in the loose leaf book are, with due respect to the Employer, less accurate than the above calculations. Various types of costs are attributed to base pay which are not appropriate for calculation within the "Hard CAP" calculation. Reference is made on several Charts to non-bargaining unit personnel. Costs attributed to pension and health care are added to certain Employer Charts. These items are specifically excluded by paragraph A of the Hard CAP statute. In sum of the Charts the Employer

includes the cost of workers' compensation for each Officer (*T-38*). Personal days are given a dollar cost when they are in fact forbearance from work from work and work and require prior approval which is dependent on not incurring overtime costs. Forbearance from work without back fill overtime costs is not a dollar cost item. In any event, it does not belong within the Hard CAP formula. The Employer even opines unrelated administrative and equipment costs for Mahwah Police Officers, some undoubtedly non-bargaining unit costs (*Exhibit T-39*). While some may consider the Hard CAP to be Draconian legislation, at the very least it must be the subject of strict and consistent adherence in order to have valid calculations. It is respectfully submitted that the calculations of the PB are more accurate and entitled to greater weight. The Employer's own calculations (*See Employer Exhibit T-49, p.2*) so that there is Two Hundred Thirty-Seven Thousand Six Hundred Forty-Nine Dollars (\$237,649.00) available under the Hard CAP Law. If one subtracts the actual cost of step movement in 2013 (*See Chart No. 4*/Fifty-Nine Thousand One Hundred Fifty-Eight Dollars (\$59,158.00) there remains the balance, after accounting for step movement in 2013 of an additional One Hundred Seventy-Eight Thousand Four Hundred Ninety-One Dollars (\$178,491.00).

The step movement cost in 2014 will only affect seven (7) Officers as Officer Iorio has achieved the maximum pay in 2013. There remains ample

funding for a reasonable wage increase *albeit* the PBA recognizes the possibility of a delayed start date on any increase over the course of the contract.

Some general notes must be made with respect to the general fiscal condition of the Township of Mahwah. Observations include the following:

- The anticipate surplus in 2013 has increased by \$645,000 over the anticipated surplus in 2012. This is a 19.8% increase (See 2013 Budget, T-48, Sheet 4, Line 1).
- The tax collection rate in the Township has been exceptionally high:
  - 2012 – 98.97%
  - 2011 – 99.22%
  - 2010 – 98.9%
  - 2009 – 98.11%
  - 2008 – 99.2%
  - 2007 – 99.3% (Township of Mahwah Report of Audit, P-7, p.145)
- Notwithstanding the exceptionally high tax collection rate, the Township has only anticipated 97.25% for 2013 (See T-48, p. 3, line 3). The underestimation compared to the 2012 rate (98.97%, See T-48, Sheet 39) for 2013 is only 98.25% (Sheet 3, Line 3) is .72%. while this may appear to be a small number when it is multiplied by the total Tax Levy of the Ninety-Two Million Eight Hundred Twenty-Three Thousand Two Hundred Thirty-One Dollars (\$92,823,231.00) (AFS, P-6, Sheet 22, Line 5) shows and underestimation of over Six Hundred Sixty-Eight Thousand Dollars (\$668,000.).
- The Township has unanticipated revenue of substantial proportions. In 2012 alone there was over Nine Hundred

Eighty Thousand Dollars ( $\geq \$980,000.00$ ) in "Miscellaneous Revenues Not Anticipated" (See AFS, *P-6*, Sheet 20).

- The median value of a house in the Township has risen by two hundred seventy-six percent (2765) from 2000 to 2010 (Rating Agency Presentation for General Improvement Bonds, *P-3*, Sheet 10).
- Commercial property accounts for a larger share of ratable as compared to 2005 (*P-3*, Sheet 11). Net debt percentage has remained below seven-tenths of one percent (0.7%) since 2005, less than one-third ( $1/3$ ) the amount permitted by statute (*P-3*, Sheet 15).
- The Annual Debt Statement issued December 31, 2012 shows that net debt is 0.45%, well under the 3.5% statutory debt limit (*P-8*, p.1).
- The pace of amortization of outstanding debt shows rapid repayment (*P-3*, Sheet 16).
- The Township maintains strong reserves (*P-3*, Sheet 19). The Township, while it mentioned tax appeals during its presentation, actually maintains a reserve for tax appeals of just under One Million Dollars ( $\leq \$1,000,000.00$ ) for 2012 which was carried over and an additional Three Hundred Thousand Dollars (\$300,000.00) for 2013 per the statements on cross-examination of Employer Business Administrator Brian Campion at hearing.
- State aid to Mahwah has remained strong and has not been decreased in four (4) years (*T-29*).
- Strong surplus balances and the ability to regenerate surplus have been consistent within the Township (*T-30*). The aggregate true value of property within the Township is Six Billion Three Hundred Ninety-Two Million Four Hundred Eighty-Three Thousand Dollars (\$6,392,483,000.00) (Equalization Table for the County of Bergen, *T-18*). This aggregate true value is the highest among all seventy (70) Bergen County municipalities.
- Noting that there was reevaluation effective in 2011 for the Township of Mahwah, the actual tax rate in Mahwah of One Dollar and Fifty-Eight Cents (\$1.58) is one of the very lowest in the entire seventy (70) town County of Bergen.

This is a municipality where the tax rate is low, the ratable base is extremely high, and based upon the rate of current collection, it would appear that the rate is not burdensome. The Township of Mahwah is certainly a preferred municipality with respect to taxpayers, tax burden and value received.

### **THE COST OF LIVING**

Both parties have submitted documents with respect to the cost of living. The data in those exhibits, for example, *P-19* and *P-20* support an award of the PBA Position in this case.

### **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**

A review of this case consistent with the referenced private sector standards would import concepts such as "area standards" and "prevailing rate". Both of these elements have been the subject of PBA proofs at hearing and have been discussed earlier in this Brief. The Employer has however ignored

this concept and in fact gone against the trend by attempting to take advantage of a challenging statutory environment by attacking longevity. Longevity for the Mahwah Police Officer is one of the poorest programs of longevity in any contract submitted by any party in this proceeding. They are already at the bottom. To make matters worse, the Mahwah longevity program is a flat dollar program which is not affected by base wage changes. This is significant considering the statutory definition applicable in this matter. The Employer did not even bother to cost out the longevity issue individually.

Perhaps most troubling in this case is the Employer's unwarranted and unsupported attack on a longstanding and most important condition of employment, health care coverage. The issue of health care coverage is of paramount importance to any Employee, private or public. If one cannot provide for the wellbeing of themselves and their family, the issue of wages is on nominal importance. It is acknowledged that the Mahwah PBA has a good health care insurance plan. Such is not denied. What must be understood however is that this coverage was the product of negotiations, contract inclusion and of many years duration. While it is difficult to specifically identify in negotiation history what was given for what, this was a negotiated benefit which has long been provided in this Employer-Employee relationship. The Employer is attempting to "take a shot" at this most valuable element of compensation and is doing so in a most disorganized way.

With due respect to the public employer insurance salesperson, the PBA did present Frank J. Petrulla whose expertise in health care matters is over thirty ( $\geq 30$  years). His many licenses, certifications, professional memberships and awards over those many years was made part of the record with his *curriculum vitae* (P-21). Mr. Petrulla is a person of great expertise in the medical benefits field and he was clearly knowledgeable on those elements of coverage at issue in this case. His testimony was compelling.

The paramount made by Employee benefits expert Frank J. Petrulla was that there was insufficient information provided by the public employer in this hearing upon which an assessment could be made. There were too many questions left unanswered and too many key elements which were not addressed in the Employer's position. Mr. Petrulla identified the failure to provide a quantitative analysis regarding the insurance provider network. He talked of variations in the "Stop/Loss Corridor". He also talked about the issue of discounts with affiliates and how they impact the network. None of these issues were addressed by the Employer. Here the Arbitrator is not placed in a position of having to weigh creditable evidence by the respective partners. Rather the Arbitrator is faced with the party which has the burden failing to supply necessary elements of proof. The public employer could not answer the question with respect to brokerage fees, clearly an issue with its insurance

representative, and how they relate to base calculations for statutory application.

In one area that the Employer is apparently stumbling in is the issue of termination liability. Mr. Petrulla went into this issue in detail. There is a significant risk factor in this area, not even addressed by the Employer. In other words, the Employer is getting into something that it was not presenting but could ultimately result in a significant negative impact on this same Employer. Mr. Petrulla described the issue and stated that there was "insufficient information to do a disruption analysis".

The limitation of networks and the differentiation under the Employer's Position which has different levels of coverage for in-network and out-of-network status is important. The AmeriHealth network which the Employer acknowledged would be applicable, is a New Jersey network. It is noteworthy that the Township of Mahwah lies on the State line and a major trauma center is just across the border, Good Samaritan Hospital. Emergency cases, possibly involving Mahwah Police Officers or their families may well end up at this trauma center only a few miles from Headquarters whereas other New Jersey trauma centers are at significantly greater distance. The Employer's exhibit (T-34) had numerous areas which specifically showed shortfalls from current positioning in the Employer's new program. In some cases the Employer was not able to



respond, either directly or through its witness on key issues. For example, what is the possibility under this new proposal for coverage of a retiree's widow? There are such cases in Mahwah where a retired Officer died and left a surviving spouse. Said people are currently covered. The insurance representative who was promoting the Proposal for the Employer was not able to answer the question. The representative could not define brokerage fees or other administrative costs. These are important because they do not apply to the statutory formula for partial payment.

The deductibles are different. There is no question that the deductibles under the Employer's program are higher than the current deductibles for single and family claims. After the deductible significant changes would be applied for lesser coverage for hospital benefits, surgery benefits and even office visits.

In the present plan there is no difference between "in-network versus out-of-network" as the plan does not make such definition. The Employer's Proposal is a two (2) tier plan where lists of in or out-of-network providers are unilaterally set by the Employer or its representative. The potential for further negative impact is significant. The current PBA contract (*J-1*) provides at page 30, Paragraph D provides:

The current level of medical and related insurance coverages shall be provided for retired Employees and the Employer shall assume the entire cost of such coverage and pay all

premiums for Employees who have retired after achieving twenty-five (25) years of creditable service as defined by the New Jersey State Police and Firemen's Pension statute and in addition have served a minimum of twenty (20) years with the Township.

This specific and directory is the standard for all retirees. The noted paragraph goes on to specify specific deductibles and other cost containment issues as they are applicable to said to retirees. There are retirees out in retirement with said plan. As a matter of law the parties cannot negotiate for retirees. That is exactly what the Employer is attempting to do here. By changing the level of coverages, the in-network/out-of-network standards being introduced, and the entirely revised prescription program with new deductibles, is violating the retiree rights. The PBA would not and could not agree to this type of change for people who are now in retirement having relied upon the written promise of the Township and included it in their plans for retirement. The Employer's insurance representative who testified at hearing could not respond to this issue and said he would have to look into it. That is not good enough. That is an insufficient response and is another example of a major flaw in the Employer's position. Should such a change be unilaterally implemented it would almost certainly lead to litigation which would be costly to the public and likely to be successful against the Employer.

A fundamental problem to the Employer's Position is that it based on an incorrect assessment of costs. The current plan is a self-insurance plan. Self-

insurance plans, as Mr. Petrulla clearly identified are claims driven. If one's costs goes up in a certain year to pay for claims then obviously the cost of the coverage account goes up as well. Conversely, if one has a good year with lower claims then the account for coverage goes down as well. It is a claims driven program. The PBA put into evidence the 2012 Municipal Budget (P-7) and the 2013 Budget was put in by the Employer (T-48). Referring to the 2012 Budget at Sheet 13 one notes that for 2011 there was Four Million Two Hundred Five Thousand Two Hundred Seventy-Nine Dollars (\$4,205,279.00) appropriated and the "total for 2011 as modified by all transfers" was the same number, Four Million Two Hundred Five Thousand Two Hundred Seventy-Nine Dollars (\$4,205,279.00). The key concept however is that under the column to the right "Paid or Charged" was only Three Million Six Hundred Eighty Thousand Nine Hundred Forty-Two Dollars (\$3,680,942.00). To the right again is a reserved account, the amount not spent in 2011. The reserve account is Five Hundred Twenty-Four Thousand Three Hundred Thirty-Six Dollars (\$524,336.00). In other words for 2011 the actual paid or charged was over one-half million ( $\leq \frac{1}{2}$  Million) less than was anticipated. It would appear that 2011 was a good year for claims from a cost standpoint. Moving to the 2013 Budget (T-48, Sheet 13) one notes the 2012 amount of appropriated money was Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000.00) and the 2013 was Four Million Two Hundred Five Thousand Dollars (\$4,205,000.00). This certainly is an increase in allocation for 2013 but it is not an amount spent. It is an amount projected. This is a world

apart from money spent. There is a cushion here. Insurance expert Petrulla identified a cushion in self-insured plans by referring to it as a "margin" which is usually a total of one hundred twenty-five percent (125%) over the anticipated claim. It is a buffer to make sure no one runs out of money. In Mahwah the appropriated amount for 2013 is greater than was appropriated in 2012 notwithstanding that the actual amount expended in 2012 was, again to the right, Three Million Six Hundred Ninety-Two Thousand One Hundred One Dollars (\$3,692,101.00). The difference between the anticipation for 2013 under the appropriated amount ) Four Million Two Hundred Five Thousand Dollars (\$4,205,000.00)) and the actual "Paid or Charged" for 2012 (Three Million Six Hundred Ninety-Two Thousand One Hundred One Dollars (\$3,692,101.00)) is Five Hundred Twelve Thousand Eight Hundred Ninety-Nine Dollars (\$512,899.00). In other words, this Employer has for reasons best known to the Employer appropriated an additional Five Hundred Twelve Thousand Eight Hundred Ninety-Nine Dollar (\$512,899.00) in 2013 over that which they actually spent in 2012. Therefore the history over these three (3) years, 2011, 2012 and 2013 shows and over anticipation of cost by appropriation of a significantly higher amount than was actually expended. In each year there was a significant cushion, which is a conservative practice and not challenged, and money was left unappropriated as a "reserve sum. The amount that the public employer is complaining about in this proceeding, Four Million Two Hundred Five Thousand Dollars (\$4,205,000.00), is not an insurance cost. It is an appropriated amount

which the Employer is guessing that it may have to spend during 2013. The PBA would submit that if the proper margin practices are maintained that this amount is well beyond that which will be actually spent as it has been for the prior years in evidence. In effect the Employer has anticipated a large sum and is now complaining about the large sum which is not an expense but just an anticipation. There are no proofs here.

This is not a premium plan. The health care plan in Mahwah is a claims driven plan which is the result of self insurance. One cannot claim costs out of money set aside in anticipation. Unspent monies go into a reserve account and carry forward. It is good business but it is not sufficient to support a claim of insurance costs.

Given the lack of key information identified by Mr. Petrulla at hearing and further the failing to address significant essential areas required for assessment should be considered fatal to this Proposal. The only specifics provided are highlights in several points provided by the Employer by people who are promoting the plan, its insurance representative. T-34 is made up of selective points identified by the Employer. Notably, even the Employer's best selected points show serious defects in cost, network modifications and availability of services and prescription coverage. The person who was selling this idea presented by the Employer could not even come up with hard dollar savings as

to what the difference would be for Employees under the Act. This is of course, of critical importance because under the revised statute the Employees are to be paying some portion in four (4) plateau stages of the cost. When asked specifically how much it would cost, he could not answer.

The Employer's medical proposal to reduce coverage is unawardable as a matter of law. The Interest Arbitration statute requires that an arbitrator assess annual cost impact in each year of the Award. Here there is insufficient evidence to even identify even one year of the Award. It cannot be quantified. It cannot be costed out. It cannot be awarded.

In conclusion one must only refer to the Arbitrator's most comprehensive and well -reasoned statement in the Award regarding the Employer's attempts to cut in many areas without justification.

It must also be noted, particularly in considering the array of cuts in economic benefits the Township proposes, that the salary and benefits earned by these police officers is a result of years of collective negotiations. It is generally an axiom of negotiations, especially in the last few years where concessions are being proposed, that you give something up in exchange for something else. Here, the employer asks for an array of give-backs on benefits, but at the same time, proposes to give virtually nothing in increases. I intend to take a more balance approach in this award.  
(Township of Byram and PBA Local 138 (Byram Township

Unit), PERC Docket No. IA-2013-012 (2013) Award, p. 42).

The PBA believes these words are well stated and they are reasonably sound.

### **The Township's Position<sup>2</sup>**

### **FACTUAL BACKGROUND**

Mahwah is a 25.7 square mile town (T-19), having a population of approximately 26,000, located in Bergen County, New Jersey (T-17). According to the 2010 census, there are 25,890 residents living in a total of 9,970 housing units (T-19 and 20).

The median household income in Mahwah in 2010 was \$92,971, a figure ranking it twelfth **lowest** among the thirteen Northwest Bergen County communities (T-22).

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<sup>2</sup> The Township's position was taken from pages 8-69 of its Brief. I omitted page 38 through the top portion of page 46 of the Township's brief where the Township listed the parties' exhibits and their final offers. The footnotes extracted from the Township's Brief are misnumbered in this Award because I was unable to renumber the footnotes after I performed the "cut and paste" function in Word format. Footnotes 3-7 in this Award are actually numbered 1-5 in the Township's Brief.

Mahwah's population is significantly residential in character, with the vast majority (78.6%) of its residences being single family homes (T-19). Accordingly, Mahwah is extremely reliant on taxes generated from residential properties to provide revenues for its municipal and educational services, with said properties accounting for over 70% of Mahwah's total revenues in 2013. (T-23 and T-24).

Mahwah is significantly developed with only 1.5% of its total acreage remaining as undeveloped land in the entire community (T-25).

In this regard, 46% (7,400 acres) of Mahwah's total acreage (15,959 acres) is located in a Conservation or Preservation Zone, mainly due to the presence of the Ramapo Reservation County Park and Campgaw Reservation and Ski Area in Mahwah, both of which fall under the jurisdiction of the Bergen County Police Department. Such zoning allows such property be used exclusively for open space/recreation purposes. Accordingly, while Mahwah is geographically the largest municipality in Bergen County, almost 50% of the Township does not require traditional policing services.

Additionally, all Township property located west of Route 202 is located in the Highlands Preservation Zone, which restricts development in said zone. (T-25). Mahwah has also opted by ordinance to impose additional development



restrictions on all property in the eastern one-half of the Township within the Highlands Planning District. (T-25).

Therefore, little by way of additional revenues from future development can be reasonably anticipated.

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The PBA is the collective bargaining representative for the police department personnel of the Township.

The predecessor CBA (T-8 and J-1) commenced on January 1, 2011 and expired on December 31, 2012. It contains a salary schedule which provided for a 2012 salary of \$127,796 (exclusive of longevity and other monetary benefits) for a "top step" patrolman. (J-1).

The predecessor CBA contains a longevity provision, which provides that police officers, in addition to other benefits, also receive \$375.00 for each year of service. Said payments do not begin until an officer has served four (4) years on the Township Police Department (including probation), after which the payments are calculated so as to include credit for the first four (4) years of service.

### **THE HEARING**

Gerald Folatico, PBA President, Rosario Zito and Frank Petrella testified at the April 29, 2013 hearing on behalf of the PBA. Township Administrator Brian Campion and Frank Covelli testified on behalf of the Township.

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### **The Township's Witness**

Township Administrator Brian Campion testified on behalf of Mahwah. He indicated that he had been the Administrator for the Township for the past eleven (11) years.

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Mr. Campion testified that Mahwah is geographically the largest municipality located in the northwest portion of Bergen County (T-17 and 18). It consists of 25.7 square miles (T-19).

However, he testified that 7,400 acres – i.e. almost one-half, or 46.3%, of all Township property – is located in a Conservation or Preservation Zone, which prohibits said acreage from being used for any purpose other than open space or recreation.

Mr. Campion indicated that, according to the 2010 census, there are 25,890 residents living in Mahwah in a total of 9,970 housing units (T-19 and T-20).

More than fourteen percent (14%) of the population of Mahwah is age sixty-five or older (T-20). Most, if not all, of this age group, is on fixed incomes.

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Mahwah is a part of a thirteen (13) town area commonly referred to as Northwest Bergen County (T-18). Mr. Campion noted that Mahwah is bordered by Allendale, Oakland, Franklin Lakes, Ramsey, Upper Saddle River and Wyckoff, and he identified each of the thirteen Northwest Bergen communities (T-18). Mr. Campion also noted that such designation is duly recognized as a regional planning area.

The PBA, as part of its presentation at the hearing, "cherry-picked", for introduction into evidence, three CBAs for police officers outside the Northwest Bergen communities, i.e., Montvale (P-16), the investigators and sergeants units of the Bergen County Prosecutor's Office (P-13) and the superior officers, lieutenants and captains for the Bergen County Prosecutor's Office (P-14). However, while such agreements were obviously specifically introduced by the PBA to "fit" the theme of their presentation, they clearly fell outside the most logical and appropriate communities upon which to evaluate the wages and benefits of comparable bargaining units as mandated by the Act. As such, same should be given very little, if any, weight.

While many of its neighboring communities in Northwest Bergen are quite affluent, this is not the case with Mahwah. In fact, more than one-half of such communities have median household income levels exceeding that of Mahwah by 40-90% (T-22). Only Midland Park, nominally, has a lower median household income level than Mahwah when compared to the other thirteen Northwest Bergen municipalities. Such median household incomes are reflected below and in exhibit T-22:

	<u><b>Town</b></u>	<u><b>Median Household Income</b></u>
1	Upper Saddle River	\$175,399
2	Ho-Ho-Kus	155,030
3	Franklin Lakes	151,224
4	Wyckoff	145,366
5	Ridgewood	143,229
6	Glen Rock	140,882
7	Allendale	131,563
8	Ramsey	111,549
9	Oakland	111,390
10	Saddle River	97,197
11	Waldwick	95,774
<b>12</b>	<b>Mahwah</b>	<b>92,971</b>
13	Midland Park	87,905

In its presentation, the PBA introduced evidence of the median household income in Bergen County, the State of New Jersey and the United States. Such statistics were obviously used because the PBA is well-aware that the communities of Northwest Bergen County are the most relevant comparative statistics to examine when assessing Mahwah's relative wealth, and such statistics speak loudly of Mahwah's relative lack of affluence compared to such other communities. In any event, such statistics are not competent comparables, and should be given no weight.

Also, Mahwah has limited ratables and only a small proportion of non-residential ratables (T-23). In fact, on a consistent basis (contrary to the testimony of Officers Folatiko and Zito regarding new commercial development), residential ratables approximate 77% of the overall ratables of the Township (T-23). As a result, as Mr. Campion noted in his testimony, any expansion of municipal services or increase in the costs for the same, is disproportionately borne directly by the residential taxpayers of the community.

Further, a large majority (over 70%) of the total revenue of the Township is derived from local purpose real estate taxes. (T-24) Thus, once again, the residential taxpayers of Mahwah bear a disproportionate share of any expansion or increase of the costs of municipal services.

Against this backdrop of a community with limited commercial ratables; located in an affluent area; yet having a population earning significantly less than the vast majority of residents in neighboring communities; Mahwah has also experienced a loss in state aid (T-29). Whereas \$6,071,473 in state aid was received in 2007, just three years later (2010), this figure had been reduced by almost 20% to \$4,909,572. Further, despite an increasing budget each year after 2010, the level of state aid received by the Township has remained flat at that figure through 2013. (T-29)

Since the proposed CBA will provide for salaries projected into the future, it is not unreasonable to assess the likelihood of Mahwah securing additional ratables in the near-term to help offset increased labor costs. However, here again the future is not promising for the Township. Mahwah (again unlike some of its wealthy neighbors) has little undeveloped property (T-25) which is capable of supporting significant future additional ratables. Almost one-half of Mahwah's entire acreage is developmentally constrained by permanent conservation/preservation zones – most notably comprised of Ramapo Reservation County Park. The "and growing" reference made by Officer Zito during his presentation is substantially devoid of factual support. In addition, the testimony of Officer Zito regarding the International Crossroads site was significantly misleading. As noted by Administrator Campion, while there is development application pending, it proposes a use that is incompatible with

existing zoning and is presently subject to multiple lawsuits. No reliance can be placed on the uncertainty of any future development at this site.

Further constraining future development is the fact that all Township property located west of Route 202 is located within the State of New Jersey Highlands Preservation Zone, which limits the development of all real estate therein. (T-25). Additionally, all land in the eastern half of Mahwah is, by Township ordinance, regulated by the Highlands Planning District "overlay" which restrains development therein.

Also, there are a total of 31 tax-exempt properties within the Township having a 2013 net taxable value of over one-half billion dollars, i.e., \$519,323,300. (T-26) Included within such tax-exempt properties are, as confirmed by the PBA in its proofs (P-2), fifteen (15) houses of worship.

In short, Mahwah will receive little future tax relief by the addition of new ratables from presently undeveloped property.

Mr. Campion also testified that from 2011 through 2013, Mahwah has experienced declining net valuation of taxable properties. From 2011 to 2012 alone, tax ratables declined in value from \$5,735,375,297 to \$5,696,623,777. (T-27). From 2012 to 2013, tax ratables declined in value from \$5,696,623,777 to

\$5,663,644,555. Therefore, from 2011 to 2013, tax ratables have declined approximately \$72,000,000. (T-27)

Mahwah's tax rate over this same period has significantly increased. From 2010 to 2011, the tax rate increased 7.2% (.319 to .342). (T-32). From 2011 to 2012, the rate of increase declined to 1.75% (going from .342 to .348) due in large part to austerity measures undertaken by the Township. (T-27 and T-32). However, from 2012 to 2013, the rate significantly increased again by 3.45% (from .348 to .360). Accordingly, from 2010 to 2013, Mahwah residents have sustained an increase in tax rates of approximately thirteen (13%) percent, or a 4.13% average annual increase during these three (3) years. (T-27).

Correspondingly, Mahwah has sustained an extraordinary increase in tax refunds paid from 2011 through 2013. (T-27). In 2011, tax refunds totaling \$203,293 were paid. In 2012, this figure increased by two hundred (200%) percent to \$612,048. Thereafter, beginning in January 2013 through April 2013, the Township has already paid out \$394,822 in tax refunds, and has further stipulated in New Jersey Tax Court to pay an additional \$804,322 in tax refunds. Id. Therefore, for the first four (4) months of 2013 alone, Mahwah has incurred approximately \$1,200,000 in tax refunds. Further, Mr. Campion testified that, for the remainder of 2013, Mahwah reasonably anticipates additional tax refunds. The Township anticipates more than an additional \$1,000,000 of refunds to be



paid in 2013 and 2014 to cover the commercial and residential appeals already filed.

While Mahwah has budgeted approximately \$1,200,000 as a reserve for tax appeal refunds for 2013, this amount has been or will be exhausted by the tax refunds paid or settled for the first three months of 2013. (See T-27). Obviously, significant additional funding will be required for the balance of the pending tax appeals from 2011, 2012, and for the new appeals filed in April 2013. In this regard, at least an additional \$1,000,000 in refunds is anticipated. (T-27).

Mr. Campion testified that, while the foregoing sources of revenue have been declining, the Township's expenditures have not. More particularly, the appropriations for 2012 of \$34,564,660 have increased by 3.1% for 2013 to \$35,605,814. (T-48). Such increases have resulted in Mahwah's local tax levy increasing from \$21,984,062 in 2012 to \$22,449,691 in 2013 – an increase of 2.1%. (T-31) As Mr. Campion testified, such increase was within the 2% statutory tax levy cap under N.J.S.A. 40A:4-45.45 when statutory exceptions are taken into account.

Due to the referenced financial constraints, and based upon a long-standing managerial philosophy, Mahwah, as Mr. Campion testified, has

adopted a “pay as you go” approach. Clearly, the Township is not in a financial position to support any new significant debt. Logically, this approach at the municipal level is very consistent with the personal credo of the residents of the community, who must make do in a very affluent area with far less income than the residents in neighboring towns.

Mahwah has provided, for consideration by the Arbitrator, its 2012 financial statement (T-47), as well as its 2013 budget (T-48). These compilations give ample support to and reaffirm the various economic realities and constraints referred to infra. Included among the constraints utilized by the Township is a zero (0%) per cent increase in salaries for all non-union Township employees for 2013.

What is equally telling and problematic, however, is the fact that Mahwah has been required to use more and more of its surplus in order to “control” the tax impact of its expenditures.

Despite being very austere and despite avoiding long-term debt wherever possible, Mahwah’s tax rate has continued to escalate at an alarming rate (T-32). More specifically, as noted above, the tax rate has increased an average of 4.13% each year between 2010 and 2013. Indeed, but for the austerity measures taken by the Township in 2011, as well as the aggressive, but

not sustainable, use of surplus monies, the tax rate increase would have been significantly larger.

At the same time, in order to avoid a further increase in taxes, the Governing Body has allocated an increasing amount of surplus to defray (at least to some extent) the tax impacts (T-30). Such increase in the use of surplus monies has resulted in corresponding decreases in year-end surplus balances (T-30).

By way of example, from 2006 through 2008, the year-end surplus decreased as follows: \$8,510,396 in 2006 to \$7,579,224 (-11.5%) to \$7,287,814 in 2008 (-4%).

Beginning in 2009, as general economic conditions deteriorated, the Township utilized additional surplus to soften the impact of such conditions. In 2009 and 2010, the Township utilized \$4,750,000 and \$4,625,000 of the surplus, respectively. (T-30) In 2011 and 2012, due to austerity measures implemented by the Township, the amount of the surplus utilized decreased to \$3,825,000 and \$3,250,000. However, by 2013, the amount of surplus being utilized increased to \$3,895,000 – an increase of approximately 19% over that utilized in 2012.

Corresponding with the need to utilize such substantial surplus monies in these years were diminishing year-end surplus balances from 2009 through 2013. (The sole exception to this occurred between 2011 and 2012 when the surplus increased approximately 5% due to the austerity measures implemented by the Township.) From 2009 to 2010 the surplus decreased by 10%; from 2010 to 2011 it decreased by 5%; and from 2012 to 2013 it decreased by 3%. (T-30)

Mr. Campion also testified that the rating agencies have expressed concern regarding the continuous decline of the Township's surplus balance and the negative effect that same may have on the Township's bond rating. In light of same, the Township is committed to maintaining no less than a \$6,000,000 surplus balance. This commitment presents a further challenge to the Township given the pressures to use the surplus as a way to defray tax increases.

In addition to declining revenues due to shrinking assessed values, a decline in state aid, the 2% tax levy cap and dramatically increasing tax refunds, Mr. Campion testified that, beginning in November 2012 and continuing to the present, Mahwah has experienced the following dramatic and extraordinary decrease in revenue from traffic tickets. (T-50).

<u>Month</u>	<u>Tickets Issued 2011</u>	<u>Tickets Issued 2012</u>	<u>Tickets Issued 2013</u>	<u>Percentage Change (-)</u>
November	621	293		(212%)
December	994	330		(300%)
January		814	398	(205%)
February		945	459	(206%)
March		890	138	(645%)

Such unprecedented loss of revenues from traffic violations (for which the PBA has offered no explanation) will indisputably further restrict the Township's ability to realize sufficient funds for its essential operations.

Against this somber backdrop of decreasing revenue sources is the further compounding factor of increasing costs. In addition to escalating labor/salary costs, the most significant "multiplier" is the cost of health care premiums for Township employees. As reflected on T-33, and as testified to by Mr. Campion, these costs have increased at an alarming rate.

<u>YEAR</u>	<u>AVERAGE COST PER EMPLOYEE (\$)</u>	<u>% INCREASE FROM PRIOR YEAR</u>
2011	14,818	-----
2012	18,523	25.00%
2013*	22,429	21.00%
2013**	19,921	7.50%

As explained by Mr. Campion and Frank Covelli at the hearing, Mahwah, in an effort to rein in the ever-spiraling cost of health benefits, has elected to increase its claims exposure in 2013 (under the same traditional plan as utilized in 2012), but has taken steps to avoid a resultant 21% increase in premiums. (T-33). Mahwah has elected to provide the same coverage under "Option V" (which increases Mahwah's "stop loss" exposure from \$60,000 per employee to \$70,000 per employee) resulting in "only" a 7.5% increase in premiums. However, as noted, under Option V, Mahwah is assuming a significantly greater risk by way of the higher stop loss threshold. Consequently, Mahwah has increased the amount budgeted for health insurance claims from \$3,724,000 to \$4,400,000 – an 18% increase. [T-33]

With respect to the plan change proposed by the Township as part of its Final Offer, Mr. Covelli explained that the PPO plan proposed by the Township provides coverage through the Amerihealth network – the same network of healthcare providers as is currently being used under the existing traditional plan. However, under the proposed PPO plan, substantial savings are realized by virtue of incentivizing the insureds' use of in-network providers.

Moreover, the "in-network" benefits of the proposed plan are essentially the same as the current traditional plan. More particularly, Mr. Covelli explained

how the proposed PPO plan compares to the current healthcare plan, and how the proposed plan significantly mirrors the benefits of the current plan.

Further, as explained by Mr. Covelli and Mr. Campion, because the PBA under current law now contributes to the cost of their healthcare premiums, 35% of all savings in healthcare premiums will inure directly to the benefit of the PBA members themselves. This fact was also acknowledged by the PBA's health insurance witness, Frank Petrulla.

When the healthcare cost increases are applied to the members of Mahwah's Police Department, what was already an expensive program in 2011 (\$14,818 per year per officer), has increased in cost by approximately 35% in just two (2) short years, i.e., an increase per officer from \$14,818 to \$19,921. (T-33). However, as previously noted, the Township's efforts to maintain substantially similar healthcare coverage at a lower premium has been accomplished only by way of assuming a greater risk through a higher stop loss threshold. Related "hidden" costs, that are directly attributable to the CBA, include the cost of medical insurance for retirees.

At best, the position taken by the PBA on the proposed insurance change can be characterized as "spiteful." Rather than agreeing to a change that significantly maintains all existing benefits, and offer savings to both employer

and employee by incentivizing the use of in network providers, the PBA simply says, "No." In fact, the PBA's insurance consultant, Frank Petrulla, acknowledged on cross examination that he had witnessed a significant migration from traditional plans to PPOs (such as SHBP Direct-10 and "clones" thereof), as proposed by the Township. As noted above, the illogic of the PBA's position, and the opinion expressed by Mr. Petrulla, is patent given the fact that PBA members will ultimately be making a 35% Chapter 78 contribution.

The essence of Mr. Petrulla's critique is also disingenuous. On the one hand, he testified that there is not enough information set forth on T-34 (the plan comparison document) on which to make an informed judgment as to comparability, while, on the other hand, he opined that the Township's proposal results in "inferior" coverage. This incongruous testimony reflects an absence of credibility on the part of the witness and essentially constitutes a "net opinion."

While there is, of course, a detailed plan document supporting any insurance plan, T-34, as confirmed by Mr. Covelli, is the typical manner in which "side by side" comparisons of insurance plans are undertaken. In this regard, Mr. Covelli candidly acknowledged the minor instances of coverage change, but reaffirm that the proposed change will result in substantially similar coverage.



For his part, Mr. Petrulla, consistent with the PBA's negative position and attempt to maintain an antiquated and outdated vestige of historic insurance coverage (not to mention being cost prohibitive, see T-33), opined that one cannot measure future savings because future usage cannot presently be quantified. However, he was forced to acknowledge on cross examination, that under any plan, future usage is speculative because illnesses, injuries and use of providers in future years can never be presently ascertained with certainty.

While Mr. Covelli projected a 12.48% cost savings as part of the proposed modification, whether such savings ultimately turn out to be 6%, 12% or 18%, both the Township and the PBA will benefit directly from such savings.

Clearly, the Township's proposal constitutes a classic "win-win" scenario which should be adopted by the arbitrator notwithstanding the PBA's obstinacy and belligerence.

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Mr. Campion also testified that it was the Township's goal to remain "externally competitive" while at the same time being "internally consistent" on the issue of police salaries. When viewed in light of this precept, and the 2% cap on base salaries mandated by the Salary Cap Act, the Final Offer of the

Township is not only demonstrably more reasonable, but is the only offer compliant with the Salary Cap Act.

Focusing first on the Mahwah Police Department, Mr. Campion testified as to the existing Table of Organization (T-36). He also offered testimony regarding the total cost incurred by Mahwah (exclusive of court time, training time and overtime) for one (1) "top step" patrol officer in 2013. This figure, as indicated on Exhibit T-38, is **\$203,133.67**.

**Of the foregoing amount, \$130,096 is salary (exclusive of overtime but inclusive of \$2,250 longevity pay) and \$3,002 is cost for four (4) personal days, for an aggregate of \$133,098 (T-38). This individual income figure exceeds by more than 43% the \$92,971 median household income of Mahwah (T-22).**

Notably, the evidence reflects that Mahwah police officers also regularly received additional compensation, by way of private duty and regular overtime.

In addition to a Mahwah "top cop's" individual income far exceeding the household income of other residents of Mahwah on a direct income (salary) basis, Mahwah police officers also receive a benefits package (tuition credits, educational incentives, clothing allowances) that would be the envy of the

private sector. In addition, they are enrolled in PFRS with a significant employer pension contribution and are receiving medical benefits in a program offering expansive health care coverage. Such pension benefits for police officers far exceed anything that is currently available in the private sector with respect to retirement planning --- indeed, presently, such pensions are very rarely found in the private sector.

Notwithstanding all of its financial constraints and declining revenue, in 2012 Mahwah's top cop was the second highest paid among the Northwest Bergen County communities. As noted earlier, the thirteen Northwest Bergen County communities are the most appropriate communities for purposes of comparison. In this respect, while one might intuitively believe that a community with the second lowest median income would have a proportionate "top cop" base salary which would rank it lower among its far more affluent neighboring communities, the exact opposite is true. Mahwah residents, despite their next-to-last ranking in median income, pay the second highest in "top cop" base salary. (T-40).

In fact, for 2013, even if the "top cop" in Mahwah received no salary increase by way of step increase, longevity or across the board increase, he/she would still be the third highest paid unit in Northwest Bergen County even after all other communities received their 2013 step and salary increases. (T-40).

Of course, the entire issue of any increase in base salary for the PBA must be analyzed and determined in accordance with the 2% base salary cap mandated by N.J.S.A. 34:13A-16.7, et seq. (T-41). Insofar as the predecessor contract expired after the effective date of that act, i.e. January 1, 2011, but before April 1, 2014, the contract which is the subject of this arbitration is subject to the Salary Cap Act. (T-41).

In In Re: Township of New Milford, P.E.R.C. No. 2012-53, PERC had the first opportunity to review an arbitration award under the Salary Cap Act's 2% limitation on adjustments to base salary. PERC directed that in his/her arbitration award, an arbitrator "must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated." Id. at 13. The arbitrator must "explain what was included [in the base salary] based on the evidence submitted by the parties." Id.

In addition to the costs of salary increments as members move through the guide, the arbitrator "must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity." Id. See also the Interest Arbitration Decision and Award in Borough of Ramsey v. Ramsey PBA Local No. 155, P.E.R.C. Docket No. IA-2012-015 (April

17, 2012) at pp. 68-69, (recognizing and applying the foregoing standard from the New Milford decision).

In the present matter, Mr. Campion testified that the base salary for 2012 (the last year of the expired CBA) for the PBA's members for purposes of the Salary Cap Act is \$5,941,232. This number is comprised of the 2012 total salaries, longevity, "senior" pay, and hazardous pay of PBA members assigned to patrol and investigations as follows:

5,514,008 – Base Salary + Longevity + Hazardous for  
all officers except investigators

427,223 – Base Salary + Longevity + Hazardous for  
investigators

5,941,231 – Total 2012 "Base Salary" per Salary Cap  
Act

See T-49. No other items were agreed to, or understood, by the parties hereto as being included in the base pay for 2012.

In New Milford, PERC ruled that an arbitrator may not take into account either (1) "purported savings resulting from anticipated retirements" or (2) "added costs due to replacement by hiring new staff or promoting existing staff." Rather, PERC stated that:

The Commission believes that the better model to achieve compliance with PL 2010 c 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act. ...a cost analysis of each year of the award that includes at a minimum step increments and longevity...are a mandatory requirement under the new law.

Id. at 15-16.

Utilizing the foregoing methodology mandated by PERC, Mr. Campion testified that increasing the \$5,941,231 2012 base salary by 2% for 2013 results in a figure of \$6,060,056 as available under the Salary Cap Act for 2013 (T-49, p. 1). Increasing the 2012 base salary by an aggregate of 4% over 2013 and 2014 results in a figure of \$6,178,880 as available under the Salary Cap Act for 2013-2014 combined. Id. These calculations equate to an additional \$118,825 over 2012's base salary being available in 2013 and an additional \$237,649 being available over 2013-2014 combined. Id.

At the hearing, the PBA, during the slide presentation (P-2) of Officer Zito, stated that in 2013 seven Mahwah officers will become eligible for retirement, and that two (2) officers "are set to retire."

The presentation also stated that "By the end of 2013, The Mahwah Police Department's active roster will be reduced to 49 Police Officers."

Obviously, what any of these officers may or may not do by way of retirement during 2013-2014 is purely speculative. As noted earlier, PERC has specifically ruled that unknown future events such as expected or anticipated retirements may not be taken into account when deciding an arbitration award under the Salary Cap Act. On this point, in the New Milford decision, PERC explicitly held that:

Since an arbitrator under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award.

Id. at 15.

Therefore, such evidence of officers who are eligible or expected to retire, or "set" to retire, cannot, as a matter of law, be a factor in the arbitration award.

Mr. Campion further explained that for 2013, if the PBA members are moved through the existing step increments only, PBA salaries will increase by \$155,545 (See T-46). Further, the increase in longevity payments in 2013 would be

\$16,125. Id. Accordingly, for 2013, if the PBA received only salary increases due to step movement and longevity payments as set forth in the predecessor CBA (without any across the board ("ATB") increases), a total increase of \$171,670 in the 2013 base salary will result. (T-49, p. 4). Such amount is \$52,845 in excess of the 2% Salary Cap Act for 2013. (Id.)

If, for 2014, the PBA members are moved only through the existing steps and longevity increments under the predecessor CBA, there results a \$127,967 increase in base salary over that of 2012. Id.

Accordingly, if the PBA members are only moved through the step and longevity increments (with no new or further across-the-board ("ATB") salary or longevity increases), there will result a \$299,637 total aggregate increase in 2013-2014 over the base salary for 2012. Id. Such figure is \$61,988 (\$299,637 minus \$237,649) in excess of the permissible 4% aggregate cap for 2013-2014. (T-49, p. 5).

Based on the foregoing, it is clear that even if the Arbitrator were to award no "across the board" increases to the present steps and/or longevity, but rather simply awarded the PBA all increases to which they would be entitled in 2013-2014 if they simply moved through the existing step guides and longevity, such award would violate the Salary Cap Act.



In their final offer, however, not only does the PBA propose to permit such movement (which alone exceeds the cap by \$61,988 for 2013-2014), it proposes an additional 2% "across the board" increase for 2014. (P-1). Such proposal would result in an award which is \$174,781 over the Salary Cap Act for 2013 alone. (T-49, p. 6).

When the PBA's proposal is applied to both 2013 and 2014, the resulting base salary is \$6,489,618 – a figure which exceeds the total monies permissible under the Salary Cap Act of \$6,178,880 by \$310,738. (T-49, p.7).

In its Final Offer (T-44), the Township proposal is based on a "freeze" of step, longevity and hazard rates at their December 31, 2012 levels, but includes the full year implementation of the July 1, 2012 wage increases required by the just expired CBA.<sup>3</sup> (J-1). The implementation of the July 1, 2012 salary increase, of itself, causes the base salary for 2013, absent any guide movement, to increase to \$6,000,453 (T-49, p.3) – an increase of \$59,221, which represents a 1% increase in member compensation from 2012 to 2013. (T-45). This proposed base salary for 2013 of \$6,000,453 is a figure \$59,603 under the maximum permitted by the 2% cap (\$6,060,056 - \$6,000,454 = \$59,603). (T-49, p. 2).

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<sup>3</sup> As explained by Mr. Campion, the 2011-2012 CBA provides for a wage increase which begins 7/1/2012 and is payable/implemented pro rata from 7/1/12 to 6/30/13.

For 2014, the Township proposes a 1.25% increase over the \$6,000,453 proposed base salary for 2013. (T-1). Such 1.25% increase results in a 2014 base salary of \$6,075,459. (T-49, p.3).

While there are numerous methodologies by which the 1.25% increase can be implemented, including, without limitation, "partial steps", perhaps the easiest method would be to create a "zero step" for 2014, i.e. no step movement, thereby giving each officer an increase of 1.25% over his/her 2013 rate of pay.<sup>4</sup>

The Township's proposal results in a base salary for 2014 which is \$103,423 under the maximum permitted by the 2% cap for the 2-year contract (4% aggregate) ( $\$6,178,880 - \$6,075,457 = \$103,423$ ). Id. (T-49, p. 2).<sup>5</sup>

Utilizing the offer made by Mahwah for the proposed two year term of the CBA, Mahwah will maintain its extremely favorable relative position vis-à-vis the other Northwestern Bergen County municipalities (T-40). It will be able to do so

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<sup>4</sup> To the extent any appropriate step movement were to be awarded, same would have to accurately reflect the appropriate dates such movements would occur for each officer. See In Re Ramsey and Ramsey PBA Local No. 155, P.E.R.C. No. 2012-60 (Docket No. IA-2012-015) at pp. 7-9.

<sup>5</sup> N.J.S.A. 34:13A-16.7 requires that the 2% cap on each year of an award be calculated on the "base year", i.e. the last twelve months of the just-expired CBA, and not as 2% of the base for the preceding year beyond the first year of the new agreement. See Interest Arbitration Award in Township of Byram and Sussex County PBA Local No. 138, Docket No. IA-2013-12 (March 11, 2013).

despite the fact that Mahwah, unlike most of the other communities, is operating under significant fiscal constraints that its neighbors do not face.

Applying the Township's offer to the existing officers in the Department offers some insight into the fact that the salary being paid to members of the force is certainly "fair and reasonable", particularly when measured against prevailing community standards (T-40). When the other compensation factors are added in, even without considering available overtime, it is apparent that in 2013, with a freeze on all step and ATB increases, all but eleven (11) of the forty-eight members of the entire force will exceed the \$128,000 in base salary alone; i.e. more that 77% of the PBA members. (T-45) Again, such an individual officer's salary exceeds by more than 40% the median household income of the taxpayers of Mahwah.

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Mr. Campion also offered testimony on the cost of the Police Department, as compared to the rest of the 2013 municipal budget. Whereas Mahwah's entire 2013 budget is \$32,986,542, the budget for the police department alone is \$10,731,935 – a figure equaling 33% of the entire municipal budget. (T-39)

Focusing solely on the salary, benefits and pension components of police expenditures, said portion of the police budget for 2013 was \$9,618,705, or 29% of the entire municipal budget. Id.

Relatedly, Mr. Campion testified that from 2010 to the present, the staffing level for the Police Department has remained virtually unchanged, despite the economic difficulties during this period confronted by the Township. (T-35) This was confirmed by the presentation given by Officer Zito at the hearing. Reflective of the Township's commitment to maintain a properly staffed Police Department is its hiring of four (4) new police officers in 2010, notwithstanding the continuing difficult economic climate. (T-37)

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The New Jersey Legislature has enacted the CAP law so as to impose a 2.5% limit as it relates to municipalities. In the judgment of Mahwah, this was a legislative expression of what the State expected from local elected officials in adopting and implementing municipal budgets. In this regard, the Township's efforts to contain the spiraling costs of the PBA contract are consistent with this legislative philosophy.

In enacting the CAP law, the Legislature declared that:

- It is hereby declared to be the policy of the Legislature that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads.
- At the same time, the Legislature recognizes that local government cannot be constrained to the point that it is impossible to provide necessary services to its residents.

It is the desire, in fact the obligation, of Mahwah to comply with this legislative mandate.

Mahwah has done everything within its control to comport with its managerial philosophy and to comply with the law. As a matter of fundamental fairness and equity, and in light of the criteria applicable to public interest arbitrations, Mr. Champion indicated that the wage offer made by Mahwah, together with the other elements of its proposal, were not only fair and reasonable, but is the only offer compliant with the Salary Cap Act.

**[Page 38 through the top portion of page 46 intentionally omitted]**

#### **SCOPE ISSUES WITH RESPECT TO FINAL OFFER OF THE PBA**

As an initial matter, the PBA's final offer sets forth terms and conditions of employment that are absolutely improper for consideration. More specifically, the PBA is, first, attempting to arbitrate an increase in the off duty work rate which is not a term of the existing contract between the parties. In fact, Officer Falatico acknowledged that such payments arise solely by way of municipal ordinance. Second, the PBA is seeking to arbitrate an issue in the off duty work rate which was never discussed or presented by the PBA during prior negotiation sessions (and has only been raised for the first time in the context of this arbitration.)

As noted in the PBA's Petition to Initiate Compulsory Interest Arbitration (T-1), item 4a requires the list of "dates and duration of negotiation sessions..." The reason is evident: the Act requires the parties to meet and confer over new terms on these occasions in an attempt to mutually agree upon same before a party files a petition. Obviously, it does no good to meet and confer if the PBA were permitted to "sandbag" issues by raising them for the first time in arbitration. This is especially true given timeframes mandated by the new "rocket docket".

Further, it is totally inappropriate to attempt to amend ordinance language via this process. However, even if permitted, the PBA's proposal of permitting a junior officer to be paid at the overtime rate of a full "top cop" member, which is not currently in the contract, would permit the PBA to circumvent proper channels and to impermissibly amend an ordinance through misuse of this process.

## **LEGAL ANALYSIS ON BEHALF OF THE TOWNSHIP OF MAHWAH**

### **I. ECONOMIC ISSUES**

#### **A. Preface**

While the Township submits that its Final Offer (T-44) must be viewed in its totality, not solely in terms of its individual components, it is instructive to review

each of these components. Accordingly, such components have been analyzed, along with each of the elements of the applicable statutory criteria.

At the time of the April 29, 2013 hearing, numerous exhibits were received into evidence. The PBA has failed to demonstrate any significant basis for its position that a 2% "across the board" increase is appropriate (or permissible) under the prevailing statute or otherwise.

In fact, such proposal conspicuously ignores the fact that it is patently in violation of the Salary Cap Act.

At best, the PBA provided a single criterion; a slideshow of corporate entities in Mahwah which it alleges somehow provides a sufficient basis to support its position. However, a review of this slideshow supports only a singular premise, i.e. that Mahwah has several international businesses with facilities located in the Township. Reliance on international corporate structures has absolutely nothing to do with the issues to be addressed in this arbitration and is thus irrelevant and inappropriate. Likewise, the PBA's reliance on DOT traffic statistics provides no support for its arbitration position and is largely irrelevant to the proceedings.

For its part, the Township suggests that its exhibits and positions which analyze the fiscal status of the Township and that of the other Northwest Bergen municipalities are the appropriate comparisons to be examined in this hearing. Those municipalities located in Northwest Bergen County which, by the undisputed testimony of both the PBA witnesses and Mr. Campion, manifest substantially similar and comparable characteristics to Mahwah, provide the most appropriate context contemplated by the Act. Included within this group are 13 municipalities. (T-21 and T-18).

B. The Wage Proposal of the Township

As a part of its Final Offer, the Township has proposed (1) a salary rate freeze for 2013, with no step movement, which fully implements in 2013 the July 1, 2012 salary increase (and results in a 1% salary increase for all PBA members in 2013); and (2) a 1.25% wage increase for 2014. In its Final Offer, the PBA has proposed a 2% increase in each year of the contract in addition to the increases in salaries relating to step movement and longevity. As noted throughout, such proposal clearly violates the Salary Cap Act.

As a threshold issue, while the PBA has fashioned its proposal in terms of percentage increases, the Township believes that the appropriate framework for the analysis required by the Salary Cap Act must be undertaken in terms of "real dollars". More specifically, N.J.S.A. 34:13A:16.7 provides that:



An arbitrator shall not render an award [under the Act] which, on an annual basis, increases the base salary items by more than 2.0 per cent of the aggregate amount expended by the public employer on base salary items for the members of the affected employer organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration...

As discussed hereinabove, when calculating the amount that will be expended for the years which are the subject of the arbitration proceeding, all contractual salary increases realized by step movement and longevity must be taken into account.

After considering the maximum amount an arbitrator can award, the issue then becomes what is the fairest measure of the award taking into account the nine factors under N.J.S.A. 34:13A-16(g). Each of these factors is analyzed in more detail below. The Township submits that such analysis supports the conclusion that its offer is more appropriate than that of the PBA when all such factors are considered.

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The reasonableness of the proposal of the Township receives objective support from multiple sources. Obviously, there are the two statutes themselves, N.J.S.A. 34:13A-16.9 and N.J.S.A. 34:13A-16(g). Second, as evidenced by Exhibit T-43, the Township risks losing state aid based on its answers to a series of state sponsored questions, one of which is whether the increases in any collective bargaining agreements/settlements exceed 2% per year during each year of

such agreement/settlement. As such, the Legislature has made it clear: costs of wages paid to police officers and firemen have reached unsustainable levels and need to be controlled. The days of awarding "maximum" salary increases have passed.

In addition to these outside barometers, an analysis of the 2012 base pay for police officers in comparable jurisdictions demonstrates the equities of the Township's position. As reflected in Exhibit T-40, in 2012 Mahwah ranked **2<sup>nd</sup>** out of 13 comparable municipalities with respect to maximum ("Top Cop") base salary – a position right at the top of the comparison group. Further, a "top cop" officer in Mahwah currently makes **many** thousands of dollars per year more than the median family income in the Township. See T-22.

Moreover, an analysis of the 2013 base pay for police officers in comparable jurisdictions further demonstrates the equities of the Township's position. As reflected in Exhibit T-40, the increase proposed by Mahwah would continue to result in a Top Cop base salary which maintains Mahwah's position, i.e., Mahwah would continue to rank 2<sup>nd</sup> highest out of 13 jurisdictions for which data is available for 2013.

Further, although Mahwah's "top cop" is the second highest paid in Northwest Bergen County, as demonstrated on T-22 Mahwah ranks **2<sup>nd</sup> lowest** in household median income among Northwest Bergen County municipalities.

Additionally, as demonstrated on T-38, a single Mahwah "top cop" officer costs the Township in excess of \$200,000, inclusive of benefits.

In summary, the proposal of the Township is significantly more consistent with the economic realities facing the Township, and with the Legislature's mandate to control ever upward spiraling police salaries and benefits, than is the proposal of the PBA.

#### C. Insurance

In addition to the economic salary proposals of the Township, Mahwah has also proposed effective, cost-saving measures relating to healthcare insurance coverage. More specifically, the "Proposed Plan" set forth on T-34 would help control the rapidly escalating premium rates, which have continued to increase by nearly 20% a year. (T-33).

Under its proposal, Mahwah aims to keep benefits substantially comparable while incentivizing in-network coverage. As a direct result, such cost-saving measure also decreases employee costs for the PBA, given their 35%

statutory responsibility for premium payments under the recent Chapter 78 legislation. Overall, Mahwah's proposal should be a "no brainer" in terms of providing the substantially similar benefits at a lower cost. It provides a classic "win/win" scenario for employer and employee.

D. Elimination of Longevity for New Hires

As noted infra, Mahwah's proposal to prospectively eliminate longevity benefits for new hires is consistent with the recognized trend that longevity is "a slowly-shrinking factor in municipal compensation schemes." This observation is particularly correct among the Northwest Bergen County communities in that 5 of the 13 municipalities comprising same have already eliminated longevity outright or have done so as to new hires. Finally, this rationale is particularly applicable to Mahwah insofar as its officers already receive the second highest salary among the 13 towns, and are thus well-compensated exclusive of longevity benefits.

II. **NON-ECONOMIC ISSUES**

A. **Term of Contract**

Both the Township and the PBA have proposed a two-year agreement.

**B. PBA's Proposal to Delete Paragraph E on Page 10 of the 2011-2012 CBA**

In its Final Offer, the PBA proposes to "modify" paragraph E on page 19 of the CBA "to delete antiquated language." Such proposal must be rejected.

The language which the PBA seeks to delete reads as follows:

E. The entire holiday benefit has, consistent with the prior contract, been folded-in to regular compensation and made a part of the base. The folded-in holiday value has been calculated in the base pay rate (Appendix A). Folded-in holiday compensation shall be utilized for all compensation purposes.

Such language serves two important purposes. First, it memorializes that all holiday benefits payable to the PBA were folded-in to, made a part of, and calculated into the base pay rate of the PBA. Second, it requires that such folded-in holiday compensation be utilized for "all compensation purposes."

By memorializing such terms, this language ensures that no argument can be made in future that the PBA is somehow not being compensated for holidays. Absent such language, as memories fade, one could argue that absence of such language signifies the lack of such holiday pay inclusion in the base pay.

Further, the last sentence of the language in question remains operative and relevant should there ever arise any question as to whether holiday pay is to be utilized for any particular computation.

At the hearing, the PBA presented no substantive reasons why this provision should be deleted --- and none exist. Rather, for the foregoing reasons, such language remains relevant and operative.

Therefore, the Arbitrator should entirely reject the PBA's proposal to eliminate said provision.

III. **APPLICATION OF STATUTORY CRITERIA UNDER N.J.S.A. 34:13A-16g- "THE BOTTOM LINE"**

In determining an arbitration award, the Interest Arbitrator's duties are set forth in the Act. The Township respectfully submits that application of the criteria in the Act compels the conclusion that its proposal be adopted.

1. **The Interests and Welfare of the Public.**

The "interest and welfare" of the public include not only the public's need for a productive police force in all areas of public safety, but also the Township's interest in limiting the costs associated with its police force, so that all other municipal services may be preserved while at the same time keeping the tax rate as low as possible.

It is clear, as noted in almost every recent arbitration award, and by the Legislature itself, that New Jersey is facing a fiscal crisis. The recent statutes are consistent with this reality and the need to keep municipal tax rates in check.

While acknowledging this reality, the Township proposes the balanced approach outlined above. The proposal of the Township achieves this desired balance by proposing a reasonable base salary increase, taking into consideration a variety of cost-effective savings, such as a reasonable change in the prevailing health insurance program.

In that regard, Mahwah is cognizant of the fact that a well-trained, well-equipped and harmonious police department is also a factor when gauging the interests and welfare of the public. In this respect, there is no indication from the testimony at the hearing that the Mahwah police force is operated other than in a harmonious and efficient manner.

The Township believes of particular importance and weight in this matter is the mandate in N.J.S.A. 34:13A-16g(1), requiring an Arbitrator to consider the impact of the CAP Law upon the interests and welfare of the public. In 1976, the Legislature enacted the Local Government CAP Law, N.J.S.A. 40A:4-45.1, et seq., limiting the annual increase in spending level by state, county and municipal governments to 5%. N.J. State P.B.A., Local 29 v. Town of Irvington, 80

N.J. 271,280 (1979). By such statute, the Legislature sought to preclude dramatic increases in "the overall sums that citizens would have to expend in order to finance the workings of government." Id. In 2004, the Legislature amended the CAP Law to reduce the permissible budget increases from 5% to 2.5% or the cost of living adjustment, whichever is less.

As testified to by Mr. Campion, and as confirmed by the November 2, 2012 Local Finance Notice (LFN-2012-23) issued by the New Jersey Department of Community Affairs (see T-42), the Cost of Living Adjustment for calendar year 2013 municipal budgets is two (2%) per cent. In other words, the permissible increase of Mahwah's 2013 budget is 2.0% --- not 2.5%.

The purpose of the CAP Law is evident from the language of the law itself which declared it to be

The policy of the [State] that the spiraling costs of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads.

N.J.S.A. 40A:4-45.1.

Initially, the CAP Law prohibited municipalities from increasing their financial appropriations by more than 5% over the previous year. By doing so,



The Legislature attempted to insure that local real estate taxes would not be unduly increased, particularly those levied against individual homeowners.

Irvington, supra at 281.

As originally enacted, the Act did not specifically reference the CAP Law or address the relationship between the two (2) statutes. Subsequently, the Act was amended in 1996 to provide in subsection (g)(1) that an arbitrator must take the CAP Law into consideration when weighing and assessing the "interests and welfare of the public." However, even prior to such amendment, the Supreme Court recognized that the CAP Law must be considered when taking into account a municipality's financial capacity. P.B.A. Local 207 v. Borough of Hillsdale, 137 N.J. 71,86(1994). In doing so, the Court affirmed the lower court's statement that

"it is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of a public interest arbitration award." 263 N.J. Super. at 188 n.16, 622 A.2d 872....

Closely associated with factor g(1) is factor g(6) under the Act which provides, in part, that an arbitrator must give due weight to

The financial impact [of the award] on the governing unit, its residents and tax payers. When considering the factor in a dispute in which the public employer is a county or municipality, the arbitrator...shall take into account, to the extent that evidence is introduced, how the award will affect

the municipal...purposes element...of the local property tax;... the impact of the award on the ability of the governing body to (a) maintain existing local programs and services...

Many recent or current facts of which the arbitrator can take judicial notice lead to the inescapable conclusion that factors g(1) and g(6) should be given significant and dominant weight in the context of an arbitrator's award.

Simply stated, the interests and welfare of Mahwah's residents, and the fiscal health of the Township, compel the conclusion that the time has come for the PBA to bear its reasonable share of the spending limitations which confront the Township.

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Administrator Campion also testified with respect to the impact of "wage freeze" put into effect for 2013 as to all non-union Township employees. In particular, the Administrator noted that such disparity is creating an unfair and inequitable two-tier system of compensation that is demoralizing to such other Township employees.

Further, all other white and blue collar collective bargaining agreements in Mahwah have expired, and in the ongoing negotiations for successor agreements for all such contracts, the Township has proposed a wage freeze for 2013.

Clearly, such negative morale has an adverse effect on the Township as a whole, and as such, is not in the best interests and welfare of the public.

## **2. Comparison and Overall Compensation**

In reviewing the maximum 2012 base salaries for the highest paid officers ("Top Cop") in the 13 comparable municipalities vis-à-vis the maximum base salary proposed by the Township (see Exhibits "T-40" and "T-44"), the pay increase proposed by the Township clearly maintains Mahwah's current standing.

Accordingly, under the Township's proposal, the PBA continues to enjoy compensation which is the second highest among comparable municipalities. With respect to other economic components of compensation, i.e. those other than base pay, the PBA has not even raised any other appropriate significant issues, thereby signaling its satisfaction with the status quo with regard to these elements.<sup>6</sup>

Any argument by the PBA that Mahwah must meet or exceed the rate of compensation growth existing in comparable municipalities misconstrues the purpose and intent of the Act. Rather, the Act requires the Arbitrator to consider

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<sup>6</sup> As noted, the PBA has attempted to insert the issue of private pay into this arbitration. As discussed herein, infra, such issue is not a negotiated term of the contract and consideration of said issue is inappropriate.

and weigh the eight statutory criteria in N.J.S.A. 34:13A-6(g), among which are a “comparison” of various economic benefits. Nothing in the Act requires, or is intended to require, a municipality to rigidly maintain its position among comparable municipalities. Rather the standard is one of relative, not absolute, comparison.

As such, the issue to be addressed by the Arbitrator is not whether a level of economic benefits maintains a municipality's position in an absolute sense, but whether such benefits maintain, to a reasonable degree, the municipality's general, relative position. For example, if a proposal resulted in a municipality's position moving from the top 10% to the bottom 10% of comparable municipalities, but the actual difference in real dollars was only \$1,000, it would be unreasonable to determine that such a change rendered the proposal “incomparable” to other municipalities.

Stated otherwise, the Act was not intended to prohibit a municipality from declining to provide benefits that other comparable municipalities may offer, as long as such proposal does not render the proffered benefits unreasonably inequitable when compared with comparable municipalities (and is otherwise consistent with the other statutory criteria). In a practical sense, this means that an arbitrator cannot reject an economic proposal simply because it does not provide a benefit afforded by other municipalities --- particularly when the

elimination of that benefit is on a prospective basis only with no negative economic (or other) impact on existing members.

N.J.S.A. 34:13A-16g(2)(c) specifically requires that an Arbitrator compare the wages and salaries of the employees involved in the arbitration proceeding with those of other public employees employed by the same employees. In this regard, as noted above, Mahwah has imposed a wage freeze for 2013 for all non-union Township employees. Additionally, in its current negotiations with all other white and blue collar union employees, all of whose collective bargaining agreements have expired, Mahwah has proposed a zero (0%) per cent salary increase for 2013.

Therefore, the Township's final offer to the PBA is certainly consistent with the position it has taken, and when possible implemented, with regard to all its other public employees. In this regard, the harmony and lack of discord among all the Township's employees is clearly best served and promoted by the Township's final offer.

Here, the PBA's only position is that they are somehow entitled to the maximum award possible. (As noted herein, the PBA's final offer clearly proposes an award which far exceeds the maximum salary increase permitted

by law.) That is not the law in New Jersey and, as expressed throughout this brief, the fiscal reality of Mahwah compels otherwise.

### 3. **Overall Compensation Presently Received by the Employees**

As reflected in the narrow scope of economic issues presented in this arbitration, the only compensation issues raised related to (1) increase in base salary; (2) elimination of longevity on a prospective basis; and (3) changes to the Township's insurance plan. As to these issues, the Township has already discussed the equity of its proposal. The Township also presented evidence which provides a complete picture of the overall compensation it paid to a "top step patrol officer" in 2012 (see T-38). In addition to a base salary of \$130,096, inclusive of longevity benefits; \$3,002.22 for four personal days; \$34,633.84 for health benefits; \$214.80 for life insurance benefits; \$32,706.13 employer pension contribution; and \$1,858.10 for FICA benefits; and \$3,668.71 in workers compensation benefits. Id.

Accordingly, such officer received a total compensation package in 2012 of \$203,133.67, **excluding overtime and private duty pay.**

Moreover, Mahwah's insurance proposal is fair, equitable, and, as confirmed by Mr. Covelli, will result in no substantial reduction in benefits. To the contrary, it will maintain current health insurance coverage while simultaneously

affording economic relief to both the Township and the PBA, as the latter now contributes 35% of incurred healthcare insurance premiums.

With respect to longevity, the Township's prospective basis proposal eliminating such cost is consistent with recent arbitration awards and the status of current collective bargaining agreements in this state. Given that longevity is considered "base salary" under the Salary Cap Act, Mahwah has provided a breakdown of longevity costs in exhibit T-49. As noted therein, in 2013 and 2014, longevity alone amounts to a \$38,250 increase in base salary increase under the current contract in addition to other costs.

The Township's proposal of prospective elimination of longevity creates the proper "balance between anticipated cost giving and not dampening the morale of officers to have given Mahwah years of service." See Borough of Ramsey and Ramsey PBA Local No. 155, supra at page 67 (eliminating longevity benefits prospectively.). Further, the following statement by the arbitrator in Ramsey holds true for Mahwah:

recruits...should not be dissuaded [by the elimination of longevity as to them] from now joining Ramsey's Police Force. This is especially true since the salary guide is quite competitive in Bergen County.

Id.

As noted by PERC in its May 2012 review of an Interest Arbitration Award for the Borough of Ramsey and its police, the arbitrator in that matter properly “found longevity to be a ‘slowly-shrinking’ factor in municipal compensation schemes,” and that “10 of 67 municipalities submitted by the Borough as comparable on longevity” had either completely eliminated longevity or eliminated for new hires. Id. at pp. 9-10.

The current collective bargaining agreements of the 12 other municipalities in Northwest Bergen County provide even more compelling statistics supporting the Township's proposal to eliminate longevity for new hires. More particularly, of these 12 towns, five (5) or about half of same, appear to have already either eliminated longevity completely or have eliminated it for new hires ---- Franklin Lakes (P-5), Ho-Ho-Kus (P-7), Midland Park (P-9), Ramsey (per the above cited PERC decision), and Saddle River (P-13).

The rationale and basis for eliminating longevity for new police hires in Ramsey --- a municipality bordering Mahwah --- is equally compelling for such elimination of longevity for new police hires in Mahwah.

#### **4. Stipulations of the Parties**

There are no applicable stipulations of the parties.



**5. The Lawful Authority of the Township**

The importance and relative significance of the CAP Law is demonstrated again by N.J.S.A. 34:13A – 16g(5) which requires the arbitrator to consider the CAP Law in connection with his/her consideration of the overall lawful authority of the employer. While the PBA may suggest that the Township has the authority to increase its budget, such increase would not be fiscally responsible in light of the superior economic position currently held by Mahwah's police officers and Township's limited opportunity to develop new tax rates. (T-23 and T-25).

**6. Financial Impact On The Government Authority, Its Residents and Taxpayers.**

Mahwah, like many other municipalities in New Jersey, continues to struggle to provide appropriate services to its residents without placing an inordinate financial burden on them.

In this regard, the Township introduced evidence (T-39) reflecting that the 2013 police department budget of 10,731,935 represents 33% of the total 2013 municipal budget of \$32,986,542 (T-39). Of the \$10,731,935 police budget, \$6,545,761 is comprised solely of salary. Id. Such figures demonstrate the tremendous impact of police salary and benefits on both the police department budget and the overall municipal budget.

Accordingly, the above figures confirm the dramatic financial impact which Mahwah's police wages and benefits have upon Mahwah's governing body and taxpayers, as well as the need to responsibly control such costs.

Such figures also illustrate the reasonableness of Mahwah's proposal.

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### **Insurance**

The financial impact of the Township's proposal to amend the language of Article XXI is also of particular importance and weight.

Brian Campion and Frank Covelli both testified that in three years, i.e. from 2011 to 2013, the cost of health care premiums for the PBA has increased 25% and 21%, respectively.<sup>7</sup> Obviously, the financial impact of the PBA's health costs is very significant.

In response to same, the Township has proposed a transfer of health insurance coverage from a traditional plan to a more prevalent PPO, with no substantial reduction in "in-network" benefits.

Such change would provide the Township with the critical flexibility needed to explore and implement cost-saving options, while at the same time

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<sup>7</sup> The actual cost in 2013 was 7.5%, with an 18% budget increase. See T-33.

ensuring no significant reduction in coverage or benefits to the PBA. Unlike the overwhelmingly prevailing practice in the private sector, the Township is not seeking to reduce the level of coverage.

Given the clear, demonstrated need to address the spiraling cost of health care insurance, the Township's proposal is a measured, reasonable approach to same, particularly given the fact that the PBA will be paying 35% of the health insurance premiums under Chapter 78. Such premium savings are passed on to the PBA as a result of overall premium savings to the Township.

**7. Cost of Living.**

There has been no substantial change in the cost of living. Such factor further supports the reasonableness and superiority of Mahwah's Final Offer.

**8. The Continuity and Stability of Employment Including Seniority Rights**

While the final offers of the parties propose various modifications of certain economic issues, no evidence was presented that any aspect of the Township's Final Offer would adversely impact the continuity and stability of employment in the police department.

In fact, as confirmed by the testimony of both the Township and the PBA, Mahwah's police department, unlike some of its neighboring communities, has sustained virtually no changes in its staffing level over the past few years.

9. **Statutory Restrictions Imposed on the Employer, Including N.J.S.A. 40A:4-45.45**

As noted earlier, Mahwah's expenditures have continued to increase despite its best efforts to responsibly contain same. At the same time, the tax levy cap of 2% imposed by N.J.S.A. 40A:4-45.45 has constrained the additional monies which Mahwah is permitted to raise by taxes.

Given the fact that expenditures for police salaries and benefits have been rising at a far higher rate than 2%, such statutory tax levy limitation should be given significant weight in affirming the reasonableness of the Township's Final offer.

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In summary, the information provided by Mahwah at the hearing and memorialized herein evidences that the total compensation package being offered by the Township is extremely fair and reasonable, is within the confines of existing budgetary constraints, and promotes the stability and continuity of employment in this PBA, as well as the unquestioned superior level of compensation enjoyed by the PBA.

## **DISCUSSION**

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

1. The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
2. Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - a. In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - b. In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995., c. 425 (C. 34:13A-16.2); provided, however that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations,

holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

4. Stipulations of the parties.
5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq.).
6. The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c.62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.
7. The cost of living.
8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and

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

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

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

### **Base Salary & Base Salary Cap Calculation**

This Award is subject to the 2% base salary cap ["Hard Cap"] imposed by P.L. 2010, c. 105. In Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53, 38 NJPER 380 (¶ 116 2012), PERC cited standards as they relate to interest arbitration awards having to meet the 2% base salary cap requirements of N.J.S.A. 34:13A-16.7:

P.L. 2010, c. 105 amended the interest arbitration law N.J.S.A. 34:13a-16.7 provides:

- a. As used in this section:  
"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided

pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.

- b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

This is the first interest arbitration award that we review under the new 2% limitation on adjustments to base salary. Accordingly, we modify our review standard to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of



6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

PERC continued its discussion of base salary:

Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

\* \* \*

....We note that the cap on salary awards in the new legislation does not provide for the PBA to be credited with

savings that the Borough receives from retirements or any other legislation that may reduce the employer's costs.

In the consolidated case of Point Pleasant Borough & PBA Local 158/SOA, PERC Dkt. Nos. IA-2012-018 & IA-2012-019 (December 2012), the Arbitrator concluded that he was compelled to apply PERC's standards to the facts of that case. I reached the same conclusion in Camden County Sheriff & PBA Local 277/SOA, PERC Dkt. No. IA-2013-010 (March 2013), in Borough of Tenafly & PBA Local 376, PERC Dkt. No. IA-2013-018 (May 2013), and continue to do so with respect to this matter.<sup>8</sup>

The Township indicates that the base salary for 2012 consisted of salary, longevity, hazardous pay and senior pay. [See Ex. T-45]. The Township calculated base salary in 2012 to be \$5,941,231 and thus the annual 2% Hard Cap under the statute to be \$118,824.50 (\$237,649 over 2 years). [See Township Brief, p. 31]. Using the figures above, and applying PERC's standards, the annual cap amount costs that can be awarded for this bargaining unit over a period of two (2) years as applied to the expired salary schedule as of December 31, 2012, assuming an even application of \$118,824.50 per year, is \$6,060,055 in 2013 and \$6,178,879.50 in 2014. Given the structure of the salary guides, the current

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<sup>8</sup> On May 13, 2013, PERC issued a directive to all public employers in interest arbitration concerning required base salary information and calculations. Atlantic City & PBA Local 24, P.E.R.C. No. 2013-82 (May 13, 2013). PERC's directive was issued after the close of the evidentiary record for this matter and did not factor into this Award.

placement of officers on the guides, and the other economic benefits contained within the expired Agreement, the Hard Cap was a constraint upon the manner in which I was able to craft the salary increases, the salary guides and the longevity benefits to be received by those currently in the bargaining unit.

### **Interests and Welfare of the Public**

As I expressed in recent interest arbitration awards, Arbitrators have recognized that "[t]he interests and welfare of the public [N.J.S.A. N.J.S.A. 34:13A-16g(1)] is paramount because it is a criterion that embraces many of the other factors and recognizes their relationships." Borough of Tenafly & PBA Local 376, PERC Dkt. No. IA-2013-018 (May 2013) and Ocean Cty. Sheriff & PBA Local 379A (Superiors), IA-2013-002 (October 2012) citing Washington Tp. & PBA Local 301, IA-2009-053 (Mastriani 2012); see Borough of Roselle Park & PBA Local 27/(SOA), IA-2012-024, IA-2012-026 (Osborn 2012). Having considered the entire record, the interests and welfare of the public criterion factored into my deliberations but the manner in which I reviewed this case was largely influenced by the statutory Hard Cap. I now review the interests and welfare criterion through the other statutory factors addressed below.

**Lawful Authority of the Employer/Financial Impact on the Governing Unit, Its Residents and Taxpayers/Statutory Restrictions Imposed on the Employer**

N.J.S.A. 34:12A-16g(1), (5), (6) and (9) refer to the lawful authority of the employer, the financial impact of the award, and the statutory restrictions imposed on the employer. As to the tax levy cap, the Township's tax levy cap calculation sheet for 2012 indicates that the amount to be raised by taxation was \$225,556.95 below the maximum allowable amount (\$19,840,086.78 compared to \$20,065,643.73). [Ex. PBA-4, Sheet 3b-1]. In addition, the Township had a 2010 cap bank of \$1,153,641.67, a 2011 cap bank of \$1,310,214.18, and a 2012 cap bank ordinance at 1% of \$255,200.76. [Id. at Sheet 3b]. As to the appropriations cap, the total 2012 budget of \$25,376,159.49 was \$3,525,110.82 below the total general appropriations for municipal purposes cap of \$28,901,270.31. [Id.].

The Township's tax levy cap calculation sheet for 2013 indicates that the amount to be raised by taxation was \$313,951.38 below the maximum allowable amount (\$20,376,614.83 compared to \$20,690,566.21). [Ex. T-48, Sheet 3b-1]. In addition, Township's Final Budget for 2013 indicates that the Township had a 2011 cap bank of \$1,310,214.18, a 2012 cap bank of \$1,061,254.96, and a 2013 cap bank ordinance at 1.5% of \$380,642.39. [Id. at Sheet 3b]. As to the

appropriations cap, the total 2013 budget of \$26,390,076.50 was \$2,289,303.67 below the total allowable appropriations cap of \$28,679,380.17. [Id.].

With respect to surplus, the Township indicates that its surplus balance was \$8.51 million in 2006, \$7.58 million in 2007, \$7.29 million in 2008, \$6.98 million in 2009, \$6.26 million in 2010, \$5.94 in 2011, \$6.27 million in 2012, and \$6.08 million in 2013 (per the adopted budget for 2013). The Township indicates that it utilized \$4.75 million of surplus in 2009, \$4.625 million in 2010, \$3.825 million in 2011, \$3.25 million in 2012, and \$3.895 million in 2013 (per the adopted budget for 2013). [Ex. T-30].

Using the Township's total base salary in 2012 of \$5,941,230.50 I have calculated the awarded base salary increases including salary, longevity, hazardous pay and senior pay to be \$139,993.50 in 2013 and \$92,591.17 in 2014. The total cost of the awarded base salary increases that include salary, longevity, hazardous pay and senior pay over the two (2) year term of the contract is \$232,584.67.

Having considered the entire record, I conclude that the financial impact of this Award as outlined above will not adversely affect the governing unit, its residents and its taxpayers, and it will not prohibit the Township from meeting its statutory obligations or cause it to exceed its lawful authority. Further, this Award

serves the interests and welfare of the public through a thorough weighing of the statutory criteria after due consideration to the Hard Cap.

## **Comparability**

### ***Private Employment***

Given the unique nature of law enforcement jobs, the comparison to private employment has not been allotted significant weight in previous interest arbitration awards. I continue to find no evidence to support a deviation from giving greater weight to public sector and internal comparisons.

### ***Public Employment in General/In the Same or Similar Jurisdictions***

With respect to public employment, the PBA and the Township presented comparisons of this bargaining unit to the law enforcement units in other jurisdictions within Bergen County and the State. The Township emphasized that for 2013 it imposed a wage freeze upon its unrepresented employees and that it has proposed a wage freeze in 2013 for the other represented employees who are currently in negotiations for successor contracts.

The most recent salary increase analysis for interest arbitration on PERC's website shows that the average increase for awards was 2.88% from January 1, 2010 through December 31, 2010, 2.05% from January 1, 2011 through December 31, 2011, 1.86% from January 1, 2012 through December 31, 2012, and 2.17% from January 1, 2013 through March 31, 2013. Over the same time periods, reported voluntary settlements averaged 2.65%, 1.87%, 1.80%, and 1.88%. PERC indicates that the average 2012 settlement for post-2011 filings is 1.84%, and the average 2012 award for post-2011 filings is 1.85%. The data shows that the salary increases received through voluntary settlement or an award from January 1, 2011 through March 31, 2013 have leveled off over that period of time. I give greater weight to the increases received through the post-2011 filings than I do to the ones under the other settlements and awards.

I have reviewed the parties' comparisons and conclude that this bargaining unit enjoys a host of competitive economic benefits that fall within the range of those received in other law enforcement units. I give less weight to internal comparability than external comparability because the Township has yet to reach terms to an agreement with any of the other bargaining units for 2013 and 2014.

### **Overall Compensation**

The evidence in this matter, as demonstrated by the parties' exhibits and the comparisons outlined above, shows that the overall compensation received by the Township's officers is fair, reasonable and competitive. The modifications I award herein are based upon the application of all of the statutory criteria, but as to the salary modifications awarded herein, greater weight to the Hard Cap was required. As to the modifications awarded for new hires, the external comparisons were given greater weight than any internal comparisons presented.

### **Stipulations of the Parties**

There were no stipulations other than the fact that they agree to a term of two (2) years for the Agreement.

### **The Cost of Living**

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



Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2003	2.6	3.0	3.0	2.2	2.1	2.1	2.1	2.2	2.3	2.0	1.8	1.9	2.3	2.5	2.0
2004	1.9	1.7	1.7	2.3	3.1	3.3	3.0	2.7	2.5	3.2	3.5	3.3	2.7	2.3	3.0
2005	3.0	3.0	3.1	3.5	2.8	2.5	3.2	3.6	4.7	4.3	3.5	3.4	3.4	3.0	3.8
2006	4.0	3.6	3.4	3.5	4.2	4.3	4.1	3.8	2.1	1.3	2.0	2.5	3.2	3.8	2.6
2007	2.1	2.4	2.8	2.6	2.7	2.7	2.4	2.0	2.8	3.5	4.3	4.1	2.8	2.5	3.1
2008	4.3	4.0	4.0	3.9	4.2	5.0	5.6	5.4	4.9	3.7	1.1	0.1	3.8	4.2	3.4
2009	0.0	0.2	-0.4	-0.7	-1.3	-1.4	-2.1	-1.5	-1.3	-0.2	1.8	2.7	-0.4	-0.6	-0.1
2010	2.6	2.1	2.3	2.2	2.0	1.1	1.2	1.1	1.1	1.2	1.1	1.5	1.6	2.1	1.2
2011	1.6	2.1	2.7	3.2	3.6	3.6	3.6	3.8	3.9	3.5	3.4	3.0	3.2	2.8	3.5
2012	2.9	2.9	2.7	2.3	1.7	1.7	1.4	1.7	2.0	2.2	1.8	1.7	2.1	2.3	1.8
2013	1.6	2.0	1.5	1.1											

As I did in Tenafly, I have given little weight to this criterion given the impact of the Hard Cap in this case.

### **Continuity and Stability of Employment**

This criterion was considered in my review of the evidence. I conclude that the modifications awarded herein are reasonable under the circumstances presented and will maintain the continuity and stability of employment given the legal constraints on the amount that can be awarded herein.

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

## **Awarded Modifications/Proposals**

### **Term of Agreement**

As proposed by each party, I award a term of two (2) years – January 1, 2013 through December 31, 2014.

### **Salary/Salary Guide/Longevity/Cost Analysis**

The Township's salary data spreadsheets indicate that as of December 31, 2012, there were 48 bargaining unit members – 1 Detective Lieutenant, 4 Lieutenants, 4 Sergeants, 2 Detectives and 37 Patrolmen. [Ex. T-45]. The Township calculated total base salary for 2012 as including salary, longevity, hazardous pay and senior pay to be \$5,941,231. [Id.]. The Township's calculations are based upon its representation that all step movement, with the exception of the first movement made after six months after hire, takes place on January 1<sup>st</sup> of each year. The PBA indicated in its post-hearing brief that step movement takes place on the anniversary date of hire. Under the circumstances, and given the strict statutory time limitations in this matter, I am inclined to rely upon the Township's calculations.

Appendix A of the expired Agreement includes base salaries for Detective Lieutenant, Lieutenant, Detective Sergeant, Sergeant, and Detective. It includes a step guide for Patrol Officer: the first six (6) months, the second six (6) months, second year, third year, fourth year, fifth year, sixth year, and after sixth year (maximum). [See Ex. J-1, Appendix A]. The expired Agreement also includes longevity at a fixed rate of \$375 for each year of service (not due and payable until the officer has served four (4) years with the police department), and senior pay at a fixed rate of \$2,000 for Patrol Officers who have completed 23 years of police service. Every bargaining unit member receives hazardous pay at a fixed rate of \$50.

The salary scale as of December 31, 2012 is as follows:

<u>Patrol Officer</u>	
First Six (6) Months	\$ 41,854
Second Six (6) Months	\$ 46,875
Second Year	\$ 59,335
Third Year	\$ 71,795
Fourth Year	\$ 84,256
Fifth Year	\$ 96,716
Sixth Year	\$109,177
After Sixth Year (Maximum)	\$127,796
<u>Detective</u>	\$131,918
<u>Sergeant</u>	\$136,036
<u>Detective Sergeant</u>	\$140,152
<u>Lieutenant</u>	\$144,272
<u>Detective Lieutenant</u>	\$148,390

The Township's salary data spreadsheets show that in the event the salary schedule remained in place for 2013 and 2014 that there are 11 Patrol Officers moving through the salary guide in 2013. [See also Ex. T-46]. Three (3) out of the 11 Patrol Officers will reach the top step in 2013, 1 moves to Sixth Year, 2 to Fifth Year, 4 to Fourth Year, and 1 to Third Year. Of the remaining 8 Patrol Officers moving through the salary guide in 2014 there is one (1) Patrol Officer who will reach the top step in 2014, 2 to Sixth Year, 4 to Fifth Year, and 1 to Fourth Year. [Id.]. As for senior pay, there is only one (1) Patrol Officer who currently receives senior pay and that will not change because no other Patrol Officer becomes eligible for senior pay in either 2013 or 2014 based upon their years of service. As to longevity, the Patrol Officers who move to the Fifth Year in 2013 or 2014 receive their first longevity payment of \$1,500 (\$375 x 4) effective January 1<sup>st</sup> of the applicable year.

Applying the Hard Cap to this case, and having considered all of the statutory criteria, I award the following. For Detective Lieutenants, Lieutenants, Detective Sergeants, Sergeants, and all Patrol Officers at the top step of their respective salary guides as of December 31, 2012, I award a wage freeze and a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2014 Agreement. Their salaries for 2013 and 2014 are as follows:

### **2013 and 2014**

After Sixth Year (Maximum)	\$127,796
<u>Detective</u>	\$131,918
<u>Sergeant</u>	\$136,036
<u>Detective Sergeant</u>	\$140,152
<u>Lieutenant</u>	\$144,272
<u>Detective Lieutenant</u>	\$148,390

I award the freezes to salary and longevity for these bargaining unit members in order to meet the Hard Cap requirements and to permit the Patrol Officers currently moving through the salary guide to continue advancing upwardly. For the same reasons I also freeze the lower salary steps for 2013 and 2014:

<u>Patrol Officer</u>	
First Six (6) Months	\$ 41,854
Second Six (6) Months	\$ 46,875
Second Year	\$ 59,335
Third Year	\$ 71,795
Fourth Year	\$ 84,256
Fifth Year	\$ 96,716
Sixth Year	\$109,177

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, I award step movement (1 step) effective July 1, 2013, and step movement (1 step) effective December 1, 2014. Once again, in order to meet the Hard Cap requirements and to permit the Patrol Officers currently

moving through the salary guide to continue advancing upwardly I award a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2014 Agreement.

The only exception to the longevity freezes above is for bargaining unit members who are eligible to advance to the Fifth Year step in 2013 and 2014. For those members who are eligible to advance to the Fifth Year step in 2013 they shall begin receiving their longevity pay of \$1,500 as of January 1, 2013. Their longevity shall then be frozen at \$1,500 for 2014. For those members who are eligible to advance to the Fifth Year step in 2014 they shall begin receiving their longevity pay of \$1,500 as of January 1, 2014.

All bargaining unit members will continue to receive hazardous pay at a fixed rate of \$50.

In accordance with PERC's standards, by utilizing the same complement of officers employed by the Township as of December 31, 2012 over a term of two (2) years, and assuming for the purposes of comparison there are no resignations, retirements, promotions or additional hires, the increases to base salary awarded herein increase the total base salary including salary, longevity, hazardous pay and senior pay:

		<u>Total Base Salary</u>	<u>Increase from Prior Year</u>
Base Year	2012	\$ 5,941,230.50	
	2013	\$ 6,081,224.00	\$139,933.50
	2014	\$ 6,173,815.17	\$ 92,591.17
		Total Increase	\$232,584.67

As to longevity for new hires, the evidence shows that there are an increasing number of law enforcement units in Bergen County that have a reduced or an eliminated benefit for officers hired on or after a specified date. I have given greater weight to this external comparison and it supports an award of a reduction in the longevity benefits for officers hired on or after July 1, 2013 from the current fixed rate of \$375 for each year of service to a fixed rate of \$175 for each year of service. The reduced benefit will provide a cost-savings to the Township, but it will also continue to provide new hires with an incentive to remain employed in the Department.

#### **Medical, Dental and Optical Benefits (Article XXI)**

The Township's proposal to change the health benefits plan design is outlined in a 4-page health benefits plan comparison prepared by PIA Security

Programs. [Ex. T-34]. The Township's insurance consultant from PIA, Frank Covelli, testified to the proposed plan design changes. In his professional opinion, the proposed plan will provide a cost savings to the Township and PBA bargaining unit members. The PBA presented Employee Benefits Consultant Frank Petrulla. Petrulla reviewed the plan comparison and in his professional opinion there was insufficient information to make a comprehensive assessment of the proposed plan. Petrulla's testified to his concerns about the proposed plan and they were outlined in the PBA's post-hearing brief. [See PBA Brief, pp. 37-44, see also pp. 44-54 of this Award]. I am persuaded that the PBA has raised reasonable concerns over the potential impact of the plan modifications proposed by the Township. For instance, the proposed plan may lower the established premiums thus reducing the employee contribution amount for the present time. But the impact of the plan on individual bargaining unit members insofar as it changes the out-of-pocket expense amounts for various benefits and creates "in-network" versus "out-of-network" benefits is not known. I conclude that further analysis is required and therefore do not award the Township's proposal. The parties may be well served by engaging in joint discussions over modifications that could mutually benefit the parties. My rejection of the Township's proposal shall not preclude the parties from implementing a change during the course of the 2013-2014 Agreement in the event that their discussions result in a mutual agreement to modify the current plan.



### **Other Modifications/Proposals not Awarded**

As to the remainder of the parties' modifications and proposals I thoroughly reviewed and considered their respective positions. Having examined these items in conjunction with the supporting evidentiary submissions I do not find sufficient justification to award them in whole or in part at this time. The remaining modifications and proposals are therefore rejected.

### **CONCLUSION**

I conclude that the terms of this Award represent a reasonable determination of the issues after applying the statutory criteria. I have given greater weight to the interests and welfare of the public, the Hard Cap, and external comparisons. I have also considered all of the other factors and conclude there is nothing in the record that compels a different result than I have determined in this proceeding.

## **AWARD**

1. Term. Two (2) years – Effective January 1, 2013 through December 31, 2014.
2. Salary/Salary Guide/Longevity.

For Detective Lieutenants, Lieutenants, Detective Sergeants, Sergeants, and all Patrol Officers at the top step of their respective salary guides as of December 31, 2012, I award a wage freeze and a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2014 Agreement. Their salaries for 2013 and 2014 are as follows:

<b>2013 and 2014</b>	
After Sixth Year (Maximum)	\$127,796
<u>Detective</u>	\$131,918
<u>Sergeant</u>	\$136,036
<u>Detective Sergeant</u>	\$140,152
<u>Lieutenant</u>	\$144,272
<u>Detective Lieutenant</u>	\$148,390

The lower salary steps shall also be frozen for 2013 and 2014:

<u>Patrol Officer</u>	
First Six (6) Months	\$ 41,854
Second Six (6) Months	\$ 46,875
Second Year	\$ 59,335
Third Year	\$ 71,795
Fourth Year	\$ 84,256
Fifth Year	\$ 96,716
Sixth Year	\$109,177

For Patrol Officers who have not reached the top step of their salary guide as of December 31, 2012, I award step movement (1 step) effective July 1, 2013, and step movement (1 step) effective December 1, 2014. I award a longevity freeze at their December 31, 2012 levels for the duration of the 2013-2014.

The only exception to the longevity freezes above is for bargaining unit members who are eligible to advance to the Fifth Year step in 2013 and 2014. For those members who are eligible to advance to the Fifth Year step in 2013 they shall begin receiving their longevity pay of \$1,500 as of January 1, 2013. Their longevity shall then be frozen at \$1,500 for 2014. For those members who are eligible to advance to the Fifth Year step in 2014 they shall begin receiving their longevity pay of \$1,500 as of January 1, 2014.

All bargaining unit members will continue to receive hazardous pay of \$50.

Longevity for officers hired on or after July 1, 2013 will be reduced from the current fixed rate of \$375 for each year of service to a fixed rate of \$175 for each year of service.

3. All Other Proposals. All other proposals of the Township and the Union are denied.

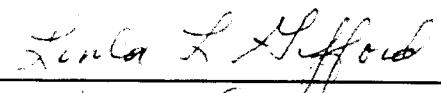
Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken "the statutory limitation imposed on the local tax levy cap into account in making the award." My Award also explains how the statutory criteria factored into my final determination.

Dated: June 28, 2013  
Sea Girt, New Jersey

  
\_\_\_\_\_  
Robert C. Gifford

State of New Jersey     }  
County of Monmouth    }ss:

On this 28<sup>th</sup> day of June, 2013, before me personally came and appeared Robert C. Gifford to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

  
\_\_\_\_\_  
Notary Public  
1/10/16